

FAMILY LAW PRACTICE AND PROCEDURE Joinder where paternal grandmother seeks to intervene in proceedings paternal grandmother will seek an order to spend time with the child matter already listed for trial leave to intervene granted on the condition that the paternal grandmother specify orders sought. Family Law Rules 2004 (Cth) r 6.05 APPLICANT: Ms Parker 1st RESPONDENT: Ms Medwell 2nd RESPONDENT: Mr Calvett INDEPENDENT CHILDRENS LAWYER: Ian Charman and Associates FILE NUMBER: ADC 4367 Of 2013 DATE DELIVERED: 30 September 2014 PLACE DELIVERED: Adelaide PLACE HEARD: Adelaide JUDGMENT OF: Dawe J HEARING DATE: 30 September 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Ms Jobson SOLICITOR FOR THE APPLICANT: The Family Law Project COUNSEL FOR THE 1ST RESPONDENT: Mr Fryer SOLICITOR FOR THE 1ST RESPONDENT: Adelaide Lawyers COUNSEL FOR THE 2ND RESPONDENT: n/a SOLICITOR FOR THE 2ND RESPONDENT: n/a COUNSEL FOR THE INDEPENDENT CHILDRENS LAWYER: Mr Charman SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Ian Charman and Associates ORDERS (1) Leave is granted for the paternal grandmother to intervene in the proceedings UPON CONDITION THAT: (a) on or before 4.00 pm on Tuesday 14 October 2014 the paternal grandmother file and serve a Response to the Initiating Application setting out specific details of orders sought for time to be spent with the child S born on ... May 2013; (b) on or before 4.00 pm on Friday 24 October 2014 the paternal grandmother file and serve an affidavit of Evidence-in-Chief such an affidavit to include copies of all exhibits upon which the paternal grandmother proposes to rely. IT IS NOTED that publication of this judgment by this Court under the pseudonym Parker & Medwell 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 ADELAIDE FILE NUMBER: ADC 4367 of 2013 Ms Parker Applicant And Ms Medwell First Respondent And Mr Calvett Second Respondent EX TEMPORE REASONS FOR JUDGMENT I have before me today an Application in a Case filed on 26 August 2014 on behalf of the paternal grandmother, Ms Parker. The Application in a Case seeks order that: (1) this application be heard urgently as the matter is listed for trial; (2) the applicant paternal grandmother be granted liberty to intervene in these proceedings. The affidavit filed on the same day sets out the history of the

litigation between the mother and the father concerning the childS (the child), and past relevant matters. Much of that evidence is already before the Court. There is an indication that the paternal grandmother has some interaction with her son, but it appears that she has not been able to access copy documents for these proceedings through her son. In the affidavit she does not specify what orders she would be seeking if she was granted leave to intervene, save and except in paragraph 33: I seek an order to be at liberty to intervene in the proceedings. If granted liberty to be joined as a party I will be seeking an order to spend time with [the child]. When that difficulty was raised with counsel this morning, the matter was stood down so she could take instructions as she did not have instructions about the sort of order the paternal grandmother would be seeking if she was given leave to come before the Court in the trial which is already listed. When the matter returned before me, there was an indication that the paternal grandmother would be seeking supervised time every second weekend for two hours until an attachment was established and then further changes to those arrangements depending upon, as I understand it, the attachment. The proceedings that are currently before the Court between the mother and father concern the best interests of the child, who was born in May 2013. The current orders provide for the child to live with the mother. There are serious issues raised in the documents already before the Court concerning the need to protect the child. The matter has been set down for trial and specific orders made on 10 June 2014 for the matter to be prepared for trial commencing on 8 December 2014. Included in those orders made in June was an order that there be a section 62G(2) report prepared. I am told from the bar table that appointments were made for the mother and father to attend upon the Family Consultant preparing the assessment last week. The Court has the capacity to dispense with the Family Law Rules 2004 (Cth) if they are not obeyed. The failure to comply with rule 6.05 in this case can be dispensed with. In particular, the question of what is in the best interests of the child will include factors relevant to the child's Aboriginal heritage which is referred to in paragraph 32 of the paternal grandmother's affidavit. The father has not attended today and there is no one appearing on his behalf. It appears from remarks made from the bar table by counsel for the paternal grandmother that the father did not consider it necessary for him to attend today. That explanation is unsatisfactory. However, taking into

account all of the factors, I am of a view that notwithstanding the mother's opposition to the paternal grandmother participating in the proceedings, that it is appropriate to grant leave to the paternal grandmother provided that there are conditions attached to that leave which will ensure that the matter is still prepared for trial on the dates set and there is no delay in hearing the matter so that final orders can be made relieving the parties from further litigation as soon as possible. That is a factor which I consider would be in the best interests of the child in any event. The Court will therefore grant leave for the paternal grandmother to intervene in the proceedings on conditions. The only evidence the paternal grandmother is proposing to call is that of herself. The Independent Children's Lawyer will endeavour to arrange for the family consultant to consider the paternal grandmother's application, and, if possible, conduct necessary interviews. Once the paternal grandmother has complied with the orders, she will be a party to the file so the legal representatives will have access to the file. The orders of 10 June 2014 are maintained. The matter remains listed for a compliance check before me on 25 November at 9.15 am and the matter remains listed for the final trial commencing on 8 December 2014 for seven days. When the trial is before me, I will be concerned to ensure that the cross-examination of the mother's witnesses by the counsel for the paternal grandmother deal with the issue of time spent with the paternal grandmother. The father and his counsel will deal with the issue of final orders concerning parental responsibility and with whom the child lives. I will not be giving the paternal grandmother or her counsel open slather to delay the trial or ask questions which deal with issues which do not relate to the paternal grandmother's time with the child and the conditions that should apply if there is any time granted. The father is already on notice that if he does not comply with the orders and file documents as already ordered, the question of parental responsibility, with whom the child lives and his time with the child may be dealt with in his absence and on a what is described as an undefended basis. I certify that the preceding eighteen (18) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Dawe delivered on 30 September 2014. Associate: Date: 9 October 2014

