

# Inability to control one's impulses a ground for loss of visitation rights

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In the case of Neill & Redford ([2013] FamCA 588), the Family Court gave sole parental responsibility to the mother and prohibited the father from seeing or communicating with his two children except through the post on the ground that the father's failure and consistent refusal to undergo psychiatric treatment to help him manage his anger issues, control his impulses and to reflect upon how his actions affect others around him puts his children at risk of significant harm.

The mother and the father had five children together during their cohabitation. The custody of the twins was given to the paternal grandmother while the three older children lived with the mother. The father is a truck driver and he is on the road on most days and nights such that it was impossible for the children to live with him. The consent orders granting them equal parental responsibility worked for two years until a series of complaints for domestic violence were made by the mother against the father. An Apprehended Violence Order (AVO) had been issued by the police against the father on the complaint of the mother. She claimed that he had sexual intercourse with her without her consent. The father then repeatedly breached the AVO which landed him in gaol.

During his appearance in court, he asked that parental responsibility be given to him and not to the mother as the mother was using drugs and that the children were at risk of abuse and neglect with her. The mother refused to appear in court or even give evidence. The Court was in a quandary as to how to proceed seeing as neither of the parties was willing to give evidence that could form the basis of parenting orders.

The Court relied upon the testimonial evidence of a psychiatrist, refuge workers (who helped the mother recover from the domestic violence she had been living through), case workers from the Department of Family Services who had been helping her learn parenting techniques, and from the police who have already compiled a dossier on the father's many criminal charges.

The father has had several criminal charges for drink driving, assault, offensive and disorderly conduct and for breaches of the APO. In court, he exhibited a propensity to use foul language, to bang his fists and engage in physically threatening behavior that the court had to call in security personnel. He has hearing impairment and when he did not like the line of questioning of the Independent Children's Lawyer he threw the hearing device that enabled him to hear the proceedings in the court, shattering it so that a new one had to be brought in for him.

The Court noted that the mother's failure and refusal to attend the hearings or even give evidence must have been brought about by fear of the husband's temper. The Court noted that there were two complaints filed by the mother against the father of engaging in sexual intercourse without the mother's consent. The father was of heavy build and he had a loud voice. When he is angry, his behavior could be regarded as threatening and menacing. On the other hand, the mother has a substance abuse problem: she takes amphetamines and this prevents her from being a sensitive and attentive parent to her children. However, as between the mother and the father, the mother has

help from case workers and refuge workers who are all helping her overcome her substance abuse issues and helping her become an effective parent.

This is in clear distinction from the father who refuses to even acknowledge that he had a problem with impulse control and emotional regulation. The Court noted that he is of the belief that parental responsibility and face to face visitation are rights of which he is being systematically deprived by the police, by the social workers and by the court. He refuses to acknowledge that his difficulty may partly be due to his failure to control his emotions. This kind of failure to emotionally self-regulate does not speak highly of his ability to parent his children. Even if there is evidence that he has not ever hurt his own children and has not displayed any animosity against them, his continual display of ill temper, anger and irritation put the children in fear of their safety and in fear of the physical safety of their mother. This would place the children in significant harm and allowing him visitation would not be in the best interest of the children at this time.

While the children have not been the subject or object of his violent and aggressive outbursts, the children have witnessed his outbursts. The father took one of the children to a football match and by the time the match ended, the father was intoxicated. He showed enough good sense not to drive and instead, he and his son slept in the car. The mother, frantic that the child had not been returned after the game, requested police assistance. The police found the father and the child in the car. When the police awakened the father and told him of the complaint against him, the father displayed aggression toward the police which his son witnessed.

The Court was convinced that these outbursts of aggression and violence although not directed toward the children can still harm them as it sets for them a bad example of how to deal with frustration and adversities in life. Thus, as between the father who refuses to take responsibility for himself and the mother whose drug use may be attributable to the fear and anxiety she had been living under because of her relationship with her former husband, it is the mother who must be given sole parental responsibility over their children.

The father is entitled to know of any serious illness or injury of the children. He is also entitled to be consulted as to any major decisions affecting the health and schooling of his children. The mother is directed to write to her husband and give him sufficient time to respond before making any major decision about the children. The father is directed not to have any direct face-to-face contact with his children. He is free to send them letters and other things for their birthday and for Christmas through the post.

### **About the Author**

Alan Weiss established [aussiedivorce.com.au](http://aussiedivorce.com.au) in 2005. Today, we are Australia leading boutique family law website. We have [divorce lawyers Sydney](#), [divorce lawyers Melbourne](#), [divorce lawyers in Brisbane](#).

