FAMILY LAW CHILDREN Long standing litigation and conflict No contact and norelationship between father andchildren Father decides not to proceed Orders made. Family Law Act 1975 (Cth) APPLICANT: Mr Jacsic RESPONDENT: Ms Mamula INDEPENDENT CHILDRENS LAWYER: FILENUMBER: MLC 6282 of 2012 DATE DELIVERED: 8 September 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Cronin J HEARING DATE: 8 September 2014 REPRESENTATION THE APPLICANT: In person THE RESPONDENT: In person SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER Agricola Wunderlich & Associates COUNSELFOR THE INDEPENDENT CHILDRENS LAWYER MrCombes ORDERS (1) That theapplication of the husband seeking parenting orders is withdrawn. (2) That the wife have sole parental responsibility for the child B JACSIC born... December 1999 (but otherwise known to the wifeand the child herself as (aspelling similar to her birth given name) MAMULA), C JACSIC born ... November2000 (but otherwise knownto the wife and the child himself as (a spellingsimilar to his birth given name) MAMULA) and D JACSIC born ... June 2003 (butotherwiseknown to the wife and to the child himself as (a spelling similar tohis birth given name) MAMULA). (3) That the husband be restrained by injunction from having any contact withthe said children other than by letters, cards andpresents. (4) For the purposes of paragraph 3 of these orders, the wife provide to thehusband forthwith upon her arrival in Sydney, an addressto which the letters,cards and presents can be forwarded to the children and the wife shallimmediately upon receipt of any suchitems, advise the husband in writing thatthose items have been received and have been given to the children. (5) That the children be at liberty to live permanently in New South Wales orsuch other Australian place as the wife determines. (6) That the Independent Childrens Lawyer is discharged from theproceedings. (7) That all outstanding applications are otherwise dismissed. (8) That pursuant to s 65DA(2) and s 62B, the particulars of the obligationsthese orders create and the particulars of the consequences that may follow if aperson contravenesthese orders and details of who can assist parties adjust toand comply with an order are set out in the Fact Sheet attached heretoand theseparticulars are included in these orders. IT IS NOTEDthat publication of this judgment by this Court under the pseudonymJacsic & Mamula has been approved by the Chief Justice pursuant to s121(9)(g) of the

Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER:MLC 6282 of 2012 Mr Jacsic Applicant And Ms Mamula Respondent Independent Childrens Lawyer REASONS FOR JUDGMENT Theseare parenting proceedings which sadly have an appalling history through thelitigation system, culminating in them being transferredfrom the FederalCircuit Court to this Court. Each of the applicant and the respondent hasappeared today without legal representation,which has made the task for themand for the Court somewhat more difficult. The dispute is about three childrenwhose birth namesare recorded on the Victorian Register as B Jacsic, born inDecember 1999; C Jacsic, born in November 2000; and D Jacsic, bornin June2003. Theproceedings arose out of a dispute as to what happened in the personalrelationship of the parents. The consequences of thataffected the children. Suffice to say that, for almost four years, Mr Jacsic (the father)has had nothing to do withthese three children. There have been counsellors,psychologists and family reports involved in this case, and none of thatresolvedthe matter until today. Inthe midst of cross-examination of the father by counsel for the IndependentChildrens Lawyer, he broke down and indicatedthat he could no longercontinue with the proceedings. That occurred as a result of an obvious questionwhich sooner or later hadto be faced, which was how these children could beforced to do something which they would not want to do, particularly bearing inmind two out of the three childrens ages. Thefather had the luncheon break to have a think about things, and he hadultimately came to a decision that he wanted to stop theproceedings and allowthe children to get on with their lives. After lunch, the issues were furthercanvassed, and he confirmedhis position, leaving the mother of these childrenwith sole parental responsibility for them. That includes the question of wherethey live. It has always been the mothers desire to live with thechildren in Sydney. There would then be no contact faceto face, at least forthe foreseeable future. There does not seem to be any reason why the childrenshould not live with her whereshe so chooses in Australia. Ascounsel for the Independent Childrens Lawyer rightly pointed out, Sydneymay not be the most ideal situation from the communityspoint of view,but without any other option left open, it does not seem appropriate that Ishould retain the children at a placecontrary to the wishes of theirmother. Therewas subsequently debate about the question of

whether I should make orders whichsought to affect changes to the birth registrypractice in Victoria, becauseeach of the names of the children does not accord with either what their firstnames are as shown onthe register; what the children are calling themselvesnow; and also issues about their surname. Absent four years of having a fatherin their life, they have reasons to call themselves by their motherssurname. Ihad indicated it is not appropriate for the Court to be directing the Registrarto alter the names, bearing in mind that the powerof the Court is limited. Inany event it seems to me there has been no error here, in the registration ofthe births, but rathera dispute between the parties as to exactly what thecorrect spelling of the childrens names should have been at the timeofregistration. In respect of each of the children, the error, or disagreement,occurred for each occasion the childrensnames were registered. Theother issue in relation to names concerns the fact that the children are callingthemselves by their mothers surname, andthat is creating some difficultywith identification. As I have pointed out, and the order I will make willcover that contingency,that situation leads into the final order sought by thewife, which relates to the issue of an Australian passport. Ihave expressed to the wife the role of the Court and the limitations of thepower in relation to the Australian Passports legislation,and whilst she mightwant to have the birth certificates with the names that she wants to register asthe passport names of the children,in my view it is a matter for the Ministerinvolved in the issuing of passports to decide what name the children shoulduse. Thisis a very sad outcome for these children in one way, and good in another. Itgives them an opportunity to get on with theirlives, but they will not have afather in their lives. It may be that that problem can be resolved by himexpressing, in appropriateterms by letters, cards and presents to an addressthat the mother will be obliged to give him, so that they can at leastunderstandthat their father does know of them and has some views about them. Iam proposing to make a restraining order precluding the father from having anycontact with them other than by that correspondence. For that purpose, the wifewill be obliged to provide a Sydney address, as soon as she arrives in Sydney,to which those items canbe sent. Immediately she is there, she is to advisethe husband that she has received the items and given them to the children. Theredoes not seem to be any further role for the Independent ChildrensLawyer, so I propose to discharge the

IndependentChildrens Lawyer. Imake the usual orders under ss 65DA(2) and 62B, which I direct will be attachedto the order itself, and I otherwise dismiss the proceedings. Icertify that the preceding twelve (12) paragraphs are a true copy of the reasonsfor judgment of the Honourable Justice Cronin deliveredon 8 September2014. Associate: Date: 22 October 2014 AustLII:Copyright Policy|Disclaimers|Privacy Policy|Feedback URL: http://www.austlii.edu.au/au/cases/cth/FamCA/2014/901.html