

FAMILY LAW CHILDREN With whom a child lives and spends time Where the parties have reached consent in relation to a number of final parenting orders Where the Court is satisfied that the orders meet the child's best interests Where the only remaining issues for trial are whether the father should receive yearly school reports and school photographs and the form of the final orders made with respect to any prospect of the father making a further application for parenting orders when the child attains the age of 14 years Family Law Act 1975 (Cth) APPLICANT: Mr Hensen RESPONDENT: Ms Lyndall INDEPENDENT CHILDRENS LAWYER: Jennifer Boulton FILE NUMBER: BRC 6974 of 2008 DATE DELIVERED: 8 October 2014 PLACE DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Kent J HEARING DATE: 8 October 2014 REPRESENTATION FOR THE APPLICANT: In person SOLICITOR FOR THE RESPONDENT: Ms McCormick, Matthew Love Family Lawyers SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Jennifer Boulton Solicitor ORDERS IT IS ORDERED BY CONSENT ON A FINAL BASIS THAT: The Mother shall have sole parental responsibility for the child, S born ... May 2007. 2. The child live with the Mother. 3. The Father spend no time or communicate with the child. IT IS FURTHER ORDERED THAT: The trial of these proceedings listed for four (4) days commencing 3 November 2014 be vacated. The issue as to whether the Father is to receive school reports and school photographs for the child and any issue as to there being further parenting proceedings upon the child attaining the age of fourteen (14) years be adjourned for further hearing before the Honourable Justice Kent for one (1) day commencing at 10.00 am on 31 October 2014 at the Family Court of Australia, Brisbane Registry. Pursuant to rule 5.06(1)(a) of the Family Law Rules leave is given to the Mother's witness Ms B to provide evidence by telephone at the hearing of these proceedings on 31 October 2014. Pursuant to s 62B and s 65DA(2) of the Family Law Act 1975 (Cth), the particulars of the obligations these Orders create and the particulars of the consequences that may follow if a person contravenes these Orders, and details of who can assist parties to adjust to and comply with an order, are set out in the document entitled Parenting orders obligations, consequences and who can help, a copy of which is annexed to these Orders. IT IS NOTED that publication of this judgment by this Court under the pseudonym Hensen & Lyndall 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: BRC 6974 of 2008 Mr Hensen Applicant And Ms Lyndall Respondent EX TEMPORE REASONS FOR JUDGMENT These proceedings pursuant to Part VII of the Family Law Act 1975 (Cth) (the Act) concern the child S, born in May 2007 who is currently seven years of age (the child). The parties to the proceedings are the applicant, Mr Hensen (the father), the respondent, Ms Lyndall (the mother) and the Independent Children's Lawyer (the ICL) appointed pursuant to s 68L of the Act to independently represent the child's interests in these proceedings. By way of brief history, the mother and father met in 2006 and were in a brief relationship which subsisted only for about a month, from October to November 2006, during which time the child was conceived. Obviously, the parties had finally separated before the child was born in May 2007. Subsequent to the child's birth, the parties entered into final parenting orders by consent on 4 August 2008, which provided for the parents to have equal shared parental responsibility, for the child to live with the mother and spend time with the father on a gradually increasing basis, eventually leading to overnight time provisions each alternate weekend commencing in 2010. As will be discussed further, those orders were subsequently discharged following the filing of the father's Initiating Application in the then Federal Magistrates Court on 23 August 2011, which sought to amend the consent orders and the mother's response, which sought to discharge those consent orders and have the child live with her due to concerns of sexual abuse arising out of an investigation by the Department of Communities, Child Safety and Disability Services (the Department). Following the parents' separation and in about May 2007, the father commenced a relationship with one Ms O and they subsequently married. Ms O had two daughters from her marriage with Mr O. A girl born January 2002, now aged 12 years and a younger girl born January 2006, now aged eight years (the O children). In August 2011 the younger girl referred to, made disclosures that the father had sexually abused her and encouraged her to have sexual contact with the child - allegations which the father vehemently denied. The allegations related to disclosures that the young girl had licked [the child's] willy; that she had licked the father's penis; that the father had touched her private parts and that the father had her look at pictures of penises in magazines and

made her lick them. These allegations resulted in the Department undertaking an investigation and assessment in relation to the O children from August to October 2011. The outcome of that investigation was recorded by the Department as substantiated emotional harm caused by sexual abuse in relation to the younger girl, with the father being identified by the Department as the person responsible for the harm; whilst the outcome with respect to the older O girl was recorded by the Department as unsubstantiated due to insufficient evidence. Ultimately, no action was taken by the Department in relation to the O children as the parents of those children were found to have acted protectively of the children given that Ms O ended her relationship with the father and prevented him from having any further contact with the O children. Some six Magellan reports have been prepared in these proceedings in relation to the child. The first Magellan report, dated 21 November 2011, records that the child and the younger O child experienced emotional harm as a result of sexual abuse for which the father was said to be responsible. Further, it was assessed that the child would be at an unacceptable risk of emotional and physical harm caused by sexual abuse if he were to be in the unsupervised care of the father. The Department recorded a finding that the child was a child in need of protection due to orders of this Court, then in place, which provided for the father to have unsupervised overnight contact with the child. However, it seems the Department did not intervene at that time as the father agreed to have supervised time only with the child and the parents arranged to separately attend family group meetings to develop a case plan supervised by the Department. Bell J heard the trial of these proceedings over some seven days between 10 and 14 September 2012 and on 18 and 19 March 2013. On 24 May 2013 his Honour made interim orders and delivered Reasons for Judgment. Without incorporating in these Reasons all that his Honour had to say in his Reasons (the Judgment delivered on 24 May 2013), I note that at paragraph 64 of his Reasons Bell J, after outlining the available evidence and his consideration of that evidence, concluded that the father would be an unacceptable risk to the child if he had unsupervised time with the child. It is clear from those Reasons that the remaining considerations for his Honour in terms of the further trial of these proceedings was whether or not the child would benefit, or not, from any supervised time with the father and whether or not the mother would suffer a

diminishment of her capacity to appropriately parent the child if there were to be any time with the father, even on a supervised basis. With those matters in mind, Bell J made the interim orders referred to, pursuant to which the trial of the further issues was adjourned with the child to live with the mother and spend supervised time with the father at a contact centre for some five months before a further updated family report was obtained. On 14 November 2013 Bell J ordered the listing of the further trial of the time issue which was originally envisaged to commence on 1 April 2014. In the result, due to ill health of Bell J, the trial did not proceed and went through a case management process resulting in me listing it for a pre-trial mention on 17 September 2014, when I then listed the trial to commence for four days on 3 November 2014. In the period under discussion the further family report has been obtained and further evidence has been forthcoming. In particular, the father has filed an affidavit on 26 September 2014. Under a heading, Statement for Finalisation of Custody, there is, in summary, the father's position that maintaining his stance that he did not sexually abuse any child, asserting that this Court and the Department are biased against him; and claims that the mother has taken steps adversely to him to prevent him having time with the child; but importantly including in his affidavit at page 4 the following: I therefore suggest for [the child's] best interest, emotion and mental health the following: Until [the child] is 14 years of age I Give Parental and legal responsibilities to [the mother]. 2. Ask to receive from [the child's] school his reports. Be issued with yearly school photos to be billed to myself to a cost of \$50PA. 4. [The child] not be allowed to leave Australia. I should record that following the Department's investigations; the child lived with the mother and had no time or communication with the father between September 2011 and June 2013. From July 2013 until December 2013 the child spent supervised time with the father at the C Contact Centre in accordance with the orders of Bell J to which I have referred. However, that time ceased in December 2013 with the last occasion occurring on 13 December 2013. Taken from the updated family report of psychologist Mr D, which was filed on 20 March 2014; and from reports from the subject Contact Centre; and the child's school and the child's counselling at E Counselling Practice; there was a body of evidence indicating that the child's behaviour and coping deteriorated over the six month period that he spent supervised time with the father. In particular, it is reported that the child

displayed increased sexualised behaviours and trauma type symptoms, for example, anxiety. I note, in particular, at paragraph 52 of his updated report, Mr D summarises these sexualised behaviours, noting these too had decreased since the cessation of supervised time with the father in December 2013. Under the heading, Summary and Conclusion, commencing at paragraph 77 of his updated report filed 20 March 2014, Mr D made various conclusions and recommendations regarding the child's sexualised behaviours and his time with the father. They may be summarised as follows:

79. [The child's] behavioural and emotional declines would appear to be symptomatic of re-exposure to trauma stimuli associating with his father. ... The declines in [the child's] behaviours and the increase in the presence of [the mother's] symptoms of depression, anxiety and stress indicate that her parenting of [the child] was being compromised when [the child] was having time with his father. Consequently if [the mother's] parenting is compromised, in turn [the child's] childhood experiences too are being compromised, as he is being deprived of the opportunity to have positive and healthy maternal care provided to him by his otherwise competent and normally functioning mother. [The mother] highlighted the changes in [the child's] behaviours in paragraph 52 of this report. If [the mother's] claims are considered as credible, then it is hard to justify any ongoing relationship between [the child] and [the father]. The types of anti-social behaviours that have been reported about [the child] would have grave implications for his development if such behaviours continued. I am unable to envisage benefit for [the child] by his father receiving information about [the child's] education, health and welfare. Under the heading, Recommendations, Mr D recorded at paragraph 86 of his report: I recommend that [the mother] have sole parental responsibility and that the Court does not make Orders for [the child] to have time with his father Mr [Hensen]. At today's hearing and consistent with his affidavit, the father has confirmed that he consents to a final order by which the mother has sole parental responsibility for the child. The father also confirms his consent to an order that there be no order for time or communication as between the child and the father. The remaining issues became the question of whether the father ought receive yearly school reports and school photographs and the child leaving Australia. In the course of the hearing today the father did not persist in seeking any order to the effect that the child not be allowed to leave Australia in

circumstances where the mother was to be having sole parental responsibility and when the child would be living with her and having no time or communication with the father. The only issue remaining for a trial are thus - whether or not the father should receive school reports and school photographs. Each of the parties appearing before me today have confirmed that the only witnesses required to give oral evidence with respect to that issue are Mr D, the family report writer; the mother's treating psychologist and the mother herself. In those circumstances it seems to me that the trial of that remaining issue can comfortably be completed within one day and by agreement of all parties the ICL will notify the Court after consultation with the mother's lawyers with respect to her psychologist's availability, as to a date for the trial in either the week beginning 20 October 2014 or the following week beginning 27 October 2014. In the meantime, I am satisfied that it is in the child's best interests that final orders be made in the terms as sought now by all of the parties including the father, with respect to the child living with the mother and having no time or communication with the father and for the mother to have sole parental responsibility. It seems to me that the only other remaining issue, aside from the school reports and yearly photograph issue would be the form of the final orders made with respect to any prospect of the father returning the matter to Court. As already noted, there is reference in the father's affidavit to the time until the child turns 14 years of age. For present purposes, all that needs to be done is to make final orders in the terms agreed so far as parental responsibility and live with and communication is concerned, leaving to the further hearing of the matter later this month, the other issues referred to. I am satisfied on the evidence to which I have referred and the fact of the parties consent to orders in those terms that these orders best meet the child's best interests within the meaning of Part VII of the Act. I therefore make those orders and will adjourn the further trial of the outstanding issues to the date as to be advised by the ICL as indicated. I certify that the preceding twenty-eight (28) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Kent delivered on 8 October 2014. Associate: Date: 8 October 2014 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/877.html>

