FAMILY COURT OF AUSTRALIA

RE: CARLA (MEDICAL PROCEDURE) ***[2016] FamCA 7***

FAMILY LAW – CHILDREN – MEDICAL PROCEDURES – Where the applicants are the parents of a five year old girl who has a genetic disorder – Where the parents seek an order authorising them to consent to the child undergoing certain medical procedures including a gonadectomy – Where the procedure would result in the child being infertile – Where the parents and medical experts agree that it is in the best interests of the child to undergo the procedure – Whether the procedure is in the best interests of the child – Whether the medical treatment proposed falls within the bounds of permissible parental authority – Whether court sanction is required.

Family Law Act 1975 (Cth)

Re Lesley (Special Medical Procedure) [2008] FamCA 1226
Re Sean and Russell (Special Medical Procedures) [2010] FamCA 948
Secretary, Department of Health and Community Services v JWB and SMB ("*Marion's Case*") (1992) 175 CLR 218

FIRST APPLICANT:	The Mother
SECOND APPLICANT:	The Father
OTHER:	Relevant Government Department

FILE NUMBER: By Court Order File Number is suppressed

DATE DELIVERED:	20 January 2016
JUDGMENT OF:	Forrest J
HEARING DATE:	14 January 2016

REPRESENTATION

By Court Order the names of counsel and solicitors have been suppressed

ORDERS (Made on 14 January 2016)

IT IS ORDERED

(1) That the Court be closed today for the hearing and determination of these proceedings.

(2) That leave is granted for the relevant Government Department to appear as a friend of the Court in these proceedings.

IT IS FURTHER ORDERED

(3) That the proposed surgery for Carla involving the bilateral removal or her gonads ("gonadectomy"), as outlined in the affidavits of Dr B and Dr C, may be authorised by either of Carla's parents, the Mother or the Father.

(4) That such further or other necessary and consequential procedures to give effect to the treatment of Carla for her condition of 17 beta hydroxysteroid dehydrogenase 3 deficiency, including oestrogen treatment as outlined in the affidavit of Dr C, may be authorised by either of her parents, the Mother or the Father.

(5) All scientists, doctors and other medical practitioners be and are hereby authorised to conduct such operations and procedures indicated in (1) and (2) above upon the written authority of either of the said Mother or Father.

(6) That the full name of Carla, Carla's family members and their occupations, the hospital, Carla's medical practitioners, Carla's school, this Court's file number, the State of Australia in which the proceedings were initiated, the name of the parents' lawyers, and any other fact or matter that may identify Carla shall not be published in any way, and only anonymised Reasons for Judgement and Orders (with cover sheets excluding the registry, file number, and lawyers' names and details, as well as the parties' real names) shall be released by the Court to non-parties without further contrary order of a judge, it being noted that each party shall be handed one full copy of these orders with the relevant details included, for provision to the treating medical practitioners and to enable their execution, and one cover sheet of Reasons for Judgment that includes the file number and lawyers' names.

(7) That no person shall be permitted to search the Court file in this matter without first obtaining the leave of a judge.

IT IS NOTED that publication of this judgment by this Court under the pseudonym *Re: Carla* has been approved by the Chief Justice pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth).

FAMILY COURT OF AUSTRALIA

FILE NUMBER: By Court Order file number is suppressed

The Mother and the Father
Applicants

And

Relevant Government Department
Other

REASONS FOR JUDGMENT

1. The child Carla was born in 2010, is now five years of age and is about to start school. She identifies as a young girl, although she was born genetically male. Carla was born with a sexual development disorder, described, in more particular medical terms, as 17 beta hydroxysteroid dehydrogenase 3 deficiency. In short, Carla had minimum in-utero exposure to androgens and because such exposure is required for the development of the male internal and external genitalia, it meant that at birth, Carla was markedly under virilised for a genetic male.

2. Although having no female reproductive organs, Carla was born with the external appearance of a female child, but with male gonads not contained within a scrotum. Her loving parents, after obtaining expert medical advice and support, determined to rear her as a female and to review that decision in close consultation with their medical advisers as Carla grew. Surgery already performed on Carla has enhanced the appearance of her female genitalia.

3. Carla's parents recently jointly made application to this Court for orders authorising them to consent to further medical treatment for their daughter to help manage her condition. Significantly, that treatment includes a procedure which involves the bilateral removal of Carla's male gonads. Carla's parents sought the Court's sanction for them to authorise that surgical procedure and such further or other necessary and consequential procedures to give effect to her treatment, as may be recommended by Carla's treating medical practitioners, so that Carla can continue to live a healthy life as a female in the way that she identifies and is being raised.

4. On Thursday 14 January 2016, I heard their joint application. They were represented by solicitor and counsel. The Director-General of the relevant

Government Department appeared represented by a solicitor and sought and was given leave to appear as a friend of the Court. The Court was informed that the Director-General did not oppose the orders sought by the parents.

5. The application was supported by affidavit evidence from each of Carla's parents. Additionally, it was supported by very comprehensive affidavit evidence from medical experts, Doctor B, Carla's treating paediatric surgeon, Doctor C, Carla's treating paediatric endocrinologist and Doctor S, Carla's treating paediatric psychiatrist.

6. At the hearing of the application, in accordance with what has become my usual practice in matters of this kind having regard to their extremely sensitive nature, I acceded to the application of the parents for the matter to be heard in a closed court room.

7. At the end of the hearing, with the approval of the applicants, I made the orders that the parents sought, satisfied that they were in the best interests of Carla. However, I reserved the delivery of my reasons. I did this because counsel for the applicants informed me that his clients had brought the application having read the judgment of the late Justice Barry in *Re Lesley (Special Medical Procedure)* [2008] FamCA 1226, a case with almost identical factual circumstances, in which his Honour had said that the procedure proposed to be performed on the child in that case (the same gonadectomy as proposed in this case) "*is a procedure which requires the sanction of a Court"*, but that they nevertheless "invited" me to consider whether I agreed with that view.

8. It was respectfully made clear to me that the applicants were not submitting that I should not make the orders they were asking for, but rather that they were submitting, more for the potential benefit of any parents, like them, who might find themselves in these very same factual circumstances in the future, that Court sanction is not actually required for parental authorisation of the proposed medical treatment, including the gonadectomy, to be administered to the child, and inviting me to accept that submission.

9. With the utmost respect to the views of my former judicial colleague, the late Barry J, I do accept the submission made by counsel for the applicants. I do not consider that this Court's sanction was actually required in the factual circumstances of this case. That said, I am nevertheless quite satisfied that it can still be given where the parents do seek it, as has already happened in this case.

10. These are my reasons.

Some Relevant Background

11. Carla's parents were married in 2001 and welcomed their daughter into the world in 2010. In the days following Carla's birth, her mother noticed genital

swelling while changing Carla's nappy and this led to a series of investigative medical tests, including some undertaken internationally.

12. Carla was later diagnosed with 17 beta hydroxysteroid dehydrogenase 3 deficiency and her parents began consulting with various medical professionals for advice in relation to the condition.

13. From the outset, Carla's parents met with Dr S and other clinicians to seek advice as to whether they should raise Carla as a male or a female. They decided that it was appropriate to continue to raise Carla as a girl with the understanding that her gender identity would be assessed when it was developmentally appropriate to do so.

14. In her mother's opinion, Carla acts as a girl and she has no concerns that her daughter identifies as anything other than female. Carla's father agrees with that.

15. In 2014, when Carla was almost four years of age, she was reviewed by Dr S who formed the opinion that Carla had developed a female gender identity and identified as a female and that this was unlikely to change in the future. Dr S formed this opinion based on the following observations:

    a) Her parents were able to describe a clear, consistent development of a female gender identity;

    b) Her parents supplied photos and other evidence that demonstrated that Carla identifies as a female;

    c) She spoke in an age appropriate manner, and described a range of interests/toys and colours, all of which were stereotypically female, for example, having pink curtains, a Barbie bedspread and campervan, necklaces, lip gloss and 'fairy stations';

    d) She happily wore a floral skirt and shirt with glittery sandals and Minnie Mouse underwear and had her long blond hair tied in braids; and

    e) Her parents told Dr S that Carla never tries to stand while urinating, never wants to be called by or referred to in the male pronoun, prefers female toys, clothes and activities over male toys, clothes and activities, all of which are typically seen in natal boys and natal girls who identify as boys.

16. In 2014, Carla underwent two operations. In March that year, Dr B, performed a 'clitoral' recession and labioplasty to feminise Carla's external appearance. Later that year, in September, Dr B performed a repair of bilateral inguinal hernia on Carla.

17. The next step in Carla's treatment plan is the proposed procedure I have already referred to - a laparoscopic excision of both gonads. Dr B deposes that

this is to be carried out as a day case procedure and the operation would take 30 to 40 minutes, with Carla leaving hospital after a few hours recovery.

18. It is then proposed that in the future, as Carla approaches the age of 12, that exogenous oestrogen be administered to her in increasing doses over approximately two years to induce female pubertal development. This could occur at a time comparable to her female peers and is most likely to be positive for her social and psychological well-being. Carla would then require lifelong oestrogen replacement. Carla may also require other surgery in the future to enable her vaginal cavity to have adequate capacity for sexual intercourse.

Why the need for the proposed surgery?

19. Given the positioning of Carla's gonads in the intra-abdominal cavity, if the procedure does not take place and they are not removed, there is a risk of transformation in to germ cell malignancy in the short, medium and long term. Dr C reports that the Consensus Statement for Management of Disorders of Sexual Development puts the risk of germ cell malignancy at 28% for Carla's condition. That is said to be an intermediate level of risk of malignancy. Performing the proposed procedure would remove the risk of tumour development in the testes. This is one of, if not the major reason for undertaking the proposed procedure.

20. There are limited alternatives to the proposed procedure. Dr B's evidence is that because of the position of Carla's gonads, if they are left where they are it would be virtually impossible to regularly monitor them for the presence of tumours. The evidence is that they could be moved external to the abdominal cavity but that, of course, would be likely to have quite adverse psychological consequences for Carla.

21. If the gonads are not removed, and one or both developed a malignant germ cell tumour in the future, upon discovery surgical removal would be immediately required.

22. If Carla does not have this procedure now, as she approaches the normal age of puberty, there is a risk that testosterone like substances will be produced which would further potentially virilise Carla's body. The medical evidence is that it is difficult to predict the degree of virilisation that may occur but that some features, if they occurred, would be irreversible. Those include the development of a male physique, increased body hair, deepening of the voice and enlarging of the clitoris.

23. The expert evidence is also that even if the clitoris enlarged significantly, other surgery would be required to create male genitalia and supplemental testosterone would likely be required through puberty and adult male life.

24. Dr C does report that "in theory" male puberty could be suppressed hormonally in Carla to prevent any virilisation until Carla was older and could give

informed consent to treatment. However, this would require at least three monthly injections of depot Lucrin intramuscularly, three monthly medical reviews and any female pubertal development would thereby be necessarily delayed until her testes were removed and pubertal suppression could be ceased. This would mean that Carla's pubertal development would be significantly delayed compared to her peers with likely detrimental social and psychological effects on her in addition to detrimental physical effects including in respect of her bone health. Carla would, of course, also be exposed to the abovementioned significant risk of tumour development in the testes during this time.

25. As well as the physical risk of cancer that Carla faces if she does not undergo the proposed surgical procedure, the doctors say Carla would, in the circumstances of the onset of male puberty, be at increased risk of developing mental health problems including, potentially, a variety of anxiety and depressive disorders and serious confusion about her gender identity. Carla's parents are, quite naturally, very worried that if the procedure is not undertaken and Carla goes through male puberty that she will suffer significant distress as Carla clearly identifies herself as female.

26. Dr S expressed the firm opinion that the psychological risks to Carla of not undergoing the procedure outweigh the psychological risks to her of undergoing the surgery.

27. Clearly, one of the most important considerations for the parents in this case is the fact that removal of the gonads prior to puberty will certainly render Carla infertile. She has no ovaries containing female gametes. She has pre-pubertal testes. The medical expert evidence is that as her testes are pre-pubertal, sperm have not yet matured. No viable sperm can be extracted from those testes now. The evidence is that the testes could be cryopreserved after removal but that no technology exists to source viable mature sperm from cryopreserved pre-pubertal testes. The expert evidence is also that whilst it is conceivable that in the future, technology might be developed that would enable Carla to have a child that is genetically her own through stem cell manipulation, the prospects of the development of such technology are unknown at this stage.

28. However, if the surgical procedure is not undertaken and the gonads are left in situ, the issue of Carla's future potential fertility raises other significant social and emotional complexities given that Carla identifies as a female and, according to the expert evidence, is likely to continue to, whilst any fertility she could potentially attain is based on male gametes.

29. In any event, the medical evidence is that even if Carla's gonads are not removed, she might still be infertile or sub-fertile given that they are intra-abdominally located. Their function would be compromised during pubertal changes having regard to temperature differences between their intra-

abdominal location and the normal location in an externally located scrotal sac. The medical evidence is also that testosterone production at the time of puberty could also be lower than that in an unaffected male because of the genetic condition with which Carla was born. So, there is no certainty of future fertility if the surgery does not take place.

30. The medical evidence recommends that the procedure be performed prior to Carla commencing puberty and supports the position that there is no reason to delay the procedure especially given that there are physical and psychological risks associated with such a delay and particularly given that it will be less psychologically traumatic for Carla if it is performed before she is able to understand the nature of the procedure.

31. Dr B advises that in terms of the proposed procedure itself, the risks include those normally associated with the taking of general anaesthetic, (which Carla has taken previously without complication), as well as wound infection and short term local pain and discomfort from the surgery. Otherwise, no other real or apparent risks have been identified for the surgery itself.

32. I accept the expert qualifications of the medical witnesses in this case. Each is highly credentialed and experienced. Each has expressed the opinion that the proposed treatment is in Carla's best interests. I am quite satisfied that those doctors are caring, thoughtful, expertly qualified doctors who have been working extremely well together and with Carla and her parents in treating Carla. That, of course, should continue.

33. The evidence demonstrates to me that Carla's parents have carefully and thoughtfully considered the risks and, properly motivated, in what can only be described as an extremely difficult decision to have to make, with the advice and support of Carla's treating medical practitioners, they have decided that it is in their daughter's best interests to proceed with the procedure and have decided that they do not wish to cryogenically store her testicular tissue. This particular aspect of the decision is also supported by Dr C.

34. Carla's parents respectfully asked this Court to support their decision. As I have said, I did, and I made the orders they asked for.

So, why did Carla's parents have to come to this Court?

35. As I have already pointed out, at the hearing, the Court was informed that the application was made because Barry J had said in a case which counsel rightly described as being factually "on all fours" with this one, that exactly the same procedure that is proposed to be undertaken in respect of Carla "*requires the sanction of a Court".*

36. In what was an ex temporaneous judgment, Barry J determined that the application before him in *Re Lesley* (exactly the same type of application that was before me in respect of a young child with the exact same condition as

Carla has) fell "*squarely within the principles enunciated in Marion's case".* His Honour's reference to "*Marion's case*" was a reference to the 1992 decision of the High Court in *Secretary, Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218.

37. With respect to his Honour, I observe, in what appears to me from a reading of his Honour's judgment to be a context of there having been no argument made that sanction was not required and Lesley's parents having supported the applicant hospital's application for the sanction to be granted by the Court, his Honour had no apparent cause to consider the High Court's decision in *Marion's case* other than to satisfy himself that it provided authority for the Court to sanction the decision he was asked to make.

38. *Marion's case* was a landmark decision of the High Court in this country in respect of the bounds of parental authority to authorise medical procedures on their children.

39. In that case, the parents of an intellectually disabled 14 year old girl wished to permit a hysterectomy and ovariectomy to be performed on their child. These procedures were proposed for the purpose of preventing pregnancy and menstruation with its psychological and behavioural consequences and to stabilise hormonal fluxes with the aim of helping to eliminate consequential stress and behavioural responses.

40. One of the questions for the determination of the High Court was whether the parents, as joint guardians of the child, could lawfully authorise the proposed procedures without a Court order.

41. In short, the High Court determined that the parents could not lawfully authorise the proposed procedures without a Court order. The Court also found that this Court, exercising welfare jurisdiction in respect of children that is conferred upon it, has jurisdiction to authorise those proposed procedures. Four Judges of the High Court concurred in a joint judgment. The other three Judges wrote separate judgments.

42. The four Judges who wrote the joint judgment determined that at common law (absent legislative provision), parental power to consent to medical treatment on behalf of a child diminishes gradually as the child's capacities and maturity grow. Their Honours held that a child is capable of giving informed consent when he or she "*achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed*".[1] This sufficient level of understanding and intelligence has become known as "*Gillick* competency", after the House of Lords decision of that name. There was no dissent from the other three Judges in respect of that view.

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[1] Per Mason CJ, Dawson, Toohey and Gaudron JJ in *Marion's case* at 237 citing *Gillick v West Norfolk and Wisbech* AHA [1986] AC 112, a decision of the English House of Lords.

43. The four Judges who wrote the joint judgment held that where a child is incapable of giving a valid consent, parents may, in a wide range of circumstances, consent to the medical treatment of their child. Their Honours caveated that by determining that the overriding criterion to be applied in the exercise of parental authority on behalf of a child is the welfare of the child objectively assessed. Similar views, at least in my understanding of their separate judgments, were expressed by each of the other three Judges.

44. Critically though, in my view at least,[2] whilst the four Judges who wrote the joint judgment went on to determine that the decision to authorise the "sterilisation" of another person involves factors which indicate that, "*in order to ensure the best protection of the interests of a child, such a decision should not come within the ordinary scope of parental power to consent to medical treatment*",[3] they then said:

> But first it is necessary to make clear that, in speaking of sterilisation in this context, we are not referring to sterilisation which is a by-product of surgery appropriately carried out to treat some malfunction or disease. We hesitate to use the expressions "therapeutic" and "non-therapeutic", because of their uncertainty. But it is necessary to make the distinction, however unclear the dividing line may be.

45. Though their Honours said nothing more about the distinction between "therapeutic" and "non-therapeutic" medical treatment than that, Brennan J did in his judgment in which he agreed that court sanction is not required for "therapeutic medical treatment" that has, as an incidental outcome, the rendering infertile of the subject child. His Honour said:

> It is necessary to define what is meant by therapeutic medical treatment. I would define treatment (including surgery) as therapeutic when it is administered for the chief purpose of preventing, removing or ameliorating a cosmetic deformity, a pathological condition or a psychiatric disorder, provided the treatment is appropriate for and proportionate to the purpose for which it is administered. "Non-therapeutic" medical treatment is descriptive of treatment which is inappropriate or disproportionate having regard to the cosmetic deformity, pathological condition or psychiatric disorder for which the treatment is administered and of treatment which is administered chiefly for other purposes.[4]

46. His Honour later went on to say:

> Proportionality and purpose are the legal factors which determine the therapeutic nature of medical treatment. Proportionality is determined as a

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2 A view I respectfully consider was also clearly expressed by Murphy J of this Court in *Re Sean and Russell (Special Medical Procedures)* [2010] FamCA 948.

3 *Marion's case* at 249.

4 *Marion's case* at 269.

question of medical fact. Purpose is ascertained by reference to all the circumstances but especially to the physical or mental condition which the treatment is appropriate to affect.

The propriety of authorizing sterilization for therapeutic purposes is not reasonably open to doubt.[5]

47. Deane J, in his judgment, said on the subject:

…One can identify two broad common law propositions relating to the authority of parents to authorise surgery in the case of a relevantly incapable child… The first of those propositions is that parental authority exists to authorise such surgery for the purpose, and only for the purpose, of advancing the welfare of the child… That which constitutes the welfare of a child in a particular case falls to be determined by reference to general community standards, but making due allowance for the entitlement of parents, within the limits of what is permissible in accordance with those standards, to entertain divergent views about the moral and secular objectives to be pursued for their children. The second broad proposition is that, at least in relation to a serious matter such as a major medical procedure, parental authority can be validly exercised only after due inquiry about, and adequate consideration of, what truly represents the welfare of the child in all the circumstances of the case. Those two broad common law propositions appear to me to be beyond serious dispute. Ordinarily, their application will be straightforward. Most surgery is for the conventional medical purpose of treating or preventing physical illness. Competent medical advice that the particular surgical procedure is necessary to preserve life or to treat physical illness will suffice to satisfy the requirement of due inquiry and adequate consideration. Indeed, at least where medical opinion is unanimous in recommending immediate major surgery to avoid death or to treat or prevent grave illness or physical incapacity, parental duty will ordinarily dictate the authorisation of such surgery.

….the parents of an incapable child have authority to authorise surgery involving irreversible sterilisation in a case where such surgery is, according to competent medical advice, necessary for the conventional purpose of treating or preventing grave physical illness. In such cases, the common law requirement of due inquiry and adequate consideration is satisfied by competent medical advice, including or supplemented by appropriate multi-specialist and inter-disciplinary input (for example, psychological or vocational).[6]

48. McHugh J, in his judgment, said:

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5 *Marion's case* at 274.

6 Per Deane J in *Marion's case* at 295.

> If there is any real possibility that, at some future time, the child will acquire the capacity and maturity to choose whether he or she should be sterilised, the carrying out of that procedure cannot be in the best interests of the child unless, of course, protection of the child's health urgently requires that the procedure be carried out during incompetency.[7]

49. Quite clearly, in my respectful view, all of their Honours acknowledged a distinction between the authorisation of medical procedures that result in the rendering of a child infertile that falls outside the bounds of permissible parental authority thus requiring Court sanction and the authorisation of such procedures that falls within permissible parental authority thus not requiring Court sanction.

50. Considering all of the evidence that was adduced by the applicants before me, I am quite satisfied that the medical treatment proposed for Carla is appropriately described as "therapeutic" within the meaning of that descriptor as used by the four Judges in the majority in *Marion's case* and also used by Brennan J in his separate judgment and thus within the bounds of permissible parental authority as delineated by those five Judges. I am also satisfied that it falls within the category of cases identified by Deane J and McHugh J in their separate judgments as being cases involving decisions that fall within the bounds of permissible parental authority.

51. Whilst it might be arguable, with reference to the view of McHugh J, that the protection of Carla's health does not "urgently" require the procedure to be carried out at this very point in her minority, the evidence does establish that it should be carried out before the onset of pubertal changes in order to ameliorate real and not insubstantial risks to Carla's physical and emotional health, and one has to accept that the onset of pubertal changes will occur before the child would become *Gillick* competent. As such, in my view, it still falls within the exception acknowledged by his Honour to exist in respect of the authorisation of medical procedures resulting in the rendering infertile of a child that would otherwise be outside the bounds of permissible parental authority.

52. I consider the proposed medical treatment "therapeutic" as being necessary to appropriately and proportionately treat a genetic bodily malfunction that, untreated, poses real and not insubstantial risks to the child's physical and emotional health.

53. If follows that I do not consider this a case where the decision to authorise the medical procedures that Carla is proposed to be subject to, is one that falls outside the bounds of permissible parental authority as determined by the High Court in *Marion's Case.* As such, I do not consider this to be a case of a decision actually requiring Court sanction.

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[7] Per McHugh J in *Marion's case* at 320.

Does the Court still have the jurisdiction to make the orders it did?

54. In respect of those medical procedures the authorisation of which fall outside the bounds of permissible parental authority as determined by application of the principles in *Marion's case,* there is little doubt that this Court still has jurisdiction notwithstanding the legislative amendments to the *Family Law Act 1975* (Cth) since the High Court's decision.[8]

55. In respect of those medical procedures the authorisation of which fall within the bounds of permissible parental authority, such as I have determined is the case in the factual circumstances of this case, the bringing of an application by a parent or a health authority for this Court's sanction, though, in my view, not actually "required", can, in many circumstances, be understandably considered "as a prudent step".[9] I consider it unnecessary, though, in the context of this judgment, to attempt to set out the preconditions for when the prudence of seeking Court sanction when not actually required becomes compelling.

56. In *Re Sean and Russell (Special Medical Procedures)* [2010] FamCA 948 from [66] to [75] and from [102] to [108] Murphy J discussed and set out his view that this Court has jurisdiction and power to make "parenting orders" in respect of issues such as those before the Court in this case, because the orders that are being sought deal with parental responsibility and do not seek to enlarge powers which those with parental responsibility otherwise have by law. I respectfully agree with his Honour's views expressed therein and am satisfied that the Court has the jurisdiction and the power to have made the orders that I did, in the form that I did.

57. I also made some further orders that I considered appropriate to further ensure the privacy of this family having regard to the particular sensitivity of the subject matter of this case.

I certify that the preceding fifty-seven (57) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Forrest delivered on 20 January 2016.

Associate:

Date: 20 January 2016

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8 See particularly the discussion of the question by Murphy J in *Re Sean and Russell (Special Medical Procedures)* [2010] FamCA 948 at [49] to [59] and s 67ZC of the *Family Law Act 1975* (Cth).

9 Per Murphy J in *Re Sean and Russell (Special Medical Procedures)* [2010] FamCA 948 at [95].