

FAMILY LAW CHILDREN INTERIM ORDERS Time that children will spend with each parent

Children returned to fathers care after the making of a publication order and the execution of a recovery order in circumstances where the mother disregarded Court orders and took the children Mother and mothers family to spend supervised time with the children to prevent the children being removed again pending the obtaining of further evidence from the mother about the circumstances in which she removed the children and about issues of family violence and the capacity of both parents to fulfil their obligations as parents Family Law Act 1975 (Cth) APPLICANT: Mr Cody RESPONDENT: Ms Kilroy INTERVENOR: Mrs J Kilroy INDEPENDENT CHILDRENS LAWYER: Ms Fox for Ms Osmond FILE NUMBER: CAF 605 of 2006 DATE DELIVERED: 22 October 2007 PLACE DELIVERED: Canberra PLACE HEARD: Canberra JUDGMENT OF: Faulks DCJ HEARING DATE: 22 October 2007 REPRESENTATION SOLICITOR FOR THE APPLICANT: Ms Burgess COUNSEL FOR THE RESPONDENT: Mr Arthur SOLICITOR FOR THE INTERVENOR: Mr Ridge ORDERS (1) The children E, born on ... February 2003, and C, born on ... November 2004, will live with their father who will have primary parental responsibility for the children. Such care and responsibility will be exercised in consultation with the children's mother. (2) The children will spend such time with their mother and other relatives including their maternal grandmother and their stepsister as may be reasonably organised with Anglicare ... on the basis that that may occur as frequently as every day if such is able to be arranged. (3) The mother, the father, the children and the maternal grandmother will attend upon the Family Consultant, Ms L, at such time or times as she will nominate for the purposes of enabling her to prepare a family report. (4) The Independent Children's Lawyer have leave to issue subpoenas to the Queensland Department of Child Safety and the Queensland Police in relation to the incidents surrounding and of the execution of the recovery order, and to the Queensland Police in relation to the criminal record of Mr V. (5) The proceedings be adjourned to 30 November 2007 at 10:00 am unless the parties are earlier notified because of the fact that Ms L may not be able to prepare the Family Report by that time. (6) The mother have liberty to file an affidavit in which she sets out the circumstances relating to, or the circumstances giving rise to, her departure from the NSW Southern Tablelands area and her failure thereafter to comply with the

orders made by Federal Magistrate Mowbray on 23 August 2006. That material will also give indications on what she did during her absence from the NSW Southern Tablelands area and how she looked after the children during that period. (7) The mother can also set out a Minute of the Orders she proposes on a formal basis finally and will complete a questionnaire to allow the process of the Less Adversarial Trial to progress. (8) The maternal grandmother who has leave to intervene in these proceedings will also complete a questionnaire as soon as possible and file and serve copy of it on the other parties involved in the proceedings. IT IS NOTED that publication of this judgment under the pseudonym Cody & Kilroy is approved pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth).

FAMILY COURT OF AUSTRALIA AT CANBERRA FILE NUMBER: CAF605 of 2006 MR CODY Applicant And MS KILROY Respondent And MRS J KILROY Intervenor

REASONS FOR JUDGMENT

In this matter I will make orders of a similar sort to those suggested by the Independent Children's Lawyer and I will briefly give my reasons for doing so. In coming to the conclusions I do I take account of the Principles and Objects set out in s 60B of the Family Law Act 1975 (the Act) and in particular as a backdrop to my decision making the fact that it is important that the children have a meaningful involvement with each of their parents and that they be protected in effect from physical violence and otherwise from the possibilities of any intervention by other parent or by any other third person. Any determination I make must in accordance with the provisions of 60CA be made in the best interests of the children as the paramount consideration. I am also obliged in coming to that conclusion to take account of the primary considerations set out under s 60CC which include the benefit to the children of having a meaningful relationship with each of their parents and the need to protect them from physical or psychological harm. In these circumstances, looking at those primary considerations at this point it seems difficult to contemplate that in circumstances where there has been a flight with the children in what would appear at this point to be fairly blatant disregard of Court orders that there would not be at least a substantial risk occasioned to the children and hence their relationship with their father if I were to put them in a situation where they might again be absconded with by their mother. I am not suggesting that the children, on the evidence before me at the moment, would be in any physical or psychological harm in being with their mother, although I note

that the report which became part of the evidence in these proceedings by the police raises some questions about those matters. Those are matters which ought to be the subject of a more detailed consideration with the assistance of Ms L, the Family Consultant. The matters which I take into account in determining the children's best interests include the likely effect that the arrangements would have on the children having been separated from their mother. I suspect that this would be a matter of concern, given what has happened and it would be a matter of great regret to me that this should be so. It is also a matter of regret to me that in the circumstances of this matter I would have to, in effect, expose the children to that possibility because of what I regard as being the effect of the mother's disregard previously of the Court orders. There will be an opportunity for the children to spend time with their mother and their grandmother on a regular basis in circumstances where there will be no risk for them in being taken away again, and that I take into account and balanced with my concerns about the effect on the children of their separation from the full-time care of their mother. At this point I am unable to assess with any degree of accuracy the capacity that either of the parents has properly to provide for the needs of the children including their emotional and intellectual needs. In this regard I note that in the past it has been asserted that the father might not be able to do those things and I note also that the children's mother, in apparent disregard for their emotional needs, had removed them from the area in which they had grown up and then, adapting Mr Ridges words, on which they had become well settled before her departure in the NSW Southern Tablelands area, with their mother, grandmother and their stepsister. I am concerned about the attitude of the mother to her responsibilities as a parent. I would have to say on the evidence at present available to me the father has demonstrated a higher level of responsibility in more recent times than has the mother. That is a matter which will not necessarily reflect in final orders but a matter I have to take into account now. I have had some evidence about family violence involving the children, none of which is in a form which helps me particularly, part of it involves the incident around which the children were recovered, part of it involved the allegation of the mother about the incidents that have occurred between her and the children's father in the past. None of the matters at this point is sufficiently advanced in the presentation of evidence before me to enable me

to make a firm conclusion about it one way or the other. I have also to take account under s 61DA as to whether I should even at this point make an order requiring that the parents share parental responsibility for the children equally. In my opinion pending a further determination where the children ought principally to live and I note the father in the end wants the children to spend time with each of the parents, substantial time with each of the parents which would, in itself ordinarily involve the making of an order for joint parental responsibility. In the meantime until I can move towards that position more permanently it seems to me that the father should have parental responsibility for the children, not to be exercised, I might add, in this matter without some consultation with the children's mother but he should have that primary responsibility. Such a determination removes from me the obligation under the presumption contained in s 61DA from considering whether the children should live equally with each of their parents or spend substantial and significant time with each of their parents. In any event, for the reasons I have outlined in my opinion, especially as this is an interim matter I would not ordinarily make an order of that sort at this point in the circumstances of this matter. Accordingly, the orders that I make on an interim basis, pending further determination of this matter after the family report has been prepared are as follows. I will give you an opportunity in a moment to put to me what other evidence you might want to put before the Court on the next occasion. I do not want to preclude your client having her side of the story told. Equally I do not want to have vast swathes of affidavits about the past in circumstances where until we have seen what the Family Report says and we can then determine what is crucial for the future consideration. I certify that the preceding thirteen (13) paragraphs are a true copy of the reasons for judgment of the Honourable Deputy Chief Justice Faulks Associate Date: 28 November 2007 AustLII: Copyright

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