



Friday, 14 December 2018

Weekly Family Law Selected from our Daily Bulletins covering Family Law

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Executive Summary (1 minute read)

Dautry & Wemple (FamCAFC) - family law - appeal against dismissal of application for 'revised parenting orders' dismissed - appeal against stay of 'contravention application' allowed - appeal allowed in part

James & Snipper and Anor (FamCAFC) - family law - husband's appeal against parenting orders and property orders dismissed

Walters & Carson (FamCAFC) - family law - property settlement - spousal maintenance - child support - de facto husband's appeal against orders for child support and spousal maintenance upheld

Yin & Landon (FamCAFC) - family law - declaration that marriage between parties was void - decree of nullity - extension of time to appeal on basis of alleged forgery and perjury refused

Chan & Chih (FamCA) - family law - property settlement - husband sought stay of paragraphs of property settlement order - stay granted on conditions

Summaries With Link (Five Minute Read)

Dautry & Wemple [2018] FamCAFC 237

Full Court of the Family Court of Australia

Austin J

Family law - appellant mother sought 'revised parenting orders' concerning parties' child under Part VII *Family Law Act 1975* (Cth) - primary judge refused application on basis of principles in *Rice v Asplund* [1978] FamCA 84 - mother also made 'contravention application' against father - primary judge stayed contravention application pending mother's payment of 'outstanding costs order' - mother appealed - held: appeal against dismissal of application for revised parenting orders dismissed - primary judge's reasons inadequate in respect of decision to stay contravention application - appeal against stay allowed - appeal allowed in part.

[Dautry](#)

[From Benchmark Friday, 14 December 2018]

James & Snipper and Anor [2018] FamCAFC 235

Full Court of the Family Court of Australia

Ainslie-Wallace, Aldridge & Austin JJ

Family law - parenting orders - property orders - husband challenged order that children spend time with him 'from 9 am each alternate Sunday until 9 am before school on Monday' - husband also challenged conclusions concerning 'wife's income and financial resources' and failure to find evidence of wife 'not credible' - husband also challenged findings concerning his Australian Tax Office debt, his wife's contribution to the debt, finding that his 'present partner' was a 'financial resource', findings concerning wife's 'knowledge and acceptance' of his gambling', and finding that wife should receive 95% of net property - held: appeal dismissed.

[James & Snipper](#)

[From Benchmark Friday, 14 December 2018]

Walters & Carson [2018] FamCAFC 233

Full Court of the Family Court of Australia

Thackray, Murphy & Kent JJ

Family law - property settlement - spousal maintenance - child support - de facto husband challenged findings concerning his 'present and future earnings', findings on contributions, 'Section 90SF(3) findings', and determinations concerning child support and spousal maintenance - de facto husband also appealed on basis of 'asserted failure' by trial judge to consider orders' 'overall or cumulative effect' - de facto husband also sought to adduce further evidence - whether failure to take mandatory consideration into account - whether inadequate reasons - de facto wife's capacity to meet children's 'proper needs' with regard to "income, property and financial resources" - de facto wife's need for maintenance - de facto husband's capacity to pay maintenance - held: appeals against orders for child support and spousal maintenance upheld.

[Walters](#)

[From Benchmark Friday, 14 December 2018]

Yin & Landon [2018] FamCAFC 232

Full Court of the Family Court of Australia

Murphy J

Family law - primary judge declared marriage solemnised by parties was void - primary judge made 'decree of nullity' on basis respondent had proved applicant was married at time of her marriage to respondent - applicant sought extension of time to appeal - applicant contended she was not married when she married respondent and that respondent had forged her signature and perjured himself - whether there was an application to adduce further evidence - whether evidence in support of application had 'central purpose' of demonstrating error by trial judge - "obliterate[s] the distinction between [the] original and appellate jurisdiction" - held: application for extension of time dismissed.

[Yin & Landon](#)

[From Benchmark Friday, 14 December 2018]

Chan & Chih [2018] FamCA 998

Family Court of Australia

Watts J

Family law - property settlement - husband, by application in case, sought stay of paragraphs of property settlement order pending appeal - whether husband showed 'proper basis' for grant of stay - onus - strength of appeal - matters in matters in s79(4)(d) – (g) *Family Law Act 1975* (Cth) - whether sale of property was 'irreversible step' which could render appeal's outcome nugatory - held: stay granted on conditions.

[Chan](#)

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Summer Wind

By: William Cullen Bryant

It is a sultry day; the sun has drunk
The dew that lay upon the morning grass;
There is no rustling in the lofty elm
That canopies my dwelling, and its shade
Scarce cools me. All is silent, save the faint
And interrupted murmur of the bee,
Settling on the sick flowers, and then again
Instantly on the wing. The plants around
Feel the too potent fervors: the tall maize
Rolls up its long green leaves; the clover droops
Its tender foliage, and declines its blooms.
But far in the fierce sunshine tower the hills,
With all their growth of woods, silent and stern,
As if the scorching heat and dazzling light
Were but an element they loved. Bright clouds,
Motionless pillars of the brazen heaven—
Their bases on the mountains—their white tops
Shining in the far ether—fire the air
With a reflected radiance, and make turn
The gazer's eye away. For me, I lie
Languidly in the shade, where the thick turf,
Yet virgin from the kisses of the sun,
Retains some freshness, and I woo the wind
That still delays his coming. Why so slow,
Gentle and voluble spirit of the air?
Oh, come and breathe upon the fainting earth
Coolness and life! Is it that in his caves
He hears me? See, on yonder woody ridge,
The pine is bending his proud top, and now
Among the nearer groves, chestnut and oak
Are tossing their green boughs about. He comes;
Lo, where the grassy meadow runs in waves!
The deep distressful silence of the scene
Breaks up with mingling of unnumbered sounds
And universal motion. He is come,
Shaking a shower of blossoms from the shrubs,
And bearing on their fragrance; and he brings
Music of birds, and rustling of young boughs,
And sound of swaying branches, and the voice
Of distant waterfalls. All the green herbs



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Are stirring in his breath; a thousand flowers,
By the road-side and the borders of the brook,
Nod gayly to each other; glossy leaves
Are twinkling in the sun, as if the dew
Were on them yet, and silver waters break
Into small waves and sparkle as he comes.
https://en.wikipedia.org/wiki/William_Cullen_Bryant

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