



Friday, 26 April 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)

Gabbey & Cadriel (FedCFamC1A) - mother found to have made malicious and false accusations of sexual assault against the father failed in appeal against parenting orders restricting her contact with the children, except for certain orders made without explanation or apparent justification

HABEAS CANEM

Country smile



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Summaries With Link (Five Minute Read)

Gabbey & Cadriel [2024] FedCFamC1A 60

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

Austin, Jarrett, & Riethmuller JJ

Parenting - the primary judge ordered that children live with their father, and that he have sole parental responsibility for them and, save for some contact through the provision of cards, letters and gifts on special occasions, they have no contact or communication with their mother - the primary judge had rejected the mother's contention that the children would be unacceptable risk of harm in the father's care, and rejected the mother's evidence about sexual assaults against her - the primary judge found some of the mother's behaviour could properly be seen as malicious, and that her views about the father and the risk he posed to the children and the mother were immutable, and that her malevolent attitude towards the father risked impairing the children's proper development by the false narrative that their father was a rapist, that they were conceived as a result of sexual assault, and that their father was grooming them to be the willing victims of child sexual abuse, ideas that the trial judge thought would inevitably be conveyed to them by the mother - the mother appealed - held: the trial judge had not erred by making findings not supported by the evidence, failing to give adequate reasons, or denying procedural fairness, when making findings that the mother posed an unacceptable risk of emotional and psychological harm to the children - the trial judge had not failed to properly consider relevant considerations, placed excessive weight on the evidence of the father, failed to properly assess mandatory considerations as contained in s60CC of the *Family Law Act 1975* (Cth), or failed to give adequate reasons in this regard - the mother was bound by her case at trial, and the primary judge had not erred in making orders that were disproportionate the need to mitigate the mother's unacceptable risk of emotional and psychological harm to the children - however, the primary judge had failed to give reasons for making orders restraining the mother from attending at or being within 100 metres of any school, preschool, out of school hours care or school or extracurricular activity attended by the children, communicating with any such school, preschool or out of school hours care, or communicating with the children's medical and allied health professionals - the necessity for these orders was not immediately apparent - the failure to give any reasons for the making of these orders was an error of law - no order for remitter should be made, and these orders should simply be set aside - appeal allowed in part.

[Gabbey](#)

[From Benchmark Friday, 26 April 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Kirkorov v Lithuania (Eur Ct HR) - Decision of Lithuania to deny entry to Russian entertainer on national security grounds did not amount to a violation of Article 10 (freedom of expression) of the *European Convention on Human Rights*

Summaries With Link (Five Minute Read)

Kirkorov v Lithuania, ECHR 096 (2024)

European Court of Human Rights

Bårdsen P, Ilievski, Kuris, Yüksel, Schembri Orland, Krenc, & Derencinovic JJ

Kirkorov was a popular singer from Russia who had been found by the Lithuanian Migration Department to have publicly supported Vladimir Putin and supported Russia's actions in Crimea. The government of Lithuania placed Kirkorov on a list of aliens barred from entering the country. Kirkorov unsuccessfully challenged this decision in the Lithuanian courts. Kirkorov then brought proceedings before the European Court of Human Rights alleging that the actions of Lithuania violated his right to freedom of expression guaranteed by Article 10 of the *European Convention of Human Rights*. Article 10 provides that everyone has the right to freedom of expression without interference by public authority and regardless of frontiers. However, these rights may be subject to such restrictions as are prescribed by law "and are necessary in a democratic society, in the interests of national security' or public safety. The European Court found that, while the right of a foreigner to remain in a country is not a Convention right, 'immigration controls must be exercised consistently with Convention obligations'. The Court ruled that the ban on entry was materially related to the right of expression because, under Article 10, no distinction can be drawn between nationals and foreigners. As entry to Lithuania was denied on the basis of Kirkorov's past statements, the Court found that there had been an interference with his Article 10 rights. The issue came down to whether Lithuania's actions were permissible as being prescribed by law and necessary in the interests of national security. The Court found that Lithuania's actions were prescribed by law that purported to be based on national security. Nevertheless, it was for the courts to determine whether the invocation of national security had a reasonable basis or was contrary to common sense. The Court concluded that there had not been a violation of Article 10 in light of the careful scrutiny by the Lithuanian courts to the claim that Kirkorov represented a threat to national security. Further, the European Court held that the measures taken by Lithuania were not disproportionate and that the national courts had properly weighed the interests of national security against the measures taken against Kirkorov.

[Kirkorov](#)



Poem for Friday

The Song of a Comet

By: Clark Ashton Smith (1893-1961)

A plummet of the changing universe,
Far-cast, I flare
Through gulfs the sun's uncharted orbits bind,
And spaces bare
That intermediate darks immerse
By road of sun nor world confined.
Upon my star-undominated gyre
I mark the systems vanish one by one;
Among the swarming worlds I lunge,
And sudden plunge
Close to the zones of solar fire;
Or 'mid the mighty wrack of stars undone,
Flash, and with momentary rays
Compel the dark to yield
Their aimless forms, whose once far-potent blaze
In ashes chill is now inurned.



A space revealed,
I see their planets turned,
Where holders of the heritage of breath
Exultant rose, and sank to barren death
Beneath the stars' unheeding eyes.
A down contiguous skies
I pass the thickening brume
Of systems yet unshaped, that hang immense[67]
Along mysterious shores of gloom;
Or see—unimplicated in their doom—
The final and disastrous gyre
Of blinded suns that meet,
And from their mingled heat,
And battle-clouds intense,
O'erspread the deep with fire.

Through stellar labyrinths I thrid
Mine orbit placed amid
The multiple and irised stars, or hid,
Unsolved and intricate,
In many a planet-swinging sun's estate.



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Ofttimes I steal in solitary flight
Along the rim of the exterior night
That grips the universe;
And then return,
Past outer footholds of sidereal light,
To where the systems gather and disperse;
And dip again into the web of things,
To watch it shift and burn,
Hearted with stars. On peaceless wings
I pierce, where deep-outstripping all surmise,
The nether heavens drop unsunned,
By stars and planets shunned.
And then I rise
Through vaulting gloom, to watch the dark
Snatch at the flame of failing suns;
Or mark
The heavy-dusked and silent skies,[68]
Strewn thick with wrecked and broken stars,
Where many a fated orbit runs.
An arrow sped from some eternal bow,
Through change of firmaments and systems sent,



And finding bourn nor bars,

I flee, nor know

For what eternal mark my flight is meant.

Clark Ashton Smith was born on 13 January, 1893, in Long Valley, Placer County, California. Largely self-taught, he began writing at a very young age, acquiring an exceptionally large vocabulary by reading the dictionary from cover to cover. A protégé of the San Francisco poet George Sterling, Smith achieved recognition at the age of 19 for his collection of poems *The Star Treader* (1912), influenced by Baudelaire, Poe and Sterling. Smith always considered himself a poet first and foremost, however, following the Great Depression, he later turned to writing short stories for pulp magazines such as *Weird Tales* as this was a more lucrative source of income to support himself and his aging parents. He wrote more than 100 short stories between 1929 and 1934, and it is this, along with his friendship with fellow *Weird Tales* contributor H. P. Lovecraft, for which he is remembered today. Smith lived most of his life in Auburn, California, and passed away in his sleep on 14 August 1961, at the age of 68. In addition to his literary activities, he created a large number of drawings, paintings and sculptures which reflected the otherworldly atmosphere of his tales.

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