

FAMILY COURT OF AUSTRALIA

BROWN & PHILLIPS

[2014] FamCA 9

FAMILY LAW – CHILDREN – where the parties agreed the respondent should have sole parental responsibility with some restrictions – where the applicant is a transgender male – where the parties settled all but four matters which were: how much time the child should spend with the applicant on father’s day; how much time the child should spend with the applicant during school holidays; how much information the applicant should receive about the child’s schooling and health and how the applicant should receive that information; and the circumstances in which the applicant should attend the child’s extra-curricular activities

Family Law Act 1975 (Cth)

APPLICANT:	Mr Brown
RESPONDENT:	Ms Phillips
INDEPENDENT CHILDREN’S LAWYER:	Mr O’Dowd
FILE NUMBER:	SYC 1528 of 2012
DATE DELIVERED:	10 January 2014
PLACE DELIVERED:	Sydney
PLACE HEARD:	Sydney
JUDGMENT OF:	Watts J
HEARING DATE:	9 – 10 September 2013

REPRESENTATION

COUNSEL FOR THE APPLICANT:	Mr Guterres
SOLICITOR FOR THE APPLICANT:	Inner City Legal Centre
SOLICITOR FOR THE RESPONDENT:	Litigant in person
SOLICITOR FOR THE INDEPENDENT CHILDREN’S LAWYER:	Legal Aid NSW

ORDERS

1. The child B, (“the child”) born ... May 2006, spend time with the applicant during the Christmas period on Christmas Day from 8am to 3pm, with the applicant to collect the child from the respondent at the commencement of the time and the respondent to collect the child from the applicant at the conclusion of time.
2. In even numbered years, on the weekend that Father’s Day falls, the child spend time with the applicant from after school or 3pm Friday until 6pm Sunday.
3. In odd numbered years, on the weekend that Father’s Day falls, the child spend time with the applicant from after school or 3pm Friday to 3.30pm Sunday.
4. If Father’s Day falls on a weekend the child is ordinarily with the respondent, then the child’s time with the respondent is suspended and in lieu, the child will spend the following weekend with the respondent.
5. I note that the Orders made on 9 September 2013 provide that the child spend time with the applicant each alternate weekend during school terms.
6. For the purpose of the Orders made on 9 September 2013 and these Orders, a school term will be defined as commencing on the morning of the commencement of school on the first day of school term and concluding at the conclusion of school on the last day of school term.
7. Subject to order 9 and any subsequent agreement or court order, the child will spend weekends with the applicant during all school holidays in the same pattern as the child was spending weekends with the applicant under Order 4(a) made 9 September 2013 as if the school term continued.
8. In addition, in term 1 and term 3 school holidays, the child will spend an additional four nights and four days with the applicant immediately following the first weekend that the child spends with the applicant during those school holidays pursuant to these orders (the period would commence 3pm Friday and conclude 3pm the following Thursday).
9. The child is to spend time with the applicant for six nights during the Brown family holiday in term 2 school holidays but those six nights are to include any alternate weekend that the child would otherwise spend with the applicant pursuant to these orders and the applicant is to do everything possible to attempt to arrange that the Brown family holiday includes the weekend that the applicant would ordinarily spend time with the child. If the Brown family holiday cannot be arranged such that it would include the alternate weekend time that the applicant would ordinarily spend with the child, the applicant is to spend six nights with the child but in lieu, the child shall not spend the next scheduled alternate weekend time with the applicant.

10. During the Christmas 2013/2014 school holidays, unless the parties otherwise agree in writing, the child spend time with the applicant from 9am on 13 January 2014 to 6pm on 17 January 2014 and from 9am on 23 January 2014 to 6pm on 26 January 2014.
11. During the 2014/2015 Christmas school holidays, the child spend time (such time in addition to time pursuant to order 7) with the applicant on two separate occasions, one period for four days (three consecutive nights) and one period for five days (four consecutive nights), which periods are to be seven days (six nights) apart. The dates of the two occasions are to be agreed by the parties in writing by 1 November 2014, and failing agreement, either party has liberty to apply on 28 days' notice on that limited issue.
12. The respondent is to inform the applicant in writing by 30 June 2015 as to whether or not she consents to the child spending additional time with the applicant during Christmas school holidays and, if applicable, what that time will be. In addition, either party can inform the other in writing by 30 June 2015 as to whether they wish some amended arrangements in relation to school holidays from the 2016 school year onwards. In the event the parties are unable to reach agreement they are to attend a mediator agreed upon between them (and failing agreement, to be nominated by the Director of Child Dispute Services, Sydney Registry) and attempt to reach agreement. Should agreement not be reached, either party has liberty to apply on 28 days' notice on those limited issues.
13. The respondent is to inform the applicant in writing as soon as practicable of any specialist medical appointments for the child and the contact details of the doctor or other health professional providing treatment.
14. The applicant be restrained from contacting any medical specialist, doctor or health professional in respect of whom he has been given information pursuant to the previous order.
15. The respondent is to inform the applicant in writing as soon as is practicable, any advice or opinion given to the respondent by any doctor or any other health professional who is treating or consulting in respect of the child (including any written report). This order is not to include reporting to the respondent in relation to the child's attendance on a psychologist in respect of her current difficulties with anxiety, but the respondent is not precluded from doing so if she so chooses.
16. The applicant is restrained from specifically seeking out the child's teacher or the principal of the child's school or anybody else at the child's school for the specific purpose of inquiring as to the child's progress or attending parent/teacher nights.
17. The respondent is to send all school reports and any important notifications from the school that might affect something that the child is doing. That communication is to be sent electronically in a timely way, preferably with the use of PDF imaging so that the applicant gets a copy of the report or notice. The

respondent is to provide a written summary to the applicant as to what was said during parent/teacher interviews.

18. The applicant be at liberty to attend all school activities that are open to friends and other family members (for example school concerts, plays and the like).
19. Subject to order 20, the applicant may be involved in two school events per year to which close family members are invited by the school (for example, excursions and reading groups).
20. The applicant is restrained from participating at the school in any event that is designed solely for the primary carer of the child (for example parent/teacher nights).
21. Pursuant to s 65DA(2) and s 62B, the particulars of the obligations these orders create and the particulars of the consequences that may follow if a person contravenes these orders and details of who can assist parties adjust to and comply with an order are set out in the Fact Sheet attached hereto and these particulars are included in these orders.

IT IS NOTED that publication of this judgment by this Court under the pseudonym *Brown & Phillips* has been approved by the Chief Justice pursuant to s 121(9)(g) of the Act.

FAMILY COURT OF AUSTRALIA AT SYDNEY

FILE NUMBER: SYC 1528 of 2012

Mr Brown

Applicant

And

Ms Phillips

Respondent

REASONS FOR JUDGMENT

INTRODUCTION

1. There are two children in this matter, S (aged seventeen) and B (aged seven). The respondent is the mother of both children. The applicant is a transgender male and was previously the female de facto partner of the respondent.
2. The parties resolved all issues in relation to S and consent orders were made on 6 September 2013 in the terms of Appendix A to these reasons.
3. The parties reached agreement in relation to a significant number of parenting issues in relation to B (“the child”). Consent orders were made on 9 September 2013 and those orders are Appendix B to these reasons.
4. During final submissions, the parties reached agreement in relation to arrangements in respect of Christmas holidays and those orders will be part of the orders I make, being orders made by consent.
5. The remaining controversies between the parties are about the following matters:
 - 5.1. What time the child should spend with the applicant on Father’s Day;
 - 5.2. What time the child should spend with the applicant during school holidays (and how should school holidays be defined);
 - 5.3. How much information the applicant should receive in relation to the child’s schooling and health and how the applicant should receive that information;
 - 5.4. In what circumstances should the applicant be permitted to attend school events and extra-curricular activities.

DETAILED CHRONOLOGY

6. The respondent Ms Phillips was born in 1977.
7. The applicant Mr Brown (formerly Ms Brown) was born in 1979.
8. The respondent has a child, S, born in 1997. S is currently aged seventeen. S at all times has been a member of the respondent's household. S's biological father has not been involved in his upbringing.
9. The parties commenced a sexual (lesbian) relationship around September 2000.
10. The parties lived together in the same premises and their relationship was "on-off". During a period of separation, the respondent travelled overseas and was impregnated by a man from overseas (whose identity is unknown).
11. The parties reconciled during the respondent's pregnancy and commenced to consistently cohabit in December 2005.
12. The child who is the subject of the unresolved issues in these proceedings, B, was born in May 2006 and is currently aged seven. The child's biological father has not been involved in her upbringing.
13. The parties ceased cohabitation in December 2007.
14. The parties recommenced cohabitation in May 2008.
15. The parties had a commitment ceremony in September 2009.
16. In October 2009, the applicant began identifying as transgender.
17. The following month the applicant discussed with the respondent the possibility of the applicant being transgender.
18. In January 2010 the applicant announced that he intended to have hormone treatment in preparation for surgery to transition to a man. The applicant changed his name from a female name to a male name.
19. In August 2010 the applicant told the children separately, without the respondent being present, that he intended to transition to being male and in that month he underwent the first treatment involving transition hormones. At that time the parties separated and the respondent moved with the two children to the home of her parents.
20. From August 2010 until February 2011, the children spent time with the applicant each Monday after school until Thursday before school with the respondent present at least two out of three of those nights.
21. In February 2011, the respondent unilaterally reduced the amount of time the children spent with the applicant. The child began spending Tuesday and

Wednesday nights with the applicant, and S stayed with the applicant overnight on Wednesdays.

22. The applicant commenced a relationship with Mr C (who is also a transgender male) in September 2011.
23. In March 2012, the applicant changed his name on his birth certificate from a female given name to a male given name.
24. In April 2012, the applicant underwent “gender affirming surgery” removing his breasts.
25. The parties entered into interim consent orders on 17 September 2012. Those orders provided that the children live with the respondent. From the commencement of Term 4, 2012, the child was to spend time with the applicant on Tuesday and Wednesday nights every week.
26. In October 2012, the applicant’s father took the children camping. The applicant also attended.
27. Dr A completed her report on 8 April 2013.
28. On 7 September 2013, the applicant moved into a house in the Blue Mountains with Mr C.
29. The hearing proceeded before me on 9 and 10 September 2013.

CREDIT

30. The respondent gave evidence in a fairly frank and forthright manner. I did not believe that at any point she was attempting to fabricate evidence.
31. The applicant’s demeanour in the witness box was less convincing. I have no reason to not accept the opinion of Dr A where she says that she found it very difficult to accept some of the assertions made by the applicant to Dr A in relation to the behaviour of the respondent.
32. I am however able to resolve the issues in this case without making any general findings as to the credit of either party.

THE VIEW THE RESPONDENT HAS IN RELATION TO THE APPLICANT’S PARENTAL STATUS

33. An issue which impacts upon all the decisions I am asked to make is the view the respondent has as to the applicant’s parental status and whether or not that view is in the best interests of the child.
34. Dr A records “[the respondent] stated she now sees [the applicant] as ‘[the child’s] ex-step-parent, someone who has played a role in her life’”.

35. Exhibit 13 is an email from the respondent to the applicant dated 14 January 2013. The respondent says “I know that in your opinion you are [the child] and [S’s] parent. It is not my opinion... You WERE a step parent to [S]. You DID play a parental role for [the child].”
36. Counsel for the applicant pointed out to the respondent that Dr A referred to the applicant as the child’s stepfather. The respondent said she rejected “the father bit, not the stepfather bit... If you read in Dr [A’s] report, I see him as an ex-stepparent. She was explaining to me about how, to me, he’s an ex, to [the child] he may be a stepparent. I still see him as an ex-stepparent... I accept that he’s viewed as a stepparent. I don’t like it personally. But I respond as if he’s a stepparent.”
37. At one point during cross examination, the respondent said she believed that the applicant “had a stepfather role”. She quickly corrected herself and said “stepparent role”.
38. I later asked the respondent that given she considered the applicant to be a male, and a stepparent, why “stepfather” could not be substituted for “stepparent”. She replied “because he’s not a father... He’s not a stepfather... I don’t know how to explain it. The word father has specific connotations.”
39. Underlying the attitude of the respondent is her conviction that the applicant, who now lives his life as a male and is seen by the respondent as a male, is not the same person as the woman with whom she had a de facto relationship. Her evidence was that whilst she understood and was sympathetic in relation to the transition, she had always thought that the person who the applicant would become would simply be a male version of the woman that she knew. She said that did not transpire and as a result she has grave reservations in relation to the status the applicant should have in respect of the child’s future.
40. The respondent did not accept easily that the child, at the age of seven, may have a different way of understanding who the applicant is. In the Child Responsive Program Memorandum, the family consultant states “[w]hen talking about her family, the child said that she sometimes calls her “Dad” “Mum” and during observations the child referred to [the applicant] as “M...” ([European language] for my mum).” The family consultant goes on to say “[The child] said that her ‘Mum’s’ name is ‘[the respondent’s given name]’ and her ‘Dad’s’ name is ‘[an abbreviation of the applicant’s male given name]’”. The family consultant was not called to give evidence and I am mindful that Child Responsive Program Memoranda are prepared within strict limitations in respect of time for preparation, but I accept what the family consultant has recorded in the assessment.
41. The respondent said she has never heard the child refer to the applicant as “Dad”. She says the child refers to the applicant as “[the applicant’s male given name]” or “M...”. The respondent doubted that the child had said to the family consultant, unprompted, that the applicant was her dad. The respondent said “I

cannot say with certainty – because I’ve never heard [the child] do it in any other capacity – that [the child] said “[the applicant’s male given name] is my dad.”

42. In her report, Dr A notes “[a]sked whether [the applicant] feels like a parent to her, [the child] confirmed he does – he feels like a father. She added Mum says he is not her father or her stepfather but allows her to call him ‘Dad’.” Dr A observed the children with the respondent and noted that “[The child] described [the applicant] by saying ‘he use [sic] to be my stepmum and now not my stepdad or my Dad’”. The following day, Dr A observed the children with the applicant. During that observation, Dr A noted “[The child] commented to [the applicant] ‘you say you’re in the family. Mum says you’re not.’”
43. In oral evidence the respondent explained “I didn’t say outright to [the child] “he is not your father”, but when she talks about her dad, I, we do – and [the applicant] always was the same – mention that she has [overseas] heritage. So I wouldn’t say outright to her [the applicant] is not her father, but I have said – when we talk about father we talk about [overseas].” She said when “[the child] asks about her father and [overseas], I give responses according to that.” The respondent could not recall if she had told the child that the applicant was not the child’s stepfather. The respondent accepted that if she had said to the child that the applicant was not her stepfather, that comment would stick in the child’s mind.
44. The respondent also accepted that the child indicated to Dr A that the applicant feels like a father. The respondent went on to say “I also accept that [the child’s] also said that she feels like [the applicant is] a mother, feels like a friend, feels like a stepfather, feels like a stepmother.”
45. The respondent denied she had ever told the child that the applicant was not part of the child’s family. The respondent explained that:

When I speak to the children about our family, I talk about myself, [the child] and [S]. She knows that. What she also – she knows that when I’m talking about family, I don’t include him. That does not mean that I specifically say to her he is not in it. But it just means when I talk to her about family that is what I talk about. So when [the child] is going to be talking about my perception of family and his perception of family it is going to differ. That does not mean that I have said those things specifically to her. Anyone who has dealt with children would understand that’s what happens. That is my perception, that is his perception. That is how she would explain them both.

46. The respondent agreed the child views the applicant as part of her family.
47. Counsel for the applicant also pointed to the “therapy program summary and recommendations” by D Therapists dated 24 July 2012 which said “[The child] spoke several times about her dad, showing him as a consideration in her life”. It is unclear from this statement whether the child referred to the applicant as “dad” or whether those are the words of the report writer.

48. I accept that in the respondent's presence, the child does not refer to the applicant as "dad". I accept the respondent's evidence that in the respondent's presence, the child has only ever referred to the applicant as "M...", (which the parties say is a European language word for mother) or by the applicant's male given name.
49. The child's view of the identity of the applicant is far broader than the name the child uses for the applicant in the presence of the respondent.
50. The parties have agreed that it be left up to the child as to what nomenclature she uses in relation to the applicant.

THE CHILD'S ANXIETY

51. The parties both describe the child as suffering from anxiety. Dr A notes the applicant described the child telling him that she is "scared" he is not going to be there. She will not go to the toilet, her room or shower on her own and wants to eat constantly (and has been hoarding food)." Dr A notes that the respondent described the child as having "experienced nightmares, makes a "mess" with her toys and belongings, wants to be "safe – (she will) - go to sleep in my bed, stay by my side, not wanting me to leave".
52. Dr A goes on to opine that the child presented as "stressed by the family situation" and that at the assessment she "demonstrated separation anxiety, crying at not returning home with her mother but quickly settled and accepted [the applicant's] comfort. This observed behaviour was consistent with reports she is clingy and anxious at other times."
53. The major tension in this case is, on the one hand, to have in mind the best arrangement for the child in relation to having a continuing relationship with the applicant and what identity the applicant would have in that relationship with the child, on a continuing basis, but on the other hand recognising as Dr A suggests I must, the primary relationship that exists between the child and the respondent. Dr A in a very pithy passage summarises those tensions in the following way:

Her time with [the applicant] must occur sufficiently to protect their relationship but not be so frequent or lengthy it destabilises her relationship with her mother.
54. Dr A was asked by the Independent Children's Lawyer "[w]hat period of time or at what age would it be expected for [the child] to have gained the necessary security and be settled?" Dr A was of the opinion that the resolution of the child's anxiety cannot be predicted. Dr A opines that the child's anxiety "undoubtedly...will be influenced by her being told that her living arrangements have settled and having lived through/experienced a period of stability and predictability, without adult conflict impinging upon her." [emphasis in original]
55. I have not been asked in this case to predict how the child's current anxiety and confusion will resolve.

RELEVANT STATUTORY CONSIDERATIONS

56. The applicant's initiating application was filed before 7 June 2012, and as such the applicable s 60CC *Family Law Act 1975* (Cth) ("FLA") is that that was in force before that section was amended by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

Primary considerations

The benefit to the child of having a meaningful relationship with both of the children's parents (s 60CC(2)(a) FLA)

57. I accept that the child has a meaningful relationship with both parties.

The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence (s 60CC(2)(b) FLA)

58. Apart from the anxiety the child is experiencing as a result of the adult conflict, this is not an issue.

The additional considerations

Child's views (s60CC(3)(a))

59. The child is seven years old. Given her young age, I am unable to place any weight on any view she has expressed, save those that I have earlier recorded, as to how she views the applicant's identity.

Relationships of the child with the parents and other persons (s60CC(3)(b))

60. I accept Dr A's assessment that the child appeared to have "a positive relationship with both her mother and [the applicant], as well as with [S]. Her primary attachment figure is her mother and this must not be jeopardised."

Willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent (s60CC(3)(c), noting (s60CC(4))

61. Counsel for the applicant submitted that the Court could have no confidence that the respondent would promote the child's relationship with the applicant given the respondent's attitude towards the applicant's parental status.

62. I accept the respondent's attitude is a cause for concern but I do not find that she would not promote the child's relationship with the applicant. The respondent has reached agreement with the applicant on alternate weekend time and special occasions (except Father's Day). There is no history of significant non-compliance by the respondent.

Likely effect of any change in the child's circumstances (s60CC(3)(d))

63. Orders which enable the child to be told that she has settled living arrangements and a period of stability and predictability are likely to improve the child's anxiety.

Practical difficulties and expense of the child spending time and communicating with a parent (s60CC(3)(e))

64. The applicant has recently relocated to the Blue Mountains area. The respondent lives in Sydney. Although the parties live some distance apart, I do not consider this to be an impediment in relation to the four issues I am to determine.

The capacity of each of the parents to provide for the needs of the child, including emotional and intellectual needs (s60CC(3)(f)) and the attitude to the child and the responsibilities of parenthood demonstrated by each of the child's parents (s60CC(3)(i), noting (s60CC(4))

65. I have described above on the one hand matters going to the respondent's attitudes but on the other hand, the need to protect her capacity to fulfil her role as the primary provider of the children's needs.

Whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child (s60CC(3)(l))

66. The applicant wanted Christmas school holiday time locked in for the years up to and including 2016/2017. Counsel for the applicant submitted that orders in that form would limit future litigation between the parties. Dr A says "the resolution of anxiety in six year old [the child] cannot be predicted". I am prepared to create certainty by way of orders for 2013/2014 Christmas holidays and 2014/2015 Christmas holidays. After that time, there should be a reassessment by the parties of the level of the child's anxiety.

67. Even though it possibly (but hopefully not) involves another court application, I think it is best for the child not to predict the resolution of the child's anxiety this far out.

68. No other statutory consideration is of any relevance.

FATHER'S DAY

69. The parties agree that the child should spend time with the applicant on each Father's Day.

70. The applicant proposed that if Father's Day falls on a weekend the child is spending time with him, he spend time with the child until 6pm on Sunday (as he would for any other weekend he spends with the child).

71. The applicant and the Independent Children's Lawyer proposed that when Father's Day falls on a weekend that the child is not ordinarily with the

applicant, the child spend that whole weekend with the applicant. The Independent Children's Lawyer proposed that such time end at 4pm on Sunday. The applicant wanted the mirror of the Mother's Day order which is contained in the consent orders made on 6 September 2013.

72. The respondent initially proposed that if Father's Day falls on a weekend that the child is not spending time with the applicant, the child spend time with the applicant from 1pm to 6pm on Father's Day. However the respondent during final submissions agreed to amend her application to allow the child to be with the applicant from 9am to 3.30pm, if Father's Day fell on a weekend that the child would not ordinarily spend time with the applicant.
73. The respondent initially proposed that if Father's Day falls on a weekend that the child is spending time with the applicant, the child be returned at 5pm rather than 6pm. The respondent argued this would enable the child to spend time with her maternal grandfather on Father's Day. However during submissions she amended her proposal and sought that the child be returned to her at 3.30pm. She said that if the child was delivered back to Suburb E at 3.30pm on the Sunday, it would enable her to get to Suburb F so that the child could spend some time with her maternal grandfather on Father's Day.
74. The respondent submitted that there have only been three Father's Days since the applicant transitioned from female to male, and that for the rest of the child's life she has spent Father's Day primarily with the maternal grandfather, but also with the applicant's father.
75. I accept the respondent's evidence that the child has communication with her maternal grandfather on about three occasions a week. I also accept her evidence that she has a strong relationship with her maternal grandfather and sees him on Father's Day.
76. Although the parties have agreed that they will let the child work out what she is going to call the applicant in an evolutionary process, I find that it is likely on balance that the child will see the applicant in the role of parent and because he has a beard she will in her mind probably over time accept him as a "father" or "dad". I acknowledge the respondent currently is resistant to that as a notion, but is conceding that the child spend time with the applicant on each Father's Day. I accept the applicant's and Independent Children's Lawyer's proposal that the child spend the whole Father's Day weekend with the applicant. On balance, I think it best to facilitate the child seeing her maternal grandfather each second Father's Day and accordingly, on each second year the child should be returned to the respondent at 3.30pm.

SCHOOL HOLIDAY TIME

77. In her report dated 8 April 2013, Dr A recommends "[The child] spend time with [the applicant] on alternate weekends, Friday PM – Sunday PM." She said that the child "needs to gain security in her mother's home but maintain her

relationship with her stepfather” and “[s]pending time with him on alternate weekends... should assist [the child] to settle”.

78. In a letter dated 30 May 2013, Dr A clarified that “[i]n school holidays [the child] could spend extra time with [the applicant] – four days, increasing to seven at Christmas.”
79. Neither party wished to cross examine Dr A. Although Dr A’s recommendation in relation to holiday time was expressed in terms of a number of additional days, the parties agreed that that be interpreted to also mean nights.
80. Counsel for the applicant submitted that the use of the word “extra” in Dr A’s letter dated 30 May 2013 must be interpreted to mean Dr A recommended the alternate weekend time continue throughout school holidays.
81. I accept that the child’s time with the applicant on alternate weekends should continue throughout school holidays. That will not be relevant to the Term 2 school holidays as it is agreed that the child will participate in the Brown family holiday which happens in the winter school holidays. The parties agree that the child is to spend time with the applicant for six nights but those six nights are to include the two nights he would ordinarily spend with the child. If the Brown family holiday cannot be arranged such that it would include the alternate weekend time that the applicant would ordinarily spend with the child, the applicant is to spend six nights with the child but forfeit his weekend with her.
82. Given that alternate weekends will continue during term 1 and 3 school holidays, I need to consider where to best place the four days and nights in term 1 and term 3 school holidays. A number of options are available. I could:
 - 82.1. Attach all the additional nights onto the first weekend when the child is with the applicant such that she would spend six nights in a row with the applicant; or
 - 82.2. Split the additional nights and distribute them during the school holidays so that the child would spend more than two nights in a row but less than six nights in a row with the applicant; or
 - 82.3. Attach none of the additional nights onto the weekend or weekends the applicant would ordinarily spend time with the child.
83. I find that the best arrangement is for the child to spend all of the additional nights with the applicant immediately after the first weekend when the child is with the applicant during school holidays. Although six nights in a row may be at the outer limit in relation to time the child could spend away from the respondent, I find that six nights in a row is not too lengthy during school holiday time, particularly in circumstances where the parties have already agreed to the child spending six nights with the applicant during term 2 (winter) school holidays.

Christmas holidays

84. The parties consented to an order that the child spend time with the respondent from Boxing Day through to 6 January for the purpose of attending the respondent's family's annual camping holiday.
85. Counsel for the applicant submitted that Dr A's recommendation for "extra" time in relation to the applicant's time with the child in the Christmas school holidays also meant that the applicant's alternate weekend time should continue throughout Christmas school holidays. The applicant did not seek a specific order in that regard. Notwithstanding an exchange I had with counsel during submissions, I accept that Dr A's recommendation should be read in that way. Subject to Order 5(e) of the Orders dated 9 September 2013, the applicant's time with the child on an alternate weekend basis will continue throughout the Christmas school holidays.
86. The parties have agreed the applicant is to have an additional seven nights with the child during the Christmas school holidays. Both parties sought those seven nights be broken up. The order that the applicant sought in relation to the 2013/14 holidays was for there to be two blocks of time, the first three nights and the second four nights (although, as I have already mentioned, that proposal expands on what Dr A has suggested by creating an additional day which given that Dr A was quoting "days" is an extension of what Dr A was recommending).
87. Although Dr A recommended the child spend seven days with the applicant over Christmas (rather than seven nights), it seems that both parties have agreed that at least in the 2013/2014 Christmas school holidays, the arrangement would be for there to be two separate occasions, one period for four days (three consecutive nights) and one period of five days (four consecutive nights) as agreed upon between the parties. The applicant seeks that those two periods be five days apart. The respondent seeks that those two periods be 14 days apart. Given that there are approximately three weeks from when the child returns from the camping holiday to when she is to recommence school, I am of the view that if the two periods were to be 14 days apart, the parties would have too little flexibility as to the specific dates the child is to spend time with the applicant. I conclude it is in the child's best interests for her to spend two periods with the applicant this Christmas school holidays, such periods to be seven days (six nights) apart. Given the timing of the delivery of these reasons the parties may have already reached agreement as to dates. If they have not I will order specific dates for January 2014. For the 2014/2015 school holidays, the specific dates are to be agreed by the parties in writing, and failing agreement, the parties are at liberty to apply to the Court on that limited issue.
88. The applicant sought that I make orders to cover the 2014/2015 holidays, 2015/2016 holidays, and 2016/2017 holidays by gradually increasing holiday time that the child spends with the applicant on each of those occasions and having an order to safeguard the child that those times could be delayed only if the parties are advised in writing by the child's therapist.

89. I have referred to Dr A's opinion as to the unpredictability of the resolution of the child's anxiety. I am not prepared to lock in orders that a non-judicial officer might then be able to vary. At this point I think it is prudent to give the child certainty for the next two school (summer) holiday periods and I will make an order for the 2014/2015 Christmas school holiday period in identical terms to the agreed position for this forthcoming school holidays.
90. After that time, the respondent is to inform the applicant in writing by 30 June 2015 as to whether or not she is prepared to allow the child to have additional time with him during Christmas school holidays, and if applicable, what that time is to be. In the event the parties are unable to reach agreement they are to attempt to reach agreement using a mediator (such person to be agreed between the parties or failing agreement nominated by the Director of Child Dispute Services, Sydney Registry) and if the parties cannot agree then they can come back to court on that limited issue.

PROVISION OF INFORMATION

91. The first important matter to note in relation to the provision of information is the consensual agreement the parties have reached. That agreement is based on material and opinions contained in Dr A's report.
92. By consent, the parties agreed that Order 13 made on 17 September 2012 should be made as a final order. That order related to the parties providing information to one another about any specialist medical appointments the child is to attend. Given the agreement between the parties as to parental responsibility, I will amend that order such that the respondent is responsible for providing that information to the applicant in writing.
93. The question arises as to whether or not the applicant should be able to directly contact the child's treating professionals. The respondent opposes direct contact.
94. The respondent's opposition was based upon her assertion that the applicant has "a history of interfering with health professionals... in an inappropriate manner." She points to an example where in 2011 S broke his collarbone. She said she kept the applicant updated in relation to S's condition. She says that the applicant "contacted the hospital and requested information". During her oral evidence she said the applicant obtained a report directly from the hospital that "he wasn't supposed to have access to...[S] did not want him to have [the report]". She explained the report and x-ray was to go directly to the doctor. She said the applicant obtained the report before she had seen it.
95. The respondent also points to an incident where the child's treating therapist Ms G withdrew her services. In the expert report, Dr A refers to the respondent describing an incident where she said that Ms G was "allegedly intimidated by [the applicant] and refused to see him again". Dr A noted that the applicant reported that "counselling with Ms [G] had not ended up working because she was "not good at her job... she screamed at me and the ICL over the telephone." There are no independent records from Ms G. In his oral evidence, the applicant

said that he attended upon Ms G on two or three occasions. She suggested mediation, but he said that he was advised that Ms G was not able to conduct mediation because the parties were already engaged in legal proceedings. The applicant said that Ms G hung up on him when they had a telephone conversation.

96. Exhibit 16 is correspondence between the applicant and Ms G. In an email on 13 September 2013, the applicant wrote “I am just writing to you as I wanted to apologise for upsetting you. I am not sure what it was that I did that has upset you.” I take that statement by the applicant as an admission that the applicant had done something to upset the child’s treating therapist. The respondent had filed some evidence indicating that she had had a conversation with the child’s therapist who, amongst other things, indicated that she did not believe she could work constructively with the applicant. Exhibit 9 is a letter from the applicant’s lawyers to Ms G on 21 September 2012 asking her to “consider whether it is appropriate for you to continue your involvement with this family...” There is no indication as to whether or not Ms G responded to this letter.
97. Exhibit 21 is a chain of correspondence between the parties on 9 November 2010 about the child commencing counselling with a child psychologist. The respondent had made an appointment for the child and asked whether the applicant would like to attend. The applicant responded “I will not have any part of that you vile scum. This is just another way for you to abuse me and the children.” The respondent then reiterated that the applicant was welcome to attend. He then replied “If you do this I will report the car stolen to the police. This is abuse.” The respondent had been driving a car that was registered in the applicant’s name. This evidences behaviour by the applicant which is corroborative of the respondent’s assertion that friction may arise if the applicant is involved in direct contact with treating professionals.
98. As I later indicate, the respondent also blames the applicant for the cessation of S’s counselling with Ms H, asserting the applicant inappropriately sought information from Ms H about the content of S’s counselling sessions. The applicant denies that assertion. Ms H was not called as a witness and neither party subpoenaed her records and I reach no conclusion about the circumstances of S ceasing counselling with Ms H.
99. Counsel for the applicant submitted that the Court could not have confidence the respondent would comply with any order that is made in relation to the provision of information and that is a strong reason why the applicant should have the ability to go directly to the source without relying upon the respondent to provide information to him.
100. The applicant’s position is fundamentally supported by the Independent Children’s Lawyer’s orders as sought, although there is a difference between the Independent Children’s Lawyer’s orders and the applicant’s orders.
101. The applicant sought the following order:

23. The Respondent shall provide an irrevocable written authority to any school, medical practitioner or other health care professional engaged with [the child] to provide the Applicant with copies of any reports **and other information that the Applicant may request of those persons**, in relation to [the child's] health and education. [emphasis added]

102. The Independent Children's Lawyer sought the following order:

5. That the Respondent Mother do all acts and things and sign all documents necessary to provide to any medical health care professional attended by [the child] an authority to the medical health care professional **to the effect that the Applicant receives the same written and verbal information** as provided by the medical health care professional to the Respondent mother. [emphasis added]

103. The effect of the order the Independent Children's Lawyer sought would be to require the health care professional to initiate contact with the applicant and repeat any verbal advice that had been given to the respondent. The effect of the order the applicant seeks is that the applicant would be able to initiate contact with the health care practitioner (or school) and request that advice that had been given to respondent be repeated to him and he can seek other information.

104. Counsel for the applicant pointed to three examples where the applicant says the respondent did not comply with orders to provide information in the past.

105. Firstly, the applicant says the respondent did not inform him about the child's appointment with Dr I pursuant to Order 13 of the Orders dated 17 September 2012. The respondent said that she told her lawyer to pass on that information. The applicant says he didn't know about the appointment. I accept on balance that the respondent did tell her lawyer and it wasn't passed on.

106. Secondly, in his affidavit affirmed 8 September 2013, the applicant complains "[The respondent] did not tell me [the child] had seen the paediatrician, Dr [J] and she did not give me a copy of the report from Dr [J]. I did not see the report, which is dated 14 December 2012 until 14 March 2013 when my lawyer sent me a copy."

107. The respondent says in her affidavit sworn 14 December 2012 "[The applicant] and I have attended UNIFAM in accordance with the interim orders, and [the child] has also seen a counsellor from UNIFAM. UNIFAM has recommended that [the child] obtain a mental health assessment, and I have made appointments for her with Dr [J], being the doctor recommended by UNIFAM." The respondent said in oral evidence that she thought that UNIFAM was going to tell the applicant about the child's appointment with Dr J, since both parties had been involved in UNIFAM and that organisation had recommended Dr J.

108. The respondent explained in her oral evidence that the child saw Dr J on 8 December 2012 and 14 December 2012. She said Dr J then went on leave, and she rang him in February 2013 to ask whether he had finished his report. The respondent says she received the original report sometime in February or March

2013, despite the document being dated 14 December 2012. She says she spoke to Dr J about how the report inaccurately reflected the child's family history. Dr J agreed to amend his report. Exhibit 17 is a copy of Dr J's amended report which says on it "Amended 20/03/2013". The applicant's complaint about not receiving Dr J's report until March 2013, so far as it relates to the original (backdated) report, can have no substance because I am comfortably satisfied that the respondent did not get the original report herself until February or March 2013.

109. Thirdly, counsel for the applicant pointed to an "inconsistency" in relation to the respondent's evidence regarding Ms H (S's psychologist) and the evidence from Dr A. In her affidavit sworn 18 July 2012, the respondent said S commenced seeing Ms H before separation and ceased seeing her in early 2011. She says S has refused to attend upon Ms H since the applicant contacted Ms H in 2011, and "demanded information be shared with him regarding things said by and to [S]." Dr A notes the respondent "reported between 2009-2010, befor [sic] she and [the applicant] separated, [S] had seen psychologist [Ms H] about four times because they were having a "hard time" following the deaths of several family members. These sessions apparently stopped when [the applicant] contacted Ms [H] "wanting information"." On page 17 of her report, Dr A says that the respondent told her she had seen a counsellor "in 2009, when she and [S] had seen psychologist [Ms H]." Counsel for the applicant submitted that Dr A reports that S ceased attending upon Ms H before the parties separated, whereas the respondent asserts S commenced attending upon Ms H before separation, and continued attending upon her until after the parties separated.
110. The applicant denies he ever contacted Ms H. He asserts he never even knew the name of S's psychologist (although at one point in his evidence he conceded he knew her given name) and sought information about her from the respondent. The applicant tendered two letters (which became exhibit 15) from his solicitors to the respondent requesting the details of S's psychologist. On 30 August 2011, the applicant's solicitor wrote to the respondent saying (inter alia):

[y]ou have advised that [S] is seeing a psychologist. Please confirm whether [S] is still seeing this psychologist and provide the person's name and contact details.

In her oral evidence, the respondent agreed that she declined to respond to the applicant's lawyers after receiving the letter on 30 August 2011, but asserted that she did respond to the applicant.

On 12 October 2011, the applicant's solicitors wrote to the respondent saying (inter alia):

We refer to your letter received by us on 26 September 2011...In your letter you stated that '[S] is commencing counselling with a psychologist...' Please let us know the psychologist's name and contact details, when [S] is attending, and how often he is attending.

111. Exhibit 23 is a chain of emails between the parties on 22 March 2011. In that correspondence, the applicant complains that the respondent scheduled S's appointment with his psychologist during a time S was to be spending time with the applicant. The applicant says "I will neither take him to this appointment or allow this on my day." The respondent emailed the applicant at 11:45am saying:

...You only get out from the counselor/psych [sic] what you put in... You have told me that you wished your parents had found a counselor [sic] who didn't judge you but was willing to be patient and wait everything out and get you to trust them. [Ms H's given name] is doing that. And is reaching him...

I find that S was seeing Ms H before and after separation. I do not accept that the respondent attempted to keep information about S's counselling with Ms H a secret, but as I have already indicated I have formed no view about why S ceased to see Ms H.

112. It is very clear that the parties currently have a minimal ability to communicate with one another. Unfortunately the two days that they spent in my court room probably only entrenched and exacerbated the negative feelings the parties have for one another. The child has particular uncertainties and psychological difficulties primarily resulting from adult conflict surrounding the separation and issues arising out of the applicant's transition from female to male. I accept Dr A's strong recommendation that the respondent's position should be protected and for those two fundamental reasons, I am inclined to structure orders that provide the respondent with certainty and comfort moving forward in her role as the person with sole parental responsibility in relation to making decisions about major long term issues in respect of the child's care, welfare and development.
113. I am of the view that the order sought by the Independent Children's Lawyer (that the respondent provide an authority to any medical health care professional attended by the child to allow the applicant to receive the same written and verbal information as provided by the medical health care professional to the respondent) would be impractical. A doctor cannot be expected to telephone one parent and repeat everything that has just been said to the other parent.
114. There is insufficient evidence to establish that the respondent is unlikely to comply with an order that she provide to the applicant on a regular basis details about specialist medical appointments for the child and any advice given by any doctor or any other health professional providing treatment for the child (including written reports).
115. In relation to medical matters, the respondent is to provide medical reports to the applicant. The respondent under the consent order has to inform the applicant of decisions she is about to make of a medical nature that fall into the definition of a "major long term issue". Those issues would obviously cover any major medical operation or course of therapy that the child is about to embark upon. The respondent should also summarise to the applicant in writing the effect of

any attendance on any medical practitioner and give a short summary as to what it was about and what treatment was suggested or prescribed. It is not necessary for the respondent to report to the applicant the content of any treatment the child is receiving from a child psychologist about her anxiety.

116. I find that it is in the child's best interests to make an order that the applicant be restrained from contacting any medical specialist, doctor or health professional.

Schooling

117. The order the applicant wants in relation to the provision of information about the child's schooling is set out at [101] of these Reasons. The applicant seeks to receive copies of school reports and any other information that the applicant may request. The order the Independent Children's Lawyer seeks in relation to information about the child's schooling is, again, more onerous on the professionals themselves.
118. The respondent again opposes a direct approach by the applicant. She asserts in October 2012 the applicant was "intimidating and confrontational" towards the child's teacher, Mr K. Mr K is not on affidavit. The applicant denies he has ever behaved inappropriately towards the child's teachers.
119. Consistent with my approach in relation to medical matters, I find that it is in the child's best interests for an order to be made that the applicant not directly approach the child's school teachers for the specific purpose of obtaining progress reports about her schooling. The applicant will not be prohibited from having a conversation with a school teacher in the ordinary flow of events. For example, if a teacher is at the school gate when the applicant is picking up the child he can have a casual conversation with that teacher but he is not to specifically seek out the child's teacher or school principal or anybody else at the school for the specific purposes of inquiring as to the child's progress. That information should come via the respondent. The respondent is to send all school reports and any important notifications from the school that might affect something that the child is doing. That communication is to be sent electronically in a timely way, preferably with the use of PDF imaging so that the applicant gets a copy of the report or notice.

EXTRA CURRICULAR ACTIVITIES AND SCHOOL ACTIVITIES

120. It was agreed that the applicant could be involved in two school events per year (this would allow the applicant to participate in things like excursions and reading groups which he has done in the past). Extra-curricular activities however primarily fall on a weekend and given that the child will be with the applicant every alternate weekend, there is no need for any special order in relation to extra-curricular activities. The applicant has the option of involving himself in those extra-curricular activities on occasions when the child is with him, although I acknowledge the logistical difficulties if those activities are in the Sydney area and the applicant has taken the child to the Blue Mountains for the weekend.

121. The applicant also wanted an order that he be able to attend events at the school such as parent/teacher interviews. It was the respondent's position that the applicant should not go to such events if they were solely for parents.
122. In 2011, the parties had separate parent/teacher interviews with the child's school. Both parties take credit for organising those interviews.
123. This is not really an issue about the applicant's status as a parent. It is really an issue about the respondent having the ability to function as freely as she can as the parent who has sole parental responsibility. I accordingly accede to the respondent's request to injunct the applicant from participating at the school in any event that is designed solely for the primary carer of a child.
124. The orders that I have made attempt to respect the respondent's position as the person with sole parental responsibility. They do however impose obligations upon the respondent to keep the applicant informed in a proper way about important matters in respect of the child's health and education. If the respondent fails to do that then the applicant has remedies arising out of non-compliance with my orders. The orders have attached to them information about those remedies. I would urge the respondent to carefully consider what obligations are created upon her as a result of these orders in respect of providing information to the applicant and be diligent and mindful of those orders as she receives important information from time to time about the child's health and education.

I certify that the preceding one hundred and twenty-four (124) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Watts delivered on 10 January 2014.

Associate:

Date: 10.1.2014

Orders made on 6 September 2013 relating to the child S

Appendix "A"

1. That all previous parenting orders in relation to [the child S] born ... January 1997 [S] be discharged.
 2. That [S] live with the respondent.
 3. That the respondent have sole parental responsibility in relation to [S].
 4. That [S] spend time with the applicant at times as arranged between [S] and the applicant.
-

Orders made on 9 September 2013 relating to the child B

Appendix "B"

1. All previous Parenting Orders in relation to the child [B] born ... May 2006 ("[the child]") be discharged.
2. Subject to Order 15(a) to (c) and Order 18 below, the Respondent retain sole parental responsibility for [the child] born ... May 2006, except that:
 - (a) Before making any major decisions, the Respondent shall:
 - i. Advise the Applicant in writing of the decision to be made;
 - ii. Consider with regard to [the child's] best interests, any response in writing from the Applicant; and
 - (b) Advise the Applicant in writing with 48 hours after making the decision.
3. [The child] live with the Respondent.
4. [The child] spend time with the Applicant as follows:
 - (a) During school terms, unless otherwise agreed in writing between the parties, each alternate week from after school or 3pm on Friday until 6pm Sunday, with the Applicant to collect [the child] from school at the commencement of time and return her to the Respondent or her delegate at [Business L] at the conclusion of time, with such time to commence on the second Friday immediately following the making of these Orders.
 - (b) On special occasions as agreed and at times as agreed, with such time to include:
 - (i) For [the child's] birthday each year, by agreement and failing agreement, from after school or 3pm if a non-school day until 7pm;
 - (ii) For the Applicant's birthday each year, by agreement and failing agreement, from after school or 3pm if a non-school day until 6pm.
 - (iii) For Easter, from 3pm or after school on the Thursday immediately before Good Friday to 6pm on Good Friday.

5. Notwithstanding any other Order, [the child's] time with the Applicant is to be suspended as may be necessary to facilitate [the child] spending special occasion time with the Respondent and is to include the following:
 - (a) If [the child's] birthday falls on a weekend she is with the Applicant, then [the child's] time with the Applicant will be suspended for that weekend and instead, [the child] will spend the following weekend with the Applicant and the Applicant otherwise spend time with [the child] for her birthday in accordance with Order 4(b)(i).
 - (b) If the Respondent's birthday falls on a weekend [the child] is with the Applicant, then [the child's] time with the Applicant will be suspended for that weekend and instead, [the child] will spend the following weekend with the Applicant.
 - (c) If Mother's Day falls on a weekend [the child] is with the Applicant, then [the child's] time with the Applicant will be suspended for that weekend and instead, [the child] will spend the following weekend with the Applicant;
 - (d) For Easter such that [the child] shall be with the Respondent from 6pm on Good Friday until 6pm on Easter Monday.
 - (e) For the weekend gathering of the Respondent's extended family in December each year from Boxing Day to 6 January inclusive.
6. Unless otherwise provided in these Orders or agreed in writing between the parties, changeover when not at school shall be facilitated by the Applicant or his delegate collecting [the child] from the Respondent or her delegate at [Business L] at the beginning of [the child's] time with the Applicant, and the Respondent or her delegate collecting [the child] from the Applicant or his delegate at [Suburb E] McDonalds at the conclusion of [the child's] time with the Applicant.
7. For the purposes of these Orders, in the event that [the child] has weekend sports or extracurricular activities during the times she is with the Applicant, then the Applicant shall ensure [the child's] attendance at these activities, and for the purposes of these orders such commitments shall be limited to one activity per period of time with the Applicant for not more than 2 hours.
8. Each party shall facilitate [the child] communicating with the other party by telephone at any reasonable time if [the child] wishes to do so, and specifically, the Applicant will facilitate [the child] telephoning the Respondent at 6pm on each night [the child] spends with the Applicant.
9. Each party is to keep the other informed of their current residential address, a telephone number and an email address and will advise the other party of any change to those details, at least 7 days prior to any change in residential addresses and within 24 hours of any changes to telephone number and email address.
10. In the event [the child] is seriously injured or hospitalised, the party who has the care of [the child] at that time is to advise the other by telephone call as soon as practicable and in no more than two hours.

11. It is noted that the Respondent has arranged for [the child] to attend counselling with Dr [I] and the Respondent will continue to facilitate [the child's] attendance for counselling in accordance with Dr [I's] recommendations.
12. It is noted that the Respondent has provided to Dr [I], the Applicant's email address and telephone number.
13. The Respondent shall cause [the child] to attend upon paediatrician Dr [J] in accordance with Dr [J's] recommendations.
14. Each party is hereby restrained by injunction from denigrating the other party or any member of the other party's family to or in [the child's] presence or on any social media site.
15. The Respondent be restrained by injunction from:
 - (a) Changing [the child's] surname from "[Brown]" to any name other than "Phillips Brown".
 - (b) Relocating [the child's] place of residence to any place outside the Greater Sydney metropolitan area.
 - (c) Causing [the child] to attend upon any therapist or counsellor other than UNIFAM or Dr [I], other than in accordance with advice from Dr [I] or Dr [J].
16. That the parties are to re-engage in the "Keeping in Contact" program through UNIFAM and are to remain engaged with that program until such time as their UNIFAM therapist recommends in writing that the engagement cease.
17. Both parties are restrained from instructing [the child] as to what name to call or not to call each of the parties.
18. The Respondent shall enrol [the child] into [M] Public School in 2014, and in the event the Respondent intends to change [the child's] schooling in the future, the Respondent shall provide not less than 4 weeks' notice of any proposed changes to the Respondent.