

FAMILY LAW ACT 1975

**IN THE FAMILY COURT
OF AUSTRALIA**

AT BRISBANE

No BRF4047 of 1997

BETWEEN:

LEWIS

EDWIN LESLIE JOHN

(Husband)

AND:

CARTY

HELEN LEIGH

(Wife)

AND:

JAMES WILLIAM & JUNE MURIEL

LEWIS

(Paternal Grandparents)

BEFORE THE HONOURABLE JUSTICE JORDAN

Date of Hearing:

17th, 18th, 19th, 20th, 21st & 26th
February 2003

Judgment Delivered:

4th March 2003

Appearances:

The Husband appeared in person.

Ms Cassidy of Counsel, instructed by Mullins & Mullins, Solicitors, Brisbane, Qld, appeared on behalf of the Wife.

The Paternal Grandparents appeared in person.

Mr Murphy of Counsel, instructed by Berck & Associates, Solicitors, Brisbane, Qld, appeared on behalf of the Children's Representative.

REASONS FOR JUDGMENT

ANNEXURE 8.

1. The issues before the Court in this matter relate to the applications of the husband and the wife and the paternal grandparents for contact and other specific issue orders relating to the children, Justin James Lewis, born on 24th March 1993, Clinton Allan Lewis, born on 11th February 1995, and Thomas Edwin Lewis, born on 29th October 1996.
2. At one level, this case is very complex and troublesome. At another level, it is of quite narrow compass.

BACKGROUND

3. The parties married in June 1991 and separated on 17th March 1997. The children have been in the wife's full-time care since separation and, although there were some ongoing difficulties between the parties, the husband largely enjoyed regular contact with his sons until March 2001.
4. Litigation was commenced between the parties in 1997 and has largely continued unabated since that time. The early litigation was dominated by allegations of sexual abuse of the child, Justin, by the maternal grandfather. There were competing applications for residence and contact and those matters were listed for final hearing before Warnick J on 21st April 1999. On the first day of that hearing, the parties entered into Consent Orders, with the wife to have residence of the children and the husband regular contact in the usual terms, although Thomas was only two years of age at that time and the contact orders in relation to that child were graduated.

5. There was a significant event in the lives of each of the parties and their children in March of 2001, when the husband was admitted to the psychiatric ward of the PA Hospital and regulated on his parents' request. Mr & Mrs Lewis Senior described their son as suffering a break-down and he was exhibiting grandiose delusional traits at that time.
6. The wife says, and I accept, that she was largely kept in the dark at that time by the husband and members of his family, and she understandably became anxious about contact when she heard of the husband's hospitalisation.
7. Prior to that time, Justin had been treated by a child psychiatrist, Dr Evans, as a consequence of anxiety and developmental issues and the wife's concerns relating to the adverse impact of the sexual abuse allegations which surrounded him.
8. Shortly after the husband's admission to hospital, his treating psychiatrist and Dr Evans conferred and the husband's psychiatrist advised Dr Evans that there were significant concerns about features of the husband's disorder and presentation at that time. Dr Hayworth informed Dr Evans that Easter Sunday appeared to be a particularly significant event for the husband, who was suffering grandiose religious delusions, and Dr Hayworth informed Dr Evans that the husband may represent a danger to the children at that time. Dr Hayworth advised that the children should not be made available for contact on that weekend. Not surprisingly, the wife took that advice and did not make the children available and this caused considerable agitation in the Lewis household.
9. A Legal Aid conference was convened in May of 2001, but the parties were unable to resolve the matter. The wife continued to refuse to provide contact in accordance with pre-existing contact orders. However, subsequently, the husband

and members of his family exercised contact with the boys at the Redland Bay State School with the blessing of the school principal.

10. In November 2001, Judicial Registrar Smith formally suspended Warnick J's orders for contact, although the orders provided for ongoing contact at the State school as authorised by the school authorities.
11. In January 2002, the wife sought orders to have the husband's contact limited to supervised contact until such time as his condition was properly treated and managed. The parties and the Court received reports from Mr Philip Trudinger, Clinical Psychologist, and Professor Nurcombe, Consultant Psychiatrist. Those experts expressed significant concerns about the husband's presentation and each recommended that all contact be suspended.
12. On 25th February 2002, Registrar Dittman made orders suspending all contact, including school contact.
13. In May of 2002, the paternal grandparents filed an application seeking orders for contact to the boys.
14. On 2nd July 2002, Registrar Spelleken made orders for contact between the boys and the paternal grandparents to be supervised at the Logan West Contact Centre. Subsequently, Registrar Dittman extended the period of such contact and the grandparents have enjoyed contact away from the contact centre in more recent times.
15. The husband resides with the paternal grandparents and informs the Court that it is his intention to do so for the foreseeable future.

ORDERS SOUGHT

16. The parties' cases have been in a state of flux during the course of the proceedings and the orders now being sought, in part, emerged after some negotiations on the fourth day of the trial and, in part, are the subject of developments on the day of final addresses.
17. The husband proposed to the Court after the fourth day that the Court should make orders that he have contact with the boys on alternate weekends from Friday afternoon to Sunday, alternate Wednesdays from after school until 7.00 pm, half school holidays and on other special occasions. He also sought an order for telephone contact each alternate Wednesday. He proposed that the changeover should be at the McDonald's Restaurant at Cleveland. On the question of specific issues, he sought orders of mutual obligation designed to ensure that each of the parties was aware of the children's needs and able to participate in most aspects of the children's lives.
18. On the fourth day of the trial, after the negotiations referred to above and after each of the parties had reduced their new proposals to writing, the evidence was completed and the Children's Representative addressed the Court in relation to the evidence and his proposals and completed his address at that time. I then stood the matter over to the 21st February 2003 to hear the address of Counsel for the wife, the husband's address and the address of the paternal grandmother. On the morning of 21st February, the husband was not in attendance, nor was the paternal grandfather. The paternal grandmother said that the applicant husband was not well and did not intend to appear that day and that he asked her to inform the Court that he did not have anything further to say and did not wish to participate.

further in the process. She said that he asked the Court to proceed in his absence. She also indicated that the paternal grandfather was unwell and was happy for her to proceed on his behalf. She also indicated that she did not wish to address the Court and that it was the will of all of the Lewis's that the matter be brought to an end. I explained to Mrs Lewis that, given the nature of the proceedings and the fact that she did not appear before me as the representative of the applicant husband, I did not feel it was appropriate to proceed in the husband's absence. I therefore adjourned the matter over to 26th February 2003 and requested that she advise the applicant husband of the new hearing date.

19. On the 26th February, the husband did appear in person and both the husband and the paternal grandmother indicated that they wished to withdraw all applications. I asked them to each reconsider their position, particularly in light of the recommendations of the Children's Representative for some form of contact and the concession by the wife that she was largely in agreement with the spirit of the recommendations made by the Children's Representative for contact. I also reminded them of the interests of the children in having a relationship with their father and the paternal grandparents and indicated that it was my intention to make orders for contact and that the issue had become what should be the terms and conditions of such contact. I stood the matter down for a short period to enable them to consider their positions. Upon my return, the husband indicated that it was no longer his intention to formally withdraw his application, but that he did not wish to address the Court further and that he would merely abide the orders of this Court. In essence, the husband said that, whilst he would obviously love to have a relationship with his children, he perceived his efforts in the past as

a six year struggle, where the odds had continually been stacked against him, and that the whole matter was taking too heavy a toll upon him, his parents and the children. He said he thought that, whatever the Court determined, the struggle would continue. He indicated that he hoped that, in due course, his boys would seek him out.

20. The paternal grandmother indicated that she was no longer seeking any orders for contact for herself or her husband. She indicated that she was prepared to be bound by the undertakings executed by her in the previous week and she was prepared to continue to act as supervisor of contact for the husband, should it be ordered, and should the husband choose to take up such ordered contact.
21. The applicant husband and Mrs Lewis then sought leave to withdraw from the Court, which leave was granted to them.
22. The Children's Representative's recommendations remain unaffected by that turn of events. The Children's Representative seeks orders that the husband have contact with the children, with an initial period being supervised by a third party, and any subsequent contact thereafter being supervised by the paternal grandparents.
23. It is proposed that there be five short two hour periods of contact under the supervision of Philip Trudinger, followed by five periods of three hours contact each third Saturday, followed by each alternate Saturday from 9.00 am to 5.00 pm. From December 2003, it is proposed that the husband and paternal grandparents have some extended periods of contact.
24. The Children's Representative also seeks specific issues orders designed to monitor and report upon the husband's presentation and treatment and to keep the

husband informed of the children's progress. It is proposed by the Children's Representative that the handover be at the end of the easement of the wife's property, with the paternal grandfather alone to be in attendance for such purposes.

25. The Children's Representative submits that there should be a prohibition on further proceedings, other than those instituted by the Children's Representative.
26. The wife is largely in agreement with the proposals of the Children's Representative, at least in principle. However, she contends that all orders for contact should be subject to the husband attending for treatment as prescribed by his treating psychiatrist. She also proposes that the contact proceed at a slightly slower pace, with slightly reduced hours. She suggests that the extended periods of holiday contact should be more limited and there are some differences between the parties in relation to Christmas Day and Boxing Day. The wife proposes that the changeover continue to be facilitated at the Logan West Contact Centre.
27. The wife also seeks an order for a change of surname from "Lewis" to "Carty-Lewis". That application was opposed by the husband and the Children's Representative.

MATTERS IN ISSUE

28. The husband has filed a vast body of material. He is without legal representation. To compound his difficulties, he has been diagnosed as suffering a psychotic disorder with prominent delusional and affective features. Mr Lewis believes he is God on Earth.

29. The husband's material includes vast writings which have the appearance of religious scripture, religious verses or, as he says, messages from God in Heaven. Aspects of his case were very difficult to understand.
30. Included in his material is a review of many of the difficulties he has experienced in his relationship with his wife subsequent to separation. He also raised many issues about the wife's failings as a person and as a parent. The husband also sought to re-visit allegations of past sexual abuse of Justin by the maternal grandfather and his concerns about the investigation of those matters.
31. The paternal grandparents' application was for contact. They were also without legal representation. At the commencement of the proceedings, it was agreed that Mrs Lewis Senior would act as spokesperson for the applicant grandparents. Mrs Lewis became continually confused about her role in the proceedings and was often conducting herself as prosecutor of the husband's case, or advocate for him.
32. Contested proceedings for residence were instituted in 1997 and set down for a final hearing in 1999. The allegations of sexual abuse of Justin pre-dated the 1999 proceedings and were part of the case before the Court at that time. Those allegations were investigated and found by several Government agencies to be unsubstantiated. In turn, Justin was referred to a child psychiatrist for treatment and he did not make any disclosures of sexual abuse during the period of such treatment. The husband elected not to proceed with the matter in 1999 and consented to orders for residence in the wife's favour.
33. There is no application for residence before me and the Children's Representative has not pursued the issue of the alleged past abuse of the child, Justin. Accordingly, at the commencement of these proceedings, I informed the parties

that it was not my intention to re-visit the issue of past abuse. However, both Counsel for the wife and Counsel for the children strongly argued that the ongoing attitude of the husband and the paternal grandparents to that issue, and particularly the likelihood of any of them confronting Justin about such matters, remained relevant to the applications for contact. I agreed with those submissions. Further, as there was no ongoing application for residence, I indicated that it was not my intention to take account of the evidence of the husband and the paternal grandparents relating to criticism of the wife's parenting, other than to the limited extent it is relevant to their applications for contact.

34. The wife originally sought orders for limited supervised contact for both the husband and the paternal grandparents. During the course of these proceedings, she has modified her stance to accommodate contact by the husband, supervised only by the paternal grandparents. However, whilst she is supportive of the notion of contact between the children and the father and members of his family, her concerns remain and she moves the Court to be cautious in its approach to such orders. Those concerns may be summarised as follows.
35. Firstly, the wife is concerned about the nature and extent of the husband's delusional disorder. She is concerned that, if he shares his beliefs with their young sons, the boys may become worried and confused. Related to that issue, she is concerned that the husband has already exhibited an unwillingness to be compliant in relation to aspects of his recommended treatment and that, once these proceedings are concluded, he may well discontinue his attendance and treatment. She is concerned that, in such a case, the risks to the boys may be greatly increased.

36. Secondly, she remains concerned that the father and the paternal grandparents have exhibited an obsession with the past allegations of sexual abuse of Justin by the maternal grandfather and she is not convinced that the Lewis's will voluntarily abandon their six year campaign. She highlights that Justin has experienced emotional and developmental issues in the past and that it would be very harmful if these false assertions of sexual abuse were canvassed with him again.
37. Finally, she says that the Lewis's have an extremely adverse view of her and she again questions their capacity to contain their antipathy in the presence of the children. She fears that she is likely to be the subject of open denigration and that such prospect would be very harmful to the boys who are primarily dependent upon their mother in their day to day lives.

PRINCIPLES

38. The governing principle described by the Family Law Act to guide the Court in its determinations in children's issues is that the welfare of the child is the paramount consideration. Section 68F of the Family Law Act sets out those matters which must be considered by the Court in order to determine what is in the child's best interests. The objects and principles of the Act as prescribed in Section 60B have a particular resonance in this case and they include an acknowledgment that the children have a right to a relationship with each of their parents and other significant adults and that parents should share in the responsibilities associated with the care and development of their children. Those rights of the children are, however, prefaced by the proviso that orders should not be made giving effect to those principles if it is against the child's best interests to do so.

ISSUES

39. Having regard to the facts of this case, the Legislation and the overriding principles, I find that the important issues for consideration in this matter are as follows:-
- (a) The wishes of the children.
 - (b) The nature of the relationship of the children with each of the parents and the paternal grandparents.
 - (c) The capacity of the father and the paternal grandparents to meet the children's emotional needs.
 - (d) The need to protect the children from psychological harm.
 - (e) The husband's mental health and its impact upon the children.
 - (f) The advantages to the children of a relationship with the father.
 - (g) The risks to the children associated with such contact, in particular, if they are exposed to the father's delusions, ongoing allegations of sexual abuse and denigration of the mother, and the capacity of the Lewis's to protect the children from the adverse impact of such exposure.

THE HUSBAND'S MENTAL CONDITION

40. The evidence on this point is clear-cut. Each of the experts who have provided evidence on this topic have diagnosed the husband as suffering from a delusional disorder. Whilst there has been some variation of opinions on aspects of the presentation from time to time, the essential feature of each diagnosis is best summarised by that of his treating psychiatrist, Dr O'Brien, who assessed the

husband as suffering from a psychotic disorder, with prominent delusional and affective features. The husband does not accept that he suffers from any psychiatric disorder, but he has not produced any expert evidence to the contrary.

I accept Dr O'Brien's diagnosis.

41. The manifestation of the husband's delusions is based upon his belief that he is God on Earth. He believes that he possesses great powers and has provided examples in the course of these proceedings, such as he is able to move stars, work miracle cures and change the outcome of day to day events. Mr Lewis believes that the end is very near, "less than twelve months".
42. The husband has only been partly compliant with the treatment recommended to him. He has continued to take that medication which regulates mood fluctuations, but he has declined to take the anti-psychotic medication which is designed to reduce the incidence and intensity of the delusional component of his illness. The former medication has largely been successful in regulating the husband's mood, but the husband's delusions have continued unabated.
43. Notwithstanding the husband's significant delusional disorder, it has been consistently observed by the experts, with some qualification by Dr O'Brien, that, when not focussing on his belief system, the husband's presentation is that of a "normal", intelligent human being. He continues in his occupation as a gardener and is thereby required to regularly deal with businessmen and members of the public. He maintains a healthy interest in sporting and other day to day events. He attended at the children's school for an extended period of time after his breakdown without apparent incident. Before me, when not discussing his belief

system, he also presented as a person who had a clear understanding of the matters in issue.

44. Varying opinions have been expressed about the likely impact of exposure of the boys to the husband's extreme beliefs. I accept that they may find such matters as confusing and/or amusing, and that talk of the end of the world might cause them to be fearful.
45. Mr Lewis says that he has no need to discuss those issues with his boys and that it is not his intention to do so. The experts, again, offer different opinions about the husband's capacity to refrain from sharing his beliefs with his sons. His treating psychiatrist, Dr O'Brien, and Professor Nurcombe were of the view that the husband would find such a prospect very difficult, and Dr O'Brien was of the view that it was likely that he would share such information with his sons. Mr Trudinger tended to the view that Mr Lewis would be able to compartmentalise that aspect of his life from his sons.
46. Given the intensity of the husband's expressions on this topic, both through his material and during the course of these proceedings, I again lean more towards the views expressed by Dr O'Brien and conclude that it is more likely than not that the boys will be exposed to their father's belief systems during periods of contact. At the same time, however, I accept the evidence of Mr Trudinger that the boys could be prepared for that contingency by an explanation to the effect that their father had some ideas that they might find unusual and that he might have some unusual things to say from time to time. He thought that, given such assistance, the boys could cope with such disclosures without any significant harm being occasioned to them. I accept, on this point, that the advantages of contact and the

benefits of a renewed relationship with their father would outweigh the likely degree of confusion which could emerge from such discussions.

47. On the question of the risk to the children of exposure to the husband's attitude about past sexual abuse, Mr Lewis again says that he will not raise the topic. He says that issue is now over and that he has to let it go.
48. The wife says she finds it very difficult to accept the husband's assurances in that regard. She says that it has been an obsession of the husband for over six years. Objectively, it appears that the husband was quite prepared to jeopardise his prospects of ongoing contact with his sons at the Legal Aid conference in May 2001. The wife offered generous contact, particularly given his break-down only two months earlier. The proposed agreement submitted by the wife at that time included not only generous arrangements for contact, but a series of specific issues covering a wide range of matters generally favourable to the husband.
There were some twenty-five clauses and one of those clauses required the husband to refer any ongoing concerns about sexual abuse to Dr Evans. The husband refused to sign the agreement because, he explained, he felt it curtailed his capacity to pursue such matters through the appropriate authorities. The wife points out that there was no prohibition upon the husband reporting such matters to the authorities and that his refusal was evidence of his determination to continue to prosecute allegations of sexual abuse, even at the price of contact to his sons.
49. I am of the view that this issue remains very close to the surface for the husband. It forms an integral part of the husband's very strident antipathy towards his former wife and her family. He continues to regard the maternal grandfather as a

paedophile and, in the proceedings before me, he was determined to even erase an association between the maternal grandfather and the children by asserting that one, and only one, of the three children did not have a second name. He said that Clinton was not baptised Clinton Allan, as suggested by the wife. Justin's second name is James, after the paternal grandfather, and I accept that Clinton was given a second name, Allan, after the name of the maternal grandfather. The husband's assertion in that regard represents stark evidence of the depth of his feelings against the maternal grandfather. I am of the view that the husband may find it difficult to contain himself on this issue and, in particular, resist sharing with the boys his view about the maternal grandfather. Such discussions would be likely to be damaging to the children, and Justin in particular.

50. I then turn to the troublesome issue of exposure of the children to the antipathy which exists between the two households. It is obvious that there is no love lost between the parties before me. The wife feels that she has been under siege by the whole Lewis family since the date of separation. She rejects any statements of conciliation. She says that she has been subject to abuse and ridicule directly and the denigration of her has been effected through neighbours, friends and the authorities.

51. The husband made it clear to me that he holds only negative views of the wife and has no regard for her as a parent or a person. The grandparents exhibited little regard for the wife, either in their material or in their presentation, despite verbal assertions to the contrary by the paternal grandmother from time to time. The Lewis household holds the wife responsible for the break-down of the marriage,

the husband's mental break-down and the severance of the relationship between the boys and their father.

52. Of course, the Court needs to deal with the reality of the situation and acknowledge that one cannot easily redress years of hurt and breached trust. However, the issue for the Court is, how such ongoing antipathy will impact upon the children.
53. Whatever the wife's feeling about the husband and his family, her presentation before me was such that I was satisfied that she can manage and contain those feelings and that, in her household, the boys will be free to have good relations with their father and paternal grandparents. The best evidence of this is the fact that the boys continue to express positive feelings towards their father and an interest in a renewed relationship with him, notwithstanding they have not had meaningful contact with their father for almost two years. The boys have a marvellous relationship with their paternal grandparents. Needless to say, the wife has had more than ample time, and more than ample evidence in the case of the husband, to poison the children against the Lewis household had she wished to do so.
54. On the other hand, the wife says that she has been subjected to abuse and denigration in the past by the husband and members of his family, and that their feelings towards her are such that her children could not be shielded from such behaviour. The Lewis's largely deny the allegations against them in relation to their past conduct and, in any event, assert that they would not share their views of the wife with the children.

55. Having regard to the material of the husband and the paternal grandparents and their presentation before me, I share the wife's concerns. In making that observations, I do need to acknowledge some difficulties under which the Lewis's have conducted their case before me. The husband and the paternal grandparents have been at a disadvantage, in that they were not legally represented. They did not have the safety shield of someone advising them and conducting the cases on their behalf. Of course, the husband's difficulties are further compounded by features of his poor health. However, in relation to the latter point, I have already observed that, when not discussing his belief system, the husband otherwise presented as a capable, intelligent person, fully aware of what he was doing and saying in the proceedings before me.
56. Even after making allowances for the above matters, the presentation before me of the Lewis's, individually and collectively, adds some weight to the wife's concerns. They have each openly displayed anger and hostility periodically throughout the proceedings. The husband at times could not contain himself and swore and directed disparaging remarks to the Bench. During the course of the trial, the wife was described as a bad mother, a cruel mother, and one deserving of no credit for the boys' apparent good presentation at this time. She was described by the husband as an evil woman and black witch.
57. I am obliged to take into account the presentation of the husband and the paternal grandparents in determining whether they are, indeed, capable of containing their feelings in the presence of the children and at changeovers.
58. One thing is very clear, and that is that it would be entirely inappropriate and absolutely impossible to bring these parties together in the future.

59. It is also very clear that it would be very damaging for these children to be exposed to any such behaviour. These boys are very closely attached to, and dependent upon, their mother. She has been their primary caregiver throughout their lives and any conduct designed, or likely to have the effect of undermining that relationship, would be likely to be damaging in the extreme, particularly as these children have been required to endure so many difficulties in the years since separation. Again, Justin would be likely to be particularly vulnerable in this regard.
60. Obviously, it would be in the boys' best interests if they were able to enjoy a relationship and happy and productive times with their father and their paternal grandparents. The issue for this Court is to weigh the inherent benefits of such contact against any likelihood of emotional harm occasioned by these boys being exposed to features of the husband's presentation, re-visiting sexual abuse allegations and denigration of their mother.

CONCLUSIONS

61. This case has a number of unfortunate features about it. These young boys have not only endured the break-down of their parents' marriage, but they have endured the burden of being indirectly embroiled in litigation in the six years since separation. Justin, in particular, appears to have been inappropriately exposed to allegations and counter-allegations of sexual abuse. He has exhibited emotional and developmental problems which may have been contributed to by his environment. I am satisfied that they have also witnessed unpleasant exchanges between many of the most important adults in their lives. More recently, they

have suffered as a consequence of their father's break-down, in that they have been deprived the opportunity to have contact with him for an extended period. The wife has endured emotional hardship as a result of conflict between the parties and her concern for its impact upon the children. The husband has also endured extreme hardship as a consequence of being deprived the opportunity to have any meaningful contact for almost two years with his sons, whom he clearly loves very much and misses dearly. That must have been a very difficult cross for him to bear. I must say that the deprivation of any contact for almost two years would seem to be an entirely disproportionate response to his illness. At the same time, however, the husband should appreciate that the events of the last two years have not been of his former wife's doing. I am satisfied that she acted in an entirely appropriate way in the best interests of her children. What information she did receive about the husband's condition suggested that the children may be at some risk from their father and she was bound to take notice of those recommendations by report writers, which suggested all contact should be suspended. In turn, the Court was bound to place a great deal of weight upon those recommendations in the interim hearings. The tragedy for all concerned is that the matter has taken so long to reach a final hearing.

62. The consensus of all opinions, expert and lay, including the wife's, is that the children should now have the opportunity to resume their relationship with their father and to enjoy ongoing contact with the paternal grandparents. The differences between the parties and the Children's Representative relate to the terms and conditions of such contact. As I indicated earlier in this judgment, it is

a matter of balance between the accepted benefits of such contact and the possible harm which may be occasioned by it.

63. The risks I have identified earlier relate to exposing the boys to the husband's delusional beliefs, the spectre of past sexual abuse and/or denigration of the wife. As I have indicated, I regard the prospect of exposure to the harms of those matters as real and that the prospect to such exposure is likely to be damaging. The husband and the paternal grandparents seek to give the Court assurances that such concerns will not come to pass. I hope and trust they are prepared to abide by their undertakings in that regard.
64. In the meantime, I share the wife's reservations in that respect and I take the view that it is appropriate to proceed slowly and to install safeguards. In that sense, it is very much in the hands of the husband and the paternal grandparents how their relationship with their sons and grandsons will progress in the future. If they are able to make such contact a positive experience for the boys, and if they are able to refrain from exposing the children to the potentially emotionally damaging behaviour to which I have referred, then they can confidently expect that contact will be extended in accordance with the terms of the orders I propose to make.
65. Having regard to the extent of the husband's condition and his non-compliance with part of the treatment prescribed, I am satisfied that, for the time being, it is essential that all ongoing contact be supervised by at least one of the paternal grandparents.
66. The husband says that there is no need for any form of supervision, but I am satisfied that it is in the children's best interest to follow the early programme recommended by the Children's Representative. That programme facilitates Mr

Trudinger supervising the first five periods of contact in a way which would enable him to counsel the children prior to contact and to monitor the behaviour of the adults and the reaction of the children in a way which, in turn, will enable him to report to the Children's Representative.

67. Provided that, until further order, all subsequent contact is to be supervised by the paternal grandparents, I cannot see any reason why the orders should not be extended to the usual types of orders for weekend and half school holiday contact.
68. The Children's Representative supports an order which will retain the involvement of the Children's Representative until the end of this year. That provides a safeguard for the children in terms of reporting and bringing the matter before the Court. In my view, it is appropriate to also specify that the wife should have liberty to bring the matter on should she have concerns about progressing with the orders I intend to prescribe. That need is even more pressing, given the eleventh hour development which gives rise to the prospect that the husband may not take up the offer for contact in a timely fashion at all. I wish to reserve to the wife the opportunity to bring this matter back on short notice should difficulties be experienced.
69. I am satisfied that, at least for the time being, contact for the husband should be conditional upon him continuing with his treatment, save that it is not my intention to impose upon him an obligation to take the anti-psychotic medication to which he is so opposed. On that point, the evidence of the experts suggests that he is presently capable of exercising contact, notwithstanding that he is not taking such anti-psychotic medication. However, I am satisfied that it is appropriate that he continue to attend upon Dr O'Brien, or some like-qualified person, not only for

his own benefit, but to ensure that the wife has a vehicle through which she can reasonably satisfy herself **that the children will be safe in the husband's care.**

70. Issue remains between the parties on the question of the place of changeover, with the husband contending for a changeover at McDonald's at Cleveland, the Children's Representative proposing at the end of the easement of the wife's property, and the wife proposing to continue with the Logan West Contact Centre. I can see all the practical advantages of the proposals of the husband and the Children's Representative, and those options would clearly save the wife and the children and the paternal grandparents the ordeal of travelling to Logan West Contact Centre at the beginning and end of each contact period. However, in the end result, I have been persuaded by the submissions of Counsel for the wife that the level of antipathy between the households is such that the Children's Representatives's sensible proposals may, in the end, undermine the prospects of successful contact. I accept that the wife remains extremely apprehensive about such proposals and that the Logan West Contact Centre has stood the test of time and the largely trouble-free handovers at that venue stand in stark contrast to the earlier history in this matter. Given the wife's poor financial circumstances and limited child support from the husband, I also accept the submission that the husband and/or those family members prepared to assist him, should meet the costs of such contact.
71. The remaining specific issue I need to address relates to the **wife's application to have the children's surname changed from "Lewis" to "Carte-Lewis".** In this regard, I note that the parties separated six years ago and that they were divorced in 1999. The wife says that, subsequent to the divorce, she reverted to her maiden

name of "Carty" and that she has used that name exclusively since that time. The wife says that, since that decision, the two older children have queried why their surname was different from their mother's. In her affidavit filed on 17th February 2003, the wife refers to some examples of confusion for the children and her decision to enrol Thomas under the surname of "Carty-Lewis".

72. This aspect of the wife's case attracted some criticism from the Children's Representative for its lack of detail and, essentially, the Children's Representative argued that a case had not been made out. As the matter has unfolded, the husband chose not to make any submissions in relation to this matter and has indicated to the Court that it is his current intention to withdraw from his sons' lives. Obviously, those developments have clearly changed the dynamics in this case.
73. I propose to make the order sought by the wife, as I am satisfied that it is in the children's best interests to do so. In passing, I am inclined to observe that I wonder whether, in 2003, a mother and primary caregiver of three children should continue to carry the heavy onus suggested by the Children's Representative to justify any modification of her estranged male partner's surname. In an era where so many women choose to retain their maiden name after marriage, or retain their maiden name for career or professional purposes, such rigid adherence to patriarchal ownership of a child's surname for the entirety of his or her childhood seems to me, with respect, somewhat antiquated and out-of-step. For my part, I do not see the need for an applicant to convince me with evidence in chapter and verse about individual incidents of individual children experiencing some embarrassment or confusion about differing surnames within the one household.

The proposition that a young child might be embarrassed or confused personally and amongst his peers because his mother has a different surname to him is so inherently probable that detailed evidence about such matters would appear to be superfluous. Importantly, in this case, the wife is not seeking to erase the children's identification with their father through his surname, but rather, she is seeking to enable the boys to publicly identify with the surname of each of their parents. My tentative view is that, if there is any onus of proof as suggested by the Children's Representative, at this time, certainly in relation to applications for shared surnames, the burden would probably more appropriately rest with the party seeking to retain exclusive proprietorship to one surname. However, it is not necessary for me to make such a finding to support the wife's application as this case has unfolded.

ORDERS

74. Having regard to the evidence and my findings, having regard to the proposals of the husband, the wife and the Children's Representative, having regard to the withdrawal of all applications by the paternal grandparents, and having regard to the husband's withdrawal from the proceedings at the conclusion of the trial, I make the following orders.

1. That the husband have contact with the children of the marriage, Justin James Lewis, born on 24th March 1993, Clinton Allan Lewis, born on 11th February 1995, and Thomas Edwin Lewis, born on 29th October 1996, at all such times as might be agreed between the parties, **provided the husband**

continues to attend a treating psychiatrist as required by the treating psychiatrist, and in particular:

- 1.1 On five (5) occasions between 2.00 pm and 4.00 pm every third Saturday, commencing 8th March 2003 at places arranged with Mr Philip Trudinger, with all such contact to be supervised by him.
- 1.2 At the conclusion of the period contemplated by paragraph 1.1 hereof, on five (5) occasions between 2.00 pm and 5.00 pm each third Saturday, with all contact by the husband to occur in the presence, sight and hearing of the paternal grandfather and/or grandmother for a period.
- 1.3 At the conclusion of the period contemplated by paragraph 1.2 hereof, between 9.00 am and 5.00 pm each third Saturday on ten (10) occasions, with all contact by the husband to occur in the presence, sight and hearing of the paternal grandfather and/or grandmother.
- 1.4 Provided the husband has first availed himself of contact in accordance with the terms of paragraphs 1.1 to 1.3 hereof, contact each alternate weekend thereafter from 9.00 am Saturday to 5.00 pm Sunday, from 9.00 am to 5.00 pm Father's Day, and for two (2) hours on the husband's and each of the children's birthdays, under the supervision of the paternal grandfather and/or paternal grandmother.
- 1.5 (a) As and from December 2003, from 4.00 pm Friday until 4.00 pm Sunday for the first weekend of the Christmas, Easter, June/July and September school holiday periods in 2004, with

all contact by the husband to occur in the presence, sight and hearing of the paternal grandfather and/or grandmother.

- (b) As and from December 2004, for the last week of the gazetted school holidays for a period of seven (7) days from 4.00 pm Saturday until 4.00 pm the following Saturday during that holiday period, and each Christmas, June/July and September school holiday period thereafter for the last week of the gazetted school holiday from 4.00 pm Saturday until 4.00 pm the following Saturday, with all contact by the husband to occur under the supervision of the paternal grandfather and/or grandmother.
- 1.6 That the child, Clinton, be at liberty to attend sporting events arranged by the International Soccer Academy if they fall during a contact period.
- 1.7 By telephone each Tuesday and on each child's birthday between 6.30 pm to 6.45 pm, with the paternal grandparents and/or the husband to telephone the children.
- 1.8 Each Boxing Day between 9.00 am and 4.00 pm.
- 1.9 That the wife have telephone contact with the children each Tuesday between 6.30 pm and 6.45 pm while the children attend contact referred to in 1.5(b) hereof, with the wife to telephone the children.
- 1.10 That if the husband fails to commence contact on 8th March 2003, the orders for contact shall commence on a Saturday nominated by him and he shall not be at liberty to progress to orders 1.2, 1.3, 1.4 and

1.5(a) and (b) until he has completed the contact in 1.1, 1.2, 1.3, 1.4
and 1.5(a) respectively.

2. That each of the husband and wife, as the case may be, shall do all such acts and sign all such documents as are necessary to:

- 2.1 Authorise and permit any treating or reporting psychiatrist of the husband to speak to, and forward documentation to, any reporting psychiatrist or psychologist engaged in the future by the Children's Representative or Dr Alexandra Evans or other treating psychiatrist for Justin or any of the other children regarding any and all aspects of the husband's presentation and treatment, with the husband to pay the professional costs of Dr Evans or other treating psychiatrist for Justin and any of the other children for the monitoring of the husband's presentation and treatment, with the husband to pay the professional costs of Dr Evans or other treating psychiatrist for Justin or any of the other children for the monitoring of the husband's presentation and treatment.
- 2.2 Authorise and permit Dr Alexandra Evans or any other treating psychiatrist for the children to speak to and forward documentation to any reporting psychiatrist or psychologist engaged in the future by the Children's Representative, or any treating or reporting psychiatrist attended by the husband, regarding any and all aspects of Justin's or the children's presentation and treatment.
- 2.3 Authorise and permit Philip Trudinger to speak to and report upon, in such manner as he shall think fit, his observations, opinions and

recommendations resulting from the contact contemplated in paragraph 1.1 hereof to any of the parties and/or the Children's Representative and/or any treating or reporting psychiatrist for the husband or any of the children.

- 2.4 Authorise and request any school which the children attend to provide to the husband any and all documentation as he might reasonably request relating to the education of the children, including but not limited to documentation relating to the obtaining of school photos and attending parent-teacher sessions.

3. That the husband be restrained and an injunction issue restraining the husband from:

- 3.1 Discussing with the children, or in their hearing or presence, these proceedings or any aspect of these proceedings.

- 3.2 Denigrating the wife or any member of the wife's family to, or in the presence of, the children.

- 3.3 Questioning or discussing with the children in any way whatsoever about any past allegations of child abuse.

- 3.4 Questioning or discussing with the children in any way whatsoever about any future allegations of child abuse unless the husband notifies the wife and Dr Evans or other treating psychiatrist for Justin or any of the other children in writing within 24 hours of questioning or discussing with the children the allegations of child abuse, provided however that the husband remains at liberty to refer any issues of future child abuse to appropriate State authorities.

4. That for the purposes of paragraph 1.1 of these orders, changeover shall occur by the wife delivering the children to Mr Trudinger at a place nominated by him at 1.55 pm and the husband and grandparents arriving at such place at 2.05 pm and by the husband and grandparents leaving the children with Mr Trudinger at 3.55 pm and the wife collecting the children from Mr Trudinger at 4.05 pm.
5. That for the purposes of all other contact proposed by this Order, the children shall be collected and delivered by the paternal grandfather and/or grandmother from the Logan West Contact Centre and delivering the children there at the conclusion of contact, with the paternal grandparents to pay any costs associated with using the Logan West Contact Centre.
6. That the cost of the supervision and reporting by **Mr Trudinger** contemplated by these Orders shall be met by the parties in such proportion as they might agree, and failing agreement by the husband and grandparents in such proportion as they might agree.
7. That each of the husband and the wife:
 - 7.1 Henceforth exclusively use the name "**Carty-Lewis**" as the surname of the children of the marriage formerly known as "**Lewis**".
 - 7.2 Forthwith do all things necessary, individually and jointly, including making application and executing documents, to seek the alteration of the registration of the name of the said children on the **register of births in the State of Queensland**, from the surname "**Lewis**" to the name "**Carty-Lewis**".

- 7.3 That in the event the husband fails to execute the documents referred to in sub-paragraph 7.2 hereof, the Registrar of the Family Court of Australia at Brisbane be at liberty to execute such documents in his stead.
8. That the Children's Representative and the wife have liberty to apply in relation to these Orders upon the giving of seven (7) days notice.
9. That the Children's Representative be discharged as and from 31st December 2003, or at the date twelve months from the commencement of contact referred to in paragraphs 1.1 and 1.10, whichever is the latest.

I certify that this and the preceding3.... pages
are a true copy of the Reasons for Judgment

herein of The Hon. Justice ...J.A.B.DAN...../
Judicial Registrar

Registrar

J. Ignell 3.13.103
Associate/Secretary Date

