

FAMILY LAW CHILDREN Adoption Application by step-parent Leave to commence adoption proceedings pursuant to s 60G Where the biological father did not participate in these proceedings Where it is in the best interests of the child to grant leave Adoption Act 2009 (Qld) Family Law Act 1975 (Cth) *Allesch v Maunz* [2000] HCA 40; (2000) 203 CLR 172 FIRST AND SECOND APPLICANTS: Ms Van Shoester and Mr Van Shoester RESPONDENT: Mr Varden FILE NUMBER: BRC 4957 of 2014 DATE DELIVERED: 13 October 2014 PLACE DELIVERED: Brisbane PLACE HEARD: Brisbane JUDGMENT OF: Kent J HEARING DATE: 13 October 2014 REPRESENTATION SOLICITOR FOR THE APPLICANT: Ms Erridge, Solicitor, V A J Byrne & Co Lawyers FOR THE RESPONDENT: No appearance ORDERS IT IS ORDERED THAT: (1) Pursuant to s 60G of the Family Law Act 1975 (Cth), leave is granted to the First and Second Applicants to commence adoption proceedings in respect of the child, R born on ... August 2005. (2) The First and Second Applicants have leave to publish these Orders and Reasons for Judgment made today to the relevant State adoption authorities in pursuing the said child's adoption. IT IS NOTED that publication of this judgment by this Court under the pseudonym *Van Shoester and Anor & Varden* 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 4957 of 2014 Ms Van Shoester and Mr Van Shoester Applicants And Mr Varden Respondent EX TEMPORE REASONS FOR JUDGMENT This Application concerns the child R (the child), who was born in New Zealand in August 2005 and is now nine years of age. The First and Second Applicants, Ms Van Shoester, the mother of the child, whom I will refer to as the mother and her husband Mr Van Shoester, applied pursuant to s 60G of the Family Law Act 1975 (Cth) that they be granted leave to commence adoption proceedings with respect to the child. The mother and Mr Van Shoester commenced their relationship when the child was only 18 months old in February 2007. They commenced cohabitation when the child was three years of age in August 2008 and they married in June 2009. Their child, S, was born in August 2011 and is now three years of age. I note that the mother and Mr Van Shoester also had another child together, namely J born in August 2009, who tragically passed away at the age of 10 months as a result of meningococcal disease. As at the time

of swearingher affidavit in support ofher Initiating Application which was sworn on 21 May 2014 and filed on 5 June2014, the mother was due to give birth to her third child with Mr Van Shoester in late June 2014. Section 60G provides in subsection (2) that in these proceedings for leave, the Court must consider whether granting leave would be in the child's best interests. I am satisfied on the evidence before me that Mr Van Shoester has played an important role in the child's life from a very early age. Mr Van Shoester has treated the child as if he was his own biological son. For a long time now, Mr Van Shoester has provided financial support for the child's needs. Thus it is that for all intents and purposes, Mr Van Shoester has regarded the child as his own biological son and has treated him as such. Further, I note on the evidence that the child is unaware that Mr Van Shoester is not, in fact, his biological father. The mother deposes that Mr Van Shoester has been the significant male role model in the child's life since he was 18 months old and as such, he believes that Mr Van Shoester is his father and calls him dad, the same as his siblings. Commencing at paragraph 5 of her affidavit filed 17 September 2014; the mother sets out the limited degree of involvement of the child's biological father, Mr Varden, in the child's life. She there deposes to having an on/off casual relationship with Mr Varden for 12 months in New Zealand before separating on 12 August 2006 upon her relocating with the child to Australia when the child was about one year old. Since relocating to Australia, it appears that Mr Varden has not had any contact with the child. The mother deposes that at the time of her relationship with Mr Varden, she was unaware that he was married with other children. However, she subsequently became aware after she moved to Australia and applied for child support. At paragraph 9 of the mother's affidavit filed 17 September 2014, she states that Mr Varden has made minimal child support payments, that is, no more than 12 payments, over the nine years of the child's life. On the mother's evidence in 2009, she communicated with Mr Varden and his wife through Facebook and informed them that she had remarried and that she and Mr Van Shoester intended to make an application to adopt the child, which Mr Varden expressed his agreement to. Further, prior to seeking advice from her solicitor in October 2013, the mother again contacted Mr Varden to confirm his consent to this Application, which he did. I note that on 20 August 2014, Registrar Brooks ordered that the Initiating Application be set down for hearing today. Mr

Varden did not appear on that occasion and has not filed any material in these proceedings, despite it being clear on all the evidence that he is well aware of the proceedings and the proposed Application. Acknowledgments of service and affidavits of service have been filed by the solicitor for the First and Second Applicants on 10 July 2014 and 29 September 2014 respectively, evidencing that Mr Varden has been served with all the documentation filed in these proceedings. Further, on 17 September 2014, Ms Erridge, solicitor for the First and Second Applicants, filed an affidavit outlining a telephone conversation she had with Mr Varden to confirm his contact details. At paragraph 3 therein, Ms Erridge deposes that during her telephone conversation with Mr Varden, he indicated that he was aware of Mr Van Shoester's Application to adopt the child and indicated that he had no objection to that Application. Moreover, at page 2 of their written submissions filed on 2 October 2014, under the heading Notice of this Application, the mother and Mr Van Shoester refer to conversations between the mother and Mr Varden during which Mr Varden gave his consent to Mr Van Shoester's Application to adopt the child and the fact that Mr Varden was served with the First and Second Applicants' request to attend via electronic means and provided his consent to Mr Van Shoester. The mother and Mr Van Shoester contend these facts support their position that Mr Varden consents to this Application proceeding today and I accept that to be so. Moreover, I am able to accept without reservation the evidence offered in support of the Application in circumstances where Mr Varden has not sought to raise any opposition to any of the facts alleged. For the record, Mr Varden does not appear today nor has he filed any material in these proceedings. I am for the reasons referred to, and on the basis that the documentation filed referred to, satisfied that Mr Varden is aware of these proceedings and does not oppose the orders that are sought. I am satisfied that within the meaning of the principles of natural justice and procedural fairness, outlined, for example, by Kirby J in *Allesch v Maunz* [2000] HCA 40; (2000) 203 CLR 172, Mr Varden has had the opportunity to be heard, if he wished to be heard, with respect to this Application. Section 60G provides in subsection (2) that in these proceedings for leave, the Court must consider whether granting leave would be in the child's best interests. This is the only requirement governing proceedings in this Court regarding whether to grant leave. Leave of this Court is a precondition to

the making of an order for adoption in favour of a step-parent by a state court exercising jurisdiction under the Adoption Act 2009 (Qld). I note that as is pointed out by Mr Van Shoester in his affidavit filed 5 June 2014, at least part of the reason for him to seek formal adoption for the child is to complete their family and allow the child to have the same surname as his siblings and for the child to understand that Mr Van Shoester intends to support him throughout his life as he matures to an adult and beyond. I am comfortably satisfied accepting as I do the materials filed in support of the Application that it is in the child's best interests for the Application to be granted. For these reasons I make the orders set out at the commencement of these Reasons. I certify that the preceding sixteen (16) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Kent delivered on 13 October 2014. Associate: Date: 13 October 2014 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/875.html>