

FAMILY LAW INTERIM ORDERS CHILDREN PARENTING who child lives with. APPLICANT: Mr Bailee RESPONDENT: Ms McKayla INDEPENDENT CHILDREN'S LAWYER: Ms Godschalk FILE NUMBER: CAC 188 of 2012 DATE DELIVERED: 23 January 2014 PLACE DELIVERED: Canberra PLACE HEARD: Canberra JUDGMENT OF: Faulks DCJ HEARING DATE: 23 January 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Ms Tonkin SOLICITOR FOR THE APPLICANT: Strong Law Pty Ltd COUNSEL FOR THE RESPONDENT: Ms Burgess SOLICITOR FOR THE RESPONDENT: Legal Aid ACT ORDERS (1) This matter be set down for hearing on a date to be notified to the parties within this matter be set down for hearing on a date to be notified to the parties within the next two months for four days. I note that this may not be until June 2014 although if an opportunity exists for it to be dealt with earlier it should be dealt with earlier. (2) Until further order, the children B and C, born ... 2008, will live with their mother. (3) Their mother will have sole parental responsibility for the children. (4) The children will spend time with their father in the presence of their paternal grandparents or at least one of their paternal grandparents (such grandparent to have undertaken and to complete training in dealing with B's diabetes) as follows: (a) From 4:15pm until 5:15pm or such further times as the mother might in the circumstances arrange on two alternate Wednesdays, the first of such Wednesdays being 29 January 2014 and the second being on 12 February 2014. (b) Thereafter the children will spend two hours with their father on each alternate Sunday morning from 9am until 11am (unless the parents otherwise agree). (c) Unless the parents otherwise agree the time that the father spends with the children will occur at the D Town in New South Wales. (i) Notwithstanding the terms of the last mentioned order, it would be sensible for the parents to modify that arrangement in the event that appropriate weather does not coincide with the time the children are spending with their father. IT IS NOTED THAT: (5) The paternal grandmother, Ms E, has the telephone number of the mother and it is agreed that she may have contact with the mother for the purposes of making the arrangements or any variation to them as set out above. (6) The mother, at this point, objects to sending B's insulin pump with her to the time that she spends with her father and that this will not occur on the first two occasions that the children spend time with their father. Thereafter, unless there is a further order of

this Court, the mother will send the insulin pump with B for the purposes of the time that she spends with her father. (a) In relation thereto it is noted the father agrees that any damage to the pump which could occur while B is with him will be his responsibility and he will pay for the repairs or the replacement of the pump if necessary. (b) It is further noted that the father and his mother have agreed that they will undertake appropriate training to deal with any issues that may arise from B's diabetes and will commence such training as soon as practicable with a view to their being at least preliminarily trained prior to the longer periods that the children will spend with their father. (c) If there is a practical difficulty associated with this issue there be liberty on behalf of the Independent Children's Lawyer to relist the issue before me at short notice to the other parties. IT IS FURTHER ORDERED THAT: (7) Each of the parties will refrain from and by order of this Court restrained from initiating any discussion with the children about these proceedings and if the mother requires any assistance in communicating with the children about the arrangements that are to occur then she may reasonably call upon Ms F, a Family Consultant of this Court, to assist her in communicating effectively with the children about any matters that are causing them concern. (8) I note that prior to the hearing affidavits from each of the parties will be filed which will deal with issues principally arising since their last affidavit or more particularly directed to the time that the children spend with their father during the forthcoming period before the trial. These will include affidavits by each of the parents, an affidavit from the maternal grandmother, affidavits from the paternal grandmother and grandfather, a psychological report in relation to the father in accordance with terms to be agreed between the mothers solicitors and the fathers solicitors, the written responses to a series of questions to be administered to Dr G by or on behalf of the Independent Children's Lawyer and an affidavit from Mr H. (9) There be a general liberty to apply in relation to the issues before the Court and for the sake of clarity the two hour visits will commence on 23 February 2014. IT IS NOTED that publication of this judgment by this Court under the pseudonym Bailee & McKayla 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 188 of 2012 Mr Bailee Applicant And Ms McKayla Respondent REASONS FOR JUDGMENT I just briefly indicate that in the matter of Bailee &

McKayla I have before me matters for direction for a final hearing, and pending the final hearing, there is a request for an interim order in relation to time that the father might spend with the children. In this regard, the criterion that I am obliged to apply by the Act and which in any event is one which I believe to be appropriate is that I should make the best interests of the children my paramount consideration. In coming to a conclusion about what is in the best interests of the children, the Act provides some guidance about a number of matters to be taken into account. I should indicate that I do not think that in the short term I should, on an interim basis, make a determination about whether or not the presumption about equal shared parental responsibility should apply. In my opinion, on an interim basis the mother should retain sole parental responsibility in relation to the children. Factors I am obliged to take into account at the moment are relatively constrained by the circumstances and by the nature of the order that I am being asked to make on an interim basis. I am persuaded from the evidence such as I have that there is, at least, the potential for the children to have a meaningful relationship with both of their parents which includes, of course, their father. I am satisfied also that it is necessary for me to ensure that the children are protected from physical or psychological harm or being exposed to abuse, neglect or family violence. In circumstances where the children spend their time with their father, accompanied by his parents, I believe that there is no unacceptable risk that the children could be exposed to any such physical or psychological harm. I am conscious of the fact that because of the attenuated nature of the relationship of the children with their father - to the extent that it might be reasonably referred to as a relationship at all - the time involved must necessarily be limited. It is argued on behalf of the mother, that it is preferable that the issues that need to be determined are first determined before any time is spent by the children with their father. While I understand the logic behind such a submission, it seems to me that it is important in a context where there is no immediate evidence that the children would be disturbed by spending time with their father, and given the nature of the recommendations from the single expert and the support in this regard of the independent children's lawyer, that there should be an opportunity for the children, in circumstances of safety for them, to have some time with their father prior to the trial of this matter. This is not to suggest the children should be subjected to some sort of experiment but rather that

there is no contrary indication at this point that it would not be an appropriate fulfilment of this court's obligation to look at what might be the most appropriate arrangements for the children at the expiration of the trial. That includes a consideration of the fact that their time with their father may be such a result, and if it is, that it would be useful to at least explore at this point, the parameters of that relationship and the time the children might spend in taking that opportunity. I accept that there will be some changes for the children necessarily implicit in this, but I am satisfied that the interference with their normal daily routine is minimal in the overall circumstances. I have taken account of the capacity of each of the parents to look after the children and be concerned about their welfare, and in this regard I note that the father will be assisted to overcome whatever shortcomings the mother may believe he has in this regard, by the presence of his parents. I am satisfied that the attitude expressed by each of the parents in this case fulfils what might be called their parental responsibility about the safety of the children. I acknowledge the mother's concerns, but say in these circumstances that I believe that these orders are, notwithstanding her reservations, consistent with her concerns. Those are the matters that I believe to be important under section 60CC. I certify that the preceding twelve (12) paragraphs are a true copy of the reasons for judgment of the Honourable Deputy Chief Justice Faulks delivered on 23 January 2014. Associate: Date: 28 January