



Friday, 1 November 2024

## Weekly Family Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering family law

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### Executive Summary (One Minute Read)

**Adler & Parrow** (FedCFamC1A) - primary judge had not erred by admitting a family report where its author was too ill to attend for cross-examination, or in finding that no issue estoppel arose from the dismissal of state criminal charges and application for an ADVO

## HABEAS CANEM

### Pig, Dog and Bougainvillea



# Benchmark

## Summaries With Link (Five Minute Read)

### **Adler & Parrow [2024] FedCFamC1A 192**

Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction  
Riethmuller J

Parenting - a father was charged with assaults against the wife, and an ADVO was also sought - a Magistrate dismissed the criminal charges but made an ADVO, which was later set aside by the District Court - at trial for parenting orders, the primary judge declined to accept any issue estoppel arose from the state proceedings - the primary judge also admitted a family report, even though its author was ill and could not attend - the primary judge ordered the parties' child live with the mother and spend limited time with the father, with staged increases - the father appealed - held: the family report was admissible in the parenting proceedings under s69ZT of the *Family Law Act 1975* (Cth) removing the prohibition against hearsay in the *Evidence Act 1995* (Cth) - no application that s69ZT not apply to the family report was made under s69ZT(3) - the primary judge retained a discretion to exclude the family report under s135 of the *Evidence Act* - on appeal, the "correctness" standard and not the principles in *House v The King* applied to the decision under s135 - there had been no real challenge to the credibility of the family report author - mere inability to cross-examine by itself cannot be sufficient to satisfy s135, as both s63 of the *Evidence Act* and s69ZT contemplate that hearsay evidence may be admitted, and such an objection could always be made to hearsay evidence - the probative value of the family report was not substantially outweighed by the dangers listed in s135 - the primary judge had correctly decided to admit the family report and then consider what weight to give it in the light of the findings of fact ultimately made - the weight or importance given to evidence is quintessentially for the primary judge unless an appellant can show that the primary judge was "plainly wrong" - the father had not established that the weight the primary judge placed on the family report was plainly wrong in the context of the findings ultimately made - an issue estoppel at common law arising from the state criminal or ADVO proceedings would not bind the Court when determining parenting orders, although it would be open to the primary judge to rely on it - there was no issue estoppel here, as the mother was not a party (or privy to a party) to the state criminal or ADVO proceedings, it was not clear what the state courts had actually decided, and the fact that courts not being satisfied that the prosecution or ADVO applicant had proved their cases did not establish the falsity of those cases - other grounds of appeal also rejected - appeal dismissed.

[Adler & Parrow](#)

[From Benchmark Friday, 1 November 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Case of Kobaliya v Russia (EUHRTS)** - European Court of Justice found that, in its overly broad definition of 'foreign agents', Russia committed multiple violations of the *European Convention on Human Rights*

### Summaries With Link (Five Minute Read)

**Case of Kobaliya v Russia, No 39446/16**

European Court of Human Rights

Pastor Vilanova P, Schukking, Serghides, Roosma, Ktistakis, Mjöll Arnardóttir, & Kovatcheva JJ  
Prior to its exclusion from the Council of Europe in 2022, Russia was bound by the *European Convention on Human Rights* and subject to the jurisdiction of the European Court of Human Rights. Here the activity in question occurred between 2012 and 2022 and related to fundamental rights to freedom of expression and assembly as guaranteed by the Convention. Under Russian law, non-governmental organisations (NGOs), media organisations, and individuals who received any foreign support were required to register as 'foreign agents' and conform to restrictions placed on persons so designated. The complainants alleged that the statutory definition was so overly broad as to impinge on rights to freedom of expression and freedom of assembly guaranteed by Articles 10 and 11 of the *European Convention*. The European Court found that the Russian legislation was unlawful because it was overly broad and employed the stigmatising term 'foreign agent' to a very wide universe of parties that could not all be lumped together as 'foreign agents'. Under Russian law, once designated as a foreign agent, substantial regulatory legislation attached curtailing the political rights of the parties so classified. By casting such a wide net, the term 'foreign agent' was used to circumvent basic *European Convention* rights.

[Case of Kobaliya](#)

## Poem for Friday

### Echo

By Christina Rossetti (1830-1894)

Come to me in the silence of the night;  
Come in the speaking silence of a dream;  
Come with soft rounded cheeks and eyes as bright  
As sunlight on a stream;  
Come back in tears,  
O memory, hope, love of finished years.

Oh dream how sweet, too sweet, too bitter sweet,  
Whose waking should have been in Paradise,  
Where souls brimfull of love abide and meet;  
Where thirsting longing eyes  
Watch the slow door  
That opening, letting in, lets out no more.

Yet come to me in dreams, that I may live  
My very life again tho' cold in death:  
Come back to me in dreams, that I may give  
Pulse for pulse, breath for breath:  
Speak low, lean low,  
As long ago, my love, how long ago.

**Christina Georgina Rossetti**, born on 5 December, 1830, was one of the foremost poets of her era. Her father, Gabrielle, was an Italian Poet, and later chair of Italian at King's College, in London. Her mother Frances Polidor, an Anglo-Italian, home schooled her children in a climate of intellectual excellence. From 1845 Christina, by then a prolific poet, suffered an illness, that some consider was at least influenced by mental illness. She continued to have bouts of serious illness throughout her life. Rossetti's poetry, included the collections *Goblin Market and other Poems* (1862), *The Prince's Progress* (1866), *A Pageant* (1881), and *The Face of the Deep* (1882). Christina Rossetti died on 29 December, 1894.

**Stanford Chamber Chorale**, conductor, Stephen M Sano, with Laura Dahl, pianist, sing Norman Dello Joio's **Come to Me, My Love**, a setting of Christina Rossetti's "Echo"

<https://www.youtube.com/watch?v=NyJs5oqyygs>



Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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