

**FAMILY LAW ACT 1975**

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

**AT NEWCASTLE**

**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)**

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ORDER 29/1/2024

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FAMILY LAW ACT 1975

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

FILE NO: (P)NCC3896/2023

BETWEEN:

STEPHEN CHRISTOPHER COOKE (Applicant)

AND:

HEATHER ANNE COOKE (Respondent)

BEFORE:

JUDICIAL REGISTRAR FURNER

DATE:

29 January 2024

MADE AT:

NEWCASTLE

UPON APPLICATION MADE TO THE COURT by Ms Evelyn, of Counsel for and with the Applicant AND Ms Roberts, Solicitor for and with the Respondent, all appearances by way of Microsoft Teams.

THE COURT ORDERS BY CONSENT AND PENDING FURTHER ORDER THAT:

1. The Respondent shall file and serve the following documents no later than **4:00pm on 5 February 2024**:
  - a. A Response to Initiating Application;
  - b. A consolidated affidavit in support of the interlocutory application only, noting the provisions of Rule 5.08 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* as modified by Rule 2.02 of the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* (“**the Rules**”);
  - c. A *Financial Statement*;
  - d. A *Notice of Child Abuse Family Violence and Risk*; and
  - e. A *Genuine Steps Certificate*.
2. By no later than **4:00pm on 5 February 2024**, the parties shall exchange (via their respective solicitors) a copy of the documents in the control or possession of each of the parties in accordance with Rule 6.06(3) of the Rules, to the extent that these documents have not already been provided.
3. By no later than **4:00pm on 5 February 2024**, the Respondent shall provide to the Applicant via the Applicant’s solicitor:



- a. The Respondent's income taxation returns and notices of assessments for the financial years 2022/2023, 2021/2022 and 2020/2021 and in the event the 2022/2023 taxation return has not yet been prepared, the Respondent shall provide an indication of when such taxation return will be completed and a copy of same within seven (7) days of completion;
  - b. A current superannuation statement for each superannuation interest in which the Respondent has an interest;
  - c. Statements for all bank or credit union accounts (including loan, mortgage and credit card accounts) in which the Respondent has an interest for the period from the last 12 months to the date of these orders;
  - d. Any documents which support the information contained in the Respondent's Financial Statement; and
  - e. Documents evidencing the bank transfers made on 17 November 2023 by the Respondent of the amounts indicated below from the following accounts including particulars as to where those funds are currently held and/or how those fund have been used:
    - i. \$29,750 from account ending #2594;
    - ii. \$173,000 from account ending #5063; and
    - iii. \$166,037 from account ending #7778.
4. No later than **12 February 2024**, the Applicant shall provide to the Respondent via their respective solicitors:
- a. His 2022/2023 tax return and notice of assessment and in the event that these documents have not yet been prepared, the Applicant shall provide an indication of when such taxation return and notice of assessment will be completed and a copy of same within seven (7) days of completion;
  - b. A current statement for all cryptocurrency interests of the Applicant;
  - c. An inventory of all IT equipment in the possession of the Applicant, including such items held in the former matrimonial home, including but not limited to particulars of all servers, satellites, mini arcade, monitors, hard drives, routers, mining rig(s) and any equipment housing any of the above equipment;
  - d. Market appraisals, purchase contracts, receipts, invoices or other documentation evidencing the current market value of any items disclosed pursuant to the immediately preceding Order; and
  - e. Particulars of disposal of any of the items referred to in the above Order within 12 months prior to separation including the sale price and the application of any proceeds of sale.



5. In the event that the Applicant's Financial Statement filed 5 December 2023 is inaccurate or incomplete in respect of the IT equipment and/or cryptocurrency in his ownership, possession and/or control, the Applicant shall file and serve an updating Financial Statement by no later than **12 February 2024**.

**THE COURT FURTHER ORDERS THAT:**

**Single Expert Report - Parenting**

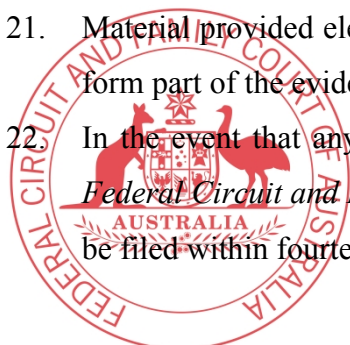
6. Pursuant to Rule 7.03 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, Mr Andrew Steele Family Therapy of the Swift Clinic or Mr Drew Cowan of Relationspace (the "Single Expert") with the consultant to be appointed is the consultant with the earliest availability is appointed as the Single Expert to enquire into and report upon issues relating to the welfare of **Christian Finn Cooke, born 20 August 2014 and Joshua Finn Cooke born 27 January 2017 (the child/ren)**.
7. The solicitor for the Applicant shall prepare a draft letter of instructions and provide same to the solicitor for the Respondent within seven (7) days of the date of these Orders.
8. The Solicitor for the Respondent shall advise the solicitor for the Applicant of any changes required within seven (7) days of receipt of the draft joint letter of instructions.
9. Thereafter the joint letter of instructions shall be emailed to Mr Andrew Steele of Family Therapy or Mr Drew Cowen of Relationspace, whichever is the case.
10. The Respondent shall pay the costs associated with the Consultant for the preparation of the Child Impact Report from the joint funds transferred by the Respondent on 17 November 2023 from Westpac accounts ending #2594, #5063 and #6063.
11. In the event that any of the parties request the attendance of the single expert at Court for the purposes of cross-examination, the parties shall be equally responsible for the single expert's costs in respect of such attendance.
12. The single expert shall prepare a report (the single expert report) which addresses the following matters:
- a. Any views expressed by the **children** and any matters (such as the **children's** maturity or level of understanding) that would affect the weight that the Court should place on those views;
  - b. The matters set out in ss 60CC, 61DA and 65DAA of the *Family Law Act 1975*;
  - c. The impact of the issues/dispute before the Court on the **children**;
  - d. any other matters that the Single Expert considers important to the welfare or best interests of the **children**.
13. The parties and the **children** shall attend upon the Single Expert for interviews at such times and locations and in such manner as is directed by the Single Expert.



14. The parties shall facilitate the preparation of the Single Expert Report including attending on and arranging for the **children** to attend upon the Single Expert as directed by that person.
15. The Single Expert shall be permitted to speak to the child's psychologist/school counsellor/treating paediatrician in the preparation of the Single Expert Report.
16. The Single Expert shall be at liberty to inspect by appointment at the Court Registry any material presently before the Court in admissible form, any material filed by the parties, produced under subpoena, or produced pursuant to a request made under s 69ZW of the *Family Law Act* or s 245D/ s 248 of the *Children and Young Persons (Care and Protection) Act*.
17. Pursuant to Rule 1.31 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, the Court dispenses with the requirements of Rule 6.37 of the said Rules and the Single Expert is granted leave to inspect all documents produced in response to subpoena, including material which is unreleased due to the issuing party not filing a Notice of Request to Inspect promptly after the date of production.
  - a. If requested to do so the Independent Children's Lawyer is granted leave to copy all material produced on subpoena in these proceedings and provide copies to the expert directly.
  - b. If the Single Expert Report writer is unable to inspect documents produced in response to subpoena and/or any other Court file(s) in these proceedings at the Newcastle Registry of the Commonwealth law Courts, the Registry Manager upon receiving a request from the Single Expert report writer, is to forward such documents to the Registry nominated by such consultant to permit such inspection.
18. Within 7 days of the report being finalised, the Applicant shall cause a copy of the single expert report, annexed to an affidavit of the single expert, to be filed with the Court.

#### **Next Court Event - Interim Hearing**

19. The interim application contained within the Initiating Application (Family Law) filed on **5 December 2023** is listed before Her Honour Judge **Carty** at **2.30pm on 11 April 2024** for interim defended hearing, that hearing to be of no more than 2 hours duration.
20. Each party will be contacted by the Associate to Her Honour Judge Carty with details of the manner in which the hearing will proceed and the necessary information to attend the hearing.
21. Material provided electronically as material a party proposes to tender at the hearing will not form part of the evidence until actually tendered during the hearing.
22. In the event that any party seeks to issue subpoena in accordance with Rule 6.27(3) of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, such subpoena must be filed within fourteen days of the date of these Orders.



23. No party shall be permitted to issue further subpoena for production for the hearing of the interlocutory application other than in accordance with these Orders without leave of the Court.
24. By **4.00pm on 21 March 2024** each party must file and serve a consolidated Affidavit setting out the evidence on which they intend to rely at the interim hearing, that affidavit to be no longer than 10 pages in length, have no more than 5 annexures and otherwise comply with the form prescribed by the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.
25. By **4.00pm on 21 March 2024** each party must forward to the Chambers of the **Judge** at [Associate.JudgeCarty@fcfcoa.gov.au](mailto:Associate.JudgeCarty@fcfcoa.gov.au) in one single document not exceeding 8 pages:
  - a. A short chronology of all relevant events;
  - b. A list of authorities to be relied upon;
  - c. A completed Outline of Case Document (Interim Hearing), in the approved form, which shall include:
    - i. A list of all documents to be read and relied upon at the interim hearing;
    - ii. An outline of the issues in dispute;
    - iii. An outline of contentions, to include those relevant facts which are agreed and contested;
    - iv. A minute of orders sought, clearly identifying those orders which may be jointly proposed by the parties, and for this purpose the parties and legal representatives are requested to confer prior to the time for filing referred to above.
26. By **4.00pm on 28 March 2024** the parties forward to the Chambers of the **Judge** at [Associate.JudgeCarty@fcfcoa.gov.au](mailto:Associate.JudgeCarty@fcfcoa.gov.au) a combined tender bundle for the interim hearing, any such combined tender bundle to be prepared and forwarded as follows:
  - a. Each other party must forthwith notify the **Solicitor for the Applicant** of any documents they seek to be included in the combined tender bundle, including specific details as to the relevant subpoena packet number(s) and page number(s);
  - b. Leave is granted to the **Solicitor for the Applicant** to photocopy documents produced on subpoena or in response to an order in these proceedings, including documents to which Rule 6.37(2) of the *Federal Circuit and Family Court of Australia (Family Law) Court Rules 2021* applies (“the restricted documents”), for the sole purpose of preparing the joint tender bundle.
  - c. Where restricted documents are included in a combined tender bundle, the following constraints apply to the use of those restricted documents:



- i. Those restricted documents are to be used for the sole purpose of the interim hearing;
- ii. A legal representative must not:
  1. Provide a copy of any restricted document to their client, whether as part of the combined tender bundle or otherwise;
  2. Permit their client to copy any part of the combined tender bundle that includes a restricted document; or
  3. Allow any other person to provide any part of the combined tender bundle to their client.
- iii. A self-represented litigant must not:
  1. Allow any other person to view or copy the combined tender bundle;
  2. Provide a copy of the combined tender bundle to any other person;
- iv. A legal representative, including the Independent Children's Lawyer, may provide a copy of the combined tender bundle to another lawyer briefed or engaged to appear at the interim hearing but not otherwise and any such person is subject to the same restrictions and obligations in relation to the tender bundle.
- v. A sealed copy of these Orders must be provided to any person receiving a copy of the combined tender bundle, including solicitors or Counsel.
- vi. At the conclusion of the interim hearing any person in possession of the combined tender bundle must immediately destroy the documents.

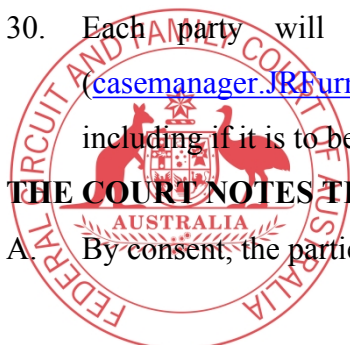
27. In the event of non-compliance with these filing directions the Court will at its discretion either vacate the interim hearing, conduct the matter as a procedural hearing, proceed on an undefended basis, list other matters with priority and/or make a costs order against the defaulting party.

**Future Court Event – Mention**

28. All outstanding applications are adjourned to **22 April 2024 at 2.30pm** before Judicial Registrar Furner for mention, by electronic hearing.
29. All parties are required to comply with Rule 12.06 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* prior to the next and all subsequent occasions.
30. Each party will be contacted by the Chambers of Judicial Registrar Furner ([casemanager.JRFurner@fcfcoa.gov.au](mailto:casemanager.JRFurner@fcfcoa.gov.au)) with the necessary information to attend the hearing, including if it is to be conducted electronically.

**THE COURT NOTES THAT:**

A. By consent, the parties request the Court to note the following:

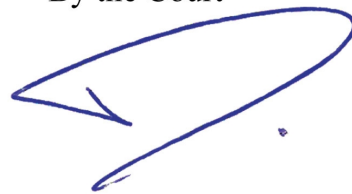


- i. The Respondent has unilaterally withdrawn the following sums from the following accounts:
    - 1.The amount of \$29,750.00 from Westpac account ending #2594;
    - 2.The amount of \$173,000.00 from the Westpac account ending #5063; and
    - 3.The amount of \$166,037.00 from the Westpac account ending #6063.
  - ii. The Applicant seeks the funds (totalling \$368,787) be held jointly in a trust account pending further order or written agreement. The Respondent does not agree to such an order on the basis that she requires these funds to operate her business including for the payment of ongoing taxation liabilities. There is a dispute in this regard that will require an interim hearing.
  - iii. Enquiries with respect to Andrew Steele Family Therapy indicate the cost of a private child impact report to be \$2,200 plus GST.
  - iv. Enquiries with respect to Drew Cowen of Relationspace indicate the cost of Mr Cowen to prepare a private child impact report to be \$5,500 plus GST.
- B. Section 121 of the *Family Law Act 1975* provides that it is an offence punishable by imprisonment for up to one year to publish or disseminate to the public or a section of the public any account of family law proceedings which identifies the parties, witnesses or other people concerned with the proceedings, unless specifically authorised by the Court.



C. If in any proceedings there are allegations of family violence and the provisions of s 102NA of the *Family Law Act 1975* apply (see attached Family Violence Information Sheet), any unrepresented party will not be permitted to personally cross-examine the other party/parties. Affected unrepresented parties may apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (“the Scheme”) for representation but any such application must be made at least 12 weeks prior to the final hearing. Further information about the legislation and the Scheme can be found at Part 4 of the attached Family Violence Information Sheet.

By the Court

A handwritten signature in blue ink, consisting of a large, stylized loop that tapers to a point on the left and ends in a small dot on the right.

Registrar



# Family Violence Information Sheet

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

## 1. About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a family member or causes them to be fearful (section 4AB *Family Law Act 1975*). Protecting family members from violence and ensuring the safety of all people engaged in the family law system, including when attending Court, is a high priority for the Federal Circuit and Family Court of Australia (the Court).

## 2. Safety at Court

Parties concerned about their safety when attending Court events can contact the registry in which their matter is listed to arrange a Safety Plan prior to the listing.

## 3. Legal and Support Services at Court

The Family Advocacy & Support Service (FASS) is a free legal and support service to assist family law litigants who allege they have been affected by family violence. For more information about FASS, parties should contact the registry in which their matter is listed.

## 4. Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that, from 10 September 2019, unrepresented parties will not be permitted to personally cross-examine another party 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.

Further information is contained on the Court's website: <https://www.fcfoa.gov.au/fl/fv/overview>