

FAMILY LAW CHILDREN who child lives with APPLICANT: Mr Rasmussen RESPONDENT: Ms Rasmussen INTERVENOR: Department of Family and Community Services INDEPENDENT CHILDRENS LAWYER: Mr Haddock FILENUMBER: CAC 1664 of 2011 DATE DELIVERED: 8 May 2014 PLACE DELIVERED: Canberra PLACE HEARD: Canberra JUDGMENT OF: Faulks DCJ HEARING DATE: 8 May 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Miller SOLICITOR FOR THE APPLICANT: Watts McCray Lawyers COUNSEL FOR THE RESPONDENT: Ms Godtschalk SOLICITOR FOR THE RESPONDENT: Farrar Gesini Dunn ORDERS (1) The hearings being this day 8 May 2014 and 7-9 July 2014 are vacated. (2) Until further order, the mother will have sole parental responsibility for the children, B, born ... 2004, and C, born ... 2008. (3) The children will live with their mother. (4) The children will spend time with their father for a period of three hours once each month and will occur on the first Saturday of the month, unless the parties otherwise agree, and will be subject to professional supervision which will be paid for by the father. It is noted that the arrangements about the time the children spend with their father will be subject to the availability of the professional supervisor and cost and each of the parents will, if the arrangements set out before are not consistent with those qualifications, do their best to reach agreement about an alternative arrangement. (5) The children may, and their mother will help them to, communicate with their father by letters, cards and photographs and e-mails and their father may communicate with them in a similar way at any reasonable time, but not more than once a week. (a) The mother will convey those communications to the children but unless she forms the opinion based on reasonably objective facts that to do so would cause them harm or distress. (6) Until further order, the children will not have telephone contact with their father. (7) The children's mother will ensure that the children's schools, where it is appropriate that it should be so, will keep the father informed by any communications they may send from the school about activities at the school and at his request the school will provide the father with copies of reports in relation to the children. (8) The mother will communicate with the father by text message in relation to any medical activities relating to the girls and in particular any treatment that they may be undergoing from time to time not including minor common place diseases and illnesses. (9) Each of the parents be and is hereby restrained

from personally or causing or allowing any other person, so far as they are able to prevent it being done, from discussing these proceedings with the children or the proceedings involving the father in the criminal courts. (10) Any party has liberty to restore the matter to the list if there is a change in the arrangements about the criminal proceedings and in particular the Independent Children's Lawyer may either at the request of either of the parents or the Director cause the matter to be relisted to deal with any other issue that may arise in the meantime. (11) The matter is otherwise adjourned until the completion of the criminal proceedings against the father. IT IS NOTED that publication of this judgment by this Court under the pseudonym Rasmussen & Rasmussen and Anor 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 CANBERRA FILE NUMBER: CAC 1664 of 2011 Mr Rasmussen Applicant And Ms Rasmussen Respondent And The Department of Family and Community Services Intervenor REASONS FOR JUDGMENT The broad parameters of my decision in this matter are dictated or agreed almost by everyone in terms of what has been put to me today. There are some exceptions and I should probably deal with those, however I should indicate that there is agreement in this matter that Ms Rasmussen will have the sole parental responsibility for the children and that the children will live with her. If it were not the case that there was agreement about that (which, in itself, in my opinion, negatives the presumption), I am satisfied the presumption is rebutted in these circumstances and, even if I were not satisfied that it was otherwise rebutted, I take the view that is agreed at the commencement interim proceedings and that therefore presumption need not apply. The parties' lawyers and the independent children's lawyer have correctly concentrated on the arrangements that might properly be made for the children to spend time with or have some form of communication with their father. This is by no means an easy task given that various and competing factors that come into play in this matter. I have been significantly assisted by the report of Ms H (which became J1). I have listened very carefully to the submissions and to the questions that were put to her today and, in particular, matters arising out of the recent incidents, most particularly, the fact that Mr Rasmussen has been charged with offences in relation to each of the girls. It is properly important to record that it is in relation to each of the girls, not to one of them as was the

original allegation. I have not lost sight of the fact that the allegation is not of sexual abuse in relation to each but I do not think that alters the overall context of the matter. I think it would be a reasonable interpretation of Ms H's evidence, in the light of the matters that were put to her today, that, as Mr Haddock has put to me in his submissions, the balance of the harm that might be caused to the children from not having any time with their father and the harm that would be occasioned or could potentially be occasioned to them, both physically and psychologically, by their having time with their father might be resolved or the balance might be found in limited physical time under professional supervision. I do not recall her attitude to time on the telephone being explored as thoroughly as it has been in submissions this afternoon as with Mr Haddock, so I will return to that matter in due course. I am prepared to accept in this matter, for the reasons I shall articulate in a few moments, the advice of Ms H about the fact there should be some potential continuing supervised time for the children with their father. Mr Miller, in his submissions to me after consultation with his client and listening to the cross-examination, I think, has taken a responsible position to suggest that the supervision should, subject to availability and cost, be professional and available and he seeks one period of up to three hours once a month. In my opinion, that is an appropriate order. I think that it is impossible to be precise in the balancing of the various risks that are identified in this matter. I accept that, during a period of professional supervision, it is not reasonably possible for the girls to be physically harmed by Mr Rasmussen, even if he were so minded. The more difficult aspect of this matter, of course, is what psychological harm might be occasioned to them because of the newly arisen fact that Mr Rasmussen has been charged with a criminal offence and the girls must necessarily be involved in the prosecution of those offences in due course. At the moment, the evidence is that the girls are unaware of their involvement in their father's prosecution and it would be sensible for me to make orders (and I ask you to remind me if I do not) which would in large measure leave that situation in place during this period. Nevertheless, there is always the risk so far as the girls are concerned that their father and his wife or their friends or any members of the family may either directly attempt to influence them in what evidence they may give to the Court in due course the criminal Court or, and I think, in this case, far more likely, have an effect on the girls of

causing them either to take their father's side, whatever that may be, without necessarily understanding what it may be, or alternatively, expressing sympathy and love for their father, both of which seem to be things that the girls are prepared to do at the moment, in any event. They may be subconsciously affected in what they do and, while it would be an abuse of language to refer to such a thing as being coercive behaviour, the indirect effect of this may cause a difficulty for the girls. That is the primary risk so far as that element is concerned. I accept that the police, as their position has been reported by Ms Christie, may take a different view but their concerns are more about the success or otherwise of a trial rather than the best interests of the children. Against the risk that I have just articulated, and I do not pretend to do an exclusive or comprehensive analysis of all of the risks, is the risk that the girls may be deprived of a relationship with a father who claims to love them and for whom they appear to exhibit love as well, and the fact that, in the end, the allegations may not be proved. In that case, their relationship may be damaged permanently if they were to have no time with their father at all. This is a difficult balance, no matter how it is to be done, and, to be honest, at this stage of the evidence, it is impossible to make any satisfactory assessment of the fact of whether or not the abuse has occurred until the evidence has been tested in a more appropriate way. Given those two – if one might put it that way – risks of harm to the children, psychological or otherwise, it seems to me that it is helpful to turn to someone who has the qualifications – and the qualifications were not disputed – to make a more informed psychological assessment of the particular values of those risks and Ms H's advice, as I interpret it from the evidence she has given today, is that the supervised time that is now sought by the father falls within the proper range of conduct that would not impose an unacceptable risk on the children. I accept that opinions about that matter may differ but, in the context of these proceedings, it seems to me that that is an appropriate balancing of the risk. In coming to that conclusion, and I am conscious of the fact I have not said anything about telephone contact at this point, I do take account of the way in which the children are reported to have behaved in the presence of their father as an expression of a view, at least to some extent, that they want their relationship to continue. I note the nature of the relationship with the children in the past with their father and with their mother and I note that the fact that the children spend time with their father

may impose a strain upon their mother who will be, by any measure, on an interim basis and possibly permanently, their primary carer. I note that the proposal now made by the father is, as Mr Miller has correctly suggested, an indication of a degree of insight and an acceptance of responsibility on his part which must have been a hard thing to do and I accept that fact. I also accept, for what it is worth at this stage of the proceedings, that the mother has behaved entirely responsibly in the way in which she has presented herself and the case to the Court and she has deliberately been restrained in both the way in which she has pursued the allegations, while taking appropriate care and consideration for the safety of the children and her appropriate obligations as a mother for those children in those circumstances. So far as the telephone communication is concerned, this matter is extraordinarily difficult. I accept that the mother does not want to be the person who is looking over the children's shoulder or perhaps listening at their ear while they are talking on the telephone, and that in itself would not mean that it would not be appropriate that she should have that monitoring role. I do not think it would be appropriate either for Mr Rasmussen or for the children for him to have unmonitored conversations with them during this period pending the trial. The difficulty for Mr Rasmussen, taking perhaps the easier part of it first, is that if this was so, it could subsequently be asserted to him in the course of criminal proceedings or in proceedings in this Court, that he had nevertheless attempted to influence the children and, whether he did or not, an inference might be drawn that he conducted himself in a way which influenced them, if not coerced them within the meaning of the Act, to a position which was advantageous to him. So from one point of view, some form of supervision or monitoring is essential for Mr Rasmussen's care. Now, Mr Rasmussen's best interests are not necessarily what I am obliged to take into account and certainly not over the best interests of the children. So far as the children are concerned, it is difficult for them in the context of a conversation with their father to perhaps have the boundaries and warnings and protective safety nets around what might occur. With an adult who was otherwise an equal with the person on the other end of the phone. That would suggest that, in the children's best interests and for their protection, it would be important there should be someone who is capable of perhaps perceiving things that they cannot perceive at their age and to interfere if necessary to terminate the call. The only

logical person to do this is the mother and if she is willing and in this case, I think reasonably unwilling in the sense that it is not fair for her to be placed in the position of having to carry out this role if she is unwilling or unable to do this, then, in my opinion, the balance lies in there not being the telephone communication. That was contrary to the view that I in fact had formed about the situation before I came back into Court this afternoon, although I recognised that there were grave difficulties associated with the whole question of telephone communication that I had not thought through, but it seems to me that is the only reasonable way in which I could resolve the conflict. Accordingly, I shall make orders in those terms. I would suggest that we simply nominate a Saturday or a Sunday and that it should be either the first or the last Saturday or Sunday of the month so that there is a predictable time that everyone can plan for, but I will make that subject to the availability of the supervisory people. I think reasonably I would say the first is probably the easiest because it then is clear for what it is each month. The time that the children spend with their father will occur on the first Saturday of the month unless the parties otherwise agree and will be subject to professional supervision which will be paid for by the father. It is noted that the arrangements about the time the children spend with their father will be subject to the availability of the professional supervisor and cost and each of the parents will, if the arrangements set out before are not consistent with those qualifications, do their best to reach agreement about an alternative arrangement. Each of the parents is hereby restrained from personally or causing or allowing any other person, so far as they are able to prevent it being done, from discussing these proceedings with the children or the proceedings involving the father in the criminal Courts. I certify that the preceding twenty (20) paragraphs are a true copy of the reasons for judgment of the Honourable Deputy Chief Justice Faulks delivered on 8 May 2014. Associate: Date: 24 February 2016 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/843.html>

