

Friday, 22 November 2019

Weekly Family Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering family law

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Prescott & Finley (FamCAFC) - family law - parenting - application in an appeal - father sought extension of time to appeal - application dismissed

Dickens & Dickens (No. 2) (FamCAFC) - family law - bias - father sought that Strickland J disqualify himself from 'further hearing' appeal - application dismissed

Mityukov & Mityukov (FamCAFC) - family law - property - husband appealed against 'property adjustment' orders between husband and wife - appeal dismissed

Shelbourne & Shelbourne (FamCAFC) - family law - property - primary judge made 'final property settlement orders' together with order that the final orders did not discharge Loughnan J's s117 orders ("order 18") - appeal against order 18 allowed - order 18 set aside

Luu & Kaa (FamCAFC) - family law - costs - solicitor's charge for preparation of affidavit not to exceed \$700.00

Summaries With Link (Five Minute Read)

Prescott & Finley [2019] FamCAFC 211

Full Court of the Family Court of Australia

Ainslie-Wallace J

Family law - parenting - father, by Application in an Appeal, sought extension of time to appeal

against primary judge's orders - father in prison when orders made and 'reasons published' - father contended 'he was not made aware' of orders and reasons - reason for delay - appeal's merits - r22.02 *Family Law Rules 2004* (Cth) - *Gallo v Dawson* (1990) 93 ALR 479 - held: Court not satisfied to grant extension of time - application dismissed.

[Prescott](#)

[From Benchmark Friday, 22 November 2019]

Dickens & Dickens (No. 2) [2019] FamCAFC 201

Full Court of the Family Court of Australia

Strickland J

Family law - bias - father sought that Strickland J disqualify himself from 'further hearing' appeal on basis Strickland J had demonstrated bias in prior judgment - whether tests in *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63 and *Johnson v Johnson* [2000] HCA 48 satisfied - held: application dismissed.

[Dickens](#)

[From Benchmark Friday, 22 November 2019]

Mityukov & Mityukov [2019] FamCAFC 199

Full Court of the Family Court of Australia

Ainslie-Wallace J

Family law - property - Federal Circuit Court judge made 'property adjustment' orders between husband and wife - orders divided 'net assets' of parties 57.5 per cent to husband and 42.5 per cent to wife - husband appealed - whether inadequate consideration of contributions of husband - sufficiency of reasons - held: error not established - appeal dismissed.

[Mityukov](#)

[From Benchmark Friday, 22 November 2019]

Shelbourne & Shelbourne [2019] FamCAFC 196

Full Court of the Family Court of Australia

Ainslie-Wallace, Ryan & Tree JJ

Family law - property - Loughnan J, under s117 *Family Law Act 1975* (Cth), made "dollar-for-dollar order" (s117 orders) - primary judge made 'final property settlement orders' together with order that the final orders did not discharge Loughnan J's s117 orders ("order 18") - husband appealed, contending order 18 was 'contrary to principle' or that primary judge did not take its consequences into account when 'assessing the just and equitable division' of property - held: appeal allowed - order 18 set aside.

[Shelbourne](#)

[From Benchmark Friday, 22 November 2019]

Luu & Kaa [2019] FamCAFC 194

Full Court of the Family Court of Australia

Ryan, Aldridge & Tree JJ



Family law - costs - solicitor for appellant, on 'evening of the last working day before' appeal, sought to file an application in an appeal, seeking that 'further evidence' in form of affidavit 'be read' at hearing - '160 pages of material' - solicitor 'intended to charge' for affidavit's preparation - determination of time required for drafting of affidavit containing the necessary material' and allowance of time 'to filter the various email communications for relevance' - held: Court ordered that solicitor's charge should not exceed \$700.00.

[Luu](#)

[From Benchmark Friday, 22 November 2019]



Benchmark

To Flush, My Dog

By: Elizabeth Barrett Browning
LOVING friend, the gift of one,
Who, her own true faith, hath run,
Through thy lower nature ;
Be my benediction said
With my hand upon thy head,
Gentle fellow-creature !

Like a lady's ringlets brown,
Flow thy silken ears adown
Either side demurely,
Of thy silver-suited breast
Shining out from all the rest
Of thy body purely.

Darkly brown thy body is,
Till the sunshine, striking this,
Alchemize its dulness, —
When the sleek curls manifold
Flash all over into gold,
With a burnished fulness.

Underneath my stroking hand,
Startled eyes of hazel bland
Kindling, growing larger, —
Up thou leapest with a spring,
Full of prank and curvetting,
Leaping like a charger.

Leap ! thy broad tail waves a light ;
Leap ! thy slender feet are bright,
Canopied in fringes.
Leap — those tasselled ears of thine
Flicker strangely, fair and fine,
Down their golden inches

Yet, my pretty sportive friend,
Little is 't to such an end
That I praise thy rareness !
Other dogs may be thy peers
Haply in these drooping ears,



Benchmark

And this glossy fairness.

But of thee it shall be said,
This dog watched beside a bed
Day and night unwearied, —
Watched within a curtained room,
Where no sunbeam broke the gloom
Round the sick and dreary.

Roses, gathered for a vase,
In that chamber died apace,
Beam and breeze resigning —
This dog only, waited on,
Knowing that when light is gone,
Love remains for shining.

Other dogs in thymy dew
Tracked the hares and followed through
Sunny moor or meadow —
This dog only, crept and crept
Next a languid cheek that slept,
Sharing in the shadow.

Other dogs of loyal cheer
Bounded at the whistle clear,
Up the woodside hieing —
This dog only, watched in reach
Of a faintly uttered speech,
Or a louder sighing.

And if one or two quick tears
Dropped upon his glossy ears,
Or a sigh came double, —
Up he sprang in eager haste,
Fawning, fondling, breathing fast,
In a tender trouble.

And this dog was satisfied,
If a pale thin hand would glide,
Down his dewlaps sloping, —
Which he pushed his nose within,
After, — platforming his chin



Benchmark

On the palm left open.

This dog, if a friendly voice
Call him now to blyther choice
Than such chamber-keeping,
Come out ! ' praying from the door, —
Presseth backward as before,
Up against me leaping.

Therefore to this dog will I,
Tenderly not scornfully,
Render praise and favour !
With my hand upon his head,
Is my benediction said
Therefore, and for ever.

And because he loves me so,
Better than his kind will do
Often, man or woman,
Give I back more love again
Than dogs often take of men, —
Leaning from my Human.

Blessings on thee, dog of mine,
Pretty collars make thee fine,
Sugared milk make fat thee !
Pleasures wag on in thy tail —
Hands of gentle motion fail
Nevermore, to pat thee !

Downy pillow take thy head,
Silken coverlid bestead,
Sunshine help thy sleeping !
No fly 's buzzing wake thee up —
No man break thy purple cup,
Set for drinking deep in.

Whiskered cats aointed flee —
Sturdy stoppers keep from thee
Cologne distillations ;
Nuts lie in thy path for stones,
And thy feast-day macaroons



Benchmark

Turn to daily rations !

Mock I thee, in wishing weal ? —
Tears are in my eyes to feel
Thou art made so straightly,
Blessing needs must straighten too, —
Little canst thou joy or do,
Thou who lovest greatly.

Yet be blessed to the height
Of all good and all delight
Pervious to thy nature, —
Only loved beyond that line,
With a love that answers thine,
Loving fellow-creature !

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

[Click Here to access our Benchmark Search Engine](#)