

FAMILY LAW CHILDREN Interim parenting Issues regarding capacity of each parent Certain matters to be addressed before completion of final hearing including as to alcohol misuse and as to parenting capacity and skills Best interests of child Child to spend increased and unsupervised time with father on an interim basis Family Law Act 1975 (Cth) Goode & Goode [2006] FamCA 1346; (2006) FLC93-286 APPLICANT: Mr Grishin RESPONDENT: Ms Ebbs FILENUMBER: PAC 4460 of 2012 DATE DELIVERED: 7 February 2014 PLACE DELIVERED: Parramatta PLACE HEARD: Parramatta JUDGMENT OF: Hannam J HEARING DATE: 5, 6 & 7 February 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Schroder SOLICITOR FOR THE APPLICANT: Smythe Wozniak Solicitors COUNSEL FOR THE RESPONDENT: Mr Livingstone SOLICITOR FOR THE RESPONDENT: Marsdens Law Group ORDERS Pending further order (1) The parents have joint parental responsibility for T born ... January 2011 (the child). (2) The child is to live with the mother, except as provided in Order 3. (3) The child is to spend time with the father as follows: (a) For a period of four weeks, commencing the first weekend after these Orders, each Saturday from 2.00 pm until 2.00 pm Sunday and each Thursday 2.00 pm until 4.00 pm. (b) Thence for a period of four weeks, each Saturday from 10.00 am until 6.00 pm Sunday and each Thursday from 2.00 pm until 4.00 pm. (c) Thence for a period of four weeks, each alternate weekend from 6.00 pm Friday until 9.00 am Monday and from 2.00 pm to 6.00 pm each Wednesday. (d) Thence each alternate week from 6.00 pm Friday until 9.00 am Tuesday and in the alternate week from 2.00 pm until 6.00 pm Wednesday until the child turns 4 years of age. (4) The child live with the father for block holiday time as follows, (and during such holiday time Orders as set out in order 3 hereof are suspended): (a) In 2014 for four continuous days and nights to occur twice, the first occasion not to occur before June 2014 and the second not to occur before November 2014, with the father to give one month's notice to the mother of his intention to exercise such time in writing. (5) That for special occasions as set out below (and orders 3 and 4 above are suspended during such special occasions) the father and mother shall spend time with the child as follows: (a) On Father's Day with the father from 9.00 am until 6.00 pm. (b) On Mother's Day with the mother from 9.00 am until 6.00 pm. (c) For four hours during the child's birthday on ... January each year, until the child

commences block holiday time with each parent pursuant to order 4 above. After such block holiday time commences the child's birthday shall lie where it falls with whichever parent she is living at that time. (d) From Christmas Eve 12.00 noon until Christmas Day 12.00 noon each even numbered year and from Christmas Day 12.00 noon until 12.00 noon Boxing Day each odd numbered year with the father. (e) From Christmas Eve 12.00 noon until Christmas Day 12.00 noon each odd numbered year and from Christmas Day 12.00 noon until 12.00 noon Boxing Day each even numbered year with the mother. (6) For the purposes of communications between the parties the parents shall: (a) Keep and maintain a communications book in which they shall record all relevant events of parenting significance so as to allow the other parent to be fully informed as to any requirements of the child whilst in their respective care. The parents shall record all communications in a respectful and informative manner. (b) Advise the other in writing of a mobile telephone number at which they can be contacted by text message or by way of telephone call in an emergency. The telephone number need not be the parent's telephone number however communication by one parent to the other by means of the advised telephone number will be sufficient compliance with any notice required to be given in writing to the other parent by text message or any emergency telephone call that is required to be made regarding the child. (c) The parents are entitled to, and shall, communicate by text message through the advised telephone number concerning matters relating to equal shared parental responsibility. Such text messages are to be informative, concise and in a polite manner. In the event of any disagreement being unable to be resolved concerning matters pertaining to a parental responsibility the parties shall attend family dispute resolution. (7) In the event of any emergency involving the child or hospitalisation the parents shall call the other parent on the advised telephone number as soon as practicable. (8) By consent, that by way of injunction: (a) Each of the parents be and are hereby restrained from consuming alcohol from 12 hours prior to the child coming into their respective care or during their respective care of the child. (b) Each of the parents be and are hereby restrained from denigrating or abusing the other parent to or in the presence of the child or allowing any other person to do so. (c) Each of the parents be and are hereby restrained from using corporal punishment with respect to the child or allowing any other person to do so. (d) Each of

the parents be and are hereby restrained from entering any abusive message in the communication book, or sending any abusive text message on the advised telephone number. (9) To effect a changeover for the child pursuant to these Orders, unless otherwise agreed in writing between the parties, changeovers shall occur at McDonalds, B Street, Suburb F. The father shall arrange for his daughter, Ms S, or his partner, Ms G, to attend the changeover and effect the changeover on his behalf. The father shall ensure that he does not attend the actual changeover. He shall be entitled to wait at the Suburb H Shopping complex for the changeover to be effected. The mother shall be entitled to arrange for an alternate person known to the child, to effect a changeover on her behalf should she wish. (10) By consent, pursuant to section 68L of the Family Law Act 1975 (Cth), interests of the child (T born ... January 2011) are to be independently represented by a lawyer in these proceedings. (11) The Legal Aid Commission of New South Wales, ... Office, is requested to make arrangements as soon as practicable to secure appropriate representation for the child's interests. (12) The parties are to provide to the ... Office of the Legal Aid Commission of New South Wales, at ... NSW ... or DX ..., forthwith copies of all documents upon which the parties rely in these proceedings, together with all existing Orders and copies of any relevant reports. (13) Leave is granted to the Independent Children's Lawyer, when appointed, to issue such subpoena as he / she considers relevant to the issues before the Court. (14) Leave is granted to the Independent Children's Lawyer, when appointed, to have photocopy access to documents produced on subpoena in these proceedings. (15) The Independent Children's Lawyer is exempt from fees pursuant to Division 2.3 of the Family Law (Fees) Regulations 2012 (Cth). (16) Leave is granted to the Independent Children's Lawyer to relist the matter on short notice by arrangement with the Court in chambers in appropriate circumstances. (17) Each parent submit to a carbohydrate transferring deficient blood test (CTD) on a random basis and further that: (a) Such testing be requested by the Independent Children's Lawyer not greater than once per month with such request to be made by letter, email, fax or phone call to the legal representative of the mother and the father. (b) Such testing is to be undertaken within 24 hours of such request. (c) Each parent to provide copies of such testing results to the solicitor for the other party and the Independent Children's Lawyer as soon as practical. (18)

Leave is granted to the Independent Childrens Lawyer to relist the matter in the event that the CTD testing shows that either parent has consumed alcohol. (19) The mother is to undergo assessment and any treatment as may be directed in respect of alcohol misuse as recommended by her General Practitioner. (20) The mother is to undertake counselling and treatment with a psychologist in respect of her emotional regulation and parenting style and factors as identified by the Family Consultant in the family report. The mother is at liberty to provide the family report to her General Practitioner and psychologist. (21) The mother is to advise the Independent Childrens Lawyer of the treatment providers in relation to alcohol misuse and counselling as soon as practicable after those professionals have been engaged. (22) Leave is granted to the Independent Childrens Lawyer to relist the matter before the Court if he/she has any concerns in relation to the appropriateness of such treatment providers. (23) The matter is relisted for mention on 23 January 2015 at 10.00am. (24) The parties have liberty to restore on 14 days notice.

IT IS NOTED that publication of this judgment by this Court under the pseudonym Grishin & Ebbs 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 4460 of 2012 Mr Grishin Applicant And Ms Ebbs Respondent

REASONS FOR JUDGMENT

THE PROCEEDINGS

In this matter, following a three day hearing in relation to T, who is aged three (the child), I suggested that, as a result of various concerns that came to light in the course of the hearing, the matter be adjourned for a fairly lengthy period of time, that is, for something in the order of 12 months to enable some of the matters that I am concerned about to be addressed and monitored and for the Court, in effect, to become better informed, bearing in mind the orders that are being sought by both of the parties. This is a matter where the greatest issues as to the best interests of this child relate to both of the primary considerations of the Family Law Act 1975 (Cth) (the Act) that is, the benefit of the child having a meaningful relationship with both of her 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. It is also a matter where the issue of the capacity of the parents to provide for the needs of the child is another issue that has loomed large in the hearing. In relation to the benefit to the child of having a meaningful relationship with both of her

parents, the matter is one in which both parents had involvement in the child's care during the reasonably short period that they lived together between late 2010 and March 2012 with the child having been born in January 2011. In other words, the parties were together for a little over one year of the child's life. There has been an extraordinary amount of acrimony and conflict between the parties both, it appears, during the relationship, but certainly since the parties have separated with each making allegations against the other of aggressive and violent conduct and each making allegations against the other in respect of impairment of their parenting due to significant alcohol misuse. It is, unfortunately, a matter where it may only be just now that the parents are each coming to terms with how serious both of these matters are, that is, how significantly parenting can be impaired by serious alcohol misuse and by conflict and aggressive behaviour. In addition, however, in my view, there are other significant matters which arise from the Family Report and they relate to the mother's over-protective parenting style, which raises the risk of her difficulties in allowing the child to individuate, which could have serious consequences for the child in later life. There are also concerns about the mother's ability to tolerate the child being separated from her in order to spend time with the father, and it is being recommended by the Family Consultant that the mother should seek to explore and address the factors underlying this. I am satisfied, as a result of the evidence which appears to be uncontradicted, that the mother still currently has a difficulty with her alcohol consumption. That is evidenced by, in particular, the various entries in the police records, which indicate that on various occasions when the police were called - particularly, at the mother's request, interestingly enough - to the home that the mother was found to be affected by alcohol, and the instance of drink driving in which she had her then 13 year old child in the car with her. I am also concerned about the mother's capacity to regulate her own emotions, which can result in her behaving in an aggressive fashion and, in that regard, I rely upon the facts contained in the fact sheet tendered upon her sentence in respect of the charge of assault occasioning actual bodily harm. In doing so, I reject her version of the events set out in her affidavit, including an assertion that she acted in self-defence, and I note that the version in the statement of facts is entirely consistent with the father's version in relation to that matter. So far as the father's alcohol use is concerned, I am of the view that at the time the parties were

together and during the period after which they were separated and prior to him ceasing alcohol use, he did have a significant problem with alcohol use and it may very well be something that he needs to remain vigilant about for many years to come, if not for the rest of his life. It is, in my view, to his credit, regardless of how he was initially motivated, that it would appear that he has abstained from alcohol. There is no evidence to indicate that that is not the case and, hopefully, he has become aware, including during the course of this hearing and listening to the Family Consultant, that the level of alcohol that he used is likely to have impaired his own parenting and that it will be for the benefit of the child that he has given up his alcohol. As I say, it may only be now that he has made that connection, but it certainly is a matter to his credit. I note in this regard in passing that when the mother was questioned about her views as to the father having given up alcohol, she commented that it was good for his health and good for his relationship with his partner and that she did not seem to make the connection between what we are really here about, and that is the benefit for the child. So far as the father's behaviour is concerned, as far as behaviour that is uncontested, there is only the matter of the incident outside the school. All the other allegations are disputed by him. The incident outside the school is also a matter which is not an allegation. It was proven and he was found guilty in relation to that conduct by another Court, though I note no conviction was recorded. It does not reflect well upon him, and I agree with the submission made by Mr Livingstone, that it is a concern that he engaged in that sort of behaviour after completing an anger management course. However, I note, that it may be that this conduct has nothing to do with anger management. There are other reasons that people behave in ways in which their emotions are not properly regulated and that seemed to be the issue that was of concern to the Family Consultant. I would certainly encourage the father to explore further some of his own issues in relation to regulation of his emotions but, in my view, that is not as worrying as concerns about the mother and her behaviour. In addition, as I said, there was the evidence that came up in the Family Report about the mother's parenting style and perhaps, once again, she has only just become aware that issues in relation to her own childhood experience that are likely to be related to her parenting style and that it would be to the child's assistance for her to seek support in exploring and addressing those factors.

It appears to me that the mother has had a difficult life in a number of ways, beginning with the evidence she gave about her own adolescent years, which was very concerning. I also accept that she was the victim of significant domestic violence in a previous relationship and it very well may be that some matters relating to her parenting style and her over-protectiveness are also related to those and it really does seem to be a matter for her own sake and more particularly for the child that she needs to have addressed.

**DISCUSSION AS TO INTERIM ORDERS** So far as the orders in the interim period are concerned, I do not feel bound by the interim Orders that have been in place up until now. Interim Orders of the kind that were put in place by his Honour Collier J follow a process which involves a two hour hearing with submissions, at most. There is no cross-examination and it also seems that some of the matters which very well may have been before him have been presented in a different way, or I have drawn different conclusions about them, as a result of the fully contested hearing. What is being proposed by the father in respect of current interim orders is that there be shared parental responsibility, which is opposed by the mother who wants a continuation of the sole parental responsibility. Both parties agree that the child is to live with the mother. Both agree that there is to be a graduated increase in time with the father and it appears that both agree that there is no longer any need for supervision of the father's time. Both also agree that the mother, who as I say I have the greatest concerns about, should be given an opportunity, for the sake of the child, to address her drinking and personal issues relating to her parenting style and occasions where she appears to have difficulties regulating her emotions. The mother also says that the father should also be required to or given the opportunity to address some issues of concern. So there are three areas that I have to consider, that is, the issue of the parental responsibility, the time with the father, and whether the father should also be required to address some deficiencies in his own parenting. The law to be applied As far as the law to be applied, of course, even though this, at this stage, it is an interim proceeding, it is governed by *Goode & Goode*[1]. The Court has to uphold the objects and principles in the Act and also must regard the best interests of the child as the paramount consideration. The starting point does need to be the issue of parental responsibility and unless the Court makes an order changing the statutory conferral of joint parental responsibility, then

section 61C provides that each of the parents of the child has parental responsibility for the child. But, of course, there is a difference between that form of parental responsibility and joint shared parental responsibility, which is what the father is seeking. Under section 61DA, when making a parenting order, 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, although the presumption does not apply if there are reasonable grounds to believe that a parent or person has engaged in abuse of the child or family violence. This is a matter where, I think, both parents have engaged in conduct which comes under the category of family violence, or alternatively the Court can consider that it is not appropriate in the circumstances for the presumption to be applied when making that order if it is an interim order. I was not addressed in terms of the issue of the presumption, but it is the father's position that most of the criticism, for want of a better expression, or perhaps most of the concern of the Court relates more to the mother and in circumstances where sole parental responsibility was given following an interim hearing that did not go to oral evidence that this child should not be denied the opportunity of a meaningful relationship with her father and that, in application of the other circumstances set out in 60C of the Act, the parents should share parental responsibility. The mother puts up in opposition to that and for continuation, in effect, of the previous interim Order, that it was put in place for good reason by his Honour, it should continue, and that, in light of the high level of conflict and looming issues such as preschool, it ought to be sole parental responsibility to the mother. As I have indicated, my view is that the current regime of having sole parental responsibility with the mother means that this child is really not having the impact or the benefit of her father having any input in important decisions and where the concerns that I have are, I have to say, greater with the mother than with the father. That is not to say that I have not got some areas of concern; I have already alluded to them with respect to the father. In my view, having regard to the particularly factors I have identified, that is, the benefit of the meaningful relationship and the need to protect the child from harm and also the issue of the capacity, I am of the view that there should be an order for joint shared parental responsibility for this child. I take into account in that regard the evidence in relation to education. I did find it concerning and I found the mother's answers quite unconvincing as



to why the older child J, had missed so much school and, not only being late, but the number of other days that had been missed, and the mother's failure to appreciate that that could have an impact on her child's education. I am also concerned with the framework from which the mother appears to come, and that is the over-protective framework. She seemed to have a sense that her child needed a much greater degree of protection than in fact she did need and the Family Consultant was concerned about what this meant in terms of her being able to pick up on the child's cues and respond appropriately to those needs. Those factors are also taken into account in relation to the orders as to the time with the father. The benefit of the child having a meaningful relationship will be promoted to a greater degree under the interim orders proposed by the father than the mother. Currently, the father is still having his time with the child supervised. I see no reason at all for that to be occurring. The father has, on the evidence before me, taken some significant steps to address the issue in relation to alcohol. He has, it would appear, made the time that the child spent with him as fulfilling and enjoyable as possible for the child and the issue of aggression that is raised by the mother seems to be only in existence in the context of immediate contact with the mother and that can be alleviated by appropriate changeover orders. It certainly is not sufficient and I think there is no need for any supervision to continue. As far as the need to protect the child from harm, as I say, I am more concerned about the psychological harm that may be occasioned by the mother's over-protectiveness and the mother's issue with alcohol in this matter, than the concerns about harm arising from time with the father. Obviously, this child is too young to express views. As far as the nature of the relationship is concerned, the more recent and more extensive report from the Family Consultant, the Family Report, certainly indicated a growing relationship between the child and her father. Some of the concerns that had been evident at the earlier assessment in the context where the child had had little time with the father had certainly vastly improved and the relationship was described by the Family Consultant as familiar and developing. She described the child being able to be comforted and settled by the father when upset, but she noted at that time the child did not appear to use him as a secure base from which to explore the room, which is obviously an issue that goes to the attachment. However, the Family Consultant went on to say that the relationship of the

child with the father appeared commensurate with the time she had spent with him and, certainly, the close and established relationship with the mother would not be disrupted because the child is to continue to live with her under either proposed orders. Essentially, the Family Consultant agreed that any extra time with the father needed to be graduated, but she certainly was not asked about whether the father's proposed regime was too fast or too slow or not sufficiently graduated, apart from being firmly of the view that equal shared time was not in the child's best interest, and I have to say, that it is to the father's credit that he has appreciated that pressing for that is not in the child's best interests. The Family Consultant was also of the view that anything roughly similar, such as six days and eight days, was also not in the child's best interests. Otherwise, she appeared to agree with the proposition that a gradual change to something short of that, but something akin to significant and substantial time, would be appropriate in these circumstances, unless the Court was satisfied of the significant risk of harm in the father's care. As I have indicated, I am not, on what I have heard from the last three days, satisfied that there is a risk of harm in the father's home. I am not of the view that this regime that is being proposed by the father is too fast. I think that the submissions made on behalf of the mother, unfortunately, perpetuate her perception of the child needing a greater degree of protection and a greater need to be with the mother and that the mother is somehow the only person who is able to provide that security and safety for her. Of course, one of the other issues to which I need to have regard is the likely effect of the change of circumstances. This will be a change in circumstances. It will go from reasonably limited supervised time with the father to unsupervised time. That increase is including overnight stay. I am of the view that, having regard to all of the evidence, the likely change will be to the benefit of the child. She will be able to further develop her relationship with her father in a much more normal context without supervision and without the risk of there being the subtle message that she needs to in some way be protected from the father. It appears to me that the likely effect of the change in circumstances is that it will further develop her relationship with her father and that will be to her benefit. As far as the capacity of the parents to provide for the child's needs, I have raised the issue of the concern that I have about the mother's capacity to meet the child's emotional needs. There is also the issue that possibly arises as a

result of the educational issue with the other child which is perhaps a concern about the capacity of the mother to appreciate the benefits that the child would have from matters such as preschool introduced at an earlier age. But I certainly do not say and, in fact, I think I should state positively on the record that there is not any suggestion that the mother is not able to meet the child's material needs and there is no evidence to support that the child is not properly groomed, cared for from a hygiene point of view, fed and matters of that kind. There are some other factors which perhaps should be touched upon but, in my view, the matters to which I have referred are the most relevant factors in all of these circumstances. I have indicated that I propose making an order for joint parental responsibility. I also make an order that the child live with the mother and make an order in accordance with orders 4(a) to (d) set out in the final orders of the father's Initiating Application in terms of the time with the father. I will also make an order in terms of 5(a) in respect to a block holiday time. I accept that this child is not yet up to the age to partake in school holiday time, but having a number of continuous days with her father will, again, start to introduce the idea of holiday time with a view, hopefully, if all goes well, to building up to more time in school holidays, which even the mother appeared to concede under cross-examination would be appropriate when the child was of school age. In my view, however, it is appropriate for this, and it is in the child's best interests, to be introduced in the year before she commences school. I also make the orders set out in 6, 7 and 8. As to order 7, I think maintaining a communication book would be a good idea in keeping with the recommendation of the Family Consultant in order to enhance the parents' communication. Hopefully this is something that will also show some improvement over the next 12 months in that the parents will develop an ability to better communicate with one another. I make the injunctions set out in order 9, which are agreed to, and order 10 in respect of changeover. I also make an order that an Independent Children's Lawyer be appointed. That will be appropriate for the reasons submitted by Mr Livingstone and it is agreed to by both parties. I make an order that each parent, pending further order, submit to a carbohydrate transferring deficient blood test (CTD) on a random basis, and further that such testing be requested by the Independent Children's Lawyer, not greater than once per month with such request to be made by letter, mail, fax or phone call to the solicitor of the mother and

the father, and such testing to be undertaken within 24 hours of such a request. Each parent is to then provide a copy of the test results to the solicitor of the other party and the Independent Children's Lawyer as soon as practicable. I also grant liberty to the Independent Children's Lawyer to relist the matter in the event that the CTD testing shows that either parent has consumed alcohol. I also make an order that the mother is to undergo assessment and any treatment as may be directed in respect of alcohol misuse as recommended by her general practitioner and also that the mother undertake counselling and treatment with a psychologist in respect of her emotional regulation and parenting style and factors in relation to it, as identified by the Family Consultant in the Family Report, and the mother be at liberty to provide a copy of the Family Report to her general practitioner and psychologist. The mother is to advise the Independent Children's Lawyer of the treatment provider in relation to alcohol misuse and counselling as soon as practicable after those professionals have been engaged and the Independent Children's Lawyer is granted liberty to relist the matter before the Court if he or she has any concerns in relation to the appropriateness of such treatment providers. The matter will be relisted on 23 January 2015. I am not going to specify what needs to be provided to the Court. It is a matter really for the Independent Children's Lawyer to put before the Court such material in relation to the intervening events as he or she thinks appropriate, but, of course, the parties are not prohibited from putting any further evidence before the Court if they wish to do so. There is one final matter and that is whether the father ought to be required to undertake any further programs. It is a matter for the father if he wishes to undertake any further programs. I am not satisfied in the circumstances that he is required to complete any further programs. Finally, I grant the parties a liberty to restore the matter to the list on 14 days notice. I certify that the preceding forty-seven (47) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Hannam delivered on 7 February 2014. Legal Associate: Date: 25 February 2014 [1] [2006] FamCA 1346; (2006) FLC 93-286 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/89.html>

