

FAMILY LAW CHILDREN CaseManagement and Hearing Orders Family Law Act 1975 (Cth)

APPLICANT: Mr Farmer RESPONDENT: Ms Farmer INDEPENDENT CHILDRENS LAWYER: Legal Aid NSW FILENUMBER: AYC 340 of 2007 DATE DELIVERED: 22 November 2007 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Young J HEARING DATE: 22 November 2007 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Weil SOLICITOR FOR THE APPLICANT: Loretta Terrill COUNSEL FOR THE RESPONDENT: Mr Thompson SOLICITOR FOR THE RESPONDENT: Belbridge Hague COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER: Ms Wearne SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Legal Aid New South Wales

ORDERS THAT the final hearing of the children, parenting, relocation and property issues be fixed before Dessau J at 2.15 p.m. on Monday 17 December 2007 for a hearing of 4 days duration. THAT on or before Monday 3 December 2007 the husband make, file and serve: (a) his affidavit of evidence in chief; (b) the affidavits of his mother, father, Ms T, Ms D and Ms E; (c) any other affidavit upon which he intends to rely. THAT on or before Thursday 29 November 2007 the wife make, file and serve the affidavit of Dr V. THAT on or before Monday 10 December 2007 the wife make, file and serve: (a) her affidavit of evidence in chief; (b) the affidavits of her mother, sister, general practitioner Dr S and her treating psychologist Ms K (c) any other affidavit upon which she intends to rely. THAT leave be granted to the Independent Childrens Lawyer to forthwith issue subpoenas to each of the individuals or organisations identified in the accompanying extempore reasons for judgment and all such subpoenas be made returnable in the Family Court of Australia at Albury on 6 December 2007 at 10.00 a.m. before Senior Registrar FitzGibbon. THAT the husband and wife forthwith confer through their legal practitioners as to the value of their Albury home and, if unable to agree then they are to obtain for the hearing a joint valuation (at their joint expense) on or before 10 December 2007. THAT the husband and wife are required to attend at a conference organised with the Family Dispute Resolution Section, by New South Wales Legal Aid on or before Thursday 6 December 2007 and to make a bona fide endeavour to resolve all outstanding children, parenting, relocation, property and financial issues or otherwise to limit the matters in dispute in these proceedings. THAT the Trustees of the Superannuation Fund of

each of the husband and wife be forthwith given proper notice of the hearing and of any superannuation splitting order and be afforded procedural fairness in all ways required. THAT the Independent Children's Lawyer file any other affidavit upon which they intend to rely on or before 4.00 p.m. on 11 December 2007. THAT on or before 12 December 2007 each of the solicitors for the husband, the wife and the Independent Children's Lawyer make, file and serve the following documents: (a) a summary of argument; (b) a statement of the specific orders sought; (c) a statement of the relevant s60CC factors; (d) a chronology; (e) a summary of assets and liabilities; (f) a list of affidavits and witnesses to be relied upon; (g) a letter pursuant to Rule 19.04 of the Family Law Rules as to appropriate cost disclosure information. THAT the extempore reasons for judgment be transcribed, be placed upon the Court file and be made available to all parties. THAT liberty be reserved to apply to Dessau J on short notice but upon proper material filed and served. IT IS NOTED: THAT the conciliation conference fixed in Melbourne at the Family Court this morning did not resolve issues but the parties did attend that conference and were in Court for this mention this afternoon. IT IS NOTED that publication of this judgment under the pseudonym Farmer & Farmer is approved pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth).

FAMILY COURT OF AUSTRALIA
AT MELBOURNE FILE NUMBER: AYC340 of 2007 MR FARMER Applicant And MS FARMER Respondent And INDEPENDENT CHILDRENS LAWYER REASONS FOR JUDGMENT

The matter of Farmer & Farmer and the Independent Children's Lawyer is listed for mention before me this day. The matter was previously before me on 9 November 2007 for mention and at which time it was adjourned to this day to ascertain from the coordinating Judge or listing Registrar if there was an available date for this matter to be listed in Melbourne for a defended hearing prior to Christmas. I have been provided with the date of 17 December 2007 before Dessau J commencing at 2.15 p.m. and the matter will be listed and commence at that time. The week is available for the hearing and conclusion of the case which involves children's issues and a modest property division. I have taken the opportunity to list the matter today to understand the particular issues and case manage the case so it will be prepared and ready for hearing. Mr Weil of counsel appeared for the husband, Mr Thompson of counsel for the wife and Ms Wearne, by telephone, has appeared from Albury for the

children. I do not propose to set out the background of the issues in dispute, but I indicate I have read the interim reasons for judgment delivered by Cronin J on 28 August 2007 and it is clear from that judgment his Honour's concerns as to an early hearing of the matter. Otherwise I have had the opportunity of scanning the transcript of evidence from Senior Registrar FitzGibbon in the hearing on 15 August 2007 and the issues that were then before the court. There are on file and I have therefore read the orders arising from each of those particular hearings. There are two children of this marriage: M, who is three and a half years of age and B, who is approaching his second birthday. Currently the two children live with the parties as provided for in paragraph 14 of the orders of Cronin J and the principal dispute in this case concerning the children is with whom they shall live hereafter and whether the wife be permitted to relocate to the south-western area of Sydney. It is proposed that the wife relocates with her mother and resides in that area with the husband remaining in the Albury/Wodonga area. I have particularly concentrated upon affidavits and evidence and an appropriate filing timetable of documents. On behalf of the father, Mr Weil has indicated that his client will be filing affidavits and relying upon the evidence of the father, his father and mother, Ms T, Ms D and Ms E. Clearly some of those affidavits are by way of family background and the local benefits of the Albury/Wodonga area. I require the affidavits that Mr Weil is to rely upon to be filed and served upon all parties by 3 December. Mr Thompson has indicated that his instructing solicitor has largely prepared all of the evidence that the wife will rely upon and I therefore require all such affidavits, including any response to issues raised by the husband, to be filed and served on or before 10 December. Mr Thompson has indicated that this client, apart from her own affidavit of evidence-in-chief, will be filing an affidavit from her mother and sister, her general practitioner Dr S, her treating psychologist Ms K, and a short affidavit from Dr V. Ms Wearne, appearing as the Independent Children's Lawyer, will rely upon the recently prepared and filed report of Ms N, family consultant Albury Registry. That report is on file. I have read the recommendations contained in paragraphs 65-69 (inclusive) thereof and otherwise Ms Wearne has referred me to paragraph 59 which touches upon the possibility of a relocation when the children are older. My brief reading of that report is it carefully makes no specific recommendations and leaves the determination of issues

to the trial judge. Ms Wearne has additionally highlighted the reliance by both parties upon medical evidence and candidly advised the court that she has no particular concerns with the parties' medical supervision, direction or treatment obtained from specialists or general practitioners. Within that context, therefore, it may be that there can be a reconsideration of what medical evidence is to be called and which is of benefit to the court in determining the various children's issues. I carefully make no judgment or give no specific direction for such evidence not to be called, but in the context of the ongoing discussion which the parties will have at the Family Dispute Resolution Centre then these matters can be more carefully considered and then discussed with their legal practitioners. I highlight that at one point in these submissions Mr Weil identified that the wife previously had a treating psychologist, Dr W, and that person is not currently proposed to file an affidavit by the wife. Again, I give no direction and, of course, counsel then appearing for the husband can be at liberty in cross-examination to raise matters of assistance to the court. I am conscious that if Dr F is required to give evidence he is located at the Royal Children's Hospital in Melbourne, as are his records of the treatment of M's epilepsy, and whilst I will grant the subpoena as sought, there should be a little inconvenience to the hospitals and professional witnesses as is possible. In that regard Ms Wearne has sought leave to issue subpoenas to the following: Department of Human Services, Wodonga; Albury-Wodonga Children's Contact Service; Royal Children's Hospital/Dr F; Dr C; Dr S. I propose to grant such leave, but require all such subpoenas to be made returnable and all documents and reports produced thereunder to be before the Family Court in Albury on 6 December 2007 when I understand Senior Registrar FitzGibbon is sitting. I require the parties to attend on or before 6 December 2007 at a family dispute resolution section conference to be organised through New South Wales Legal Aid. Ms Wearne has kindly undertaken to organise that discussion and hopefully settlement resolution conference. It will take place in Albury. I require the husband and wife to attend personally and to make a bona fide endeavour to resolve all financial, children and parenting issues or, at the very least, to substantially limit the matters in issue. I have discussed with all counsel a timetable for filing their court required documents and specifically: a summary of argument; a statement of the specific orders sought; a statement of the section 60CC factors;

achronology; a statement of assets and liabilities; a letter in accordance with the costs disclosure rules contained within Rule 19.04. I require all of those documents to be filed with the court and then served upon all other parties by 10.00 a.m. on Wednesday, 12 December 2007. I pause to underline in these brief extempore reasons that this matter is to commence at 2.15 p.m. on Monday, 17 December. The court therefore has four and a half days to hear and determine the matters in issue. The parties must understand that there are and will be no other options. The hearing starts on that date. Documents must be filed as ordered with no extensions. There should be no perception that this matter has had any favourable treatment by way of an early hearing date as it just occurred that a vacancy arose in her Honour's list at a time when my docket listing was wholly booked for the months of January, February and the first half of March and this matter, by pure coincidence, was the very last of the 32 docket matters I called over and fixed. Both parties should welcome the opportunity to quickly sort out their children's issues and future. This family and these children need certainty. The other matter I touch upon is that the property assets are relatively modest. The gross asset pool is approximately \$500,000. The home in Albury is of a value between \$460,000 and \$500,000 and the parties must agree on a value forthwith or otherwise mutually appoint at their joint expense a valuer. The other significant issue is superannuation. The husband's superannuation is with the Defence Forces Fund and totals approximately \$180,000. The wife's superannuation is with the Education Department of New South Wales and totals approximately \$47,000. Notices must be given to the Trustees of the Funds, particularly Defence Forces, as to any likely superannuation split. It is incumbent upon the practitioners to immediately comply with all procedural fairness and ensure that the Funds know of any particular superannuation split that may be sought before the court in this hearing. There are no ongoing issues of spousal maintenance and from inquiries I made of the practitioners the child support issues are subject of review and that is before the Agency within the next two weeks. I am advised that up-to-date Form 13 financial statements have been filed, but otherwise it is incumbent upon the parties to include all relevant financial details as to income, contributions, section 75(2) factors or their financial needs within their trial affidavit. With those brief reasons and with a request to Ms Wearne that she ensures that Ms N knows of the hearing date and

is available in that week commencing 17 December (in Melbourne or by video link if appropriate and so ordered) and with other solicitors being required to ensure that all of their witnesses are available, I emphasise that the obligation on practitioners is to commence and conclude this case within the week. I certify that the preceding 23 paragraphs are a true copy of the reasons for judgment herein

of The Honourable Justice Young Associate Date: 22 November 2007 AustLII: Copyright

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