

FAMILY LAW ORDERS Contravention Where the husband filed a contravention application in relation to parenting orders Application dismissed Family Law Act 1975 (Cth) APPLICANT: Mr Bagheri RESPONDENT: Ms Goudarzi FILENUMBER: SYC 7646 of 2008 DATE DELIVERED: 5 September 2014 PLACE DELIVERED: Sydney PLACE HEARD: Sydney JUDGMENT OF: Benjamin J HEARING DATE: 5 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr P R Cummings SOLICITOR FOR THE APPLICANT: Barkus Doolan COUNSEL FOR THE RESPONDENT: Ms Goudarzi SOLICITOR FOR THE RESPONDENT: ORDERS The application for contraventions contained in the document filed 18 February 2014 be dismissed. Each of the parties attend a PPP Parenting Course conducted by Relationships Australia or similar course recommended by the Director of Relationships Australia New South Wales, such course to be undertaken and completed within twelve (12) months from the date of this order. IT IS DIRECTED A copy of the reasons for these orders be taken out and placed on the Court file. IT IS CERTIFIED Pursuant to Rule 19.50 of the Family Law Rules 2004 it was reasonable to engage senior counsel and counsel to attend. IT IS NOTED that publication of this judgment by this Court under the pseudonym Bagheri & Goudarzi 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 7646 of 2008 Mr Bagheri Applicant And Ms Goudarzi Respondent REASONS FOR JUDGMENT This is an application by Mr Bagheri (the husband) asserting a number of contraventions by his former wife Ms Goudarzi (the wife) set out in a contravention application filed in this Court on 18 February 2014. In that document the husband asserts that there were, in essence, five contraventions. Firstly, on 4 January 2014, that the wife without reasonable excuse refused to allow the parties children to live with him in accordance with the order made by consent on 23 April 2013. The second and third contravention allegations arise following the parties son breaking his arm, or damaging his arm, on 27 November 2013. The husband asserts that the wife did not keep him informed of any major medical issue contained in order 27, made in April last year, and failed to provide him with the detail of the medical professionals contained in order 26 of that order. The fourth and fifth alleged contraventions arise in respect of order 32, made in April last year, about the parties

keeping the other informed as to dates and as to places they are staying when they are away on holidays. The husband asserts that the wife failed to inform him of a holiday on the Gold Coast in early July 2013, and apparently a trip to Melbourne in September 2013. The husband relied upon his affidavit filed 18 February 2014 together with the documents attached to it. He gave evidence, and was cross-examined by the wife. The wife denied the breaches, and implicitly said if there were breaches, there was a reasonable excuse and the contraventions ought not to be established. The wife prepared an affidavit in April 2014, although she deposes that that affidavit was sworn before a solicitor on 3 September 2014, and that is confirmed by the jurat on page 3 of the affidavit. There is no issue that the wife was present in court when the orders were made. Equally, there is no issue that when the orders were made she was represented by both solicitors and competent counsel. There is no issue that the application was served personally upon her. I will deal with each of the three, the latter two being groupings, individually, as I am obliged to do so and I will consider the evidence as it stands. The first arises out of the circumstances in January of this year, where the husband clearly anticipated he would have the children at a time when the wife clearly anticipated they would be going to the B Training Camp. There seems to be no issue that, but for order 8.7, the children would otherwise have been with the husband. It is of value to me to read 8.7 and put it on the transcript. It says:- Notwithstanding any other Order herein, with the Mother for a period of ten (10) days over the Summer School holidays to facilitate the children's attendance at the [B Training Camp], provided that if the [B Training Camp] falls over a period that the children would otherwise be in the Father's care pursuant to these Orders the Mother shall facilitate the children spending make-up time with the Father as agreed between the parties and the make up time shall be in one consecutive block period added to (either at the beginning or the end) of another block period the children live with the Father the same year. It is clear that the wife wrote to the husband on 3 July 2013 informing him of the camp for 2014, and making suggestions to him as to what alternate times he should take. It is not as clear in relation to his reply. The husband replied on 3 July 2013 making it clear from the email, by including 8.7, that he expected there to be an agreement. He says that he said he would get back to her in due course, although on the reading of the email it

looks like that related to the September holiday. But, in any event, he made it clear that no agreement had been reached at that stage. There is significant animosity on the part of the wife to the husband's solicitors, which comes out clearly in her affidavit. She has adopted a position where she has a solicitor acting for her in the property proceedings but is acting for herself in relation to parenting matters. I suspect that this puts some pressure on the solicitors for the husband in terms of how they deal with a person who is part represented and part not represented. But in any event, on 20 November 2013 the husband's solicitors wrote to the wife in relation to the holiday proposals. The wife sent a fairly inflammatory letter back to the solicitors, complaining, amongst other things that the husband had not engaged in the process of mediation or resolution of the process, as was set out in the orders. She wrote to the husband directly on 13 December 2013 and received a reply the same day saying that she should speak with his solicitor and that he did not intend to negotiate directly with the wife. It is the clear interpretation by the husband that any agreement has to be reached prior to the children attending the B Training Camp. My interpretation of that provision is not in that form. It seems to me that 8.7 makes it clear that the children attending the B Training Camp take precedence over other orders contained therein. The wife has an obligation to facilitate make-up time in the following year, or that year, and in this case she did do so, and furthermore even if that didn't comply there is time left and I think it did, given the consent orders before Johnson J in April of this year for that make up time to have been put in place. Accordingly, I am not satisfied on balance that the wife has contravened the order in relation to the Christmas to the New Year period by taking the children to the B Training Camp. It may be that the wife is difficult. It may be that the wife is at times discourteous. But it is not in my view, upon reading that provision, an unreasonable interpretation that the consent can happen in the following January 2012 in terms of that order. Accordingly, that aspect of the claim must fail. The second aspect of the claim for the contravention application relates to the parties son breaking or damaging his hand in November 2013. Order 27 provides, and I quote:- That each party shall keep the other informed via email of any major medical issues involving the children, including any details relating to the children's attendance upon a medical practitioner and any treatment prescribed. Order 29, provides:- That each party shall inform

the other as soon as reasonably practicable, and in any event within twenty- four (24) hours, of any of the following which occurs whilst the children are in their care: 29.1.1 Serious medical problem or illness suffered by the children; 29.1.2 Medication that has been prescribed for the children that needs to be taken whilst the children are in the care of the other party; and 29.1.3 Other significant matters relevant to the welfare of the children. What in fact happened on that day is that this child suffered the injury to the hand or the arm. The wife took the child to C Hospital and then on that day informed the husband of that event. That is not contentious. She sent him an email or a text at 6.04 pm on that day, as set out in paragraph 39 of the husband's affidavit. It is not in issue that later that evening the husband met with his children and took them for a walk. The wife was asked by the husband on 6 December to provide some details in relation to the medical treatment provided and she did so the following day by providing the name of the hospital. She was unable to provide the names of the doctors because the child was taken to the emergency section. I am not satisfied on balance that the wife has contravened those orders. I am satisfied that she has complied with the terms of the orders. If I am wrong in this respect I am satisfied that given the information provided and given the text and the availability of the children, it would have amounted to a reasonable excuse in any event. Accordingly, those two contraventions are likewise dismissed. The final two relate to the holidays and it is clear that the wife took the children on holidays and it is equally clear that she did not keep the husband informed of the precise details of where she was staying. The wife does not dispute those circumstances. She did, however, provide some details to the husband, sent him texts, photographs and other material. The wife says that on her knowledge the husband was, for the first holiday, in Iran. The husband's evidence is that he was there but he cannot recall whether it was at the time of the holiday or some other period around that time. There is also evidence that the husband has, from time to time, taken holidays and moved children from hotel to hotel without informing the wife. I am satisfied that on the evidence the wife has prima facie contravened those orders on 28 September 2013 and 3 July 2013. However, given the approach adopted by the parties and given the de minimis nature of those contraventions, I am satisfied that there is, in all of the circumstances, a reasonable excuse and also having regard to the material that was provided to the

husband. Accordingly, those two final contravention assertions will likewise be dismissed. Mr Cummings asked me to look at this in context and I have looked at the contravention in the context that the parties have engaged in adversarial proceedings over many years. I certify that the preceding seventeen (17) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Benjamin delivered on 5 September 2014. Associate: Date: 5 September 2014

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