

FAMILY LAW CHILDREN Interim parenting caseguardian case guardian appointed for ill mother case guardianappointed for interim only best interests of children timechildren spend with father in school holidays change in circumstances premature application parties may consent to orders for futureholiday periods. APPLICANT: Mr Fontana RESPONDENT: Ms Rodgers INDEPENDENT CHILDRENS LAWYER: FILENUMBER: SYC 7894 of 2011 DATE DELIVERED: 8 September 2014 PLACE DELIVERED: Sydney PLACE HEARD: Sydney JUDGMENT OF: Hannam J HEARING DATE: 8 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Ford SOLICITOR FOR THE APPLICANT: Willis & Bowring COUNSEL FOR THE RESPONDENT: Ms Bedford SOLICITOR FOR THE RESPONDENT: John Spence & Associates COUNSELFOR THE INDEPENDENT CHILDRENS LAWYER: MsFalloon SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Jennifer Weate & Associates ORDERS (1) Pendingfurther order, Mr B is appointed as a Case Guardian for the Respondent mother,Ms Rodgers, in these proceedings. (2) The document headed Minute of Consent Orders and signed by the parties shallbecome Courts Exhibit A intodays proceedings. (3) By consent and pending further order, orders are made in accordance withparagraphs 1 to 7 of Courts Exhibit A,asfollows: ThatOrder 2 of the Interim Orders made 6 February 2014, as amended on 18 March 2014,be varied so that [V] and [Y], both born ...2009 (the children)shall spend time with the father as follows: (i) In week 1: from 9.30 am on Saturday to 5.30 pm on Saturday, to commence onSaturday 13 September 2014; and (ii) In week 2: from 9.30 am on Saturday to 5.30 pm onSunday and for the purposes of changeover, the father shall collectand deliver the children to and from the mothersand Mr [Bs]residence. Thatan updated Report be prepared by Dr [R] whereby: (a) Dr [R] shall interview the parties, the children, Ms [L] and her children([M] and [N]), Mr [B] and any other people as determinedby Dr [R];and (b) Details of the mothers treatment and prognosis be provided to Dr [R]by the mothers treating doctors, as soon asinformation becomesavailable. Thatthe matter be listed for mention at a date convenient to the Court sometime inDecember 2014. ThatOrder 3 of the Orders made 6 February 2014 be discharged. Itis NOTED that the father and Case Guardian will discuss the children possiblispending additional time with the father during theirschool holidays providedthe overnight

time provided for above is going well. That Ms [Ss] fees for her reports be paid from the monies held on trust for the parties with the fathers solicitors, Willis & Bowring Solicitors. That the Independent Childrens Lawyer be reimbursed any monies she has paid for Ms [Ss] report that is annexed to her Affidavit filed 1 September 2014, from the monies held on trust for the parties with the fathers solicitors, Willis & Bowring solicitors. (4) The mother is to provide reports from her treating doctors in relation to her treatment and prognosis as soon as such information becomes available from time to time. (5) The father is to spend time with the children during the September/October school holidays for overnights on 29 and 30 September and 1 October commencing at 9.00 am on the first day and finishing at 6.00 pm on 2 October. (6) That any other application in relation to time during the December and January holidays is dismissed. (7) Pursuant to Section 65DA(2) of the Family Law Act 1975 (Cth), the particulars of the obligations these Orders create and the particulars of the consequences that may follow if a party contravenes these Orders are included in these Orders, annexed hereto. Notation: (8) That Dr R is unable to interview the parties until February 2015 and it is anticipated that her updated report will be available in approximately March or early April 2015. IT IS NOTED that publication of this judgment by this Court under the pseudonym Fontana & Rodgers 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 SYDNEY FILE NUMBER: SYC 7894 of 2011 Mr Fontana Applicant And Ms Rodgers Respondent

REASONS FOR JUDGMENT INTRODUCTION This is an application for orders in addition to orders which have been consented to by all of the parties today. It arises in circumstances where the final hearing in relation to the twin girls of the parties who are aged 5 was to commence today. The hearing was vacated last week following the Court receiving information in relation to the health of the mother to the effect that she has been diagnosed with a serious medical condition that requires her to remain in hospital for at least four weeks where she is receiving treatment and where she is unable to, at this stage, participate in these proceedings. A Case Guardian for the mother, being her husband was appointed pursuant to an order made earlier today. The current circumstances surrounding the children spending time with their father include, that he previously had significant involvement in their

care at one point in time and there was also a reasonably lengthy period of time where they spent little time with him. It is common ground that the child, Y, in particular had been suffering from a significant level of anxiety associated with being separated from her mother. For that purpose, both the children and the father have been receiving therapy from a clinical psychologist Ms S. The psychologist has provided a recent affidavit and annexed report dated 30 August in relation to the progression of the building of the relationship with the children and their father. It is a positive report in the sense that it reflects positively on the support given to the father in rebuilding that relationship and the psychologist says that in her observations she has not witnessed any anxiety or trepidation with the little girls connecting to their father and that they appear to have a secure attachment to him and his wife. The psychologist also says that on numerous occasions both of the girls have requested to sleep over at the father's home, which for Y is a positive improvement because she previously had expressed some trepidation specifically associated with spending the night at his home. The psychologist is of the opinion that both of the girls would benefit from increased contact with their father and extended family and that should include overnight time and all of the parties have agreed that overnight time should commence. The Consent Orders which I made provide for an increased regime of time for the girls to spend with their father and his family. It involves that every second week they will spend from Saturday morning to Sunday afternoon with him and his family. This is in addition to spending all day Saturday with their father on the alternate week. The application in addition to the Consent Orders is for some holiday time in the September/October holidays coming up and for sometime in the long Christmas holidays. So far as the September/October holidays is concerned, the application is for half the holidays, that is a week but there is a fall-back position which would be acceptable to the father and that is three nights. Ms Falloon on behalf of the Independent Children's Lawyer consents to the three night proposal and agrees that is in the best interests of the children, whilst the mother opposes both the three night and seven night proposal. Ms Falloon and the mother both oppose the Court making orders at this stage in relation to December and January. They essentially say that it is a premature application and that the Consent Orders do allow for agreement to be reached between the father and the Case Guardian about that holiday period.

Further, the outcome of the next step, being some overnight time, should be known and monitored prior to making any arrangement in relation to Christmas holiday time. Essentially the father presses for his application in relation to the Christmas school holiday period at this time because he says that it will save the time, expense and associated issues with coming back to Court for another application. The main reason that the application is opposed by the mother is that she says that the re-introduction involving overnight time will only have occurred on one occasion by the time these September/October holidays arise. Dr R, who is the Chapter 15 expert in the matter, has at all times expressed caution and taken time to reintroduce the children to their father. A very cautious and measured approach is essentially the mother's case and that it is too much too soon to go straight from one single night to three. The father and the Independent Children's Lawyer both referred to the information coming from Ms S as being much more current than Dr R. The Independent Children's Lawyer also submitted it may be that Dr R will change her position somewhat as a result of the clearly good work that has been done with Ms S. They would both seek that I attach particular weight to Ms S's report of 1 September. In the report, Ms S describes increasing distress with Y and V around the lack of certainty about future contact with their father as both girls have maintained they would like contact to increase in frequency and duration. Ms S said at this point that she was aware that the mother was seriously ill. Whilst it is true, (as has been pointed out by the mother's legal representative) that it appears that she may have received some inaccurate information, I do not think that it is a particular issue of significance, bearing in mind that the children have been expressing that they want to increase the frequency and duration of time spent with their father. It is the children who continue to say that they want to sleep over and to increase the time spent with their father. In all of the circumstances, I think that the parents and particularly the father to his credit have been very patient in relation to the reintroduction of himself and his wife to the children's lives. He has adhered to all of the expert advice that he has been given and participated in programs and appears to be genuinely taking on board everything that the experts are telling him and being guided by it. Ms S, whose information is the most current, was specifically directed to the issue of the children's or Y's anxiety in recommending more time spent with the father. I do not think that an increase from one

night to three nightsovernight is pushingthe children too hard in any way, though I do think thatseven nights is too much at this stage. Havingregard particularly to the issue of change in circumstances, it would beundoubtedly a difficult time for these children whentheir mother is seriouslyill. At this stage I accept the submission made on behalf of the IndependentChildrens Lawyer andthe mother that it is simply too early to be talkingabout December. Ialso think to the extent to which there is not a lot of faith put in thecapacity of the father and the Case Guardian to reach somesort of agreement,that it is premature. The father may be surprised that they are able to reachthat agreement. Again, especially,it will come to the point that it will beirresistible if the reports continue to be positive about thattime. I certify that the preceding eighteen (18) paragraphs are atrue copy of the reasons for judgment of the Honourable Justice Hannamdeliveredon 8 September 2014. Associate: Date: 14 October2014 AustLII:Copyright Policy|Disclaimers|Privacy Policy|Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/871.html>