

Friday, 10 May 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)

**Hurst v Koszewski** (SASC) - cross-vesting - interlocutory application - defendant sought transfer of proceedings to Family Court of Australia - application refused

**Trebiano & Trebiano (No. 2)** (FamCAFC) - family law - costs - Court allowed appeal in proceedings - respondent to pay appellant's costs

**Acland & Grohl** (FamCAFC) - family law - costs - appeal discontinued - appellant to pay respondent's costs on indemnity basis

**Buchanan & Morgan** (FamCAFC) - family law - parenting - appeal against 'final parenting orders' including order for 'sole parental responsibility' - appeal dismissed

**Adair & Adair** (FamCAFC) - family law - property - appeal against property settlement orders requiring husband to transfer properties he owned to wife - appeal dismissed

### Summaries With Link (Five Minute Read)

#### **Hurst v Koszewski [2019] SASC 67**

Supreme Court of South Australia

Parker J

Cross-vesting - defendant brought proceeding against plaintiff, seeking return of money and items - defendant, under s90RD *Family Law Act 1975* (Cth), subsequently brought proceedings

in Family Court, seeking declaration that 'de facto relationship' existed' between plaintiff and defendant and orders concerning spousal maintenance and property division - defendant, by interlocutory application, sought transfer of proceedings to Family Court of Australia - s5(1) *Jurisdiction of Courts (Cross-vesting) Act 1987* (SA) - interests of justice - *Valceski v Valceski* (2007) 70 NSWLR 36 held: application to transfer proceedings refused.

[Hurst](#)

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## **Trebiano & Trebiano (No. 2) [2019] FamCAFC 72**

Full Court of the Family Court of Australia

McClelland DCJ, Aldridge & Austin JJ

Family law - Court allowed appeal in proceedings - appellant sought that respondent pay costs and certificate for rehearing's costs under s8 *Federal Proceedings (Costs) Act 1981* (Cth) (Costs Act) - respondent sought the no costs order be made and that parties each be granted certificate under ss6 & 8 Costs Act for costs of appeal and rehearing - whether Court satisfied circumstances justified costs order different from order that each party bear own costs - s117(1) *Family Law Act 1975* (Cth) (Family Law Act) - matters in s117(2A) Family Law Act - held: respondent to pay appellant's costs.

[Trebiano](#)

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## **Acland & Grohl [2019] FamCAFC 69**

Full Court of the Family Court of Australia

Ryan, Aldridge & Watts JJ

Family law - costs - appeal was discontinued - respondent sought that appellant pay costs on indemnity basis - appellant conceded costs order should be made but sought costs on 'party and party basis' - whether just to grant indemnity costs order - whether settlement offer 'imprudently refused' - whether appeal 'doomed to fail' - ss117 & 117(2A) *Family Law Act 1975* (Cth) - held: appellant to pay respondent's costs on indemnity basis.

[Acland](#)

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## **Buchanan & Morgan [2019] FamCAFC 62**

Full Court of the Family Court of Australia

Alstergren CJ, Strickland & Ryan JJ

Family law - mother appealed against 'final parenting orders' made by primary judge including order that father have 'sole parental responsibility' - whether misstatement of orders sought by father in respect of parental responsibility - principles in *Macedonian Church, Whisprun and Water Board v Moutsakis* (1988) 180 CLR 491 - whether failure to take relevant considerations into account - adequacy of reasons for findings - whether adequate explanation of reasoning process - abuse of process - held: appeal dismissed.

[Buchanan](#)



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**Adair & Adair [2019] FamCAFC 70**

Full Court of the Family Court of Australia

Strickland, Ryan & Austin JJ

Family law - property - primary judge made property settlement orders requiring husband to transfer properties to wife - husband owned the properties - properties comprised whole 'alienable assets' of parties - husband appealed - whether denial of procedural fairness - whether 'erroneous findings' - whether erroneous reliance on and use of 'earlier findings' of Hannam J in parties' parenting dispute - whether 'discretionary error' in relation to 'Kennon principles', 'financial contributions' and/or 'assessments' - held: grounds of appeal did not have merit - appeal dismissed.

[Adair](#)

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# Benchmark

## **Dream-Time**

**By:** Ella Higginson

It is the time when crimson stars  
    Weary of heaven's cold delight,  
And take, like petals from a rose,  
    Their soft and hesitating flight  
Upon the cool wings of the air  
    Across the purple night.

It is the time when silver sails  
    Go drifting down the violet sea,  
And every poppy's crimson mouth  
    Kisses to sleep a lovesick bee;  
The fireweed waves her rosy plumes  
    On pasture, hill and lea.

It is the time to dream—and feel  
    The languid rocking of a boat,  
The pushing ripple round the keel  
    Where cool, deep-hearted lilies float,  
And hear thro' wild syringas steal  
    Some songster's drowsy note.

It is the time, at eve, to lie  
    And in a hammock faintly sway,  
To watch the golds and crimsons die  
    Across the blue stretch of the bay;  
To hear the sweet dusk tiptoe by  
    In the footsteps of the day.

[Ella Higginson](#)

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