

FAMILY LAW - PARENTING where the mother's interests were represented by the Adult Guardian as a result of her mental incapacity - Competing proposals - Best interests of the children where the mother's mental health is such that she is incapable of parenting where the mother lacks insight into her own condition - where the children live with the father where the mother has spent almost no time with the children since separation. APPLICANT: Mr Thor RESPONDENT: Ms Dahler who appeared by her guardian the Adult Guardian in the parenting proceedings SECOND RESPONDENT Cassandra Pullos Lawyers INDEPENDENT CHILDRENS LAWYER: Legal Aid Queensland FILE NUMBER: BRC 3538 of 2009 DATE DELIVERED: 3 October 2014 PLACE DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Hogan J HEARING DATE: 20, 21, 22, 23 & 25 May 2013 and 5 July 2013 REPRESENTATION APPLICANT: In person COUNSEL FOR THE RESPONDENT: Ms Carmody SOLICITOR FOR THE RESPONDENT: Mr Hallam of Carne Reidy Herd Lawyers COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER Mr Linklater-Steele SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Legal Aid Queensland ORDERS BY WAY OF FINAL ORDER IT IS ORDERED THAT: Parenting (1) All previous parenting orders are discharged. (2) The children G, born ... 2003, and H, born ... 2004 live with the father. (3) The Father has sole parental responsibility for the major long term issues of the children, G, born ... 2003, and H, born ... 2004, including in respect of: (a) the children's education; (b) the children's religious and cultural upbringing; (c) the children's health; (d) the children's names; and (e) changes to the children's living arrangements that make it significantly more difficult for the children to spend time with or live with either parent. (4) The children spend time and communicate with the mother at all such times as may be agreed between the father and the mother and such time shall occur in the manner agreed between the parents. (5) Save as is agreed between the parents in writing, the mother is restrained and an injunction issue restraining her from approaching within one hundred (100) metres of, entering or attempting to enter: (a) the children's residence currently: B Street, C Town; and (b) G's school currently: N School, Suburb O; and (c) H's school currently: N School, Suburb O; and (d) any venue where the children attend ballet classes or other extra-curricular activities in which they may participate from time to time. (6) Each party is restrained and an injunction issue restraining

each of them from bringing the children into contact with Mr P. (7) The parents shall keep each other informed of their current email addresses and contact telephone numbers and notify the other within seven (7) days of any change to the same. (8) The father shall provide the mother with information about the children on a quarterly basis with such information to be provided by email and to include, but not be limited to: (a) copies of the children's school report cards; and (b) copies of the children's school photographs; and (c) copies of any awards/letters of commendation that the children may have received at school or at any other extra-curricular activity; and (d) information about the children's health, general progress and well-being. (9) In the event that either or both of the children are involved in a serious accident or diagnosed as suffering from a serious illness, the father shall promptly notify the mother by email of the same. (10) The mother shall be at liberty to send letters, cards and gifts to the children and the father shall ensure the children receive any letters, cards and gifts sent by the mother to them on the proviso that the content of the same does not include inappropriate matters, a term to be considered as including (but not being limited to): (a) the father's alleged abuse of the children or similar themes; and/or (b) the mother's mental health issues and/or drug use; and/or (c) the conduct of these proceedings; and/or (d) adult issues. (11) Each party is restrained and an injunction issue restraining each of them from denigrating the other parent to or in the presence of the children. (12) The mother is restrained and an injunction issue restraining her from: (a) publishing images of the children or the father; and/or (b) discussing the children, the father and these parenting proceedings; and/or (c) publishing written material about the children, the father and these parenting proceedings via any electronic media or in any public forum or social networking internet site, including but not limited to: Facebook, Twitter, YouTube and MySpace. (13) The mother is restrained and an injunction issue restraining her from removing the children G, born ... 2003, and H, born ... 2004, from the Commonwealth of Australia. (14) The father is permitted to obtain passports in the children's names without obtaining the consent of the mother and without requiring her to execute any Passport Application. (15) The father is permitted to remove the children from the Commonwealth of Australia for the purposes of a holiday, notwithstanding that the consent of the mother has not been obtained. (16) The father shall provide

the mother with no less than 30 days written notice, sent by email, of any intention to remove the children from the Commonwealth of Australia for the purpose of holiday with such email to include a copy of the proposed travel itinerary and contact details for the children whilst overseas. (17)

A Registrar of the Family Court of Australia at Brisbane is appointed pursuant to s 106A of the Family Law Act (1975) (Cth) to: (a) sign an Application for an Australian Passport for the children and to do all acts and things necessary to ensure that any such Application is validly executed on behalf of the mother; (b) sign any documentation on behalf of the mother if such documentation is presented by the father - which is necessary to have all images, documents or other references of any kind to the children, the father and these parenting proceedings removed from any electronic media and/or in any public forum and/or social networking site including but not limited to Facebook, Twitter, MySpace and the following internet sites: (i) Macpc.org.au; (ii) Websiteaddress.com; (iii) Websiteaddress; and (iv) Websiteaddress. (18) The mother has liberty to provide a copy of the reports by Dr M, psychiatrist, and a copy of this Order and the Reasons for Judgment delivered 3 October 2014 to any psychiatrist upon whom she attends for the purpose of obtaining treatment. (19)

That unless the mother is able to file an affidavit from a treating psychiatrist, who has been provided with the full history of her mental health condition, Dr Ms reports, a copy of this Order and Reasons for Judgment, which confirms that she has: (a) undertaken consultations with the treating Psychiatrist on a fortnightly basis for a period of no less than twelve (12) months; and (b) complied with all treatment, including medication, as has been recommended by the treating Psychiatrist, with such treatment not to include dexamphetamine or related drugs; and (c) complied with all such testing as might be required or recommended by the treating Psychiatrist for the purpose of ensuring or monitoring compliance with recommended medication and/or other recommended treatment, she is restrained and an injunction issued restraining her from commencing proceedings seeking parenting orders without first obtaining the leave of the Court. (20) Any application by the mother for leave to commence proceedings seeking parenting orders must be served on the father but he is not required to participate in the hearing of the application for leave. IT IS NOTED that publication of this judgment by this Court under the pseudonym Thor & Dahler and Anor has been approved by the

Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT BRISBANE FILE NUMBER: BRC3538 of 2009 Mr Thor Applicant And Ms Dahler First Respondent And Cassandra Pullos Lawyers Pty Ltd Second Respondent REASONS FOR JUDGMENT This very sad matter involves a consideration of the parenting arrangements for G, born in 2003 and her sister, H born in 2004 (the children), whose parents separated on 6 February 2009. The children's older sister, F, is an adult, having been born in 1994. The matter has a long and tortured history and I apologise sincerely to the parties for adding further to the delay associated with its finalisation. Whilst, perhaps, illuminating, a recitation of the intricacies of its history does nothing to advance the explanation for the parenting orders which must, inevitably, be made in the circumstances of this case. On the evidence before the Court [1], there can be no doubt that the proper parenting order [2] - and that which is in the children's best interests - is one which will see them continue to live with the father: as they have done since about October 2009. Such are the symptoms and manifestations of the significant and debilitating mental illness [3] enveloping the mother that the children's time with her can only occur on whatever occasions, and in whatever manner, the father deems appropriate. Whilst a thorough investigation and consideration of the causative factors [4] underlying the mother's mental illness may once have been thought imperative to the determination of those parenting orders which are in the children's best interests, this is no longer the case. The extent of the mother's mental illness is such that causation matters little. The father is the children's only functioning parent; he alone is capable of providing for the children's needs and discharging the obligations associated with parenthood. He is entrusted with ensuring that they are not exposed to their mother when she is unwell but have the opportunity to spend time with her when she is not - as F, who has been significantly involved in helping the father to care for her younger sisters and whose recounting to Ms Q [5] I accept, says: the mother does not need supervision to spend time with the children when she is well. However, it is also clear from Ms Q's evidence that exposure to the mother's belief system and behaviours, as manifested when she is not mentally well, is highly likely to significantly distress and, possibly, emotionally damage the two youngest children. Save for specifically permitting appropriate written communication and the provision of gifts by the

mother to the children, I do not intend to make other specific orders regulating the communication between the children and the mother. Responsibility for facilitating such communication, for example, by Skype, can only realistically and practically be left to the father and, perhaps, F who have already demonstrated a capacity to support the younger children in their sometimes truncated interactions with the mother. The allegations the father had sexually abused the children - including the parties' oldest daughter - have been investigated by Police and the Department of Child Safety and found to be unsubstantiated. As long ago as 2009, the younger children's school had no concerns about their behaviour and reported that they did not display any inappropriate sexual behaviours. Further, Ms Q's observations of the children's interactions with the father establish only that they have close, warm and well established relationships with him and enjoy spending time with him. As long ago as about August 2009, Ms Q expressed the opinion that the mother continued to seek further evidence to support her belief considered to be genuinely held that the father had sexually abused the children and, consequently, was likely to interpret innocuous events such as a child not smiling in a photograph in a way that supported this pre-existing belief. In 2010, Dr M noted the mother appeared to hold, with delusional intensity, the belief the youngest child had been sexually abused by the father. He considered she attempted to hide persecutory beliefs because she realised others would consider them psychotic in nature. Exposure to such a belief structure which appears prevalent when the mother's mental ill-health manifests is only likely to cause the children significant upset, concern, anxiety and a destabilisation of their sense of security in their current, relatively long-standing, care arrangement. The mother's cyclic, and apparently deteriorating, mental ill-health means she is incapable of making decisions about any issues relating to the children. She is also incapable of making decisions about such issues jointly with the father. The children's best interests mandate the rebuttal of the presumption of equal shared parental responsibility. The only sensible, child focused and proper order in the children's best interests can be that the father has sole parental responsibility for the major long term issues relating to them. Should there be any doubt about the basis for the significant conclusions outlined above, regard need only be had to the following evidence - for example: having suffered a psychotic episode, the mother was admitted to

hospital as an involuntary patient in December 2009 and discharged on 12 February 2010; the mother's time with the children was suspended on 16 December 2009; in about April 2010, the mother attempted to remove the children from the father's care she in fact removed the youngest child and took her to hospital seeking that she be physically examined in furtherance of her belief the child had been sexually abused by the father; in April 2010, Federal Magistrate Slack restrained the mother from approaching within 100 metres of the home, school or ballet school at which the children attended; in about June 2010, the mother told Dr M, a psychiatrist commissioned to prepare reports for use in these proceedings, that: i) she had initially been diagnosed as having a psychotic episode secondary to dexamphetamine use but, later, a diagnosis of paranoid schizophrenia was made; ii) after she left hospital she refused to take the medication prescribed to her and spat it out when it was given to her in hospital; iii) she managed to get out of hospital because she had worked out she had to agree with what the staff said and not disagree with them about their ideas; iv) despite knowing she was supposed to follow up treatment once released from hospital, she saw a medical practitioner and case manager on one occasion each only and did not, thereafter, follow up; v) despite her dexamphetamine use having been out of control [6] before her December 2009 admission to hospital, she got herself put back on dexamphetamine by attending on a general practitioner after her release from hospital. As at June 2010, Dr M considered that, while the Mother gave lip service to the idea that she had suffered an illness, she did not really believe this to be the case or that she had been unwell she simply agreed so there would not be difficulties about what he described as her ongoing probable psychotic ideation; the mother was an involuntary in-patient between 2 September 2010 and 10 September 2010; despite there being provision for the children to spend supervised time with the mother, this has occurred on very limited occasions because the Contact Centre refused to provide supervision; the mother was a voluntary in-patient in a hospital in northern New South Wales between 1 January 2011 and 10 January 2011; the mother was admitted on an involuntary in-patient basis in a different hospital in northern New South Wales between 11 January 2011 and about 10 March 2011 but absconded from the hospital on 14 February 2011; the mother has previously been admitted to

various mental health facilities in both Queensland and New South Wales, has previously been subjected to Involuntary Treatment Orders on a number of occasions and has also previously absconded from treatment; when she spoke with Dr M on 23 May 2011, the mother had not seen the two youngest children since about July 2010 and had, more recently, seen F when F visited her in hospital in February 2011; Dr M noted during the May 2011 interview that the mother: i) became rapidly irritable when questioned about the nature of her beliefs; ii) placed little or no weight on the fact that medical practitioners had expressed the opinion her earlier report of seeing people prior to her first involuntary admission might be a symptom of her mental health problems; iii) reported complex and difficult to follow stories regarding recent issues including the police having her car as it had been stolen and sold five times; iv) became rapidly irritable when questioned about any events to do with sensitive topics like: hospitalisation, psychiatric care, her previous or current belief systems and access to the children or the father; v) demonstrated rapidly increasing agitation during the interview and which was much more prominent than in his previous interviews; vi) described an ongoing belief in various persecutory delusions; vii) had no insight into her psychiatric condition; viii) said she had only ever gone to hospital because she did not have any money and, otherwise, would never have presented for treatment; ix) had no insight into the abnormal nature of her previous and current belief systems about potential sexual abuse of the children, people following and plotting against her and her aunt being a Satanist; x) saw no need for psychiatric treatment and had no insight into the possible deleterious effects of her ongoing use of dexamphetamine in her condition a matter which had been explained on a number of occasions in both clinical and Court settings. sometime in the latter half of 2012, the mother thought there was a bomb in her car and exposed G to this belief; [7] she also exposed H who presented to Ms Q as an anxious 8 year old who was scared of her mother because her mother said that there were monsters attacking their kids to her belief that the real moon had been blown up and there was a fake one in the sky; in about December 2012, the mother posted information, which included the parties eldest daughters name and details, about Satanism and Paedophile rings on the internet; the Mother appeared by her guardian, the Adult Guardian - who was appointed by an Order made by the Queensland Civil and

Administrative Tribunal on 4 November 2011 - in the parenting proceedings; the mother appears to have moved between Queensland and New South Wales to take advantage of the lack of reciprocity in Involuntary Treatment Orders such was her determination not to be admitted to hospital consequent upon an Involuntary Treatment Order operative at the time of the trial that she refused to return to Queensland for the same. Let it be thought that the possibility of using a Contact Centre to facilitate safe and appropriate time between the children and the mother has not been considered, I note the Independent Children's Lawyer sought orders that the children spend no time with the mother, the mother sought that her time with the children be supervised privately in a manner which I consider to be unworkable, impracticable and highly unlikely to be able to be facilitated - and previous attempts to use such a service have been unsuccessful. Whilst a little unusual, perhaps, I consider that the form of Order outlined at the commencement of these Reasons is the only one capable of addressing, in a practical sense, the realities of the mother's mental ill-health and its consequent impacts on her capacity to interact positively with the children. If the father decided, unreasonably, to refuse to permit the children to spend time with the mother in circumstances where her mental health had improved so significantly that she was able to demonstrate stability of functioning, she will be able to exercise her right as a parent to seek further parenting orders once she is able to provide the Court with evidence she has been attending on, and following the recommendations of, a psychiatrist armed with sufficient knowledge of her past difficulties. I certify that the preceding sixteen (16) paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Hogan delivered on 3 October 2014. Associate: Date: 3 October 2014 [1] There is a vast amount of material encompassing affidavits and reports, transcript of evidence given in the previous proceedings and Exhibits comprising documents obtained pursuant to subpoena. [2] see: ss 65D, 60CA, 60CC and 65AA of the Family Law Act (1975). [3] An appreciation of which can be gathered by reference to the various reports prepared by Dr M, psychiatrist, and his recounting of the mother's historic diagnoses. [4] Which include alleged mis-prescription of dexamphetamine for misdiagnosed attention deficit disorder and/or major depression, resistant amphetamine psychosis or schizophrenia aggravated by amphetamine use. [5] Author of a number of Family Reports. [6] With

overuse and misuse. [7] Family Report date 5 April 2013, Annexure D to the affidavit of Ms Q filed 8 April 2013. AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/844.html>