

FAMILY LAW PRACTICE AND PROCEDURE Undefended proceedings Interests of natural justice
No appearance by the father No reasonable explanation for the father not having attended Court
Where the Court was satisfied that the father knew of the risk of orders being made in his absence
Where leave was granted to the mother to have her application heard on an undefended basis.

FAMILY LAW CHILDREN Best interests Magellan list Abuse and family violence Where the
presumption of equal shared parental responsibility was rebutted Where there was ongoing sexual,
physical and emotional abuse Where the overwhelming concern was to protect the children from
physical or psychological harm and from being exposed to abuse and family violence Orders made
for the children to live with mother and spend no time with the father Mother to have sole parental
responsibility Orders made pursuant to s 68B of the Family Law Act 1975 (Cth) that the father be
restrained from contacting or approaching or attempting to contact or approach any of the children.

FAMILY LAW CHILDREN Best interests Application to change children's surname Application to
apply for replacement passports for the children Where the children are fearful of the father Where
the children have no relationship with their father Where it is in the best interests of the children to
permit a change of surname without the father's consent Where it is in the best interests of the
children for the mother to be able to apply for replacement passports for the children. Family Law Act
1975 (Cth) ss 60B, 68B, 60CA, 60CC, 61C, 61DA, 65AA & 65Y. Births Deaths and Marriages Act
1995 (NSW) s 28(5) Beach v Stemmler (1979) FLC90-692 Chapman v Palmer (1978) FLC 90-510
Flanagan v Hancock (2001) FLC 93-047 George v Radford (1976) FLC90-060 Goode and Goode
[2006] FamCA 1346; (2006) FLC 93-286; (2006) 36 Fam LR 422 Jordan & Lloyd and Ors [2010]
FamCA 288 Kelley v Kelly (1981) FLC 91-002 Mahoney v McKenzie [1993] FamCA 78; (1993)
FLC92-408 Mazorski v Albright [2007] FamCA 520; (2007) 37 Fam LR 518 McCall v Clarke [2009]
FamCAFC 92; (2009) 41 Fam LR 483 MRR v GR (2010) 42 Fam LR 531 Raymond v Harold [2009]
FamCA 155 Skrabi v Leech (1989) FLC 92-016 APPLICANT: Ms Fadel RESPONDENT: Mr Jarrah
INDEPENDENT CHILDREN'S LAWYER: Karen L Haga & Associates FILE NUMBER: PAC 2015 Of
2011 DATE DELIVERED: 21 February 2014 PLACE DELIVERED: Parramatta PLACE HEARD:
Parramatta JUDGMENT OF: Johnston J HEARING DATE: 17 & 18 February 2014

REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Weaver SOLICITOR FOR THE APPLICANT: Mahony Family Lawyers FOR THE RESPONDENT: No appearance COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER: Mr Gersbach SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Karen L Haga & Associates ORDERS (1) That the following parenting orders are made in relation to the children E born on ... November 2002, J born on ... December 2003 and F born on ... January 2006 (the children). (2) That all previous orders are discharged. Parental Responsibility (3) That the mother shall have sole parental responsibility for the children. Live With (4) That the children shall live with the mother. Spend Time and Communication (5) That the father shall not spend time with, nor attempt to spend time with, nor communicate with, nor attempt to communicate with, the children. Protection (6) That pursuant to section 68B of the Family Law Act 1975 (Cth) (the Act) the father, Mr Jarratt (also known as ...), shall be and is hereby restrained from contacting or approaching, or attempting to contact or approach, any of the children, by any means whatsoever including through any third party and further the father is restrained from: (a) Attending at or being within 100 metres of the place of residence of the children; (b) Attending at or being within 100 metres of any place of employment of the children; (c) Attending at or being within 100 metres of any school or educational institution attended by the children. (7) IT IS NOTED that the above order 6 and each of its subparagraphs pursuant to s 68B of the Act are injunctions made for the personal protection of the children to which s 68C of the Act would apply and accordingly any police officer made aware of these orders and who on reasonable grounds believes that such orders and injunctions have been breached by the father, by either harassing, molesting, stalking or physically harming or threatening to harm any of the children, may arrest the father without warrant. (8) That, commencing on 11 February 2016, pursuant to s 68B of the Act the father, Mr Jarrah (also known as ...), shall be and is hereby restrained from contacting or approaching, or attempting to contact or approach, the mother Ms Fadel by any means whatsoever including through any third party and further the father is restrained from: (a) Attending at or being within 100 metres of the place of residence of Ms Fadel (b) Attending at or being within 100 metres of any place of employment of Ms Fadel (c) Attending at or being within 100 metres of any

school or educational institution attended by Ms Fadel (9) IT IS NOTED that the above order 8 and each of its subparagraphs pursuant to s 68B of the Act are injunctions made for the personal protection of Ms Fadel to which s 68C of the Act would apply and accordingly any police officer made aware of these orders and who on reasonable grounds believes that such orders and injunctions have been breached by the father, by either harassing, molesting, stalking or physically harming or threatening to harm the mother, may arrest the father without warrant. Change of Names (10) That the mother is authorised without any requirement to notify the father or obtain the father's consent to apply to the Registrar of Births, Deaths and Marriages for the children currently registered as E Jarrah born ... November 2002, J Jarrah born ... December 2003 and F Jarrah born ... January 2006 to now be registered in such names as the mother shall nominate. (11) That pursuant to section 28(5) of the Births Deaths and Marriages Act 1995 (NSW) the Registrar shall register each of the children E Jarrah, J Jarrah and F Jarrah in the form of name nominated by the mother pursuant to order 10 herein. (12) IT IS NOTED that the mother shall be authorised to effect a change of name for each of the children in the manner provided for by orders 10 and 11 absent the father's consent and knowledge for the personal protection of the mother and children. Overseas Travel (13) That until further order, each party, Mr Jarrah (also known as ...) and Ms Fadel, their servants and/or agents be and are hereby restrained from removing or attempting to remove or causing or attempting to cause or permitting or attempting to permit the removal of the said children E born ... November 2002 (a female), J born ... December 2003 (a male) and F born ... January 2006 (a male) by each party, their servants and/or their agents or by the children themselves, from the Commonwealth of Australia AND IT IS REQUESTED that the Australian Federal Police give effect to this order by placing the names of the said children on the Airport Watch List in force at all points of arrival and departure in the Commonwealth of Australia and maintain the children's names on the Airport Watch List until the Court orders their removal or until the children each respectively attain 18 years of age. (14) That pursuant to s 65Y of the Act the mother is authorised and entitled to remove the children from the Commonwealth of Australia for the purpose of travel at her discretion. (15) That pursuant to s 65Y of the Act the father is restrained from removing the children from the

Commonwealth of Australia. (16) That the mother is permitted to apply for replacement Australian passports for the children in their changed names as registered by the Registrar of Births, Deaths and Marriages (NSW) notwithstanding that there will be no consent by the father and the Court requests the Australian Government authorities to assist the mother in this regard. (17) IT IS NOTED THAT order 14 above is intended to permit the mother to travel with the children upon passports issued in the children's names as so registered pursuant to the above orders. (18) IT IS NOTED that the orders made above are intended to vest sole parental responsibility for the children in the mother for the purposes of the Family Law Act 1975 (Cth), the Australian Passports Act 2005 (Cth) and the Births Deaths and Marriages Act 1995 (NSW). (19) That the mother may serve a copy of these orders on: NSW Registry of Births, Deaths and Marriages; Australian Department of Foreign Affairs and Trade; Australian Passport Office; Australian Federal Police; NSW Police; Centrelink; NSW Department of Family and Community Services; NSW Department of Housing Australian Child Support Agency (20) IT IS NOTED that orders 8 and 9 above made pursuant to s 68B of the Act for the personal protection of the mother are to commence on 11 February 2016 in circumstances where the Final Apprehended Violence Order made on 10 February 2014 by ... Local Court for her protection will expire on 10 February 2016. IT IS NOTED that publication of this judgment by this Court under the pseudonym Fadel & Jarrah 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 PARRAMATTA FILE NUMBER: PAC 2015 of 2011 Ms Fadel Applicant And Mr Jarrah Respondent REASONS FOR JUDGMENT Ms Fadel, to whom for convenience I shall refer as the mother, and Mr Jarrah, to whom for convenience I shall refer as the father, have been involved in litigation over many years concerning parenting arrangements in respect of their three children. Those children are E born in November 2002, J born in December 2003 and F born in January 2006. The immediate matter before the Court is the hearing of the substantive parenting proceedings between the parents. APPLICATION TO PROCEED UNDEFENDED There has been a lot of difficulty in bringing these proceedings to a final trial. The mother filed her Initiating Application seeking final parenting orders on 6 May 2011. A more detailed history of the endeavours to bring these proceedings to final trial is

set out in the judgment of the Full Court in the appeal between these parties being appeal EA23/2014 in respect of which judgment was delivered on 12 February 2014. Suffice it to say that at paragraph 18 thereof the Full Court observed that the mother's final parenting application has been listed for hearing on four previous occasions and on each of those occasions the hearing dates have been vacated. The Full Court observed that on at least three of those occasions the vacation of the hearing dates had been at the father's request. That appeal was an appeal by the father against orders which I had made refusing the father's application to vacate the hearing dates commencing on 17 February 2014. On 12 February 2014, the date listed for hearing that appeal, the husband did not appear before the Full Court but rather sent a letter requesting an adjournment of the appeal. The Full Court refused the father's application for the adjournment. It then proceeded to consider the father's appeal against my refusal to vacate this week's hearing dates and dismissed that appeal. Shortly prior to the commencement of the hearing on 17 February 2014 there was received in the Registry a letter by the father, dated 17 February 2014 in the following terms: To the Family Court Parramatta. I [Mr Jarrah] asking kindly to set another date to my case instead of 17.2.2014 as I am Unable to attend due to health reasons. My Medical certificates attached to my letter [Mr Jarrah] 17/2/2014 Attached to the father's letter was the same letter dated 8 December 2013 from a Ms C, Clinical Psychologist, which the father placed before the Full Court in support of his application for an adjournment on 12 February 2014. The thrust of Ms C's letter was that she expressed the opinion that a six month break from all legal matters related to the father's case would assist him in his recovery from the emotional struggle she says he has been having in dealing with issues related to his family law case. The father's letter also had attached to it a letter from a Dr M, general medical practitioner, dated 13 February 2014 in the following form: This is to certify that Mr [Jarrah] is a patient of mine and that he suffers from Rheumatoid Arthritis. On 4 February 2014, he attended [Suburb C] Hospital emergency complaining of severe neck pain as a result of a disc lesion in his cervical spine. He will be unfit to attend court for a period of one month. In note from records produced on subpoena by Suburb C Hospital, and specifically the relevant discharge referral in respect of the father on 4 February 2014 that the father presented at the emergency department at the Hospital with what

was described as non-traumatic neck pain that had been ongoing for three days. On examination it was noted that the father was ambulatory but not keen to move his neck. His condition was discussed with a Dr N who prescribed appropriate analgesia and discharged the father after a short time at the Hospital. In my view the certificate by Dr M dated 13 February 2014 is to be considered in this context, that is that the appropriate professional officer at the hospital prescribed what was described as appropriate analgesia. I also note that the Full Court in its judgment on 12 February 2014 referred to a letter from NALawyers dated 11 February 2014 addressed to the Registrar of this Court to the effect that the lawyers advised that they acted for the father in an apprehended violence hearing on 10 February 2014 at the Local Court, that the matter was completed at about 4:15 pm with the father undergoing lengthy cross-examination. The onus to persuade the Court that a party to proceedings is reasonably unable to appear at Court lies on that party. In the light of the material from the Hospital referred to above and the fact that the father was able to appear at the Local Court and undergo lengthy cross-examination on 10 February 2014, in my view the rather bare certificate by Dr M dated 13 February 2014 does not come near what I would regard as a reasonable explanation for the father not having attended Court in the immediate proceedings. In circumstances where the father had not appeared at Court, I adjourned the proceedings for the morning of 17 February 2014 to enable the applicant mother and the Independent Children's Lawyer to consider their respective positions. When the matter resumed in the mid-afternoon I telephoned the father's telephone number from the courtroom. A male person answered the telephone and I inquired whether that person was the father. I was informed that the person was not the father but a friend of the father and that the father was not available because he was too sick. The person indicated that his name was Mr H. I informed the person that it was important that he convey to the father that in the event that the father did not appear at Court at 10:00 am on 18 February 2014 the mother proposed to ask the Court to hear her application as an undefended proceedings. The person at the other end of the telephone line then disengaged the service. I was informed at that point, by learned counsel for the mother, that the mother said she recognised the voice of the person at the father's telephone service as in fact the father himself. I also made directions for the mother to arrange personal service

on the father of a letter informing him about the matter that I had referred to during the telephone call, namely that in the event that the father failed to appear at Court on 18 February 2014 the mother proposed to ask the Court to hear her application as an undefended proceedings. On 18 February 2014 when the proceedings reconvened, the father was called several times outside the courtroom and he was paged in the Registry. There was no appearance by him. I am satisfied that reasonable endeavours had been made to effect personal service on the father on the evening of 17 February 2014 of a letter from the mother's solicitor notifying him that if he did not appear at Court at 10:00 am on 18 February 2014, the mother proposed to ask the Court to hear her application as an undefended proceedings. There was an affidavit by Mr O who deposed to the effect that he had attended at the father's home, noticed that the father's vehicle was in the driveway, had heard footsteps inside the home but when he knocked on the door there was no answer. After approximately ten minutes of endeavouring to raise the person inside the home, Mr O left the letter in the post box at the father's home. The mother gave oral evidence to the effect that she had been in the courtroom when I spoke with a male person at the telephone service of the father on 17 February 2014. She said that she recognised the voice of the male person as that of the father. The mother's solicitor, Ms Beach, gave oral evidence that she had telephoned the father before court on 18 February 2014 and a male person answered the call. Ms Beach asked whether the person was the father and he said this is his friend. Ms Beach said that she had spoken to the father previously and identified the person who was speaking on the telephone as the father. When Ms Beach asked the person for his name he disconnected the call. In all the circumstances, I am satisfied that the father was aware that the proceedings were before the Court for hearing both on 17 February 2014 and on 18 February 2014. I am satisfied that the father could have been in no mistake that if he failed to attend at Court at 10:00 am on 18 February 2014 the mother proposed to ask the Court to hear her application as an undefended proceedings. In these circumstances I gave leave to the mother to have her application heard as an undefended proceedings. APPLICATION The mother seeks orders to the following effect: That she have sole parental responsibility for the children; That the children live with her; That the children spend no time with, nor communicate in any way with, their father; That pursuant to

68B of the Family Law Act 1975 (Cth) (the Act) the father be restrained from contacting or approaching or attempting to contact or approach any of the children and that he be specifically restrained from coming within 100 metres of the children's residence, school or the mother's place of employment or that of any of the children, such order to be supported by a power of arrest without warrant; That a similar order be made to restrain the father in relation to the mother but only to commence after the current Apprehended Violence Order for the protection of the mother expires on 10 February 2014; That she be permitted to change the children's surnames without the consent of the father; That an order be made pursuant to s 28(5) of the Births Deaths and Marriages Act 1995 (NSW) to the effect that the Registrar register the children's surnames in their changed form as nominated by the mother; That she be permitted to apply for replacement passports for the children in their changed surnames; That pursuant to s 65Y of the Act she be permitted to remove the children from Australia for the purpose of travel at her discretion and consequential orders to vary the current watch list order. The father filed a Response to Initiating Application on 14 June 2011 in which he sought orders to the following effect: That the parents have joint parental responsibility for the children; That the children live with their father; and That the children spend time with their mother each alternate weekend from after school Friday to 5:00 pm Sunday and such other times as agreed between the parties. EVIDENCE The evidence in support of the mother's application was her affidavit sworn on 23 January 2014, numerous documents produced on subpoena particularly by public authorities and the report of the Chapter 15 single expert, Dr K. On the other hand, the father did not appear at Court to identify any affidavit or other material in his case. In these circumstances the only evidence properly before the Court for the purposes of the undefended hearing is the above material in the mother's case which comes in to the evidence unchallenged. BACKGROUND The parents were both born in Egypt and married there in January 2002. They migrated to Australia in October 2002. They separated in April 2011. Since separation the children have lived with their mother and they have spent no time with their father since 17 October 2011 when Dr K, psychiatrist, interviewed them as single expert in these proceedings. THE ALLEGED VIOLENCE The mother alleged that the father was physically violent to her from the start of their marriage. She said that the

day after their marriage the father slapped her in the face. She said that as the marriage progressed the violence worsened. She said that the father began to punch her to the face and body and that such violence continued after they arrived in Australia. The mother deposed further as follows. In 2006 the father began to argue with her and he punched her several times. She began to scream and he said if you scream I will kill you. She ran to the bedroom and pushed a table and mirror against the door. The father ran at the door and broke the table and mirror then picked up a piece of wood and beat her body with it. He picked up a high heel shoe and hit her in the face with it then put his hands around her throat and began to choke her. She heard the children screaming and he stopped. The mother reported this incident to her general medical practitioner, Dr S, who advised her to go to hospital. The father refused to let her attend the hospital so she did not do so out of fear of further assaults from the father. The single expert Dr K asked Dr S about this. He said that Dr S said that the mother did not report domestic violence by the father until after she and the father separated. But Dr S did say that during the 2 years up to separation, the mother presented with a number of injuries or soreness complaints which, in hindsight, Dr S thought probably represented the physical impact of escalating domestic violence. The mother said that in December 2010 the father was yelling at her and began to punch her repeatedly. She said he then picked up a knife and held it above his head saying words to the effect if you don't get away from me now I will kill you with this knife. The mother said that in January 2011 she and the father were arguing. She said that he threw the television remote control unit at her which hit her. She said that the father would often swear and spit at her in public which caused her to become isolated and fearful of going out in public as a consequence of her embarrassment and fear. She said that the father was sexually abusive towards her, forcing her to engage in various forms of sex against her will. She said the last time he forced her to have sex with him was Easter 2010 when he woke her in the middle of the night and wanted sex. She said she refused but he forced her. She said at times he tried to choke her or punch her in the back. On 10 May 2011 a Provisional Apprehended Violence Order (AVO) was made for the protection of the mother and the children against the father. The statement in support of this order was to the effect that the father had been verbally abusing and physically assaulting the mother from the early

years of their marriage. It said that the mother had never reported any incident to police because she feared that the father may assault her because he had made threats that he would kill her if she reported any incident to the police. The statement continued that in June 2006, the mother and father were having a verbal argument which escalated and the father grabbed the mother and began hitting her on the face and shoulder several times. The mother had a swollen eye and her shoulder was numb. The mother did not report this to police but asked the father to take her to the hospital which he refused to do. The statement went on to say that the father continued to physically assault the mother and children but she never made a report. The statement continued that in April 2011 in Egypt the father told the mother that he would kill her if she reported any incident to the police. In late April 2011 the mother returned to Australia and reported to domestic violence workers several incidents of assault by the father on her. They contacted the police. The mother said that when the provisional AVO had been made on 10 May 2011 the father informed her that he would go to Egypt and kill all of her family there. When the provisional AVO was before the Court on 27 May 2011 it became continued as an interim AVO. In my view, the evidence is such that it is more probable than not that what the mother alleges by way of acts of domestic violence perpetrated by the father on her, and the children, is true. Firstly, the evidence is unchallenged. But also the above information from Dr S to Dr K adds weight to the likely accuracy of what the mother has alleged. In addition, I note the following matters. E informed her school counsellor on 13 February 2012 that her father used to hit her mother and make her feel like a slave and that he hit E and her brothers with his fist or a broken garden hose. E also told Dr K that if her father was angry with the children he would hit them. She also told Dr K that the father would hit her mother. E gave as an example that one day she and one of the boys had been running and they accidentally hit their heads. She said their mother tried to stop their father hitting them and he then hit the mother with a stick, and he hit the children too. E said that the father had also hit them with a piece of hose. J told Dr K that his father always hits and shouts in our face. J described a time when he and F were riding and F fell. He said the father had said that J had pushed F. The father shouted at J, hit him and put him in time out. J said the father then started hitting everybody. He said that the father was hitting J and pulling J's hair, he was

going to remove J's hair. J said that his mother said stop or she would call the police. J said then the father hit the mother with a piece of hose. J also said to Dr K that his father also hit them with wooden sticks from the window. He said that they are scared that their father will hit them again. J also informed Dr K that when they were in Egypt, after E ran up to her mother, their father hit her with a stick. Dr K reported that he had a telephone conversation with the I Women's Refugee Officer Ms A who reported that when the mother first arrived at the Refuge she was very frightened and very under-confident. She said that the mother and children reported violence from the father against them, that they had all appeared to be frightened of him and relieved to be away from him. Dr K said that Ms A had found their accounts to be consistent over time, linked with congruent emotion, and that there had been no factors which led Ms A to doubt their story. Dr K believed the description by the mother and the children of the father's verbal and physical aggression and physical violence towards them, particularly the mother, to have been an accurate description. So do I.

INAPPROPRIATE BEHAVIOUR WITH CHILDREN AND SEXUAL ABUSE

The mother said that many years ago the father informed her that he had paid a woman in Egypt for sex and obtained her permission to have sex with her 9 year old daughter. The mother said that such a practice is quite common in Egypt. The mother also said that when J and F were 2 or 3 years of age the father would sit them on his lap whilst watching television and put his hand down the front of the child's pants. She saw the father touching the child's genitals and the penis would become erect. She said that the children became used to this behaviour and would say to her words to the effect see it's hard like a stick. She said that the father did this most days and it appeared to be part of his normal interactions with each of the boys. She said that she confronted the father about this and said that in her view it was inappropriate. She said that the father would respond to the effect that, if he did not do the activity the boy would not grow up to be a good man and that it would make him a strong man to be with a woman. She said that the father informed her that this was normal practice in the area in which he resided in Egypt. The mother did not believe him but felt that she could not do much about this out of her fear that he would assault her. The mother also said that she did not approve of the father's focus on cleaning the genital area of each of the boys whilst they were in the bath. She said that her

objections to this were dismissed by the father. She said that the father's response to her protests was that the behaviour was normal and that she would not know. She said that she had been very isolated in her community and was unsure about what was accepted sexual practice and that she did not report the activity to any person because of her fear of violence from the father if she did. The notes of the Department of Community Services record the mother having notified the Department that the father had fondled the boys' genitals on a number of occasions, that notification being May 2011. The words recorded were that the father would sit the boys on his lap, put his hands down their underwear daily and touch them until they were erect. Dr K raised this matter with J. He said that J said that his father said that he has to do massage. He said that his father put his hand in his private parts and said that he was doing massage and, that J needed to learn. Dr K sought elaboration about this matter but J was not forthcoming. Dr K expressed the view that he thought the episodes of the father stimulating the boys' penises likely to have occurred. He said that this was more in the domain of the father teaching the boys about manhood than the father having paedophilic desires or urges. Dr K said this impression was based on his view that the mother overall presented as truthful and concerned, that he took account of J's comments and thought such behaviour as being in line with a man who views himself as the boys' guide, and has a very sexualised view of male / female relationships. Dr K also said that it is disturbing and inappropriate behaviour showing lack of respect for the child and lack of understanding of the child's developmental needs at a pre-pubescent age and even at puberty for their need for respectful guidance rather than physical obstruction. As indicated above, Dr K's opinions in his report have come into the evidence unchallenged. On the basis of all this material, in my view, it is more likely than not that the father has acted towards the boys in the manner as described above.

JS BROKEN LEG On 14 May 2011, within a few weeks of the parties separating, J suffered a broken leg. The mother took him to the emergency section of the Q Hospital. The records of the Hospital indicate that J jumped from play equipment landing on his feet with subsequent pain in his right lower limb. An x-ray showed a spiral fracture of his tibia. A plaster cast was applied. I am aware from my involvement with the father on the occasion of his application to vacate the hearing dates that the father has a suspicion

that the mother or some other person is implicated somehow in this injury sustained by J. As I have said previously, the father sought advice by doctors in relation to the likely circumstances surrounding the child sustaining the injury. However, in circumstances where the father provided no evidence in the proceedings there is no issue about the circumstances in which the injury was sustained. I note that the notes produced on subpoena by the Womens Refuge where the mother and children were staying at the time contained an account by the mother which was on all fours with that in the Hospital records. The Independent Childrens Lawyer had no concern that this matter reflected poorly on the mother. On the evidence before the Court, nor do I. THE APPLICABLE LAW The statutory provisions which guide the Court in its consideration and determination of parenting proceedings are set out in Part VII of the Family Law Act 1975 (the Act). When considering making a parenting order the Court is to bear in mind the objects of the legislation and the principles underlying the objects as set out in s 60B of the Act. The objects in this context are to ensure that the best interests of the children are met by: Ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and Protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and Ensuring that children receive adequate and proper parenting to help them achieve their full potential; and Ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children. The principles underlying these objects are that (except when it is or would be contrary to a child's best interests): Children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and Children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and Parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and Parents should agree about the future parenting of their children; and Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture). In deciding whether to make a particular

parenting order in relation to a child the Court must regard the best interests of the child as the paramount consideration (s 60CA and s 65AA). Section 60CC of the Act sets out specific criteria which must be considered in determining what is in a child's best interests. Section 61C of the Act provides to the effect that each of a child's parents has parental responsibility until such time as the child attains the age of 18 years unless the Court makes an order which alters that joint parental responsibility. Section 61DA(1) of the Act provides that when making a parenting order in relation to a child the Court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child. The above principles have been examined in numerous authorities including the decision of the Full Court of this Court in the case of *Goode and Goode* [2006] FamCA 1346; (2006) FLC 93-286; (2006) 36 Fam LR 422 and the High Court case of *MRR v GR* (2010) 42 Fam LR 531. These authorities in particular, guide courts in the approach to be taken in determining parenting applications.

SECTION 60CC CONSIDERATIONS

How the Court is to go about determining what is in the child's best interests is set out in sub-sections 60CC(2), (3) and (4) of the Act.

Primary Considerations

The primary considerations are set out in s 60CC(2) of the Act. These are: The benefit to the child of having a meaningful relationship with both of the child's parents; and The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Having noted these primary considerations at this point I shall return to discuss these below.

Additional Considerations

s 60CC(3) The additional considerations are set out in s 60CC(3) of the Act. These are: Sub-section 60CC(3)(a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views.

Etold Dr K that she did not want to see her father. She said that she could spend an hour with him but did not want to spend a day. When Dr K brought the children into the interview room E said that she did not wish to see her father. Jtold Dr K that he did not wish to see his father at all. He said Hes mean. At the end of the day of interview Dr K asked all three children whether they would like to speak with their father and they all said No. I am satisfied that the children have expressed the clear view that they do not wish to have a relationship with their father. I am also of the view that significant

weight should be given to their views for the reasons set out below. Sub-section 60CC(3)(b) the nature of the relationship of the child with each of the child's parents and other persons (including any grandparent or other relative of the child) Dr K said that the children appear to have a positive and secure relationship with their mother which has developed and strengthened since they have been living independently since separation. Dr K said that E appears to have the strongest and most robust relationship with her mother and disengagement from relationship with her father. He said she was the child who, whilst most of the time being compliant, defied her father in Egypt to greet and connect with her mother. He said that the boys have been more influenced by context and adult persuasion, shifting to the father's side when with him in Egypt but then shifting back when they reconnected with the mother. In relation to the children's relationship with their father Dr K said that overall they appeared disengaged from relationship with him. He said that when discussing the children not having seen the father for some months, their tone was more one of relief than that of grief. He said it was difficult for them to come up with things that they missed about being with their father as it appeared that being with him had been difficult and had involved, particularly E, working hard trying not to provoke the father but inevitably having little accidents (E) which led to the father being angry and shouting. Dr K said E described the father as mostly disengaged from the children, that he would sit on the computer, be lazy or sleep. He said that J's description was of disapproval rather than play or positive connection. Dr K said that such a description matched the description of the father as having spent his working life in Egypt too busy with work to find space for relationship. Dr K also said that such descriptions were also consistent with observations by Dr S, the family doctor, about how the father related to the children. Dr K said that the father's relationship with the mother and children made use of coercion and assertion of the paternal perspective in order to achieve desired paternal objectives, rather than cooperation and listening to the perspectives of others. He said that this was seen in the father's response to the anger of his son when the children were seen by Dr K. This was that rather than listen and try to understand the children, the father used tone, posture and content of speech to seek to coerce the child into an alternative attitude. Significantly in my view, Dr K said that the children's current disengagement from relationship with their father was mostly related to their own

negative experience of that relationship, rather than any influence by their mother. Sub-section 60CC(3)(c) the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent. The father informed Dr K that if the children were to live with him he would give the mother contact with them at any time. I must say, looking more broadly at past experiences, on the mother's account, in 2011 the father took the children from her by sending her to Egypt separately then acting so as to have nothing to do with her. Upon the family's return to Australia the mother found it necessary to obtain an AVO and then to obtain the assistance of the police and use the AVO to assist her to achieve the return of the children to her care because the father refused to return them to her. In my view, this experience sits poorly with the father's assertions that he would provide the mother with contact with the children at any time. On the other hand, the mother has the very strong view that if the children were to have a relationship with their father he is likely to continue his long-standing pattern of violence against them and her and his long-standing pattern of undermining the children's relationship with her. She wants desperately to be able to continue her life parenting the children with no involvement at all by the father. Sub-section 60CC(3)(d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either of his or her parents or any other child or other person (including any grandparent or other relative of the child), with whom the child has been living. As Dr K has said, the children appear to have a positive and secure relationship with their mother and a very poor relationship with their father. In these circumstances, in my view, any separation of the children from their mother could be expected to cause them considerable grief and distress. Dr K said that a separation from their mother would be distressing and developmentally disruptive to the children. On the other hand, they have not spent any time with their father for in excess of 28 months. On the accounts of the refuge officer Ms A, officers of the children's school and Dr K, the children appear to have become settled. On Dr K's report they have manifested a sense of relief from not being involved with their father and apparently the negative characteristics of their life experiences with him. Dr K said that a longer term separation from the father would likely entail some grief at the loss of the family with which the children have been accustomed. But he said that

the fathers deficits and poor father-child relationships in this case are consistent with his observation that the children appeared to feel more relief than grief at the separation from their father. Dr K said that a separation from the father would place more onus on the mother to provide for the children. However, he said that she appeared to be rising to such a challenge. Sub-section 60CC(3)(e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis. This is not relevant. Sub-section 60CC(3)(f) the capacity of each of the child's parents and any other person (including any grandparent or other relative of the child) to provide for the needs of the child, including emotional and intellectual needs. Dr K said that when the parents were living together the mother was unable to meet the child's need to be protected from abuse and exposure to family violence. He said the mother and children described the father's verbal and physical aggression and physical violence towards them as having been an ongoing pattern of behaviour. Dr K said that since separation the mother is now proactive in protecting the children and advocating for their protection. He said that the mother demonstrates an ability to be warm and empathic to the children, to listen to them, and to determine and respond to their practical and emotional needs. He said that she meets their intellectual needs through engaging with their school and assisting them with learning and homework. Dr K said that whereas the mother appeared previously to have been depressed as a consequence of her home and family circumstances she does not currently appear to be depressed and her outlook in this regard is good while she is able to move forward with a new life separate from the difficulties of her previous marital relationship. He said she has developed since separation the capacity to be strong, to set boundaries for the children and to provide them with security. He said she has the capacity to engage with extended family, to make and keep family friends and to give her children space to experiment with peer friendships. It is the case that the mother has suffered from thyroid cancer but the prognosis is very good. Dr R, an endocrinologist, has opined that there is a more than 99 percent chance that the mother's cancer has been cured and will not recur and that the mother's life expectancy and quality of life are expected to be normal. On the other hand I am satisfied

that the father has perpetrated long-standing and ongoing acts of verbal abuse and physical violence against both the children and their mother. I am also satisfied that it is more probable than not that he has acted inappropriately towards the children in a sexual sense as described above. The father had experienced lots of depression in the early years since migrating to Australia and had seen a psychiatrist. Dr K said that in addition to the father's use of physical and family violence he has had difficulty meeting the children's emotional needs because of his poor relational capacity. I shall refer to this matter again below. Dr K said that part of parental capacity in meeting a child's needs is an ability to support the well-being and capacity of the other parent. He said that in his view the father has an entrenched attitude to women which is disrespectful, and sexualised. He said that in addition the father shows a profound disrespect for the capacity of the mother. Sub-section 60CC(3)(g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant. Dr K said that the children were able to support their expressed view that they did not wish to see their father by giving examples of their experience of their father and to contrast that with their experience of their mother. Dr K said this process suggested reasonable cognitive processes were being used by the children in forming their view. He said there was some emotional maturity in the children's responses as they were looking beyond immediate comfort or gain to a broader sense of security and the absence of violence or the imminent risk of violence. Section 60CC(3)(h) if the child is an Aboriginal child or a Torres Strait Islander child: (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and (ii) the likely impact any proposed parenting order under this Part will have on that right; This is not relevant. Sub-section 60CC(3)(i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents. As reflected in Dr K's report, the mother has been able to protect the children by leaving a situation of ongoing family violence and inappropriate behaviour by the children's father. She has been able to settle the children and to provide adequately for their needs including in terms of schooling. All reports from school, doctor, refuge officer and single expert are very favourable in terms of the mother's attitude to

parenting responsibility. On the other hand the father has perpetrated ongoing, regular, serious acts of abuse and violence against the children and their mother. He has threatened to kill the mother and members of her family. Sub-section 60CC(3)(j) any family violence involving the child or a member of the child's family; I have referred to this matter in detail and shall refer to it again below. Sub-section 60CC(3)(k) any family violence order that applies to the child or a member of the child's family, if: (i) the order is a final order; or (ii) the making of the order was contested by a person; As mentioned above, there is a current AVO for the protection of the mother against the father made by the Local Court of New South Wales on 10 February 2014. Its protections are quite comprehensive. It restrains the father from assaulting, molesting, harassing, threatening or otherwise interfering with the mother, from engaging in any other conduct that intimidates her, it restrains the father from stalking the mother. In its additional orders, it restrains the father from going within 500 metres of any work premises of the mother or her residence at T Street, Suburb U. It restrains the father from approaching or contacting the mother by any means whatsoever, except through his legal representative and it restrains the father from approaching the children's school or other place which the mother might from time to time attend for the purposes of the children's education, and specifically V Public School. Sub-section 60CC(3)(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child. There has been a long history of litigation between these parents, as referred to in the outset of these Reasons. I accept the submission by learned counsel for the mother that the order which would be least likely to lead to the institution of further proceedings is that as proposed by the mother in her Application. Sub-section 60CC(3)(m) any other fact or circumstance that the court thinks is relevant. The father was convicted of common assault by the Local Court on 10 November 2011. On appeal to the District Court on 1 June 2012 the conviction was confirmed. SUB-SECTION 60CC(4) Sub-section 60CC(4) of the Act requires the Court to consider the extent to which each of the parents has fulfilled his or her responsibilities as a parent and in particular as specified in the sub-section. It is clear that since separation the mother has not engaged the father in decision-making about the children. Nor has she facilitated their spending any time with him. But this has been in circumstances

where she is fearful of him and how he might treat her and the children, such fear having been developed against the background of serious domestic violence referred to above. On the other hand the father has not maintained the children, he being unemployed and on a disability pension.

PRIMARY CONSIDERATIONS As indicated above the first of the primary considerations is the benefit to the child of having a meaningful relationship with both of the child's parents. This, of course, has to be considered also in the context of the objects of the legislation as referred to above. What is conveyed by meaningful in this context was considered by the Full Court of this Court in the case of *McCall v Clarke* [2009] FamCAFC 92; (2009) 41 Fam LR 483. At page 510 the Full Court accepted as appropriate the interpretation of meaningful relationship set out by Brown J in *Mazorski v Albright* [2007] FamCA 520; (2007) 37 Fam LR 518. In that case her Honour said as follows at [26]: What these definitions convey is that meaningful, when used in the context of meaningful relationship, is synonymous with significant which, in turn, is generally used as a synonym for important or of consequence. I proceed on the basis that when considering the primary considerations and the application of the object and principles, a meaningful relationship or a meaningful involvement is one which is important, significant and valuable to the child. It is a qualitative adjective, not a strictly quantitative one. Quantitative concepts may be addressed as part of the process of considering the consequences of the application of the presumption of equally shared parental responsibility and the requirement for time with children to be, where possible and in their best interests, substantial and significant. In the present case, unfortunately, the children do not have a meaningful relationship with their father. Dr K has made it clear that in fact they have a very poor relationship with him. Dr K referred to some very serious parenting deficits on the part of the children's father. He said that in his view the father has a very poor relational capacity in terms of an ability to listen, to respond empathically and flexibly, to communicate in a reciprocal way, to accept influence from another in balance to also asserting one's own perspective. Dr K said that such deficits may be partly neuro-developmental, but likely mostly result from some hardship, deprivation or trauma in the father's upbringing. He said that the father has compensated for these deficits with an idealised and narcissistic view of self and relationship. Dr K said that the father functions reasonably when he

has a defined role, which is powerful, superior, admired and produces appreciation/obligation. This occurred when the father acted in a professional capacity, and when he did voluntary work for the community agencies. In these settings, the father strives to, and manages to, live up to the ideal, and is rewarded with acknowledgement. Dr K goes on to say that a marital and parent / child relationship is not consistently compatible with an idealistic and narcissistic view of self and family. He said that when the father is not being appreciated or when the outcomes of his efforts are uncertain or mundane, he becomes aggrieved and angry. He does not stop to reflect on his own role and problems, or to listen to others. He gets angry and blames outside forces. He has used physical abuse and perpetrated acts of family violence against both the children and their mother. Dr K said the father has difficulty meeting the children's emotional needs because of his poor relational capacity. Dr K said that although he gave the father a number of opportunities to do so, the father was not able to reflect on his own role in his relational problems. Dr K said that part of a parent being able to meet a child's needs is an ability to support the well-being and capacity of the other parent. He said that in his view the father has an entrenched attitude to women which is disrespectful and sexualised. He said that this was observed by him but also described by the mother, Dr S and to some extent the interpreter at the time he conducted the interviews. He said that in addition the father showed a profound disrespect for the mother's capacity. He said that this had become a somewhat self-fulfilling prophecy when the couple were together, as the mother became depressed and non-functional. He said that this contrasts with the function which the mother has discovered since leaving the relationship. It is clear that the father has a very serious deficit in regard to not being able to support the well-being and capacity of the children's mother. In my view it is clear that he has used coercion, control, abuse, both verbal and physical, including perpetrating acts of physical violence on her, as well as threats to kill her and members of her family, and he has undermined her relationship with the children. Dr K also considered whether the father's relational deficits might be able to be improved by him undertaking a course of therapy. Dr K said that with regard to therapy, the father's relationship deficits are long-standing and would not be fixed quickly or reliably with a course of therapy. Dr K also said that even if the father was to become open to considering his vulnerabilities and wanted to

change, Dr K remained cautious about his capacity to change and he said that any change would be likely to require prolonged time. He said that because of the relational difficulties between the children and their father he would not be optimistic about this and considered it unlikely that there would be an improvement in the relationship between the children and their father. The second of the primary considerations is the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Tragically for these children, they have not been able to be protected from this until their mother separated from their father. Their experience of their father is an experience punctuated by his anger, his verbal abuse, his actual violence perpetrated regularly against both them and their mother, his emotional abuse of the children and their mother and also in the case of the boys, some inappropriate sexual behaviour. Dr K said that a fundamental need of a child is to be protected from abuse and exposure to family violence. Dr K also said that the children have a need to be protected from sexual abuse or inappropriate sexual behaviour. He said that if the Court was to find that the father deliberately stimulated the boys sexually, which as indicated above he thought has likely occurred, then this is a significant concern which should result in curtailing of any contact until the children are well and truly capable of understanding and asserting appropriate boundaries. I shall refer to these matters again below. On the other hand Dr K said that the children's mother, since separation, had been able to protect the children from abuse and to be able to meet their practical, emotional and intellectual needs. Would it be possible to frame orders which could achieve for the children a meaningful relationship with their father, or indeed any positive relationship? In my view, this would be an impossible task. As Dr K has said, the children have a poor relationship with their father, such that they no longer wish to see him or have him participate in their lives. They are fearful of him and of what he might do to them and to their mother. As Dr K has said, the father is unlikely to be able to address the deficits which it would appear have been prominent in bringing about this most unfortunate situation for the children. In my view, if the Court was to endeavour to put in place some orders under which there might be even some limited opportunity for the children to develop some functional relationship with their father, this would likely expose them to an unacceptable risk of harm to them either directly or as a consequence

of him causing real injury, possibly even death, to their mother. In all the circumstances, in my view, the respect which the Court must give to the second of the primary considerations, involving as it does the protection of the children, in determining orders that are in their best interests, completely outweighs the possibility of orders which would serve the first of the primary considerations in terms of the children being able to have any ongoing meaningful relationship with their father. In my view, such an outcome for these children is reinforced by a weighing of the additional considerations. The children have themselves arrived at views which reflect the breakdown in their relationship with their father. The father's appalling and destructive behaviour towards the children and their mother, his completely inappropriate attitude to parental responsibility and his serious relational deficits all point to the best interests of these children requiring orders which will support their ongoing strong functional relationship with their mother and which will protect them from the vulnerability and risk which would be involved if there was to be some requirement for contact or communication between them and their father. Such an outcome is strongly supported by the Independent Children's Lawyer as serving the best interests of the children.

PARENTAL RESPONSIBILITY As indicated above, the mother is seeking an order that she have the sole parental responsibility for the children. Parental responsibility is defined by s 61B of the Act to mean all the duties, powers, responsibilities and authority which, by law, parents have in relation to children. The Court is to apply a presumption that it is in the children's best interests for their parents to have equal shared parental responsibility for them. This flows from s 61DA(1) of the Act because I shall be making a parenting order. However, pursuant to s 61DA(2) the presumption does not apply because I am satisfied that the father has engaged in abuse of the children and family violence. In addition, s 61DA(4) provides to the effect that the presumption may be rebutted by evidence that satisfies the Court that it would not be in the best interests of the child for the parents to have equal shared parental responsibility for the child. I have determined that it is not in the interests of these children to be spending time with, or having any communication with, their father. In these circumstances it is clear that the entirety of the parenting responsibility in relation to these children will have to be exercised by their mother as their only properly functioning parent. In any event, the father has demonstrated very clearly to this

Court that he has not been able to exercise appropriate parental responsibility, not only by his past behaviour, but also by choosing not to participate in the hearing of these important proceedings.

CHANGE OF NAME AND PASSPORT AUTHORITY As indicated above, the mother seeks authorisation to have the children's surnames registered in the register of Births, Deaths and Marriages in such names as she shall nominate and that this occur without obtaining the father's consent. The mother's application in this regard is supported by the Independent Children's Lawyer.

Much consideration has been given by this Court over many years to applicable principles governing a change of a child's surname. This consideration includes that in *Flanagan v Handcock* (2001) FLC 93-047; *George v Radford* (1976) FLC 90-060; *Chapman v Palmer* (1978) FLC 90-510; *Beach v Stemmler* (1979) FLC 90-692; *Kelley v Kelly* (1981) FLC 91-002; *Skrabl v Leech* (1989) FLC 92-016; *Mahoney v McKenzie* [1993] FamCA 78; (1993) FLC 92-408; *Raymond v Harold* [2009] FamCA 155; and *Jordan & Lloyd and Ors* [2010] FamCA 288. It is clear from these authorities that decisions about the name by which a child is to be known are determined by the child's best interests. The Court is to weigh the various relevant factors for and against any change. In the present case the mother is very fearful of the father as a consequence of his long-standing abuse and violence against her and the children, and particularly his threats to kill her and members of her family. She has gone to considerable lengths to endeavour to ensure her protection and that of the children. In this regard I have referred to AVOs having been put in place since 2009 for their protection. The mother has changed her address and the children's school on four occasions in an endeavour to prevent the father finding her and the children. On every occasion this has failed because the father has ascertained the family's whereabouts within a short time of them moving, as he has ascertained the children's school. The mother and children have then experienced ongoing stalking by the father including appearances by him in their street, at the children's school and at their library. This behaviour has had the effect of intimidating the mother and the children. It is the case that the children identify strongly with their mother, that they have a very close relationship with her and that she is the parent now who has demonstrated that she is able to provide the children with protection and appropriate care. On the other hand, the children have a very poor relationship with their father as I have said,

and wish to have nothing further to do with him. It is also the case that Dr K recommended that if possible, while it would not be in the children's interests to spend time with their father, the father be sent a six monthly update regarding the wellbeing of the children and their progress and that the father be permitted to send cards to the children from time to time. I must say in all the circumstances of this case, where the expert has recommended that it is not in the interests of these children to have contact with their father and where it is unlikely that they will have any relationship with him in the future, I cannot see that there would be any benefit to these children in the course proposed by Dr K. In my view, there would be considerable likely detriment in this because regular contact by way of cards would be likely to be upsetting for the children and it would remind them of the many negative aspects of their experience of living with their father. In my view, it would also be unlikely that the father would be able to communicate with the children in an appropriate manner, given the deficits identified by Dr K. In this regard, I note that Dr K observed that when the father and children were in his interview room together, the father could not resist making a verbal attack on J. In my view, this speaks loudly about the father's inability to act appropriately towards the children. One would have thought on such an important occasion as the interview with his children for the purposes of these proceedings, the father would have been careful indeed not to upset the children. It is difficult to see that regular bulletins by the mother to the father about the children's progress could have any benefit to the children. It would be likely to be upsetting for the mother to have to provide such material and unlikely to promote her parenting of the children. On a more worrying note, it might be that it would be difficult to provide such reports without also giving the father some clue about the current whereabouts of the family. So far as the father being able to send material to the children is concerned, it would be difficult to develop some way to achieve this without disclosing the whereabouts of the children. The father has some history of depression. In his recent communication with the Court it was said that he is struggling emotionally and is seeing a clinical psychologist. This Court, in my view, must take his threats to kill the mother and members of her family seriously. In my view, the extent of the father's obsession with the mother is worrying. He has embarked on a course of intimidation towards the mother. This has involved him stalking her and the children, threatening

them and acting in a way calculated to cause her fear and distress. He has made it difficult for the mother to progress these proceedings to final trial. He has apparently informed the Department of Transport, Roads and Maritime Services that the mother was not fit to hold a driver's licence because she received a letter from the manager of the relevant unit of the Department requesting her to undertake a medical examination to determine her medical fitness and competency to drive. Notwithstanding the currency of various AVOs which included provision for the father to remain away from the mother, not to harass her, not to interfere with her, not to engage in conduct that would intimidate her, not to stalk her and to remain away from her, the father has appeared from time to time in close proximity to the mother in what can only be concluded was a deliberate endeavour by him to intimidate her. He has behaved in a similar way towards the children which has caused them to be fearful of him. The mother has made many complaints to the police about the father's behaviour to the effect that he has been breaching the AVOs put in place to protect her and the children. She said the police response has been that there has been insufficient evidence to enable them to take action against the father. Dr K has made it clear that these children have a need to feel secure within their mothers care. He said that this need for security, empathy and predictability is heightened by the fact that they have experienced trauma. Dr K also said that all three children have some vigilance and intensity of emotional arousal resulting from their experience of trauma, which makes them more reactive to threat or perceived threat. In all these circumstances, in my view, it is in the interests of these children to make the orders which would enable the mother to change their names without any resort to the father. In relation to the mother's application to be able to apply for replacement passports for the children, in my view, similar considerations apply. The children have no relationship with their father and their remaining childhood years will be solely in the care of their mother. In my view, it would be in their interests for the mother to be able to apply for replacement passports for them to enable her and them to travel overseas as they wish. The remaining aspect of this is that in my view appropriate orders should be put in place in the best interests of the children to ensure there is no possibility of their father being able to remove them from Australia which would not be in their interests for reasons which would be obvious from the above reasons.

COMMENCEMENT OF ORDERS Often in undefended proceedings I have considered it appropriate to suspend the commencement of the orders for a short period after service of the orders on the absent party and to provide such party with an opportunity to re-list the proceedings. In the present proceedings, however, I do not regard such a course to be appropriate. I am in no doubt that the father was fully aware that the proceedings were to be heard commencing at 10:00 am on 17 February 2014. He asked me to vacate the hearing date then appealed when I refused this application. His appeal was dismissed. Then on 17 February 2014 he sent his letter asking for an adjournment due to alleged ill health which I declined. As indicated, I telephoned the father on 17 February 2014 and informed him of the likely consequences if he failed to appear at court on the following day. He denied that I was speaking to him. Yet it is clear to me that this was an untruth and I am confident that the person I was speaking with was the father. The father has been afforded the principles of natural justice. He has been dishonest in his dealings with this Court. I certify that the preceding one hundred and forty-nine (149) paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Johnston delivered on 21 February 2014. Associate: Date: 21 February 2014 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/85.html>

