



Friday, 7 June 2019

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Chimin & Fiato (No. 2) (FCA) - family law - applicant's counsel sought that applicant be granted costs certificate under s10(3) *Federal Proceedings (Costs) Act 1981* (Cth) - costs certificate granted

Genesalio & Genesalio (FamCAFC) - family law - husband's brother, by Application in an Appeal, sought appointment as husband's Case Guardian - brother appointed as husband's Case Guardian 'limited to the appeal proceedings'

Frederick & Frederick (FamCAFC) - family law - Binding Financial Agreement entered by husband and wife - Binding Financial Agreement set aside - wife's appeal allowed

Sanders & Taro (FamCAFC) - family law - parenting - mother's application for expedition of appeal dismissed - mother's application seeking to dispense with requirement to provide transcript adjourned

Acharya & Bhatt (FamCAFC) - family law - respondent, by Application in an Appeal, sought dismissal of appeal under r22.45 *Family Law Rules 2004* (Cth) - appeal dismissed

Summaries With Link (Five Minute Read)

Chimin & Fiato (No. 2) [2019] FamCA 183
Family Court of Australia

Benchmark

Hogan J

Family law - costs - parenting - applicant's counsel sought that applicant be granted costs certificate under s10(3) *Federal Proceedings (Costs) Act 1981* (Cth) - whether s10(3) enlivened - whether just to exercise discretion to make order - consideration of circumstances - applicant's 'financial position' - held: Court satisfied to grant costs certificate.

[Chimin](#)

[From Benchmark Friday, 7 June 2019]

Genesalio & Genesalio [2019] FamCAFC 85

Full Court of the Family Court of Australia

Strickland J

Family law - husband's brother, by Application in an Appeal, sought appointment as husband's Case Guardian - wife opposed application - Pt 6.3 *Family Law Rules 2004* (Cth) - whether husband suffered disability requiring a Case Guardian - whether husband's brother "has no interest in the case that is adverse" to husband's interest - whether husband's brother could "fairly and competently" conduct case for husband - held: application granted - brother appointed as husband's Case Guardian 'limited to the appeal proceedings'.

[Genesalio](#)

[From Benchmark Friday, 7 June 2019]

Frederick & Frederick [2019] FamCAFC 87

Full Court of the Family Court of Australia

Strickland, Aldridge & Austin JJ

Family law - parties entered 'Binding Financial Agreement' (agreement) - husband sought declaration agreement 'valid and binding' - wife sought that agreement be set aside for non-compliance with s90G *Family Law Act 1975* (Cth) (Family Law Act) or on basis of 'changed circumstances' within s90K(1)(d) Family Law Act or on basis entry into agreement obtained by husband's 'undue influence and unconscionable conduct' - Federal Circuit Court granted declaration which husband sought - wife appealed, seeking to set aside agreement under s90K(1)(d) Family Law Act on basis disability of child of parties 'constituted changed circumstances which led to hardship' - whether erroneous failure to give weight to evidence of husband concerning assets' 'current value' - held: appeal allowed - Binding Financial Agreement set aside.

[Frederick](#)

[From Benchmark Friday, 7 June 2019]

Sanders & Taro [2019] FamCAFC 86

Full Court of the Family Court of Australia

Kent J

Family law - parenting - expedition - mother sought expedition of hearing of appeal against Baumann J's interim parenting orders - mother also sought that requirement to obtain and provide transcript of interim hearing 'be dispensed with' - r12.10A(2) *Family Law Rules 2004*



(Cth) - held: application for expedition of appeal dismissed - mother's application seeking to dispense with requirement to provide transcript adjourned

[Sanders](#)

[From Benchmark Friday, 7 June 2019]

Acharya & Bhatt [2019] FamCAFC 83

Full Court of the Family Court of Australia

Aldridge, Watts & Austin JJ

Family law - appellant, by Notice of Appeal, appealed against orders of primary judge - respondent, by Application in an Appeal, sought dismissal of appeal under r22.45 *Family Law Rules 2004* (Cth) on basis appellants had 'failed show due diligence in proceeding with the appeal' - held: appellant had failed to comply with order concerning security for costs - appeal was stayed - there was 'every prospect' of permanent stay - appellant had not paid costs orders or taken 'procedural steps to prosecute' appeal - permitting continuance of appeal would be an injustice to the respondent - no basis for reasonable suspicion of 'appealable error' by primary judge - appeal dismissed.

[Acharya](#)

[From Benchmark Friday, 7 June 2019]

Benchmark

To a Locomotive in Winter

By: Walt Whitman

Thee for my recitative,
Thee in the driving storm even as now, the snow, the winter-
day declining,
Thee in thy panoply, thy measur'd dual throbbing and thy
beat convulsive,
Thy black cylindric body, golden brass, and silvery steel,
Thy ponderous side-bars, parallel and connecting rods,
gyrating, shuttling at thy sides,
Thy metrical, now swelling pant and roar, now tapering in
the distance,
Thy great protruding head-light fix'd in front,
Thy long, pale, floating vapor-pennants, tinged with delicate
purple,
The dense and murky clouds out-belching from thy smoke-
stack,
Thy knitted frame, thy springs and valves, the tremulous
twinkle of thy wheels,
Thy train of cars behind, obedient, merrily following,
Through gale or calm, now swift, now slack, yet steadily
careering;
Type of the modern—emblem of motion and power—pulse of
the continent,
For once come serve the Muse and merge in verse, even
as here I see thee,
With storm and buffeting gusts of wind and falling
snow,
By day thy warning ringing bell to sound its notes,
By night thy silent signal lamps to swing.

Fierce-throated beauty!
Roll through my chant with all thy lawless music, thy
swinging lamps at night,
Thy madly-whistled laughter, echoing, rumbling like an
earthquake, rousing all,
Law of thyself complete, thine own track firmly holding,
(No sweetness debonair of tearful harp or glib piano thine,)
Thy trills of shrieks by rocks and hills return'd,
Launch'd o'er the prairies wide, across the lakes,
To the free skies unpent and glad and strong.



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

[Click Here to access our Benchmark Search Engine](#)