

FAMILY LAW CHILDREN Interim Orders where mother filed a fresh initiating application mother seeks orders that would enable her to change a child's schooling and suspend time between the father and the children the children reluctant to spend time with the father where the parents are unable to cooperate not in the best interests of the children for the parents to have equal shared parental responsibility orders made for the mother to have sole parental responsibility during period of adjournment orders made for the appointment of an Independent Children's Lawyer and a request for the Minister to intervene. Family Law Act 1975 (Cth) s60CC Goode & Goode (2006) FLC 93-286

APPLICANT: Ms Lindberg RESPONDENT: Mr Hillman FILENUMBER: ADC 1221 of 2007 DATE DELIVERED: 26 September 2014 PLACE DELIVERED: Adelaide PLACE HEARD: JUDGMENT OF: Dawe J HEARING DATE: 26 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: n/a SOLICITOR FOR THE APPLICANT: In Person COUNSEL FOR THE RESPONDENT: n/a SOLICITOR FOR THE RESPONDENT: In Person ORDERS The matter is further adjourned to 14 November 2014 at 9.15 am before the Honourable Justice Dawe. During the period of the adjournment: 2.1 the previous parenting orders made on 28 November 2013 in relation to the children D and B (the children) are suspended; 2.2 the mother has the sole parental responsibility for the children; 2.3 the children live with the mother and spend no time with the father SAVE AND EXCEPT such time as the parties agree upon in writing. The mother has permission to enrol the child D at C School. The father has leave to amend the Response to the Initiating Application PROVIDED THAT any amendment is filed and served within twenty-eight [28] days from today. Pursuant to Section 68L of the Family Law Act 1975 (Cth) THAT the children D born on ... 1998 and B born on ... 2003 be independently represented and that such representation be arranged by the Legal Service Commission of South Australia UPON NOTING it is requested that Ms Rebecca Reed be re-appointed if available AND that to expedite the appointment of the Independent Children's Lawyer within seven (7) days of the date hereof each party cause to be furnished to the said Commission a copy of all documents filed in the Family Court since the discharge of the Independent Children's Lawyer in November 2013. Leave is granted to the Independent Children's Lawyer to issue subpoenas for documents to: (a) the Department for Education and Child

Development Families SA; (b) South Australian Education Department; (c) South Australian Police Department; (d) any school attended by the children or to be attended by the children; and (e) the Children and Adolescent Mental Health Service (CAMHS). Pursuant to Section 91B of the Family Law Act 1975 (Cth) THAT the Court requests the Minister for the Department for Education and Child Development - Families SA be invited to intervene in these proceedings and if the Minister determines not to intervene in these proceedings it is requested that the Minister send a representative to the Court on the adjourned date to explain the Minister's position. Pursuant to s 69ZW the Court requests that the Department for Education and Child Development - Families SA provide a report specifically dealing with the child protection and welfare issues and the general circumstances concerning the children D born on ... 1998 and B born on ... 2003 including but not limited to any suspected or alleged child abuse issues and mental health issues and that such report be filed at this Court by no later than 4.00 pm on 7 November 2014 UPON NOTING that in the event that Families SA intend to rely upon any report prepared by Child Protection Services (CPS) that they also at that time provide a copy of such CPS Report and that report and that of the Minister be provided forthwith to each of the parties and the Independent Children's Lawyer (yet to be appointed). For the purposes of the requests pursuant to paragraphs 7 and 8 hereof the Court Registry is directed to supply the Minister copies of the documents filed by the parties since November 2013. Pursuant to s 65DA(2) and s 62B, the particulars of the obligations these orders create and the particulars of the consequences that may follow if a person contravenes these orders and details of who can assist parties adjust to and comply with an order are set out in the Fact Sheet attached hereto and these particulars are included in these orders. IT IS NOTED that publication of this judgment by this Court under the pseudonym Lindberg & Hillman 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 ADELAIDE FILE NUMBER: ADC 1221 of 2007 Ms Lindberg Applicant And Mr Hillman Respondent EX TEMORE REASONS FOR JUDGMENT I will deal first of all with the Response filed by the father to the Initiating Applications. The orders sought in both, being final orders and interim orders, were drafted by him without any legal assistance. Many of them are not orders that this Court would make or has

jurisdiction to make. Under the interim orders sought he asked for the child, D, to be represented by a Children's Lawyer. The parties are both proposing that both children have an Independent Children's Lawyer appointed and I propose to make that order. Under the interim orders paragraphs 2, 3, 4 and 5 are not orders of the sort that this Court would normally make. Basically, however, it appears to be suggested that the Court decide on the mother's ability to look after the children in lieu of non-compliance with the Court orders. It is clear that the children have been in the care of the mother since late February 2014 and no action was taken in this Court or any other Court with Family Law jurisdiction to amend the existing orders until the mother brought proceedings in August 2014 and the father subsequently responded. In the information that is before the Court the children have been in the care of the mother and have very little or none at all, time with the father face to face and only one telephone call I am told from the child, D, to the father. The question of the schooling is mentioned in paragraph 4 of the husband's response and that is also a matter which is dealt with in the mother's application. Paragraph 5 is: That the orders of 28 November be modified in light of the mother's behaviour. It does not, however, set out how those orders should be modified and what orders are sought. The final orders sought in that application are again orders of the sort that are not normally made but I am interpreting some of them to be orders which oppose the orders sought by the mother. In particular, paragraph 1 of the final orders sought is that the existing orders of 28 November 2013 be upheld. The father asks for orders that the mother be held accountable and that the withdrawal of the child, D, from school be considered as neglect of her parenting. All of these orders sought in the Response cannot be interpreted as contravention applications. A finding of neglect would, of course, be a factor which will be taken into account when altering any of the orders currently in existence in relation to the children. The father also asks that the mother's actions in future be monitored for the next two years by a children's advocate by Court order. This Court does not have facilities to monitor the parenting or any roles of the children. It is a superior Court of record and does not have facilities to monitor the behaviour of parents. The final order sought is leave to prepare the costs and losses due to the mother's actions for non-compliance. The parties have been unrepresented for a considerable period of time since November 2013 when final orders were

made. Therefore I am unable to understand what type of order this Court could make in relation to that paragraph. I then turn to the orders which are sought in the Initiating Application and in particular, the orders that are sought by way of interim orders today. The mother seeks orders that the existing orders regarding the children, B and D, be discharged, that she be allowed to change the child D's school from E School to C School, that the father have no contact with the children or the mother or her husband, [Mr Lindberg] and that the application be heard urgently. The mother has made it clear from the bar table that she also seeks an order that provides for her to have parental responsibility for the children during the period of the adjournment. The father has indicated that he is concerned about the health and in particular, the psychiatric and mental health of the children and in particular D, who has apparently referred to attempting to commit suicide. He is in a position where he accepts that it is difficult for him to enforce the existing Court orders if the children are opposed to that and opposed to residing with him. He has referred to his attitude towards these ongoing proceedings and from the bar table has considered that he cannot, change the girls and they have been, poisoned by the mother. They are his allegations. He also said from the bar table that it is easier just to look away. He has referred in his submissions to the altercations he has had with the school which the children did attend and where B still attends. He has also confirmed that the police have commenced prosecution of charges against him, being two charges of aggravated assault. Both matters apparently were heard in the Magistrates Court for mention in late August 2014. The father was unable to give a further date but was expecting it to be towards the end of October 2014. It is not clear, however, and the Court does not have information as to whether that is another mention date or whether there will be a trial at that time. I understand the father is not pleading guilty to aggravated assault of his daughters. It is necessary for me to consider, even on an interim basis, what is in the best interests of the children in accordance with the authority of *Goode & Goode* (2006) FLC 93-286 and take into account the provisions of the Family Law Act 1975 (Cth) (the Act) Part VII which deals with children's matters. The best interests of the children and the factors to be taken into account are set out clearly in that part of the Act. The emphasis is upon the best interests of the children, including that the children have the benefit of a meaningful relationship with both of their parents and that the

children are protected from physical or psychological harm or abuse. The proceedings having been resumed this year would fall within the category which emphasises, as the primary concern, the need to protect the children. The provisions of the Act require me to consider whether it is in the children's best interests for there to be joint parental responsibility and if joint parental responsibility applies then consideration be given to the children spending equal or shared or significant time with each of the children's parents. The material before the Court, the fresh Initiating Application and the history of the matter, is a clear indication that it is not in the best interests of these children that their parents have shared parental responsibility due to the absolute inability of any cooperation between the parents to decide issues which would promote the children's best interests. I am therefore satisfied on an interim basis that during the period of the adjournment the mother have sole parental responsibility. I also have to consider the factors which relate to the best interests of the children as set out in section 60CC. The additional considerations include the views expressed by the children and the nature of the relationship between the children and each of the children's parents. I take into account the acknowledgment by the father that the children are not currently expressing any desire to spend any time with him. Certainly, it appears from the information before the Court that the children currently wish to remain living with the mother. Whether that is because of the mother's attitude and influence upon the children is not a matter I can determine on an interim basis. The difficulty in considering other factors such as the willingness and the ability of the children's parents to facilitate and encourage a close relationship with the other parent is that it seems clear that there have been difficulties for many many years about the capacity of both parents to work together and foster a relationship with the other parent. The likely effect of any change upon the children. On this interim basis it is difficult to see how there could be a change on an interim basis pending the determination of the factors and the reports which I am proposing to order. I take into account the other factors and in particular the maturity and age of the child D, and the issues concerning family violence which are alleged but are yet to be determined, with the assault charges outstanding where the father has been charged with aggravated assault of each of the children. There are serious issues to be determined. Both parties are supporting the appointment of the Independent Children's

Lawyer for both children and, if possible, that be Ms Reed who has in the past acted as the Independent Children's Lawyer. I also propose to make orders requesting the Minister to intervene in these proceedings. There are serious concerns about the welfare of the children. It would appear that there have been some notifications to the Minister concerning the welfare of the children and the participation of the Minister in these proceedings would be of assistance. I will also request that the Families SA prepare a report dealing with the child protection and welfare issues in relation to both children as they have arisen since the orders were made in November 2013. For the purposes of the Minister's intervention, the Court will supply the Minister with copies of the documents which have been filed in this Court since November 2013. I am also proposing to give the Independent Children's Lawyer leave to issue subpoenas to the various entities to ensure that the Court has available to it updated information concerning the children. The subpoenas could be limited to issues which have arisen since the final orders were made in November 2013. That would then avoid the departments having to supply material which is not directly relevant to these current proceedings. The other significant factor which is necessary to determine is whether the child D should continue to be enrolled at E School or whether the mother should have permission to enrol D in C School which is the school which the mother has indicated is the school which D wishes to attend. It would appear from the affidavit material that D has not attended any school for 10 weeks and is refusing to attend E School. The father opposes the enrolment of the child in C School indicating that if she does not wish to attend E School they would provide some assistance for her to be homeschooled. I take into account the information before the Court in the affidavit material and that provided by the father from the bar table about ongoing difficult dealings with the former headmaster of E School. I also take into account in relation to the schooling of a child D's age, the need for her to recommence school and the fact that if it transpires that there is some difficulty in the child attending C School or some benefit to the child in her resuming at E School, then those matters can be dealt with on a final basis after the assistance the Court has from the Independent Children's Lawyer and the various reports. I consider however, even on an interim basis, that it is in the best interests of the child D, that the mother be given permission to enrol her in C School so that D can resume some sort of education as quickly as

possible. I therefore propose to make those orders. Orders made. I am being handed a letter from Relationships Australia signed [L] dated 7 July 2014 and enclosing a Section 60I certificate. It says: I, [L], [the father] did not attend family dispute with me and the other party or parties of the proceedings, but the person's failure to do so was due to the refusal or failure of the other party or parties to the proceedings to attend. It has what appears to be the same signature as the letter and is, again, dated 7 July 2014. I have taken that into account. It is not a significant factor to change any of the orders that I have made. It is a partial explanation for no action being taken by the father from late February 2014 until the mother commenced the proceedings August 2014. It is a step that he did take in July 2014 to attempt to resolve the issues. I also take into account that the mother has said from the bar table that she failed to participate because she anticipated the criminal proceedings. I am not making any findings in relation to those matters. I consider the best interests of the children to be the paramount consideration on an interim basis. I will not change the orders I have just made. The matter stands adjourned to come back before me on 14 November at 9.15 am. That is a mention date. On the next occasion it will be a 9.15 am matter prior to a trial at 10 o'clock in another matter. I certify that the preceding forty (40) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Dawe delivered on 26 September 2014 Associate: Date: 9 October 2014

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