

FAMILY LAW CHILDSUPPORT Enforcement where wife alleges husband has failed to meet obligations pursuant to Binding Child Support Agreement where husband submits error occurred as a result of a direction from the Child Support Agency husband transferred lump sum on day of hearing wife's application dismissed and no order as to costs. Family Law Act 1975 (Cth)

APPLICANT: Ms Zanella RESPONDENT: Mr Zanella FILENUMBER: ADC 1395 of 2007 DATE DELIVERED: 23 October 2014 PLACE DELIVERED: Adelaide PLACE HEARD: Adelaide JUDGMENT OF: Dawe J HEARING DATE: 23 October 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: n/a SOLICITOR FOR THE APPLICANT: In Person COUNSEL FOR THE RESPONDENT: n/a SOLICITOR FOR THE RESPONDENT: In Person

ORDERS Upon Noting the husband has today transferred to the wife's Westpac Banking Corporation account number ... the sum of SEVEN THOUSAND EIGHT HUNDRED AND TWENTY-FIVE DOLLARS [\$7,825.00] such sum being a debt due and owing by the husband to the wife in relation to the property settlement orders outstanding for the year 2013. (1) The Application in a Case filed by the wife on 27 June 2014 is dismissed and removed from the pending cases list UPON NOTING the Court grants leave for the parties to reinstate the matter for further directions before the Honourable Justice Dawe (if necessary) upon giving the other party fourteen [14] days written notice of the request to the Family Court of Australia. IT IS NOTED that publication of this judgment by this Court under the pseudonym Zanella & Zanella 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 ADELAIDE FILE NUMBER: ADC 1395 of 2008 Ms Zanella Applicant And Mr Zanella Respondent EX TEMPORE REASONS FOR JUDGMENT

There are no applications for final orders before the Court. In relation to the Application in a Case the wife is seeking an order of costs of the sum of \$127.25 in accordance with the sums expended that have been set out in the annexure to the affidavit filed on 21 October 2014 which the husband says she has not yet received. Section 117 indicates that subject to subsection (2) each party should bear their own costs. The matters to be taken into account in subsection (2) of section 117 deal with the various matters including the financial circumstances of the parties and the conduct of the litigation by the parties. In relation to this matter and taking into account the history of the matter,

the amount of somewhat irrelevant material from time to time which has been put before this Court, and the difficulties the parties have experienced in sorting out controversies with the Child Support Agency I do not consider it appropriate or just and equitable in these circumstances to make any order for costs. That will mean that both parties should bear their own costs in relation to these proceedings in the Application in a Case and the Response to the application. The Court has received exhibit 1 which indicates that following upon a request from me the husband has paid the wife the sum of \$7,825 which brings the payments due pursuant to the property settlement as at December 2013 up to date. Payments due in relation to 2014 are due and payable by 1 December 2014. I have explained to the parties that considerable penalties could apply (and interest will no doubt run) if this order is not obeyed promptly. Other matters which are being sought deal with what is a dispute concerning the payments required pursuant to the Child Support Agreement which was referred to and annexed to the order of 21 December 2010, being a Binding Child Support Agreement signed by the parties which provided not only that the husband pay periodic child support as assessed but that he also pay non-periodic child support consisting of 20 per cent of the school fees and all associated school costs such as sports fees and other items, and also all private health insurance cover for the children. The parties claim they have faced difficulties in relation to the Child Support Agency apparently demanding that payment of the non-periodic child support amounts be paid by the husband to them and not to the wife and allegedly thereafter not treating them as non-periodic child support payments but treating the payments that the husband makes as payments of periodic child support. These are matters which should be urgently dealt with by the Child Support Agency. Clearly, if the monies paid by the husband to the Child Support Agency have been treated as periodic child support (and should have been paid to the wife either as payments of non-periodic child support or paid to the wife pursuant to the order for property settlement) then those matters need to be clarified by the Child Support Agency. If the monies have been treated as periodic child support payable to the wife then the husband must forthwith make the difference up between those amounts which have been paid for non-periodic child support and instalments in advance for property settlement payments which are due on 1 December 2014. In view of the difficulties that

the parties have experienced in that regard I will not, as I might otherwise, dismiss the Application in a Case and Response but will dismiss the Application in a Case at the same time granting leave for the parties to reinstate the matter upon giving the other party fourteen days written notice of the request to the Family Court to reinstate the matter before me. I certify that the preceding eight (8) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Dawe on 23 October 2014. Associate: Date: 24 October 2014 AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2014/911.html>