

JURISDICTION : FAMILY COURT OF WESTERN AUSTRALIA
ACT : FAMILY LAW ACT 1975
LOCATION : PERTH
CITATION : VINCE and SPRUCE & ORS [2016] FCWA 97
CORAM : THACKRAY CJ
HEARD : 5 OCTOBER 2016
DELIVERED : Ex tempore
FILE NO/S : PTW 1292 of 2014
BETWEEN : MR VINCE
Applicant

AND

MS SPRUCE
First Respondent

AND

MR B VINCE
MS L VINCE
Second Respondents

Catchwords:

CHILDREN - WITH WHOM A CHILD SPENDS TIME - The children live with the mother and the father is incarcerated - Whether the children should spend time with the father and paternal grandparents against their wishes - Order for the family to engage with the Adoption Research and Counselling Service with a view to improving the relationships between the children and the father and paternal grandparents.

Legislation:

Family Law Act 1975 (Cth)

Category: Not Reportable

Representation:

Counsel:

Applicant : Ms Farmer
First Respondent : Ms Chakich
Second Respondents : Ms Farmer

Solicitors:

Applicant : Lavan Legal
First Respondent : Bannerman Solicitors
Second Respondents : Lavan Legal

Case(s) referred to in judgment(s):

Nil

THACKRAY CJ

WORDS IN SQUARE BRACKETS REPLACE WORDS USED IN THE ORIGINAL JUDGMENT - PARTIES' NAMES AND IDENTIFYING DETAILS HAVE BEEN CHANGED

1 The application before the court today is the Form 2 application filed by the father on 19 July 2016. It was listed somewhat belatedly because I have been on extended leave. Also before the court is the response of the mother filed on 27 September 2016. It is not necessary to trace the full background to these fairly protracted proceedings, as it is well known to the parties.

2 It is important to record that on 20 October 2015, at a hearing before Jordan AJ, the parties reached an agreement in relation to a difficult dispute concerning the arrangements for the children: [Chelsea], born [in] 2005; and [Rick], born [in] 2007. Pursuant to that agreement, the children were to remain living with the mother. The father was and still is incarcerated due to convictions of [theft]. It was also agreed that the children would be able to spend time with their paternal grandparents on Saturdays, and it was anticipated that the time would be arranged so the father could spend time with the children during his release from prison pursuant to the “reintegration program”. Orders were also made for telephone time.

3 The order anticipated that the changeover for the first visits between the children and the grandparents would be supervised at Relationships Australia in [Suburb A], and that thereafter the handovers would occur at [Café A] in [Suburb B]. The family made contact with Relationships Australia and an arrangement was set up to begin to facilitate the order. However, as I understand the position, it was felt by Relationships Australia in view of what they had learned about the family and the children’s views about the forthcoming visits, that the visits should initially be supervised rather than just the handovers.

4 The first visit was unsuccessful, and the complete lack of success is described at quite considerable length in the report that is before the court from the supervision service. The position adopted by the service thereafter was that it would not facilitate further visits in view of the strong opposition expressed by the children and the anxiety and upset that they experienced.

5 Subsequently, the children were interviewed in accordance with an order of the court by Family Consultant Hanavan, who had previously been involved with the family. At the end of March 2016, I authorised the release of a report from Mr Hanavan, which is now before the court. The content speaks for itself, but the children expressed fairly firm opposition to having anything to do with their father and the paternal grandparents. As I have said in hearing the argument, they appeared to lump the father and the grandparents in the same boat, and spoke of recollections they thought they had of past poor conduct by the father, and to a lesser extent, by the paternal grandparents.

6 In his report, Mr Hanavan discussed an earlier report from the single expert, [Mr C], who had been somewhat critical of the mother and the strength with which she expressed her opinions in relation to the father and the children spending time with him and his family. Reading both what is in the report and between the lines of the report, Mr Hanavan perhaps adopts a less critical view of the mother.

THACKRAY CJ

7 Although unexplored in cross-examination, Mr Hanavan expressed a fairly firm opinion that recommendations previously made by the single expert were no longer practicable, and that if there was to be further communication and a relationship between the two children and their father and the paternal grandparents, then this would require some therapeutic intervention in the form of counselling. Mr Hanavan expressed the view that if the children’s opinions were not to be fully respected and an effort was made to repair the breakdown in the relationship between them and their father and their paternal grandparents, then the Adoption Research and Counselling Service (“ARCS”) would be the recommended agency. I accept that recommendation, because this is an agency which does have expertise and considerable experience in attempting to reunite families.

8 Fortunately, following the production of Mr Hanavan’s report, it emerged that there is a considerable degree of unanimity between the paternal grandparents and the mother. They agree that, as recommended by Mr Hanavan, an attempt should be made to repair the relationships in the family, with a view to the children being able to have the benefit of seeing their father and repairing their relationship with the paternal grandparents. The father is being released on a one-night basis at the moment, and it seems quite likely he will be released altogether [in] 2017.

9 The only point of disagreement is whether or not, pending the work that is to be done by ARCS, the grandparents should have a further opportunity to spend supervised time with the children. It is common ground that ARCS will not work with the family while supervised visits are being undertaken. Hence, as I understand the amended position of the grandparents, they would leave ARCS to work with the father, who would not be having supervised time, while they attempt to have supervised time.

10 As I have said to Ms Farmer in her submissions on behalf of the father and his family, the concern that I have in relation to that proposal is not that it is an unreasonable proposal; indeed, it is a sensible way to look at it. However, it is a proposal that would result, in my view, in the children being quite considerably aggrieved that they have gone through the experience of speaking to someone at the Family Court, telling him in no uncertain terms the strength of their opinions about spending time with the father and his family, only to find that those opinions have seemingly been completely ignored by the court and by the grandparents.

11 I do not have any real confidence, if I were to make the order that is sought by the grandparents, that there would be any different outcome to the one achieved on the previous occasion. My concern for the future of this family and its relationships is that there is a greater probability of more harm than good being done by such an attempt, and that the better way to proceed is to enlist the services of ARCS, not only in attempting to restore the relationship with the father, but also to restore the relationship with the grandparents. In many respects, the relationship with them is equally broken down, with it being more than 18 months since the children have seen the grandparents, save for the aborted visit with Relationships Australia. Accordingly, I am not going to make the order that is proposed by the grandparents, but will instead make an order that the whole of the family consult with ARCS and follow the recommendations made by ARCS.

THACKRAY CJ

- 12 The other issue that needs to be considered is who is to meet the expenses associated with the involvement of ARCS. It is an organisation that I know struggles with money, because it does not have the degree of outside and government support that is enjoyed by other organisations, which is a great pity given the splendid work that they do. As a result, I have been told that there will be three intake sessions costing \$120 each for everyone involved and a session with each of the children that will cost \$200, and thereafter there will be counselling and interventions at a rate that they will determine. So on either side, there is an initial expense in the region of \$1,000 each, and there is an unspecified amount for the future work that will hopefully be done.
- 13 The grandparents were originally proposing a sharing of this expense, but the mother has pointed out that she is [an] assistant earning a modest income and that she is entirely responsible for supporting these children, without any assistance from the father or the grandparents. As a consequence, she cannot afford the expense. The merit in that proposition appears to have been accepted by the grandparents, because as an alternative proposition, they point to a fund of money being available from the sale of a property in which the whole of the family appears to have had an interest. This money remains held in trust, pending the outcome of property settlement proceedings at some unspecified time in the future. They say that the mother could look to this fund to meet her share of the expense. It is said that there is about \$50,000 in the fund that is not contested by the grandparents. The mother says she hopes to obtain the majority of those funds and would prefer that the funds not be used for this purpose.
- 14 I do not have a great deal of information about this money, apart from what I have just enunciated. However, it is not in dispute that the funds exist and that the mother hopes to obtain the lion's share. Dealing with the matter on a summary basis, I propose to require that some of that money be used for the purpose proposed, but capped at \$1,000. I will otherwise require the grandparents to meet any further balance that is incurred, as they seem to be in a stronger financial position, given that they are, for example, able to afford legal representation in these proceedings.
- 15 As for telephone communication, there is an agreement that this should continue, notwithstanding that it appears to have been fairly unsatisfactory up until now. The father proposes to reduce the number of times that he calls from twice a week to once a week at 5.00 pm on Sundays, in addition to special occasions, and the mother is in agreement.
- 16 The mother does not press her application for a "dollar-for-dollar" costs order. I have also pointed out that her application for costs in relation to the contravention proceedings is incompetent because it is out of time.
- 17 Ms Farmer makes the valid point in her submissions that the success of this program at ARCS will be dependent on a number of factors, but in particular, the attitude of the mother. She points to her concerns about this because of what Mr C said in his report. Although that report is somewhat old, it would be hoped that everyone involved has considered it carefully. I accept that people are able to modify their behaviour and attitudes, particularly as the hurt associated with the separation and the father's incarceration hopefully begins to fade a little. However, there can be

THACKRAY CJ

no doubt that the prospects of these children developing a less hostile attitude to their father and grandparents will be heavily influenced by the person with whom they are closest and with whom they are living full-time. It is gratifying to see what Mr Hanavan said in his report about the children reporting that their mother has been telling them to “give a go” to the contact arrangement with the grandparents and the father.

18 The mother could provide further encouragement to the children when she explains to them that they are going to be involved in this ARCS process, not only because the grandparents and the father desire it, but because she too desires it. She has no doubt taken on board what Mr Hanavan has said about the potential detriment to the children of simply cutting off half of their genetic inheritance by not having the contact with their father and grandparents that they have said they do not want to have.

19 Hopefully there will be some support for the process on both sides, and hopefully ARCS will be able to do what it is well equipped to do. Ultimately, however, having undertaken their assessment process, the court will be in the hands of ARCS as to whether or not, in their independent and expert assessment, there is benefit to the children in pursuing the process past the initial stages. For those reasons, I will make the following orders, subject to hearing from counsel about their form.

ORDERS

1. Subject to the availability and wait lists of the Adoption Research and Counselling Services (“ARCS”), the parties and the two children engage with ARCS to assist in the reintroduction of the children, [CHELSEA] born [in] 2005 and [RICK] born [in] 2007, with the Applicant father, [MR VINCE], and paternal grandparents, [MR B VINCE] and [MS L VINCE].
2. Each party shall:
 - (a) telephone ARCS as soon as practicable to arrange an appointment;
 - (b) attend any appointments arranged by ARCS;
 - (c) comply with the rules of ARCS;
 - (d) comply with all reasonable requests or directions of the staff of ARCS; and
 - (e) provide a copy of this order to ARCS.
3. The Respondent mother, [MS SPRUCE], be at liberty to access the funds currently held on trust in order to meet portion of the costs of the engagement of ARCS to a limit of \$1,000. Until further order of the Court, the costs otherwise be met by the father and the paternal grandparents.

THACKRAY CJ

4. ARCS be requested to provide a written report to each party at the recommendation of the counsellor or such other professional involved with ARCS, with the costs of the report to be met by the father and paternal grandparents.
5. The current orders for contact and communication be suspended until further order of the Court pending the receipt of the report from ARCS.
6. By consent, the father have telephone communication with the children each Sunday at 5.00 pm, on Christmas Day, on the children's birthdays and on such other days as may be agreed between the mother and the father.
7. The proceedings are otherwise adjourned to be relisted on written request being made after publication of the report from ARCS.

I certify that the preceding [19] paragraphs are a true copy of the reasons for judgment delivered by this Honourable Court

Associate