



Friday, 21 June 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)

**Adamo & Vinci (No 2)** (FedCFamC1A) - appeal dismissed against refusal of primary judge to discharge earlier final parenting and property orders on the basis of a material change of circumstances



## HABEAS CANEM

Small dog, big surf



# Benchmark

## Summaries With Link (Five Minute Read)

### **Adamo & Vinci (No 2) [2024] FedCFamC1A 96**

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

Austin, Hartnett, & Brasch JJ

Appeals - the then Family Court made final parenting and property orders - the primary judge in the Federal Circuit and Family Court of Australia (Division 1) dismissed an application by the father to discharge the orders on the basis that there had been a material change of circumstances warranting a re-litigation of the parenting orders, and that the property orders should be set aside under s79A(a), (c), and (d) of the *Family Law Act 1975* (Cth) - the father appealed, and sought to adduce further evidence - held: no challenge to the earlier final orders could arise in an appeal from the primary judge's orders - if the appeal from the primary judge's orders were to succeed then, in the re-exercise of discretion in relation to the appellant's application to vary the earlier final orders, either by this Court in the appeal or by a single judge upon remitter, the way in which that discretion would be exercised would depend upon the updated evidence the parties would adduce - at least in respect of parenting orders, we would have thought remitter would be the only option - the father's contention that the earlier final orders be set aside and interlocutory orders made before the earlier final orders should be revived was therefore misconceived - the new documents the father sought to adduce on appeal did not establish any appellable error on the part of the primary judge, and it would not likely have produced a different result before the primary judge - application to adduce further evidence dismissed - the so-called rule in *Rice & Asplund* [1978] FamCAFC 128; (1979) FLC 90-725, which requires the person bringing a parenting application, where parenting orders have already been made, to demonstrate that there has been a relevant change in circumstances to warrant the court re-litigating a parenting dispute, is not so much a rule but a manifestation of the best interests principle - the primary judge had correctly recognised that doing justice between both parties is an obligation imposed on judicial officers, which may not be met by slavish adherence to rules if it subverts that very obligation - the primary judge had not applied wrong principles of law - it is not an appellable error that the primary judge preferred the respondent's evidence over the appellant's - the primary judge was well alert to the fact the appellant was now renting, but did not conclude that was a material change of circumstance - this was open to the primary judge and it could not be said the primary judge failed to take the renting into account - hardship in the s79A sense must be of such a serious nature and resulting in such inequity that it can only be rectified by setting aside or varying the existing order - appeal dismissed - appellant to pay the costs of the respondent in a fixed sum.

[Adamo & Vinci \(No 2\)](#)

[From Benchmark Friday, 21 June 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Food and Drug Administration v Alliance for Hippocratic Medicine** (SCOTUS) - Plaintiff pro-life doctors and medical associations challenged Food and Drug Administration (FDA) decision to relax prescribing restrictions on a drug used to terminate pregnancies. The Court held the plaintiffs lacked standing to challenge the FDA decision

### Summaries With Link (Five Minute Read)

**Food and Drug Administration v Alliance for Hippocratic Medicine [2024] 602 US \_\_\_\_**  
Supreme Court of the United States

In 2021, the Food and Drug Administration (FDA) relaxed regulations for prescribing mifepristone, an abortion drug, to make the drug more accessible to women. The plaintiffs, consisting of pro-life doctors and medical associations, brought suit, alleging that the FDA regulations violated the *Administrative Procedure Act*. The District Court granted plaintiffs an injunction. The Court of Appeals found that plaintiffs had standing to sue and were likely to win on the merits. Reversing the lower courts, a unanimous Supreme Court held that the doctors and medical societies lacked standing to bring suit. Article III of the US Constitution limits the jurisdiction of federal courts to actual cases and controversies. The Court said that this is a matter of separation of powers. General complaints about how the government conducts its business are matters for the legislative and executive branches, not the judiciary. To establish standing, a plaintiff must demonstrate that (1) the plaintiff will likely suffer an injury in fact; (2) that the injury would likely be caused by the defendant; and (3) that the injury can be redressed by judicial relief. The plaintiffs are pro-life and do not prescribe the abortion drug. Nothing contained in the FDA regulations requires doctors to prescribe this drug. In short, the plaintiffs are acting to restrict the availability of the drug to others. While plaintiffs argued that they have suffered injury because doctors may suffer conscience objections when forced to perform abortions or perform abortion related treatment, the argument failed because federal conscience laws explicitly protect doctors from being required to perform abortions or other treatment that violates their consciences. The Court also rejected arguments that, if plaintiffs were not allowed to sue, then no one would have standing to challenge the FDA's actions. The Court said that even if this were true, it could not create standing and that some issues must be dealt with through the political and democratic processes and not the courts.

[Food and Drug Administration](#)

## Poem for Friday

### "Hope" is the thing with feathers (314)

By Emily Dickinson (10 December, 1830-15 May, 1886)

Hope is the thing with feathers -  
That perches in the soul -  
And sings the tune without the words -  
And never stops - at all -

And sweetest - in the Gale - is heard -  
And sore must be the storm -  
That could abash the little Bird  
That kept so many warm -

I've heard it in the chilliest land -  
And on the strangest Sea -  
Yet - never - in Extremity,  
It asked a crumb - of me.

Emily Dickinson [https://en.wikipedia.org/wiki/Emily\\_Dickinson](https://en.wikipedia.org/wiki/Emily_Dickinson)

Emily Dickinson Museum [https://en.wikipedia.org/wiki/Emily\\_Dickinson\\_Museum](https://en.wikipedia.org/wiki/Emily_Dickinson_Museum)

Hope is the thing with feathers, sung by Nazareth College Treble Choir, Linehan Chapel,  
Nazareth College

<https://www.youtube.com/watch?v=gDIso4hEzmE>

Recitation by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada.

Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir



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Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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