

Friday, 12 April 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)

**Trevi & Trevi (No. 3)** (FamCAFC) - family law - costs - property settlement orders - wife to pay husband's costs of re-exercise of discretion from date of certain offer

**Sfakianakis & Sfakianakis** (FamCAFC) - family law - costs - Court dismissed appeal - appellant to pay respondent's costs in 'fixed sum' which exceeded party and party costs but fell short of indemnity costs

**Elias & Elias** (FamCAFC) - family law - parenting orders - father's appeal against orders in relation to parties' child dismissed

**Garston & Yeo** (FamCAFC) - family law - spousal maintenance - application in an appeal - applicant sought expedition of appeal - application dismissed

**Pereira & Gangumi** (FamCA) - family law - parties sought declaration that marriage was a nullity - 'decree of nullity' granted

### Summaries With Link (Five Minute Read)

**Trevi & Trevi (No. 3) [2019] FamCAFC 58**

Full Court of the Family Court of Australia

Alstergren CJ, Murphy & Kent JJ

Family law - costs - Full Court allowed husband's appeal against orders - Full Court re-

exercised discretion under s79 *Family Law Act 1975* (Cth) 'to make property settlement orders' - husband sought costs of discretion's re-exercise in reliance on offers of settlement - importance of settlement offers as a consideration in determination of costs - s117(2A) of the Act - whether basis for indemnity costs order - whether sufficient particularisation of costs items - held: wife to pay husband's costs from date of certain offer in amount agreed upon, or, if not agreed upon, assessed on 'party and party basis'.

[Trevi](#)

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## **Sfakianakis & Sfakianakis [2019] FamCAFC 54**

Full Court of the Family Court of Australia

Aldridge, Watts & Austin JJ

Family law - costs - Court dismissed appeal in proceedings - respondent sought indemnity costs order - whether to grant indemnity costs - whether to grant order costs 'greater than party and party costs' - "special costs order" - offer of settlement - appellant 'wholly unsuccessful' - abandonment by appellant of 'much of his case' - whether appellant's conduct unreasonable - s117 *Family Law Act 1975* (Cth) - held: appellant to pay respondent's costs in 'fixed sum' which exceeded party and party costs but fell short of indemnity costs.

[Sfakianakis](#)

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## **Elias & Elias [2019] FamCAFC 53**

Full Court of the Family Court of Australia

Ainslie-Wallace, Aldridge & Austin JJ

Family law - parenting orders - father appealed against parenting orders in proceedings between father and mother - amount of time to be spent with child - manner in which time to be spent with child - order to attend psychologist - family violence - mental health - supervision - "supervised time" - "time in the presence of" - medical evidence - risk of harm - adequacy of reasons - held: appeal dismissed.

[Elias](#)

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## **Garston & Yeo [2019] FamCAFC 56**

Full Court of the Family Court of Australia

Aldridge J

Family law - spousal maintenance - applicant, by application in an appeal, sought expedition of appeal against spousal maintenance orders - expedition sought on basis appeal would be short, argument and material relied on would be brief, and prospect of success were strong - whether appeal 'should be heard before and in priority to' other appeals - held: Court not satisfied to grant application.

[Garston](#)

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**Pereira & Gangumi [2019] FamCA 121**

Family Court of Australia

Gill J

Family law - evidence - parties sought declaration of marriage's nullity - husband contended he was 'unknowingly still in a marriage' to another person (Ms Tani) at time of marriage - whether proof of existence of marriage to other person - admissibility of copy of 'Marriage Registration Certificate' produced by 'Department of Civil Registration, Ministry of Federal Affairs and Local Development, Nepal' - 'business records' - certificate concerning divorce order in Federal Circuit Court - whether marriage void - *Evidence Act 1995* (Cth) - *Marriage Act 1961* (Cth) - s52 *Family Law Act 1975* (Cth) - held: Court satisfied to grant 'decree of nullity'.

[Pereira](#)

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# Benchmark

**A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]**

**By:** William Shakespeare, 1564 - 1616

*A wood near Athens. A Fairy speaks.*

Over hill, over dale,  
Thorough bush, thorough brier,  
Over park, over pale,  
Thorough flood, thorough fire,  
I do wander every where,  
Swifter than the moon's sphere;  
And I serve the fairy queen,  
To dew her orbs upon the green:  
The cowslips tall her pensioners be;  
In their gold coats spots you see;  
Those be rubies, fairy favours,  
In those freckles live their savours:  
I must go seek some dew-drops here  
And hang a pearl in every cowslip's ear.  
Farewell, thou lob of spirits: I'll be gone;  
Our queen and all her elves come here anon.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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