

FAMILY LAW Adjournment of contravention proceedings no direct judicial communication with Egypt absent consent APPLICANT: Ms Fallon RESPONDENT: Mr Bashandi INTERVENOR: INDEPENDENT CHILDRENS LAWYER: Ms Hams FILENUMBER: MLC 6992 of 2013 DATE DELIVERED: 4 August 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Bennett J HEARING DATE: 4 August 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Ms Vohra SOLICITOR FOR THE APPLICANT: Taussig Cherrie Fildes COUNSEL FOR THE RESPONDENT: Mr Boden SOLICITOR FOR THE RESPONDENT: Starnet Legal COUNSEL FOR INDEPENDENT CHILDRENS LAWYER: SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER RESPONDENT: Glezer Lanteri & Associates ORDERS IT IS ORDERED THAT: This matter be adjourned part heard to 9 September 2014 at 3.00 pm for mention. IT IS FURTHER ORDERED BY CONSENT THAT: Paragraph 4 of the Order made on 1 July 2014 be varied and the wife have sole authority to apply for and complete the application for a new Australian passport to issue for the child Z born ... 2009 (the child). The husband's consent for the issuing of the new Australian passport for the child be dispensed with given the wife and the child remain overseas in Egypt and the application for the new passport will therefore have to seek that it be issued whilst the child is overseas. The orders in paragraph 5, 6 and 7 of the Orders made on 1 July 2014 otherwise remain in full force and effect. IT IS DIRECTED THAT: My Associate make arrangements for the mother to appear at the mention on 9 September 2014 by audio-visual link. IT IS NOTED that publication of this judgment by this Court under the pseudonym Fallon & Bashandi 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 MELBOURNE FILE NUMBER: MLC 6992 of 2013 MS FALLON Applicant And MR BASHANDI Respondent And INDEPENDENT CHILDRENS LAWYER REASONS FOR JUDGMENT EX TEMPORE This matter was previously before me for the hearing of the four contravention applications issued by the mother and filed, respectively, on 23 September 2013, 18 March 2014, 5 May 2014 and 24 June 2014. The respondent father required the applicant mother for cross-examination. By the time this matter was ready to proceed, the mother had not slept for in excess of 24 hours and I considered that it was not appropriate that she be cross-examined

under those circumstances. Accordingly, I adjourned the case. Today's date was therefore fixed and the commencement time was set for 3 pm, which is rather more humane than starting this matter at 10 am. One of the opportunities afforded by the adjournment was for the parties to consider what, if any, direct judicial communication may benefit this matter in relation to getting the child Z born 4 May 2009, home. This is direct judicial communication as contemplated by the Permanent Bureau of the Hague Conference on Private International Law. It is discussed in Direct Judicial Communications: Emerging Guidance regarding the Development of the International Hague Network of Judges and General Principles for Judicial Communications, including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, within the Context of the International Hague Network of Judges (HCCH Publications, 2013) <[http://www.hcch.net/upload/brochure\\_djc\\_en.pdf](http://www.hcch.net/upload/brochure_djc_en.pdf)>. In the interim, the mother has changed her legal practitioners to Taussig Cherrie Fildes and changed her counsel to Ms Vohra. She has also taken some steps, although not completed, on an application for a new passport for the child. Those steps do not include having submitted an application for that passport for execution by the father. The father says that he has remained willing to execute any application. The father has put on a further affidavit, which is sworn on 1 August 2013. It is folio 44 on the court file. I am informed, however, by Ms Vohra of counsel, and I accept, that neither she nor her client has seen the affidavit. The affidavit largely consists of submissions and arguments as to why the contravention applications are inherently difficult and also sets out some two pages of instances in which the father says that he has recently been threatened by text message or telephone, and one of those text messages apparently emanates from Egypt. The father, who is the respondent to the contravention applications, says, through Mr Boden, that these proceedings are extremely stressful for him, that he has been in court on 17 occasions and they are hanging over his head, and that he wants them to be dealt with as soon as possible or today. I haven't counted up the times that the matter has been to court, although the first contravention application is that filed on 23 September 2013, and that was folio number 10 on the court file. We are now up to folio number 44 on the court file and it does appear that there have been a great many appearances. Not all of those have been referable to the

contravention applications, although the contravention applications have been pending for a considerable period of time. This court makes orders in relation to children. This court must enforce the orders it makes. One of the remedies for enforcement and to aid compliance with orders is contravention applications. They are applications to which there attaches certain privileges and protections, particularly for those respondents. The prejudice caused to the father by the applications not proceeding today is that he will be under stress. That is not desirable and I take it into account. I accept the submission of Ms Vohra that the mother is also under stress. She is under stress because she is, in effect, detained in a country that she does not want to remain in, because she cannot remove the parties child from the country. The child has not seen her father for in excess of one year. I accept that the wife is under a great deal more stress than the father is in Australia. I accept that stress for the wife is likely to impact adversely on the mother's capacity to parent the child and, therefore, on the child. I take this into account and accord it considerable weight. The adjournment sought by the mother will prolong the contravention proceedings but is sought by the mother to put those proceedings on a better footing. The applications were served by the wife's former solicitors. There is merit in allowing the mother more time. Ms Vohra says that the reason for the adjournment includes the collation of documents which the mother has indicated to her should be on the court file, but Ms Vohra is satisfied they are not. In particular, two documents or sets of documents have been described in general terms. One is documents which would tend to prove that the father has revoked the defective power of attorney which he executed in November 2013. That is the document that should have contained reference to an irrefutable power of attorney, but the term irrefutable was omitted. The next aspect of the matter, and one to which the affidavit sworn and filed by the husband on 1 August 2014 is directed, is his assertion that he is not in control of nor a participant in the proceedings which are being conducted in Egypt. On the last occasion that the father was in court, he indicated that those proceedings were not conducted at his behest. He said that they may be conducted at the behest of his family or by some other person. Today, in the affidavit material he has now filed, he says that he is unable to verify whether his family members have the conduct of those proceedings, because his family members have not spoken to him consequent upon

him divorcing the mother and lifting the travel ban that concerns her personally. Contravention proceedings are important proceedings. In the circumstances of the case, I do not propose to compel the wife to proceed with them today. She seeks an adjournment for what seems to be a genuine and legitimate reason. There may be prejudice to the father, but it seems to me that that prejudice can, to a certain extent, be relieved by other applications that he may make. I will adjourn the contravention application to 9 September 2014. I will take the matter at 3 pm on that day. That is in advance of the next return date in the proceedings in Egypt. I stress that in the event that a party wants from the court some other hearing or intervention prior to the November proceedings (and even prior to the adjourned date which I will now allocate), they need only contact my Associate and the matter will be relisted as quickly as possible to see what, if anything, should be done. I will allow the application of the mother for an adjournment of the contravention applications. Finally, for the record, I made enquiries as to judges in Egypt to whom I could direct judicial communications. Notwithstanding that Egypt is not a contracting state under any relevant Hague Convention, I am confident that communications could be commenced. However, at the behest of the mother, I did nothing else. The mother was very much opposed to there being any direct judicial communication about whether the father could give evidence in the Egyptian proceedings by electronic means. Accordingly, I have not taken the matter further and, in the absence of consent by both parties, will not do so. If the parties change their minds, someone should bring that to my attention. I certify that the preceding fourteen (14) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Bennett delivered on 4 August 2014. Associate: Date:

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