AR CONOLLY & COMPANY
LAWYERS

Benchmark

Friday, 29 March 2024

Weekly Family Law

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

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 (One Minute Read)

Horwitz & Tavares (FedCFamC1A) - parenting judge had not erred in making parenting orders not sought by either party where the parties had not put alternative proposals if their primary proposals did not succeed

AR Conolly & Company Lawyers
Level 29 Chifley Tower, 2 Chifley Square, Sydney NSW 2000
Phone: 02 9159 0777 Fax: 02 9159 0778
www.arconolly.com.au

HABEAS CANEM

The scent on the breeze

AR Conolly & Company Lawyers
Level 29 Chifley Tower, 2 Chifley Square, Sydney NSW 2000
Phone: 02 9159 0777 Fax: 02 9159 0778
ww.arconolly.com.au

Summaries With Link (Five Minute Read)

Horwitz & Tavares [2024] FedCFamC1A 20
Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction
Schonell J
Parenting - the parties commenced cohabitation in or around 2020 and separated in approximately 2023 - the had two children, aged two and one - the mother had not worked, while the father had been employed in industry and travelled away from the parties' home for work - the wife contended that the appellant committed acts of family violence against her, sometimes in the presence of the children - the father commenced proceedings seeking final parenting orders for sole parental responsibility and for the children to live with him - the mother sought orders for sole parental responsibility, that the children live with her, and that she be at liberty to further particularise her proposal upon the completion of a psychiatric assessment of the appellant, and the release of a family report - the primary judge had ordered that the parties' children live with the respondent mother and spend time with the appellant father as agreed in writing - the father appealed - held: the primary judge had squarely raised in her Reasons for Judgment the dilemma posed by the parties' failure to provide alternative proposals for time, and evidence supporting how that time could occur, in the event that their primary applications were unsuccessful - the parties defined the ambit of litigation in disparate terms and, consequently, were bound by the way they conducted the hearing - having conducted the case in the way that he did, the father presented the primary judge with little alternative, and could now be heard to complain that the primary judge had denied procedural fairness by making an order that was not sought by either party - procedural fairness relates only to the fairness of the process and not the outcome - further, not every denial of procedural fairness will result in an appeal being allowed if the determination of the primary judge was inevitable - adequacy of reasons will depend upon the circumstances of the case, but the authorities make it plain that reasons will be inadequate if justice is not seen to be done, or if a party or an appellate court is unable to ascertain the process of reasoning undertaken by the primary judge - in this case, where the parties failed to provide a proposal as to how to give effect to the time arrangements between the children given the distance that they lived apart, it was unnecessary for the primary judge to deal with the issue of the parties' ability to communicate - the primary judge's reasons had been adequate - the primary judge had incorrectly framed the relief the appellant had sought, however, not every such error will give rise to appellate intervention - here, the primary judge's error was not material to her ultimate determination - appeal dismissed.
Horwitz & Tavares
[From Benchmark Friday, 29 March 2024]

Executive Summary and (One Minute Read)

Lifestyle Equities v Amazon UK Services Ltd (UKSC) - In a cross-border sale of merchandise where the same trade mark was owned by different entities in USA and UK, Amazon was liable for trade mark infringement where UK customers were targeted by Amazon's US website

Summaries With Link (Five Minute Read)

Lifestyle Equities v Amazon UK Services Ltd [2024] UKSC 8,
Supreme Court of the United Kingdom
Lord Hodge, Lord Briggs, Lord Hamblen, Lord Burrows, & Lord Kitchin
The trade mark at issue was the 'Beverly Hills Polo Club' brand. The holder of the mark in the EU/UK was Lifestyle Equities which is unrelated to the brand owner in the USA. A UK resident ordered US sourced goods bearing the trade mark through Amazon's US website. The owner of the EU trade mark contended that Amazon was liable for trade mark infringement because it targeted consumers in the UK/EU. This matter concerned conduct that occurred before Brexit. Applying EU law, the Supreme Court said that Amazon could only be liable for trade mark infringement in a cross-border sale if it in fact targeted consumers in the UK. The mere fact that a foreign website is accessible to a UK resident is insufficient to establish targeting of a UK consumer. The question for the court was whether an average consumer within the UK, who is reasonably well-informed and observant, would consider the website targeted at that consumer. The Court found that targeting had occurred because Amazon offered to deliver to the UK, in a dialog box Amazon specified which goods could be shipped to the UK, and specified UK delivery times and featured the option to pay in British currency. The Supreme Court also stated that Amazon's subjective intent was not the key issue. Rather, the question was one of objective fact taken from the perspective of the average consumer. Intent may, however, be taken into account to the extent it is relevant to the objective assessment made by the court.
Lifestyle Equities

Poem for Friday

The Nightingale

By: Sara Coleridge (1802-1852)

In April comes the Nightingale,
That sings when day's departed;
The poets call her Philomel,
And vow she's broken-hearted.

To them her soft, sweet, ling'ring note
Is like the sound of sorrow;
But some aver, no need hath she
The voice of grief to borrow.

No, 'tis the merry Nightingale,
Her pipe is clear and thrilling;
No anxious care, no keen regret,
Her little breast is filling.

She grieves when boys have robb'd her nest,
But so would Stork or Starling;
What mother would not weep and cry
To lose her precious darling?

Click Here to access our Benchmark Search Engine