



Friday, 20 December 2024

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)

Kleid & Schnur (FedCFamC1A) - barrister failed in appeal against orders he personally pay costs



HABEAS CANEM

Merry Christmas from McGregor

Benchmark

Summaries With Link (Five Minute Read)

Kleid & Schnur [2024] FedCFamC1A 236

Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction

Aldridge, Gill, & Strum JJ

Costs orders against legal practitioners - matter was listed for a final parenting hearing with an estimated duration of eight days - appellant barrister was briefed to appear for the mother under a grant of legal aid under the Victorian scheme applicable to cases where orders have been made under s102NA of the *Family Law Act 1975* (Cth) preventing a party from personally cross-examining the other - Counsel stated he was only briefed for cross-examination of the father, although Legal Aid Victoria had provided funding for the entirety of the hearing - the proceedings were adjourned on the second day, and the primary judge made a costs order against the barrister, as he had failed to appropriately prepare the case for the mother, having not read all the affidavit evidence (including not having completed reading the father's affidavit) and having read only one of the single expert's three reports, had accepted a brief to appear in another court at 2pm on the first day of hearing, and did not have standing to appear as he had not signed the Register of Practitioners maintained by the High Court of Australia - the barrister appealed - held: the appellant conceded he had not signed the Register and accepted that in announcing his appearance he had misled the primary judge by holding himself out as entitled to appear - contrary to the appellant's submissions, the primary judge had taken the appellant's affidavit into account, including directions from the instructing solicitor with regard to his role - the primary judge had not improperly referred to s117 of the *Family Law Act* - although s117(1) makes it plain that the prima facie position is that a party shall bear his or her own costs, s117(2) provides the Court may make such costs orders it thinks just and that this can include an order that a non-party, such as a lawyer, pay costs - the primary judge had not erred in applying r12.15 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) - the appellant did not produce a letter of instruction, a backsheet, or evidence from his clerk to challenge the statements of his instructing solicitor that he was briefed for the entirety of the eight day trial - the appellant's contention that the primary judge was affected by apprehended bias failed at the first hurdle as he did not raise any objection with the primary judge at the time nor seek her disqualification - appeal dismissed.

[Kleid & Schnur](#)

[From Benchmark Friday, 20 December 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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