FAMILY LAW ORDERS Contravention Fail to appear Warrant issued. Family Law Act 1975 (Cth) APPLICANTS: Mr Randwick and Ms Randwick RESPONDENT: Ms Keefe FILENUMBER: MLC 8505 of 2011 DATE DELIVERED: 2 September 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Cronin J HEARING DATE: 2 September 2014 REPRESENTATION THE APPLICANTS: Both in person THE RESPONDENT: No appearance ORDERS Thatthe application for contravention is adjourned to 10.00am on 3 October 2014 inthe Judicial Duty List. Thatpursuant to s 65Q of the Family Law Act 1975 (Cth) a warrant issue forthe arrest of MS KEEFE to secure her attendance on the return date. Thatthe said MS KEEFE is to be brought before the Family Court of Australia and notreleased on bail without further order of thisCourt. Thatthe mother have liberty to apply on short notice if she desires to be releasedprior to the said return date. Thatthe reasons this day be transcribed. Thata copy of this order be posted by the Registry staff to the mother at Property Tand also Property W. IT IS NOTED that publication of thisjudgment by this Court under the pseudonym Randwick and Anor & Keefehas been approved by the Chief Justice pursuant to s 121(9)(g) of the FamilyLaw Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER:MLC 8505 of 2011 Mr Randwick and MsRandwick Applicant And Ms Keefe Respondent REASONS FOR JUDGMENT On17 April 2013 McMillan J made consent orders relating to H (thechild), who is now eight years of age. One of thoseorders was that thechild live with her mother and another order was that she spend time with herpaternal grandparents on a varietyof Sundays. On 4 June 2014 an amendedcontravention application was filed after an earlier application was lodged withthe Court. The paternal grandparents brought the contravention application andin the most recent document, alleged that Ms Keefe (themother),without reasonable excuse had refused to allow them to spend time with the childpursuant the orders of McMillanJ. Fora variety of reasons associated with difficulties of service, the case haslimped along for some months. In June 2014 I was sufficientlysatisfied thatthe contravention application had been brought to the attention of the motherand as she had not attended the hearing,I issued a warrant for her arrest. Thecontravention application clearly has attached to it a warning that if a partyfails to attendthe proceeding, they may be subject to being

arrested. Notwithstanding that notification and the variety of orders, all of which,according to the Court file, have been posted to the mother and the file doesnot contain any documentation to indicate that theyhave come back unclaimed,the mother did not appear, hence the warrant for her arrest. Thecorrespondence part of the file shows that subsequent to the order, a warrantwas sent to the Australian Federal Police, who inturn referred it to the localpolice in F Town. Ironically, a report from the local police said that theywere having difficultyexecuting the warrant, although they believe that themother was in the house, but she was not responding. As a consequence, thepolice sought advice from their superiors as to whether or not the warrantentitled them to break in and arrest the mother. At varioustimes along theway, subsequent to June, the matter came back before the Court and the dateswere extended, but the warrant remainedalive. On16 August 2014 at 6 pm police attended again at the mothers home and thistime found her in attendance and executed thewarrant, taking her, presumably,to the police station. In accordance with the orders that I made, the motherwas immediately releasedupon bail, conditional upon her attending this court on2 September 2014 at 10 oclock. The undertaking of bail indeed saystheFederal Circuit Court of Australia at Melbourne, but I do not think anythingturns on that, having regard to the fact that itis the same building andindeed, the mother would well have understood that, having been herebefore. MrRandwick, the applicant paternal grandfather, has attended today and told methat as a result of what he was told yesterday, hiswife did not come, but itappears that the mother has decided not to come either. What lies behind thatis that at approximately12.32 pm yesterday, from an email address, thefollowing email was sent to the Family Law Courts and also to the paternalgrandparents. The email reads as follows: I, [the mothersfull name] of [Property T] 3... will not be attending my scheduled Courtappearance to be held on 2/9/14 dueto illness. I have a medical certificateand it can be provided if required. I apologise for any inconvenience caused. Regards,[the mothers full name] Themother has not attended today, nor, on the inquiries that I have had made of theregistry staff, has any medical certificate beenprovided. One might normallybe considerate about someone who is ill, providing they have a medicalcertificate, but in this case,because there has been a number of hearings, I amreluctant to simply accept that the matter

should be adjourned again. I saythatbecause the police report shows that the warrant that they executed, andindeed, the bail documents support that, the mother wasaware of her obligationson 16 August. Thatis over two weeks ago, and even if she was ill, there has been no indication ofany representation, nor any desire to appearand defend the proceedings. It isnot appropriate for a litigant, particularly, a litigant in person, to simplysend a message tothe Court saying that she would not be attending due toillness and that she would produce a medical certificate if she was requiredtodo so. There are many ways in which she could have resolved this issue, otherthan that. It seems to me that the real problemis that I have no understandingof what the mother is doing, but as this case has been before the Court on anumber of occasionsin the past and she has not attended, and indeed, she hasbeen arrested once and released on bail, there seems little choice butto take amore draconian approach. Thatapproach would see the mother not only arrested again, but this time without theluxury of being released on bail. Whilst thatmight not normally be a problemin the criminal courts of this country, it obviously has a significantdifficulty in this Court becausethis is a dispute about a child. Indeed,somewhat unusually, a grandchild of the applicants. I have today, and on aprevious occasion,canvassed with the applicants whether, in fact, they want themother arrested, bearing in mind the consequences of such an orderupon thechild. The grandfather has told me from the bar table today that he recentlyattended a school event and spoke to the child,who made a number of complaintsabout her mothers behaviour towards her, so he considers that there is noreal risk that thechild would be in a difficult position if her mother remainedin custody. Tothe extent that there is a problem, no doubt, as the police will be arrestingthe mother again, they can assess the welfare positionof the child and indeed,if necessary, call in the Department of Human Services to protect the interestsof the child. At this stage,the problem is that this whole Court process isbeing thwarted by a litigant who has decided that she will do things her way. Inthe circumstances, the only order that I can make is to have her brought hereinvoluntarily. Section65Q of the Family Law Act provides that if a parenting order provides that achild is to spend time with a person and the Court is satisfied that there arereasonable grounds for believing that a person has contravened the order andthere is an application before the Court in relationto that particular

personto be dealt with under Division 13A of the Family Law Act 1975 (Cth)(the Act) concerning the contravention. TheCourt has to be satisfied that the issue of a warrant is necessary to ensure theperson will attend the Court to be dealt withunder Division 13A and then theCourt may issue a particular warrant. The difficulty for the mother is thateach of the relevantparts of s 65Q(1) seem to be to have been satisfied. Insaying that, obviously I do not know whether the mother has a defence to thecontraventionapplication, but that is no doubt something that she can tell theCourt in due course. The mother clearly understood the obligationsto be heretoday, otherwise she would not have sent the email that she did. WhatI propose to do is to make an order that she be arrested again, only this timeshe will remain in custody until she can be broughtbefore this Court. I makethat clear so that notwithstanding she is in the country, she cannot be takenbefore a Justice of thePeace or indeed, before a local Court, even if it isexercising jurisdiction under the Act. I appreciate that is a dramatic step,leaving aside what I have said, because in this case it will inconvenience thestate police substantially because, no doubt, theywill have to organisetransport and indeed, place the mother in the custody of either the state prisonauthorities, until the Courtcan hear the matter. Becauseof the possibility, for example, that she might be arrested on a Friday night,in which case she would remain in custody untilthe Monday morning, and that mayhave some significant consequences for the child, I propose to give the motherthe opportunity tomake an application for leave to be released, but that willbe a matter for either me or another judge, and certainly not for anyotherCourt or bail authority. I certify that the preceding thirteen(13) paragraphs are a true copy of the reasons for judgment of the HonourableJustice Cronindelivered on 2 September 2014. Associate: Date: 22 October 2014 