

FAMILY LAW ACT 1975

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

AT NEWCASTLE

No. (P)NCC3896/2023

BETWEEN

Clarity Lawyers
Level 2, 45 Hunter Street
NEWCASTLE NSW 2300

STEPHEN CHRISTOPHER COOKE
(Applicant)

AND

Delaney Roberts Family Lawyers
Telstra Civic Suite 1,
Level 2,
317 Hunter Street,
NEWCASTLE NSW 2300

HEATHER ANNE COOKE
(Respondent)

ORDER 11/4/2024

FAMILY LAW ACT 1975

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

FILE NO: (P)NCC3896/2023

BETWEEN:

STEPHEN CHRISTOPHER COOKE (Applicant)

AND:

HEATHER ANNE COOKE (Respondent)

BEFORE:

JUDGE CARTY

DATE:

11 April 2024

MADE AT:

NEWCASTLE

UPON APPLICATION MADE TO THE COURT by Ms Van Oosterom, Counsel, for and with the APPLICANT and Mr Bithrey, Counsel, for and with the RESPONDENT.

THE COURT ORDERS PENDING FURTHER ORDER THAT:

1. By Consent the Court makes Interim Property Orders, Notations and Declarations in accordance with the document entitled, "Minute of Order" marked "A" dated this 11 April 2024 and attached hereto.
2. The solicitor for the respondent is to forward an electronic typescript of the document marked "A" to the court within 48 hours.
3. The matter is adjourned until **23 April 2024 at 2.15pm** for Orders and delivery of oral reasons for decision in the Federal Circuit and Family Court of Australia sitting at Coffs Harbour, to be conducted by way of AVL using the following dial in details:
 - i. Phone Link : (02) 9765 5580
 - ii. Meeting ID: 10093158
 - iii. Video Link:

https://avl.justice.nsw.gov.au/invited.sf?id=10093158&secret=fSwk_5IqsmseF5nqi7tKeA



By the Court

Registrar

“A”
FAMILY LAW ACT 1975

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

IN THE MARRIAGE OF

STEPHEN CHRISTOPHER COOKE
(Applicant)

and

HEATHER ANNE COOKE
(Respondent)

MINUTE OF ORDER

BY CONSENT IT IS ORDERED

Sale of 1/213 Morgan Street, Merewether NSW

1. By 11 July 2024, the parties will have done all acts and things and signed all documents necessary to cause the property at 1/213 Morgan Street, Merewether NSW ("*the Morgan Street Property*") to be listed for sale and for this purpose:

(a) The parties are to agree on the appointment of a real estate agent and, failing agreement within seven (7) days of these Orders, the Respondent Mother shall provide the names of three (3) real estate agents to the Applicant Father, and the Applicant Father shall choose the agent from the three (3) real estate agents within seven (7) days of receiving the names, failing which the Respondent Mother shall choose the real estate agent to act in relation to the sale,

(b) The parties are to execute the real estate agent's Agency Agreement within seven (7) days of receiving same,

(c) The Morgan Street Property is to be marketed for sale by private treaty for a period of three (3) months from the appointment of the real estate agent,

(d) The Applicant Father and Respondent Mother are to each pay one half of all marketing and advertising costs in relation to the sale, with the Respondent Mother to pay all such costs at first instance and the Applicant Father's one-half liability for



such costs to be adjusted in favour of the Respondent Mother on settlement from the sale proceeds,

- (e) The parties are to instruct Kent Conveyancing (or such other conveyancer agreed by the parties, and which maintains a trust account) in relation to the sale to prepare a Contract for Sale within two (2) weeks of the appointment of the real estate agent for the purpose of the real estate agent marketing the Morgan Street Property for sale,
- (f) The parties are to agree on the listing price of the Morgan Street Property and, failing agreement, the real estate agent is to nominate the listing price,
- (g) The parties are to agree on the sale price of the Morgan Street Property and, failing agreement, as advised by the agent acting on the sale,
- (h) The settlement period for the sale is to be as nominated by the purchaser provided that such settlement period is to be 42 days,
- (i) That in the event that Contracts for Sale are not exchanged three (3) months after being listed, the Morgan Street Property is to be auctioned within the next three (3) months with the following provisions to apply:
 - i. The parties are to agree on an auctioneer and, failing agreement, the auctioneer is to be appointed by the real estate agent,
 - ii. The parties are to agree on the reserve price of the Morgan Street Property and, failing agreement, the auctioneer is to set the reserve price; and
 - iii. Should the Morgan Street Property fail to reach the reserve price, the Morgan Street Property is to be auctioned in successive auctions, each auction being no less than two (2) months and no more than four (4) months apart, with the reserve price to reduce by 5% on each occasion until the Morgan Street Property is sold.

2. That forthwith upon settlement of the sale of the Morgan Street Property the parties shall do all acts and things and sign all documents necessary to distribute the proceeds of sale in the following order and priority:

- (a) In payment of the real estate agent's commission and auction expenses arising on the sale,
- (b) In payment of any proper legal costs and expenses arising from the sale,



- (c) In discharge of the home loans with Westpac Bank secured by registered mortgage against the title of the Morgan Street Property,
- (d) To the Applicant, the sum of \$200,000.00 by way of interim property settlement,
- (e) To the Respondent, the sum of \$200,000.00 by way of interim property settlement,
- (f) In payment of the remainder to be held in the trust account of Kent Conveyancing or the trust account of such other conveyancer acting in relation to the sale.

Exclusive occupancy of 1/213 Morgan Street, Merewether NSW

- 3. That pending settlement of the sale, the Applicant Father shall have exclusive occupancy of the Morgan Street Property provided that he does all acts and things necessary to allow access to the property to the real estate agent as requested by the real estate agent, tradespeople and any prospective purchasers, and to keep the property clean and in a fit and proper state of repair to settlement of the sale of the property.
- 4. That pending the sale of the Morgan Street Property, the Respondent Mother shall pay all costs in relation to the Morgan Street Property as and when they fall due, including home loan repayments, land rates, water rates, utilities and building insurance.

Applicant's use of 2015 Honda CR-V VTi-L

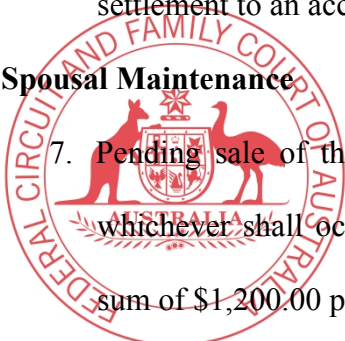
- 5. That the Applicant Father shall have use of the 2015 Honda CR-V VTi-L (registration no: DAI 47C) and the Respondent Mother shall continue to pay the registration and insurance costs for the vehicle.

Litigation funding

- 6. That within seven (7) days of the date of these Orders, the Respondent Mother shall pay to the Applicant Father the sum of \$50,000.00 as litigation funding by way of partial property settlement to an account nominated by the Applicant Father.

Spousal Maintenance

- 7. Pending sale of the Morgan Street Property or until the Applicant obtains employment, whichever shall occur first, the Respondent is to pay interim Spousal Maintenance in the sum of \$1,200.00 per week, commencing 12 April 2024.



Valuation

8. Within seven (7) days, the solicitor for the Respondent is to provide to the solicitor for the Applicant, the names, CV's and rates of fee for three persons qualified to prepare a report as to the value of the property situated at and known as 703/1 Como Crescent, Southport, QLD (*'the Como Crescent property'*).
9. Within seven (7) days of compliance with Order 8 hereof, the solicitor for the Applicant shall nominate one of those three persons and provide a signed joint letter of instruction to the solicitor for the Respondent appointing that person as a single expert for that purpose.
10. Within seven (7) days of compliance with Order 9 hereof, the solicitor for the Respondent is to counter-sign the joint letter of instruction and forward same to the single expert.
11. The parties are to comply with all reasonable requests for information and access to the Como Crescent property made by the expert.
12. The parties are to equally share in the costs of the single expert.
13. It is noted that the parties intend to attend private mediation within three months of the date of these orders.
14. That all extant interim financial applications are withdrawn and dismissed and there is no order as to costs.



Family Violence Information Sheet

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

About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a member of the person's family (the family member), or causes them to be fearful (section 4AB *Family Law Act 1975*).

The Federal Circuit and Family Court of Australia (the Court) takes family violence very seriously. Protecting family members from the effects of family violence and ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Court.

Safety at court

Parties concerned about their safety when attending court events can contact the Court's registry in which their matter is listed to arrange a safety at court plan prior to the listing.

Legal and support services

The Family Advocacy and Support Service (FASS) is a free legal and support service provided by Legal Aid to assist family law litigants who have been affected by family violence. Litigants can attend the free Legal Aid Family Law Duty Service. For more information about FASS, see Family Advocacy and Support Services, Legal Aid, see the Legal Aid section of Find a Lawyer or contact the Court.

Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that **unrepresented litigants** will be **unable** to cross-examine the other party at an interim or a final hearing if there are allegations of family violence **and**:

- i. either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party: section 102NA(1)(c)(i)
- ii. a final Family Violence Order applies to both parties: section 102NA(1)(c)(ii)
- iii. an injunction has been made under section 68B or section 114 of the *Family Law Act* for the personal protection of one party against another: section 102NA(1)(c)(iii), or
- iv. the Court makes an order that personal cross-examination should not be permitted: section 102NA(1)(c)(iv).

In matters involving alleged family violence which **do not** fall into the above categories, the Court may permit personal cross-examination by an unrepresented party but must ensure alternative protections, such as cross-examination via video link, are implemented: section 102NB.

These provisions apply to all proceedings under the Family Law Act, not just parenting proceedings.

Parties who are not permitted to personally cross-examine another party may retain private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the Scheme) to obtain legal representation. The Scheme is not means or merits tested, but applicants may be required to contribute to the cost of their representation. Applications are made through the relevant state or territory Legal Aid Commission. All applications to the Scheme must be made at least 12 weeks prior to the final hearing.

Unrepresented litigants who do not have legal representation either privately or through the Scheme will be unable to cross-examine the other party at the final hearing.

Further information can be found on the Court's website: www.fcfoa.gov.au/fl/fv/overview

This information sheet provides general information only and is not provided as 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 Federal Circuit and Family Court of Australia cannot provide legal advice.

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