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### Family Law Case Update #21: Interim Appeals

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#### *Interim Appeals*

**Vanzin & Vanzin [2014] FamCAFC 245**

**Single Judge Family Court - Justice Murphy Brisbane**

#### **Facts**

Appeal from interim decision of Howard J of the FCCA.

Parties separated October 2012. Child 5 years. On 26 November 2012 parties entered into a Parenting Plan to change from nine/five night fortnightly arrangement, to a 7/7 arrangement.

The parties were unable to reach agreement on parenting aspects such as schooling and overseas travel.

Although the parties had consented to some aspects of the matter, the balance of issues had to be determined by the judge in a duty list when the matter was heard on 23 October 2014.

The matter was in a busy duty list and it appeared the sitting judge dealt with the remaining issues which were not agreed to.

The trial judge confirmed the 7/7 arrangement based on the Parenting Plan by way of interim orders. The trial judge also made orders about the primary school for the child given the parties' inability to reach agreement on that point.

It appears that although a judgment was given on 23 October 2014 - there is nothing which indicates it was reserved, but also there appears to have been no reasons for the judgment in the transcript.

#### **On Appeal**

5. *Neither that discussion, nor anything else recorded in the transcript, bears any relation to 20 paragraphs of the orders ([16] to [36]) said to*



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*have been made that day. Again, from the bar table before me, it was explained that email exchanges took place with his Honour's chambers that resulted in "makeup time" orders being made on or after 28 October. Neither party takes any point about orders not being made by reference to a process occurring in court, nor seeks to assert that they were not given an opportunity to be heard.*

### **Reasons**

- Issues before Howard J, were limited to the difference between the child spending five nights per fortnight or seven nights per fortnight.
- The nine-five arrangement was not an issue in dispute. So Trial Judge ordered the five nights as opposed to seven.
- The Appeal Court was satisfied that the narrow scope of the issues did not require his Honour to go through all the matters in s 60CC.
- Which school should child attend? The trial judge pointed to several undisputed facts re one of schools: both parties had signed consents, friends from kindergarten going to go to this same school. On this basis ordered go to school B for 2015
- Should child be permitted to travel to Japan for 3 or five weeks? The five weeks had already been booked - so the trial judge did not propose to change the flight dates.
- Appeal Court found no weight in any of the challenges to the trial judge's decision.

### **Obiter - Full Court Adequacy of Reasons in Interim Matters:**

20. *"The process by which interim parenting decisions are made within busy lists containing many cases with equal claims to be heard is "...an abridged process where the scope of the inquiry is significantly curtailed" (Goode & Goode (2006) FLC 93-286 at [68]). That consideration, and the fact that the issues for determination here are extremely narrow, does not obviate the need to follow mandatory*



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*statutory requirements (Goode (above) at [82]).*

21. *Nor does it obviate the need to give reasons for the decision reached; the orders pertain to the life of a child, however benign the issues might seem, and the parents should know why a decision has been reached (see for example, Kirby J writing extra-curially 'Always permissible, usually desirable and often obligatory' (1994) 12 ABR 121,135-6). No ground here asserts an inadequacy of reasons, but the brevity of the ex tempore reasons delivered in this case contributes to at least some of the arguments made on behalf of the appellant.*
22. *The breadth and depth of the "significantly curtailed" inquiry in hearings of the instant type must also depend, to a significant extent, on the breadth and depth of the issues to be determined. So too, as it seems to me, an assessment of the adequacy of reasons given for interim decisions must take account of the same circumstance: "The adequacy of the reasons will depend upon the circumstances of the case" (Sun Alliance Insurance Ltd v Massoud [1989] VR 8 at 18). That is all the more so when reasons are delivered in cases of this type ex tempore."*

Court exercised discretion for costs against the father - had little prospect of success and in light of mother's enjoyment to have father withdraw the appeal on two occasions.

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