

Friday, 13 July 2018

## Weekly Family Law Selected from our Daily Bulletins covering Family Law

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### Executive Summary (1 minute read)

**Mhambrey & Vairaja** (FamCAFC) - family law - dismissal application for return of child from Australia to USA - 'child's habitual residence' - *Convention on the Civil Aspects of International Child Abduction 1980* - father's appeal dismissed

**Meadows & Meadows** (FamCAFC) - family law - application for expedition of appeal against interim parenting orders and financial orders - application dismissed

**Parsons and Anor & Masson** (FamCAFC) - family law - refusal of same-sex couple's application to relocate to New Zealand with two children - error established - appeal allowed

**Worth & Worth** (FamCA) - family law - Court satisfied to make orders for father to spend time with child under psychologist's supervision

**Department of Child Safety, Youth and Women & Townsend & Anor** (FamCA) - family law - *Family Law (Child Abduction Convention Regulations) 1986* (Cth) - prima facie case that child's maternal grandmother in UK had custody of child - interim orders granted

### Summaries With Link (Five Minute Read)

#### **Mhambrey & Vairaja [2018] FamCAFC 120**

Full Court of the Family Court of Australia

Thackray, Murphy & Kent JJ

# Benchmark

Family law - mother and father of child married in Australia before travelling to USA - child born in USA - mother and child commenced living in Canada before returning to USA - mother left USA with child, travelling to South East Asia and then to Australia - Commissioner of the Western Australian Police, in capacity as 'relevant Central Authority' sought that child be returned to USA - trial judge dismissed Central Authority's application on basis child was 'not habitually resident' in USA immediately prior to child's removal - child's father appealed as 'requesting applicant' under Regulations and *Convention on the Civil Aspects of International Child Abduction 1980* - held Court not persuaded to disturb conclusion of trial judge concerning 'dispositive issue' of child's habitual residence - appeal dismissed.

[Mhambrey](#)

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## **Meadows & Meadows [2018] FamCAFC 119:**

Full Court of the Family Court of Australia

Ainslie-Wallace J

Family law - expedition - appellant mother appealed against primary judge's interim parenting orders and financial orders - orders concerned child of mother and respondent father - primary judge's orders had set aside mother's applications - mother's applications had sought orders including order to set aside parenting orders, return of child to her care and urgent spouse maintenance - mother sought expedition of hearing of appeal - primary judge also made orders concerning psychiatric assessment of mother - s94(2D) *Family Law Act 1975* (Cth) - r12.10A *Family Law Rules* (2004) - whether 'relevant circumstance' for matter be given priority over other matters - held: Court not satisfied there was basis to grant expedition - application dismissed.

[Meadows](#)

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## **Parsons and Anor & Masson [2018] FamCAFC 115**

Full Court of the Family Court of Australia

Thackray, Murphy & Aldridge JJ

Family law - first and second appellants were same-sex couple who married in New Zealand in 2015 - first appellant was biological mother of children B and C, who were conceived by artificial insemination - respondent was B's biological father - appellants wished to relocate with children B and C to New Zealand - respondent wished children to remain in Australia - primary judge found respondent was 'a legal parent of B' and made orders including to restrain appellants from establishing New Zealand residence for the children - appellants given 'equal shared parental responsibility' on basis they consult respondent before making "long term" decisions - appellants appealed against most of the orders - whether erroneous finding respondent was legal parent of B - s79 *Judiciary Act 1903* (Cth) - *Status of Children Act 1996* (NSW) - whether assessment of children's best interest was flawed due to erroneous finding respondent was legal parent of B and 'effectively' treating respondent as C's "parent" - - held: error established - appeal allowed.

## [Parsons](#)

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### **Worth & Worth [2018] FamCA 482**

Family Court of Australia

Tree J

Family law - father sought interim orders for spending time with parties' child - mother opposed father spending time child - mother contended father presented risk of harm to child which 'even strict supervision' could not 'adequately mitigate' - 'unacceptable risk' - whether child should spend time with father under supervision - factors in s60CC *Family Law Act 1975* (Cth) - whether 'order for supervised time' in child's best interests - interests of justice - held: Court satisfied to make order for father to spend time with child under psychologist's supervision.

## [Worth](#)

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### **Department of Child Safety, Youth and Women & Townsend & Anor [2018] FamCA 480**

Family Court of Australia

Hogan J

Family law - Director-General of the Department of Child Safety, Youth and Women, as State central authority under *Family Law (Child Abduction Convention Regulations) 1986* (Cth), sought 'interim and final orders' with concerning child X who was born in United Kingdom - X and her brother, Y, pursuant to order under *Children Act 1989* (UK) (Children Act) had lived with their maternal grandmother - order granted maternal grandmother 'parental responsibility' for X and Y - maternal grandmother lived in United Kingdom and was 'requesting Applicant' under Convention - maternal grandmother contended child was 'habitually resident' in UK when she left 'temporarily for a holiday' - maternal grandmother contended child had remained in Australia due to first respondent's breach of an agreement with maternal grandmother - held: Court satisfied that evidence established prima case that maternal grandmother had custody under Children Act - Court satisfied to make orders agreed between parties on interim basis.

## [Department of Child Safety](#)

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# Benchmark

## Heaven

By: Rupert Brooke

Fish (fly-replete, in depth of June,  
Dawdling away their wat'ry noon)  
Ponder deep wisdom, dark or clear,  
Each secret fishy hope or fear.  
Fish say, they have their Stream and Pond;  
But is there anything Beyond?  
This life cannot be All, they swear,  
For how unpleasant if it were!  
One may not doubt that, somehow, Good  
Shall come of Water and of Mud;  
And, sure, the reverent eye must see  
A Purpose in Liquidity.  
We darkly know, by Faith we cry,  
The future is not Wholly Dry.  
Mud unto mud! – Death eddies near –  
Not here the appointed End, not here!  
But somewhere, beyond Space and Time,  
Is wetter water, slimier slime!  
And there (they trust) there swimmeth One  
Who swam ere rivers were begun,  
Immense, of fishy form and mind,  
Squamous, omnipotent and kind;  
And under that Almighty Fin,  
The littlest fish may enter in.  
Oh! Never fly conceals a hook,  
Fish say, in the Eternal Brook,  
But more than mundane weeds are there,  
And mud, celestially fair;  
Fat caterpillars drift around,  
And Paradisal grubs are found;  
Unfading moths, immortal flies,  
And the worm that never dies.  
And in that Heaven of all their wish,  
There shall be no more land, say fish.

[https://en.wikipedia.org/wiki/Rupert\\_Brooke](https://en.wikipedia.org/wiki/Rupert_Brooke)

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