



Friday, 16 November 2018

Weekly Family Law Selected from our Daily Bulletins covering Family Law

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Executive Summary (1 minute read)

Akhtar & Gaber (No. 3) (FamCAFC) - family law - judgments and orders - parenting orders - application for extension of time to appeal dismissed

Jabbar & Gade (No. 4) (FamCAFC) - family law - two applications for leave to appeal against orders concerning requirement that applicant vacate family home - leave to adduce further evidence granted - appeal allowed in part

Eames & Eames (FamCAFC) - family law - summary dismissal of application for order under s123 *Child Support (Assessment) Act 1989* (Cth) and order under s66M *Family Law Act 1975* (Cth) - leave to appeal refused in respect of application under s123 *Child Support (Assessment) Act 1989* (Cth) - appeal otherwise dismissed

Purtle & Purtle (No 2) (FamCA) - family law - costs - discovery - parties each sought costs of application - parties to bear own costs

Halstron & Halstron (FamCA) - family law - allowing advisor to access documents would not breach r13.07A *Family Law Rules 2004* (Cth) - subpoenas concerning "the character, qualifications and appropriateness" of advisor had no legitimate forensic purpose - objections to subpoenas upheld

Summaries With Link (Five Minute Read)

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Akhtar & Gaber (No. 3) [2018] FamCAFC 208

Full Court of the Family Court of Australia

Ainslie-Wallace J

Family law - judgments and orders - Hogan J made parenting orders concerning children of father and mother - no appearance by father at hearing - orders made ex parte - father sought to file appeal against orders 'well within' time however attempts were unsuccessful 'for a variety of reasons' - Notice of Appeal not filed within time - whether appropriate to extend time to lodge appeal - *Gallo v Dawson* [1990] HCA 30 - r22.03 *Family Law Rules 2004* (Cth) - explanation for delay - procedural fairness - whether erroneous acceptance of evidence - futility - interests of justice - finality of proceedings - children's best interests - whether appeal raised 'substantial issue' - held: Court refused to extend time to appeal - application dismissed.

[Akhtar](#)

[From Benchmark Friday, 16 November 2018]

Jabbar & Gade (No. 4) [2018] FamCAFC 210

Full Court of the Family Court of Australia

Ryan J

Family law - two applications for leave to appeal and against orders by Judge Terry - first application concerned order requiring applicant to vacate family home by certain date 'failing which' warrant of possession would issue - second application concerned challenge to dismissal of stay application and costs orders - whether primary judge's decision 'attended by sufficient doubt' to warrant its reconsideration - whether, if Court refused leave, 'substantial injustice' would ensue - *Medlow & Medlow* (2016) FLC 93-692 - whether order that applicant vacate home before payment of 'adjustment amount' would result in applicant's homelessness and was manifestly unjust - whether erroneous failure to consider prejudice to applicant - whether to grant leave to adduce further evidence concerning establishment of fund for payment of arrears - held: leave to adduce further evidence granted - appeal allowed in part.

[Jabbar](#)

[From Benchmark Friday, 16 November 2018]

Eames & Eames [2018] FamCAFC 204

Full Court of the Family Court of Australia

Alstergren DCJ, Aldridge & Austin JJ

Family law - summary dismissal - appellant appealed against summary dismissal of proceedings against respondent - appellant, before primary judge, had sought order under s123 *Child Support (Assessment) Act 1989* (Cth) (Child Support Assessment Act) and order under s66M *Family Law Act 1975* (Cth) - primary judge dismissed application on basis appellant did not have reasonable prospects of success - s17A *Federal Circuit Court of Australia Act 1999* (Cth) - whether to grant leave to appeal under s102 *Child Support Assessment Act* - *Medlow & Medlow* (2016) FLC 93-692 - adequacy of reasons - whether failure to take relevant consideration into account - held: no error in decision of primary judge - leave to appeal refused in respect of application under s123 *Child Support Assessment Act* - appeal otherwise

dismissed.

[Eames](#)

[From Benchmark Friday, 16 November 2018]

Purtle & Purtle (No 2) [2018] FamCA 895

Family Court of Australia

Berman J

Family law - costs - Court made orders that second respondent give further and better discovery of documents - wife sought that second respondent pay her costs of application (14 February application) - second respondent sought that wife pay second respondent's costs of 14 February application and costs of second respondent's Application dated 23 April - wife contended she was 'wholly successful' and that costs order should be made in her favour - second respondent conceded application's success but contended orders were unnecessary - second respondent contended there were 'no further discoverable documents' - parties' 'financial status and circumstances' - 'full and frank disclosure' - ss117, 117(1), 117(2) & 117(2A) *Family Law Act 1975* (Cth) - held: Court concluded that each party should pay own costs.

[Purtle](#)

[From Benchmark Friday, 16 November 2018]

Halstron & Halstron [2018] FamCA 887

Family Court of Australia

Rees J

Family law - husband issued five subpoenas concerning "the character, qualifications and appropriateness" of person wife nominated as her advisor - Registrar upheld objections to subpoenas - husband filed Application in a Case seeking review of Registrar's decision - wife sought permission for advisor to access documents - whether allowing advisor to access documents would breach r13.07A *Family Law Rules 2004* (Cth) (Rules) - "Harman undertaking" - whether legitimate forensic purpose - held: allowing advisor to access documents would not breach r13.07A of the Rules - subpoenas lacked legitimate forensic purpose - objections to subpoenas upheld.

[Halstron](#)

[From Benchmark Friday, 16 November 2018]

Benchmark

Spring, the sweet spring

By: Thomas Nashe

Spring, the sweet spring, is the year's pleasant king,
Then blooms each thing, then maids dance in a ring,
Cold doth not sting, the pretty birds do sing:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The palm and may make country houses gay,
Lambs frisk and play, the shepherds pipe all day,
And we hear aye birds tune this merry lay:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The fields breathe sweet, the daisies kiss our feet,
Young lovers meet, old wives a-sunning sit,
In every street these tunes our ears do greet:

Cuckoo, jug-jug, pu-we, to witta-woo!

Spring, the sweet spring!

https://en.wikipedia.org/wiki/Thomas_Nashe

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