FAMILY LAW ACT 1975

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

AT NEWCASTLE

No. (P)PAC709/2021

BETWEEN

Jacqui Griffin Mobile Solicitor
PO BOX 1272
PARRAMATTA NSW 2124

LUKE MICHAEL ARABIN
(Applicant)

AND

Jlm Family Lawyers Pty Ltd
Suite 3, 14-16 Pulteney Street
TAREE NSW 2430

JESSICA APRIL ARABIN
(Respondent)

AND

Strive Family Law & Mediations
PO BOX 7184
MANNERING PARK NSW 2259

INDEPENDENT CHILDREN'S LAWYER

ORDER 24/7/2023

FAMILY LAW ACT 1975

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

FILE NO: (P)PAC709/2021

BETWEEN:

LUKE MICHAEL ARABIN **(Applicant)**

AND:

JESSICA APRIL ARABIN **(Respondent)**

AND:

INDEPENDENT CHILDREN'S LAWYER

BEFORE: HIS HONOUR JUDGE BETTS

DATE: 24 July 2023

MADE AT: NEWCASTLE

UPON APPLICATION MADE TO THE COURT by Ms Winfield, of Counsel appearing for and with the Applicant, Mr Allen, of Counsel appearing for and with the Respondent and Ms Kaiti, of Counsel appearing for and with the Independent Children's Lawyer.

THE COURT ORDERS THAT:

1. By consent, orders be made in accordance with the Terms of Settlement handed up in Court today and marked with the letter **"A"** and attached hereto.
2. By consent, the Solicitor for the Applicant is to email a clean certified typescript of the Terms of Settlement to be placed on the Court file within two (2) days of today.
3. Pursuant to Section 65DA(2) the particulars of the obligations these orders create and the particulars of the consequences that may follow if a person contravenes these orders are set out in annexure B and these particulars are included in these orders.

4. All extant applications are dismissed.

5. The matter is removed from the Active Pending Cases List.

By the Court



Registrar

"A"

FAMILY LAW ACT 1975

IN THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2) **FILE NO: (P)PAC709/2021**

BETWEEN:

LUKE MICHAEL ARABIN **(Applicant)**

AND:

JESSICA APRIL ARABIN **(Respondent)**

AND:

INDEPENDENT CHILDREN'S LAWYER

BEFORE: **JUDGE BETTS**

DATE:

MADE AT: **NEWCASTLE**

FINAL TERMS OF SETTLEMENT

1. That the parents have equal shared parental responsibility for the children Alyssa Jane Brombey born 26 June 2013, Alexis Marie Brombey born 3 April 2015, Tyler Steven Brombey born 16 September 2016 and Eliza Dawn Arabin born 30 October 2018 ("the children").

2. That the children live with the mother.

3. That the children spend time with the father as follows:

   3.1 During school terms each alternate weekend commencing from 5pm Friday to 5pm Sunday or as close thereto as allowed by the train timetable;

   3.2 During the term school holiday periods from the day after the last day of term to the following Friday being the mid Friday of the school holiday period with changeover to occur at 5pm depending the train timetable.

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3.3 During the Christmas school holiday period for the first three weeks commencing at 5pm on the day after the last day the children are to attend school for the last term and concluding at 5pm 21 days later in odd numbered years commencing December 2023-January 2024 with the changeovers to occur at the closest train to arrive at 5pm;

3.4 During the Christmas school holiday period from 5pm 21 days prior to the last day of the school holiday period to 5pm on the second last of the school holiday period in even numbered years commencing December 2024-January 2025 with the changeovers to occur at the closest train to arrive at 5pm;

3.5 On the Father's Day weekend from 5pm on Friday to the closest train to arrive at 5pm depending on the train timetable to 5pm on Sunday or to the closest train to arrive at 5pm;

3.6 Where Easter does not fall in the school holiday period from 5pm (or after school if a school day) the day before Easter Friday to 5pm Easter Saturday in odd numbered years and from 5pm Easter Saturday to 5pm Easter Monday in even numbered years to the closest train to arrive at 5pm depending on the train timetable;

3.7 At any other times as agreed between the parties in writing.

4. That the father's time with the children shall be suspended on the Mother's Day weekend.

5. That changeover is to occur at Hornsby train Station at the main ticket office.

6. That either parent shall be permitted to telephone the children by land line telephone or mobile telephone on any Saturday that the children are not in their care between 4pm and 5pm.

7. That the parent who does not have the children in their care on the children's birthdays or Christmas Day shall be at liberty to contact the children by telephone either by mobile telephone or land line telephone on those days between 4pm and 5pm.

8. That for the purpose of communication, the parents shall communicate urgent matters only by text message and non-urgent matters in relation to the welfare of the children via email.

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9. The parents shall at all times keep each other advised of their current residential address, mobile phone number or land line telephone number and email address.

10. The parents shall advise each other of any medical or allied health appointments that the children are to attend including the name of the practitioner and name and address of the practice as soon as any such appointment is made and both parents are at liberty to contact any of the children's medical practitioners or allied health practitioners and obtain all information usually available to parents about the health and care of any of the children.

11. Should the children or any of them suffer a serious illness or be hospitalised, the parent with care of the children or child shall notify the other parent as soon as it is practical to do so via text message and include details such as the diagnosis, prognosis and location of the children or child.

12. That this Order is sufficient to allow both parents to access all material usually available to parents from any school that the children may attend.

13. That both parents are at liberty to attend any school event usually open to parental attendance.

14. That both parents are hereby restrained by injunction from:

    14.1 Abusing, insulting, belittling, rebuking or otherwise denigrating the other parent and/or any member of the other parent's extended family in the presence or hearing of the children or any of them;

    14.2 Both parties are restrained from administrating corporal punishment upon the children or any of them and will ensure that no other person does so either.

    14.3 Discussing these proceedings with or in the presence or hearing of the children or any of them and/or from knowingly permitting any other person to do so;

    14.4 Showing any document in relation to these proceedings to any of the children;

    14.5 Placing any derogatory or critical comments about the other parent or that parent's extended family on a public forum such as Facebook, Twitter or any other form of internet social media;

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14.6 Physically disciplining the children and any of them and or swearing in the presence or hearing of the children or any of them and or from knowingly permitting any other person to do so.

15. That on a without admissions basis the mother is hereby restrained from bringing the children or any of them into any form of contact with Thomas Piper.

16. That on a without admissions basis, the mother is restrained by injunction from driving the children in any motor vehicle whilst on a learner licence without adequate and appropriate supervision by a fully qualified and licensed driver.

17. That on a without admissions basis, the father is hereby restrained from driving the children in any motor vehicle in which there is not sufficient seat belts for each child.

18. That the mother shall continue to engage with the Brighter Futures Program at all times she is required to do so and until she is advised by Brighter Futures that further engagement is no longer required.

19. That should the father not be able to care for the children pursuant to these Orders the father shall provide the mother with no less than 48 hours' notice for school term time and 7 days' notice for school holiday time.

20. By consent, the Father is to pay the Independent Children's Lawyer's costs fixed in the amount of $1650.00.



Parenting orders – obligations, consequences and who can help

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

This document also includes information, pursuant to sections 62B and 65DA(3) of the Family Law Act, about:
- courses, programs and services in the community that can help people understand their responsibilities and adjust to a parenting order, and
- the options available to ensure that people comply with (follow) a parenting order.

It is important that you read this information
You have been given this document because a court has made a parenting order which requires you to take certain steps.

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

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

Community courses, programs and services
There are courses, programs and services in the community that can help you:
- reach an agreement with the other party
- understand your parental responsibilities, and
- adjust to and follow court orders.

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

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

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

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

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

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

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

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

- The order remains in force until a new parenting order or parenting plan changes it in some way.
- Even if the needs or circumstances of you, the child or the other party change, the court order applies until it is formally changed by a court or, in some situations, you enter into a parenting plan with the other party.
- Sometimes people talk to each other about changing arrangements set out in a parenting order. These talks do not change the order.

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

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

Legal advice

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

Penalties for failing to comply with a parenting order

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

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

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

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

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

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

Location and recovery orders

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

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

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

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