

FAMILY LAW ACT 1975

**IN THE FEDERAL CIRCUIT AND
FAMILY COURT OF AUSTRALIA
(DIVISION 2)**

AT COFFS HARBOUR

No. (P)NCC3896/2023

BETWEEN

Clarity Lawyers
Level 2, 45 Hunter Street
NEWCASTLE NSW 2300

STEPHEN CHRISTOPHER COOKE
(Applicant)

AND

Delaney Roberts Family Lawyers
Telstra Civic Suite 1,
Level 2,
317 Hunter Street,
NEWCASTLE NSW 2300

HEATHER ANNE COOKE
(Respondent)

ORDER 23/4/2024

FAMILY LAW ACT 1975

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FILE NO: (P)NCC3896/2023

BETWEEN:

STEPHEN CHRISTOPHER COOKE (Applicant)

AND:

HEATHER ANNE COOKE (Respondent)

BEFORE:

JUDGE CARTY

DATE:

23 April 2024

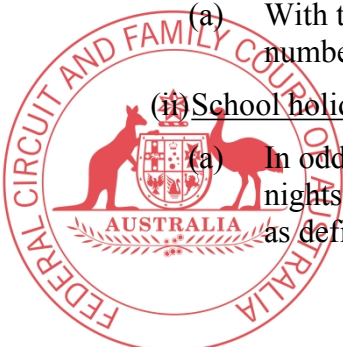
MADE AT:

COFFS HARBOUR

UPON APPLICATION MADE TO THE COURT by Ms Turner, Solicitor, for and with the APPLICANT and Ms Roberts, Solicitor, for and with the RESPONDENT.

THE COURT ORDERS UNTIL FURTHER ORDER THAT:

1. The children Christian Finn Cooke born on 20 August 2014 and Joshua Finn Cook born 27 January 2017 live with the mother.
2. The children spend time with the father at all such times as may be agreed between the parents and failing agreement as follows:
 - 2.1 During school term, in a fortnightly cycle as follows:
 - i. Week 1 from the conclusion of school or 3.00pm on Thursday until the commencement of school or 9.00am on Monday; and
 - ii. Week 2 from the conclusion of school or 3.00pm on Thursday until the commencement of school or 9.00am on Friday.
 - 2.2 During the school holiday period the spend time with arrangements in Order 2.1 are suspended and the children will spend time with the father as agreed between the parents and, in the absence of agreement, as follows:
 - (i) School holidays following Terms 1, 2 and 3:
 - (a) 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.
 - (ii) School holidays (including Christmas) following Term 4:
 - (a) In odd numbered years with the father from 3.00pm Christmas Day for 14 nights, and then from 22 January for the balance of the school holiday period as defined herein;



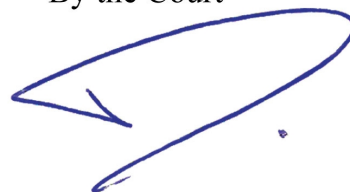
(b) In even numbered years with the father from the day after school breaks up until 3pm Christmas Day, and then from 8 January for 14 nights.

- 3 For the purposes of Order 2.2 herein, the school holidays are deemed to commence at the conclusion of school on the last day of term, and to conclude on the day prior to the commencement of the next school term, and changeovers shall occur at 3pm.
- 4 Changeover is to occur at school on a school day and otherwise at the Shell Service Station on Glebe Road, Merewether NSW.
- 5 That all communications between the parents in relation to the children will be in writing via text message or email, unless in an emergency.
- 6 The parent with the care of the children is to facilitate a phone call with the other parent at any time requested by either of the children.
- 7 Each parent is hereby restrained from consuming alcohol to such an extent that their Blood Alcohol Concentration ("BAC") will exceed 0.05 at any time that the children are in their care, or for the period six (6) hours prior to the children coming into their care.
- 8 All outstanding interim applications are dismissed.

THE COURT FURTHER ORDERS ON AN INTERIM BASIS BY CONSENT THAT:

- 9 Notwithstanding any other order herein, the children are to spend time as follows:
 - (a) During each Mother's Day and Father's Day, from 3.00pm to 6.00pm with the relevant parent to celebrate Mother's or Father's Day.
 - (b) During each of the children's birthdays, from 3.00pm to 6.00pm with the parent with whom they did not wake up.
- 10 That each of the parents is hereby restrained from:
 - (a) Denigrating the other parent or allowing any third party to denigrate the other parent, in the presence of the children.
 - (b) Discussing with the children any aspect of the parenting dispute or Court proceedings.
 - (c) Using physical punishment to discipline the children.

By the Court



Registrar



Family Violence Information Sheet

This information sheet contains important information for litigants who have experienced, or are alleged to have perpetrated, family violence. This information is not a substitute for legal advice.

About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a member of the person's family (the family member), or causes them to be fearful (section 4AB *Family Law Act 1975*).

The Federal Circuit and Family Court of Australia (the Court) takes family violence very seriously. Protecting family members from the effects of family violence and ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Court.

Safety at court

Parties concerned about their safety when attending court events can contact the Court's registry in which their matter is listed to arrange a safety at court plan prior to the listing.

Legal and support services

The Family Advocacy and Support Service (FASS) is a free legal and support service provided by Legal Aid to assist family law litigants who have been affected by family violence. Litigants can attend the free Legal Aid Family Law Duty Service. For more information about FASS, see Family Advocacy and Support Services, Legal Aid, see the Legal Aid section of Find a Lawyer or contact the Court.

Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that **unrepresented litigants** will be **unable** to cross-examine the other party at an interim or a final hearing if there are allegations of family violence **and**:

- i. either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party: section 102NA(1)(c)(i)
- ii. a final Family Violence Order applies to both parties: section 102NA(1)(c)(ii)
- iii. an injunction has been made under section 68B or section 114 of the *Family Law Act* for the personal protection of one party against another: section 102NA(1)(c)(iii), or
- iv. the Court makes an order that personal cross-examination should not be permitted: section 102NA(1)(c)(iv).

In matters involving alleged family violence which **do not** fall into the above categories, the Court may permit personal cross-examination by an unrepresented party but must ensure alternative protections, such as cross-examination via video link, are implemented: section 102NB.

These provisions apply to all proceedings under the Family Law Act, not just parenting proceedings.

Parties who are not permitted to personally cross-examine another party may retain private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the Scheme) to obtain legal representation. The Scheme is not means or merits tested, but applicants may be required to contribute to the cost of their representation. Applications are made through the relevant state or territory Legal Aid Commission. All applications to the Scheme must be made at least 12 weeks prior to the final hearing.

Unrepresented litigants who do not have legal representation either privately or through the Scheme will be unable to cross-examine the other party at the final hearing.

Further information can be found on the Court's website: www.fcfoa.gov.au/fl/fv/overview

This information sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Circuit and Family Court of Australia cannot provide legal advice.

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Parenting orders – obligations, consequences and who can help

This information is for parents and other people, such as grandparents, who are subject to a parenting order. It includes information, pursuant to section 65DA(2) of the *Family Law Act 1975*, about the legal obligations created by a parenting order and the consequences that may follow if it is contravened (breached).

This document also includes information, pursuant to sections 62B and 65DA(3) of the Family Law Act, about:

- courses, programs and services in the community that can help people understand their responsibilities and adjust to a parenting order, and
- the options available to ensure that people comply with (follow) a parenting order.

It is important that you read this information

You have been given this document because a court has made a parenting order which requires you to take certain steps.

Note – If this document is attached to a parenting order, the information provided pursuant to section 65DA(2) of the Family Law Act forms part of the order.

It is important that you understand the terms of the order and the obligations it creates. If you are unsure about any of the terms or obligations, ask your lawyer if you have one. You can also seek legal advice about a parenting order if you were not represented at court.

Community courses, programs and services

There are courses, programs and services in the community that can help you:

- reach an agreement with the other party
- understand your parental responsibilities, and
- adjust to and follow court orders.

For more information about these options, go to www.familyrelationships.gov.au, call **1800 050 321** or visit a Family Relationship Centre near you.

A court may order you to attend a post-separation parenting program. You must attend. If you fail to go to a program as ordered, without reasonable excuse, you may be in breach of the parenting order and be penalised.

What is a parenting order?

A parenting order is a set of orders made by a court about parenting arrangements for a child. A court can make a parenting order based on an agreement between the parties (consent orders) or after a court hearing or trial. When a parenting order is made, each person affected by the order must follow it.

A parenting order may deal with one or more of the following:

- who the child will live with
- how much time the child will spend with each parent and with other people, such as grandparents
- the allocation of parental responsibility
- how the child will communicate with a parent they do not live with, or other people
- any other aspect of the care, welfare or development of the child.

A parenting order can require the parties to follow certain steps before applying to a court to change an order. It can also state the process for resolving disputes that arise from the order.

If the parenting order provides that two or more people have equal shared parental responsibility, any decision about a major long-term issue in relation to a child must be made jointly. This requires each person to consult with the other person and make a genuine effort to reach a joint decision.

Note – The status of a parenting order may be altered if a parenting plan is developed by both parties in the future. For more information about parenting plans, go to www.familyrelationships.gov.au, call **1800 050 321** or visit a Family Relationship Centre near you.

Your legal obligations

- You must do everything a parenting order says. In doing so, you cannot be merely passive but must take positive action and this positive obligation includes taking all reasonable steps to ensure that the order is put into effect. You must also positively encourage your children to comply with the orders. For example where the order states your children are to spend time with another party, you must not only ensure that the children are available but must also positively encourage them to go and do so. There are agencies in the community that can help you and your family adjust to and comply with the order (see details above).

- If a parenting order has been made that provides for a child to spend time with, live with, communicate with a person, or a person is to have parental responsibility for a child, then it is an offence to send the child from Australia without an order of the Court or without the consent in writing of the person in whose favour the order has been made. Penalty is imprisonment for three years.
- The order remains in force until a new parenting order or parenting plan changes it in some way.
- Even if the needs or circumstances of you, the child or the other party change, the court order applies until it is formally changed by a court or, in some situations, you enter into a parenting plan with the other party.
- Sometimes people talk to each other about changing arrangements set out in a parenting order. These talks do not change the order.

If you and the other party agree to change the arrangements, you may enter into a parenting plan or apply for consent orders that vary the existing orders. For more information about consent orders, go to www.fcftoa.gov.au, live chat or call **1300 352 000**.

If you want to change a parenting order and the other party does not agree, family dispute resolution can help you and the other party work through your disagreement. Resolving issues this way is less formal than going to court and should cost less in money, time and emotion. If an agreement cannot be reached, you may consider applying to a court for orders.

Legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Penalties for failing to comply with a parenting order

A court can only penalise someone for failing to comply with a parenting order, which has not been altered by a parenting plan, if another person files an application alleging the person did not comply with the order. After considering all the facts of the case and applying the law, a court may decide that:

1. the alleged contravention was not established
2. the contravention was established but there was a reasonable excuse
3. there was a less serious contravention without reasonable excuse, or
4. there was a more serious contravention without reasonable excuse.

If a court finds that you have failed to comply with a parenting order without reasonable excuse, it may impose a penalty. Depending on the situation and the type and seriousness of the contravention, a court may:

- vary the primary order
- order you to attend a post separation parenting program
- compensate for time lost with a child as a result of the contravention
- require you to enter into a bond
- order you to pay all or some of the legal costs of the other party or parties
- order you to pay compensation for reasonable expenses lost as a result of the contravention
- require you to participate in community service
- order you to pay a fine
- order you to a sentence of imprisonment.

In addition to these orders, a court may also adjourn the case to allow you or the other party to apply for a further parenting order.

The penalties are listed in Division 13A in the *Family Law Act 1975*. To view the Act, go to www.legislation.gov.au. For more information about compliance, see the fact sheet 'Compliance with parenting orders'.

Where the parenting orders are inconsistent with a family violence order

If a parenting order is made that is inconsistent with a family violence order, the family violence order is invalid to the extent of the inconsistency. If you wish to vary or revoke a parenting order or injunction, you should seek legal advice. Depending on your circumstances, options available may include appealing the parenting order or making a further application to the Court. The parenting order remains in force until it is varied or revoked, and your legal obligations remain as set out in this document.

Location and recovery orders

If you breach a parenting order and you cannot be found, a court may make a location order. This order requires other people or organisations, including government departments, to give any information they have about where you and the child may be located.

If you breach a parenting order by failing to return the child as required, a court may also make a recovery order. This is an order issued to the Marshal of the Court, all officers of the Australian Federal Police and all state and territory police officers to find and recover the child. The order may also allow a search of any vehicle, vessel, aircraft or any other premises where the child may be found.

This fact sheet provides general information only and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Court cannot provide legal advice.

More information

For more information, including access to legislation, forms or publications mentioned in this fact sheet:

- go to www.fcftoa.gov.au
- live chat on the website
- call 1300 352 000, or
- visit a court registry near you.

Distributed in accordance with sections 62B and 65DA of the *Family Law Act 1975*.

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