

Friday, 6 September 2019

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

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Executive Summary (1 minute read)

GR v Secretary, Department of Family and Community Services and Justice & Ors (NSWSC) - family law - 'parens patriae jurisdiction' - mother sought that Court set aside orders of Children's Court - application dismissed

Labonte & Labonte (FamCA) - family law - spousal maintenance - payment of outgoings - husband sought to discharge orders - 'change of circumstances' not established - application dismissed

Vieth & Vieth (FamCA) - family law - parenting - mother sought parenting orders in respect of child - orders granted

Tailor & Tailor (FamCA) - family law - husband sought 'sole right' of occupation of property, exclusion of wife from property and injunction restraining wife from attending property without his consent - orders granted in husband's favour

Barberis & Barberis (FamCA) - family law - property - division of assets - assets divided half in favour of applicant and half in favour of respondent

Summaries With Link (Five Minute Read)

GR v Secretary, Department of Family and Community Services and Justice & Ors [2019] NSWSC 1146

Supreme Court of New South Wales

Slattery J

Family law - mother sought to invoke Court's 'parens patriae jurisdiction' - mother sought that Court set aside interim orders of Children's Court which had given Minister 'interim parental responsibility' - mother also sought that proceedings which Secretary commenced in Children's Court be dismissed, and discharge of 'young person' from hospital into mother's care at 'family home' - *Children and Young Persons (Care and Protection) Act 1998 (NSW)* - whether "exceptional circumstances" justifying interference with orders of Children's Court - held: application dismissed.

[View Decision](#)

[From Benchmark Friday, 6 September 2019]

Labonte & Labonte [2019] FamCA 433

Family Court of Australia

Rees J

Family law - spousal maintenance - husband sought vacation of orders for spousal maintenance payment and payment of outgoings on home which wife and children lived in - husband contended he did not have ability to pay sums - whether 'change of circumstances' for purpose of s83(2)(a)(ii) *Family Law Act 1975 (Cth)* - held: Court not satisfied 'change of circumstances' established - orders not discharged - application dismissed.

[Labonte](#)

[From Benchmark Friday, 6 September 2019]

Vieth & Vieth [2019] FamCA 45

Family Court of Australia

McClelland DCJ

Family law - parenting - mother and Independent Children's Lawyer sought parenting orders in respect of child - mother sought 'sole parental responsibility', that child live with her and that time with father be reserved - whether appropriate that matter proceed on 'undefended basis' - *Sirola & Sirola and Anor (No.3) [2016] FamCA 1076* - *Blinko & Blinko [2015] FamCAFC 146* - s60CC *Family Law Act 1975 (Cth)* - held: mother granted orders sought.

[Vieth](#)

[From Benchmark Friday, 6 September 2019]

Tailor & Tailor [2019] FamCA 383

Family Court of Australia

McEvoy J

Family law - property - husband sought 'sole right' of occupation of property he had owned since before marriage to wife - husband sought exclusion of wife from property and injunction restraining wife from attending party without husband's consent - husband also sought that wife remove caveat she lodged on property's title - wife had lodged caveat on alleged basis she had interest in property as a constructive trust's beneficiary - s114(1) *Family Law Act 1975 (Cth)* -



held: orders granted in husband's favour.

[Tailor](#)

[From Benchmark Friday, 6 September 2019]

Barberis & Barberis [2019] FamCA 386

Family Court of Australia

Wilson J

Family law - property - applicant and respondent agreed on orders in respect of child - determination of 'property issues' - respondent sought division of assets 65% in her favour and 35% in applicant's favour - identification of assets - contributions - 'family violence allegations' - s75 *Family Law Act 1975* (Cth) - applicant sought division of assets of half in favour of applicant and half in favour of respondent - held: Court satisfied that assets should be divided in manner sought by application.

[Barberis](#)

[From Benchmark Friday, 6 September 2019]



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From: The Hunting of the Snark

By: Lewis Carroll

Fit the Sixth

The Barrister's Dream

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain
That the Beaver's lace-making was wrong,
Fell asleep, and in dreams saw the creature quite plain
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound.

The indictment had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done.

The Jury had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed
"Fudge!"

That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.



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"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.

But the Judge said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being
quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,
"And then to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.



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But their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear.

https://en.wikipedia.org/wiki/Lewis_Carroll

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