

Outline of Case Document (Interim Hearing)

Central Practice Direction – Family Law Case Management

Please type or print clearly. Attach extra pages if you need more space to answer any questions.

Note: This document must be forwarded to the Associate of the presiding Judge or Senior Judicial Registrar and the other party/ies at least 2 days prior to the interim hearing

Filed on behalf of:

(specify full name of party)

Applicant: Stephen Christopher Cooke

Respondent

Other (specify: _____)

COURT USE ONLY

Client ID _____

File number _____

Filed at _____

Filed on _____

Court location _____

Part A About the parties

APPLICANT 1

Family name as used now

Cooke

Given names

Stephen Christopher

APPLICANT 2

Family name as used now

Cooke

Given names

Heather Anne

Part B Documents relied upon

	Document	Filed by	Date of filing
List each Court document you seek to rely upon at the interim hearing, including any <i>Initiating Application/Response to Initiating Application</i> , affidavit, <i>Financial Statement</i> and expert report. Include the date of filing.	eg: Affidavit of Name	Applicant	1 April 2021
	Amended Initiating Application	Applicant	2 April 2024
	Affidavit of Stephen Cooke ('F')	Applicant	2 April 2024
	Financial Statement	Applicant	2 April 2024
	Joint tender bundle	-	9 April 2024
	Child Impact Report of Drew Cohen		29 Feb 2024



Part C Issues in dispute

Briefly outline the issues to be determined by the Court at the interim hearing

1. The matter is listed for the hearing of husband's initiating application seeking orders in relation to parenting and financial matters, including interim spouse maintenance.

2. By way of his Amended Initiating Application filed 2 April 2024 the husband seeks Orders, in summary, as follows:

Parenting

2.1 That the children live with the husband.

2.2 That the children spend time with the wife in week one from after school Wednesday to before school Friday and in week two, from after school Friday until before school Monday.

Financial matters

2.3 That the husband remain in the former matrimonial home.

2.4 That the wife continue to pay the mortgage, rates and insurances for the former matrimonial home.

2.5 That the husband have use of the 2015 Honda CRV motor vehicle with the wife to pay the registration and insurance costs of the vehicle (this appears to be agreed).

2.6 That the wife pay to the husband by way of spousal maintenance the sum of \$1,458 per week.

2.7 That the funds unilaterally withdrawn by the wife in the amount of approximately \$391,895.25 be placed into an account that require both parties' consent to access.

2.8 a litigation funding payment by way of \$50,000.

3. By way of her Amended Response to Initiating Application, filed 8 April 2024, the wife the seeks Orders, in summary, as follows:

Parenting

3.1 That the children live with the wife.

3.2 That the children's current time with the husband be reduced, so that they spend time with the husband each alternate weekend.

3.3 Special occasions.

3.4 Restraints.



Financial matters

- 3.5 That the former matrimonial home be sold with the funds to remain in a trust account.
- 3.6 That the husband shall remain in the home and the wife shall be responsible for the costs associated with same until it is sold.
- 3.7 That the husband have use of the 2015 Honda CRV motor vehicle with the wife to pay the registration and insurance costs of the vehicle.
- 3.8 That the wife retain all joint funds unilaterally withdrawn at separation.
- 3.9 That a litigation funding payment by way of \$30,000 to be paid to the husband.
4. The issues in dispute are as follows:
- 4.1 With whom the children should live with.
- 4.2 What time the children should spend with the non-resident parent.
- 4.3 Whether the former matrimonial home should be sold on an interim basis.
- 4.4 Spousal maintenance.
- 4.5 The amount of the litigation funding order.
- 4.6 Injunctive orders in relation to the return of funds unilaterally transferred from the wife or whether the wife should be permitted to retain such funds.

Part D Outline of contentions

Briefly outline the contentions relevant to each of the issues in dispute, numbering each paragraph

Parenting

1. In considering the statutory framework provided for under Part VII of the *Family Law Act 1975* ("**the Act**"), it is submitted that the Court must have consideration of an appropriate framework that meets the statutory imperatives in interim parenting matters.
2. For the purpose of these interim proceedings, submissions will be made in line with the statutory framework set out in *Goode & Goode* [2006] FamCA 1346 and *MRR & GR* (2010) 42 Fam LR 531. These submissions are set out below.



3. However, when considering interim orders, the Court may, and in some circumstances must, also have some regard to the matters in dispute. There is a long line of authority to the effect that a court must make an assessment of disputed facts relating to alleged risks to children. In *SS & AH* [2010] FamCAFC 13, their Honours said at [100]:

The intuition involved in decision-making concerning children is arguably of even greater importance when a judge is obliged to make interim decisions following a hearing at which time constraints prevent the evidence being tested. Apart from relying upon the uncontroversial or agreed facts, a judge will sometimes have little alternative than to weigh the probabilities of competing claims and the likely impact on children in the event that a controversial assertion is acted upon or rejected. It is not always feasible when dealing with the immediate welfare of children simply to ignore an assertion because its accuracy has been put in issue.

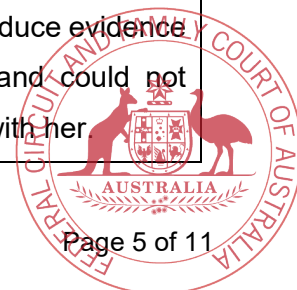
4. The mere fact that matters are in dispute does not mean the Court can ignore concerns that are raised in the material before it (per *George & George* [2013] FamCAFC 182, a decision of the Full Court citing *Deiter & Deiter* [2011] FamCAFC 82.

5. In *Deiter*, the Court was particularly concerned with the situation where the contested facts related to an assessment of risk. The Full Court said at [61]:

The assessment of risk is one of the many burdens placed on family law decision makers. Risk assessment comprises two elements – the first requires prediction of the likelihood of the occurrence of harmful events, and the second requires consideration of the severity of the impact caused by those events. In our view, the assessment of risk in cases involving the welfare of children cannot be postponed until the last piece of evidence is given and tested, and the last submission is made. We accept, however, that it is always a question of degree depending on the evidence that is before the Court.



6. These proceedings relate to two children, Christian aged 9 and Joshua aged 6.
7. The parties' separated on a final basis on 17 November 2023. They resided under the same roof until 2 December 2023, where the wife moved from the property and took the children without warning and failed to tell the husband where the children were (F5).
8. On 12 January 2024, the parties reached an interim interim arrangement, whereby the children spend five nights per fortnight with him (F7). The wife seeks to reduce the children's time with the father. The father seeks that the children live primarily with him.
9. It is the husband's case that prior to separation he was the children's primary carer since the parties relocated from Canada to Australia in September 2015. He has not worked since that date and his role was that of home maker and primary carer (F9).
10. The wife raises risk concerns regarding alcohol and substance use. The husband has provided a hair test, collected on 8 February 2024, which is negative for illicit substances and alcohol (tender bundle page 154).
11. The father raises concern regarding the mother's physical discipline. She acknowledges slapping Christian on the face on 6 September 2023 (CIR-15).
12. The wife has worked as a cardiologist during the relationship. The wife, post separation, has continued to work as a cardiologist.
13. The extent of the mother's disclosure regarding her work schedule, is at paragraph 33 of the Child Impact Report where she advises she now has most Fridays free and the children attend Out of School Hours on Mondays to Wednesdays.
14. The father is willing and able to care for the children to avoid the children being in OOSH. The Court Child Expert opines Christian does not enjoy OOSH (CIR-65). It is contended that it is in the children's best interests to be spending time with their father as opposed to being in child-care arrangements, especially given Christian's needs.
15. Submissions will be made as to the wife's failure to disclose the extent upon which she works and the court will be invited to draw an adverse inference regarding the mother's failure to adduce evidence regarding her work schedule as such would not, and could not support her ability to have the children live primarily with her



16. The father has attended upon parenting after separation courses. He has undertaken testing to address the concerns raised by the mother. The father is committed to caring for the children as their primary carer.
17. The extent of the wife's acknowledgement of the husband's role in caring for the children is at paragraph 36 of her affidavit that *'due to the time pressures and responsibilities of my role as a Cardiologist, and Stephen's desires to avoid work or study, he became responsible for household tasks including some tasks in relation to the children.'*
18. The mother is clearly critical of the father. Notwithstanding this, it is contended the father has addressed the risk concerns raised by the mother, that the court will accept that the father has been primarily responsible for caring for the children, and importantly, has the capacity to continue to do so, and it is in their best interests for such an order to be made.

Financial matters

19. Section 72 of the *Family Law Act 1975* provides that a party to a marriage is to maintain the other party, to the extent the first party is reasonably able to do so if the second party is unable to support themselves adequately because of, inter alia, an incapacity for gainful employment on account of their age or physical or having regards to the matters set out in section 75(2).
20. The High Court recently set out in *Hall & Hall* [2016] HCA 23 at [8];
- "...a court exercising the power to make an interim order under s74(1) must be satisfied of the threshold requirement in s72(1) and must have regard to any matter referred to in s75(2) that is relevant. No doubt, on an application for an interim order 'the evidence need not be so extensive and the findings not so precise' as on an application for a final order. But there is nothing to displace the applicability to an exercise of the power conferred by s74(1) of the ordinary standard of proof in civil proceedings now set out in s140 of the Evidence Act 1995 (Cth). A court determining an application for an interim order under s74(1) cannot make such an order without finding, on the balance of probabilities on the evidence before it, that the threshold requirement in s72(1) is*



met having regard to any relevant matter referred to in s75(2)."

21. The husband seeks orders for interim spouse maintenance. He resists the sale of the former matrimonial home.
22. He contends that he has not worked for close to ten years as he was primarily responsible for caring for the children and is unable to enter the workforce at this interim stage. The husband gives evidence that he will require further training and education to re-enter the work force in circumstances where he has not worked for 8 years (F59). The husband's parenting application, if successful will see a continuation of his role as primary carer of the children.
23. He deposes to being entirely dependent on the wife for financial support (F57). He has no capacity to earn income.
24. The wife controls the matrimonial assets and the husband deposes to the wife being responsible for financial decision making during the relationship. (F58).
25. The parties separated on 17 November 2023. On the same date, the wife withdrew all funds from the parties' joint accounts (F71). The withdrawals total \$391,895.25. the wife deposes to not being agreeable to the husband having access to these funds.
26. The husband seeks an order these funds are placed into an account with a two-sign authority.
27. Since separation, the husband has relied upon financial support of the wife. She has continued to meet the repayment of the mortgage over the former matrimonial home. She has refused to give the husband access to the funds held in the parties' joint account at separation. The husband has had to drawn down on his investment fund to meet his day to day living expenses (H69). The husband has no access to any other financial resource (H70).
28. The Court should have no difficulty finding the husband has no present capacity to financially support himself.
29. The wife's Financial Statement, on its face, indicates the wife has no capacity to pay the husband anything, with her income asserted to be \$10,039 week, as against expenses of \$E11,470.
30. The expenses of concern include:
 - a. The mortgage payments on the former matrimonial home increased by approximately \$860 per week when the wife



	<p>unilaterally withdrew funds from the parties' joint accounts as detailed in the Orders sought below.</p> <p>b. Payments to babysitters and OOSH (c.\$1,638 since 9 January 2024), which payments would not be required as the husband is available and willing to care for the children;</p> <p>c. Payments for electrical and gas related to the former matrimonial home as the husband has paid these expenses;</p> <p>d. Payments for insurance on the Honda CR-V VTi-L (Registration Number DAI47C) as the husband had paid for this expense.</p> <p>e. Voluntary superannuation contributions in the amount of \$606 per week.</p> <p>f. Part N expenditure of \$3,275/week, which apart from generally appearing to be inflated, includes \$1,250 per week in legal fees.</p> <p>31. The wife's taxable income for 2021/2023 was \$486,957 (TB page 241) and for the year 2022/2023 it was \$521,934 (TB page 257).</p> <p>32. The wife acknowledges her greater earning capacity, even if the husband was able to secure employment (W89). She deposes to generating all family income since July 2015 (W87).</p> <p>33. The husband's application for spousal maintenance is modest. The husband has no capacity to support himself. The Wife does have capacity to pay, and should be ordered to do so.</p> <p>34. The wife's application to sell the former matrimonial home should fail.</p> <p>35. Further oral submissions will be made at the interim hearing.</p>

Part E Minute of orders sought

<p>Particularise each order you wish the Court to make at the interim hearing</p>	<p><u>Parenting</u></p> <p>1. That the Mother return Christian Finn Cooke, born 20 August 2014 (aged 9), and Joshua Finn Cooke, born 27th January 2017 (aged 7) ("the children") to the care of the Father forthwith and that the children thereafter live with the Father.</p> <p>2. That the children spend time with the Mother as follows:</p>
---	---



- (a) in Week One, from after school on Wednesday to before school on Thursday; and
 - (b) in Week Two, from after school on Friday (or 3pm on a non-school day) until before school on Monday (or 9am on a non-school day).
3. That for the purposes of these Orders the School Holidays shall be deemed to:
 - (a) Commence at the conclusion of school on the last day of term (excluding pupil free days) for students at the school at which the child is enrolled and attending; and
 - (b) Conclude at 4:00pm NSW time on the day prior to the first day of the new school term (excluding pupil free days) for students at the school at which the child is enrolled and attending.
4. That during the School Holidays the care arrangements in Order 4 be suspended so that the children spend time during the school holidays with each parent as agreed and, in the absence of agreement, as follows:
 - (a) School Holidays following Terms 1, 2 and 3:
 - (i) With the Father for the first half of each of the school holiday periods in odd numbered years and the second half in even numbered years.
 - (b) School Holidays (including Christmas) following Term 4:
 - (i) In odd numbered years with the Mother from the day after school breaks up until 12 noon Christmas Day, then with the Father for two weeks being 14 nights, then with the Mother for two weeks being 14 nights and the balance with the Father;
 - (ii) In even numbered years with the Father from the day after school breaks up until 12 noon Christmas Day, then with the Mother for 14 nights, then with the Father for 14 nights and then the balance with the Mother.
 - (iii) For the purpose of this Order, the school holidays are deemed to commence at the conclusion of school on the last day of term, and changeovers shall occur at 12 noon.

Changeovers

5. For all changeovers not occurring at school, the parent (or nominee) whose time with the children is ending shall deliver the children to the home of the other parent (or nominee).
6. That the children have liberty to communicate with the parent they are not spending time with via telephone or video at their request and the parent they are spending time with shall facilitate such communication.
7. That there be a restraint upon the Mother from consuming alcohol while the children are in her care for the 12 hours prior to them coming into her care.
8. That the Mother pay the Father's costs of and incidental to this application fixed in the sum of \$5,000.

ALTERNATE PARENTING ORDERS:

If the Court does not Order that the children live with the Father and spend time with the Mother, then the Father seeks the following:

That the parties share care on a week about basis with changeover occurring at 9am each Friday:

- (a) *on school days, at the children's school; and*
- (b) *on non-school days at the Father's place of residence.*

Property

9. That the Applicant have sole use and occupancy of the property 213 Morgan Street Merewether ("**the FMH**").
10. That the Respondent continue to pay when they fall due all costs and expenses associated with the FMH including but not limited to mortgage and loan repayments, strata levies, utilities, rates and insurance.
11. That the Applicant have use of the 2015 Honda CR-V VTi-L (Registration Number DAI47C) and that the Respondent continue to pay as and when they fall due all costs and expenses associated with this car including registration and insurance.
12. That the Respondent pay by way of spousal maintenance the sum of \$1,457 per week into an account nominated by the Applicant.
13. That within seven (7) days of the date of these Orders the Respondent return the following sums to the following accounts and that the parties thereafter take steps to ensure that both must agree to any further withdrawals:
 - (a) \$38,470.58 from account ending *2594;
 - (b) \$178,201.51 from account ending *5063;
 - (c) \$163,967 from account ending *7778;



(d) \$6,401.93 from account ending *7671; and

(e) \$4,854.23 from account ending *5055.


14. That within 14 days the parties take all steps necessary to release the sum of \$50,000 from account ending *5063 to the trust account of the Applicant's solicitors by way of interim litigation funding. Save that should the Respondent not return the funds as per the previous order the amount of \$50,000 be paid by the Respondent to the trust account of the Applicant's solicitors.

ALTERNATE PROPERTY ORDERS:

If the Court does not make Order 13 above, then the Father seeks the following:

That the funds withdrawn be shared equally by way of interim property distribution.

Part F Certification

Signed	Date
	10 April 2024

Signed by the applicant lawyer for the applicant

the respondent lawyer for the respondent

the other party (specify _____) lawyer for the other party (specify _____)

Approved by the Chief Justice/Chief Judge pursuant to Rule 15.21 0921V1

