

FEDERAL CIRCUIT COURT OF AUSTRALIA

NDIAYE & GUEYE

[2014] FCCA 45

Catchwords:

FAMILY LAW – Parenting – [X] aged 12 years – separation prior to [X]’s birth – litigation over 5 years – history of unsustainable contact arrangements – Father’s past history of alcohol abuse – poor parental alliance – [X]’s health issues require parental vigilance – limited time ordered.

Legislation:

Family Law Act 1975, ss.4, 60B, 60CA, 60CC, 61DA, 65DAA, 65DAC

Cases cited:

MRR v GR [2010] HCA 4

| | |
|--------------------------|------------------------------------|
| Applicant: | MR NDIAYE |
| Respondent: | MS GUEYE |
| File Number: | MLC 11575 of 2009 |
| Judgment of: | Judge Sexton |
| Hearing dates: | 22 & 23 August and 31 October 2013 |
| Date of Last Submission: | 31 October 2013 |
| Delivered at: | Sydney |
| Delivered on: | 15 January 2014 |

REPRESENTATION

| | |
|---|---------------|
| Solicitors for the Applicant: | In person |
| Solicitors for the Respondent: | In person |
| Counsel for the Independent Children's Lawyer: | Ms O'Rourke |
| Solicitors for the Independent Children's Lawyer: | Legal Aid NSW |

**THE COURT ORDERED BY CONSENT AND ON A FINAL BASIS ON
31 OCTOBER 2013 THAT:**

- (1)
- (2) Except as provided by Order 3 the parties shall have equal shared parental responsibility for the child, [X] ('[X]'), born [in] 2001.
- (3) Other than for emergency treatment when in the care of the Father the Mother have sole parental responsibility for decisions relating to the health of [X].
- (4) [X] live with the Mother.
- (5) In addition to the time that the Child spends with the Father as set out in these Orders and subject to the Father being in compliance with Orders (9) and (15), [X] spend time with the Father:
 - (a) On Father's Day from 9.00am to 6.00pm; and
 - (b) On [X]'s birthday from after school to 6.00pm if a weekday and from 4.30pm to 7.30pm if on a weekend of non-contact weekend.
- (6) The parties be entitled to attend all events involving [X] including:
 - (a) Sporting fixtures;
 - (b) Extra curricular activities that allow for parental attendance;
 - (c) School functions and events that allow for parental attendance including but not limited to concerts, school assemblies, sports days, parent and teacher interviews, canteen duties and social functions; andthe party who has [X] in his/her care on the day of such activity be responsible for his day to day care at such event and his transportation to and from that event.

- (7) [X] have liberal communication by telephone with the Father at reasonable times as follows:
- (a) Between 7.30pm and 8.00pm each Monday, Wednesday and Friday, with the Father to telephone [X] on the pre-paid mobile provided by the Father; and
 - (b) At any other reasonable time when [X] may wish to telephone the Father.
- (8) For the purposes of facilitating [X]'s time with the Father at the commencement of contact periods, the Mother deliver [X] to the Father at [omitted] Plaza and collect [X] from the Father's residence at the conclusion of [X]'s time with the Father.
- (9) The Father be restrained from drinking any alcohol for 24 hours before and during any time [X] is spending with him and the Father's time with [X] in these Orders is conditional upon the Father complying with this Order.
- (10) Both parties are restrained from initiating any discussion about [X]'s hair, including requesting or suggesting [X] change his hairstyle, **and the court notes** [X] will make a request of his Mother when he wishes to have his hair cut.
- (11) Both parties are restrained from making threatening, critical or derogatory comments about the other parent to or in the presence or hearing of [X] and that each party do all things necessary to ensure that no third party makes threatening, critical or derogatory comments about the other party to or in the presence or hearing of [X].
- (12) Both parties are restrained from discussing these proceedings with or in the presence or hearing of [X] or showing [X] any documents filed or exhibited in these proceedings and that each party do all things necessary to ensure that no third party discusses these proceedings with

or in the presence or hearing of [X] or from showing him any documents filed or exhibited in these proceedings.

- (13) Both parties are restrained from taking the any photographs of [X] solely for the purposes of making a complaint about the other party's parenting.
- (14) Both parties are restrained from asking or suggesting to [X] that he spend a greater or lesser amount of time with his Father than set out in these Orders; **noting that** the time [X] is to spend with his Father under these Orders is the minimum time that both parties are to facilitate [X] spending with the Father and if [X] advises both the Mother and Father on any occasion that he wishes to spend a longer period with the Father then both parties shall facilitate that longer period.
- (15) The Father shall attend Dr C for relapse prevention alcohol counselling on not less than two occasions per year, or at such frequency as Dr C may recommend, and the Father shall comply with all recommendations of Dr C, including attending more frequently should Dr C recommend more frequent appointments and will follow all recommendations of Dr C (including any referrals to complementary services), and the Father's time with [X] is subject to the Father attending appointments with Dr C in accordance with Dr C's recommendations as to treatment and frequency of treatment.
- (16) The Court grants leave to the Independent Child's Lawyer to provide a copy of these Orders and the Reports of Dr L dated 29 December 2010 and Dr B dated 24 February 2011, 6 December 2011 and 5 August 2013 to Dr C.
- (17) During any period during which [X] is with the Father, in the event of [X] being hospitalised or receiving medical attention, the Father shall notify the Mother as soon as practicable (and in any event within two (2)

hours) after his first contact with either the medical practitioner, medical centre or hospital **AND** at that time provide details to the Mother including the details of the illness, injury, the treating doctor and the prognosis and treatment of [X] (if known).

(18) The Mother shall advise the Father in relation to the attendance of [X] on any medical specialist for [X] and that such medical specialist include any specialist medical practitioner; dentist; orthodontist; speech pathologist; occupational therapist or other therapist (hereafter referred to as 'consultant') **PROVIDED THAT** in the event [X] is referred to any such consultant:

- (a) On the Mother obtaining the appointment, she inform the Father in writing as soon as practical of any specialist medical appointments (and in any event prior to the first such appointment);
- (b) The Mother shall, as soon as possible after the initial appointment is made (and in any event prior to the date of the first appointment), authorise the consultant to discuss all matters relating to [X] with the Father and upon the Father's request provide the Father with copies of any test results, letters of referrals, reports, and letters received from and by any such consultant, provided that the Father pays the consultant's reasonable costs in providing the documents;
- (c) Within 48 hours of the Mother providing the authority the Mother will notify the Father by text message that she has provided the authority in Order (b).
- (d) The Father is permitted to consult or make an appointment with [X]'s General Practitioner once every three (3) months to obtain oral information about [X]'s health.

(19) The parties shall ensure they are civil to any practitioners treating or assessing [X].