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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)

Channing & Channing (FedCFamC1A) - leave to appeal refused against a primary judge's decision not to recuse himself for apprehended bias

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Summaries With Link (Five Minute Read)

Channing & Channing [2024] FedCFamC1A 99
Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction
Campton J
Procedural fairness - interim orders were made for two younger children to live with the mother and spend time with the father, in the case of child Z by consent and in the case of child Y after a contested hearing - by the time of final hearing, Y was living with the father and not spending time with the mother, contrary to the interim orders - the mother sought orders that Z and Y live with her and spend no time with the father, or alternatively spend supervised time with the father - the father sought orders that Z and Y live with him and spend time with the mother - while the trial was part-heard, the father sought that the primary judge recuse himself, on the basis of questions the primary judge had asked the father - the father contended that the primary judge pre-judged that the orders the father sought were not in the children's best interests - the primary judge refused to recuse, and refused to adjourn pending determination of an appeal against the refusal to recuse - judgment was still reserved, and the Court now determined the father's application for leave to appeal against the refusal to recuse - held: while the discretion to grant leave is unfettered, generally the court will look to see whether the decision is attended with sufficient doubt so as to justify leave and whether a miscarriage of justice would occur if leave were not granted, supposing the decision to be wrong - the test for apprehended bias is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide - application of the doctrine of apprehended judicial bias involves two steps, often referred to as the "double might" test - the lay observer should not be taken to be completely unaware of the way in which cases are brought to trial and tried - being "fair-minded", the observer "is neither complacent nor unduly sensitive or suspicious", yet is cognisant of "human frailty" and is all too aware of the reality that the judge is human - a judge may ask questions of a witness in the ordinary course without that being indicative of bias or giving rise to an apprehension of bias - the questions the primary judge asked did not demonstrate he had pre-judged what was in the best interests of the children, or had taken a path of cross-examination to create an evidentiary foundation to reject the father's case - it is appropriate and proper for a primary judge to undertake a tentative exploration as to potential orders that could be made to promote the children's best interests - judges are not expected to wait until the end of a case before they start thinking about the issues, or to sit mute while evidence is advanced and arguments are presented - the primary judge's decision was not attended by sufficient doubt to justify a grant of leave - leave to appeal refused and appeal dismissed.
Channing & Channing
[From Benchmark Friday, 12 July 2024]

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ___ (2024)
Supreme Court of the United States
The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.
Moody

Poem for Friday

Iceland

By Jonas Hallgrimsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almanna gorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrimsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjolnir first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
https://www.youtube.com/watch?v=6OqbfGSJDUc

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