

FAMILY LAW REVIEW

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ARTICLES

Judicial expression of a preliminary view – Felicity Bell

Judicial expression of views prior to or during a hearing may provide useful guidance for lawyers in presenting a client’s case, and can be a means of narrowing and focusing issues in dispute. Yet it is also possible for judicial expression of a preliminary view to give rise to claims of prejudgment and bias. Recently, the Full Court of the Family Court has adopted a strict approach to judges expressing preliminary views. This article examines this in the context of other authority that has held that expression of a preliminary view is permissible and, indeed, perhaps even desirable. 73

Social media evidence in family law: What can be used and its probative value – Victoria Blakeley, Patricia Easteal, Emma Fitch and Jessica Kennedy

Social media is having an influence in various areas of the law, and the use of social media evidence in family law proceedings has become a regular occurrence. From the study reported in this article, it appears that if something is said through, or posted to, social media, it is likely to be admissible evidence in family law proceedings, and could be used in support of an application. Through the analysis of 136 first instance judgments between 2009 and 2014 the authors identify how and when social media evidence is adduced (and for what purpose) and discuss what evidence is accepted by judicial officers and why. The analysis illustrates how existing rules of evidence are relied upon and applied in a dynamic evidentiary landscape. The authors hope that this study will assist litigants and legal practitioners to decide what types of social media evidence to rely on, and how and when to rely on it, having regard to specific rules of evidence. It is foreseeable that the use of social media evidence in family law matters will become more prevalent, hence the importance of making informed decisions about how to interpret, rely on, and make both supporting and rebuttal arguments in relation to social media evidence in family law matters. 81

PROFESSIONAL INSIGHTS

Public law issues in a private law system: Child protection and family law – Robert Benjamin

This article discusses the difficulties arising between private family law proceedings and public child care and protection proceedings under the Australian *Constitution*. Suggestions are made to solve these problems. 102

PROPERTY AND FINANCIAL ARRANGEMENTS

Not so special: Fields v Smith and the assessment of contributions in family law property matters – Anna Parker

The recent Full Court decision of *Fields v Smith* [2015] FamCAFC 57 confirmed the end of the controversial “special contributions” doctrine, pursuant to which particular weight was given to “special” or “extra” skills or contributions to the accumulation of wealth in the context of the determination of family law property settlements. This article considers

the history of the doctrine of special contributions, discusses its decline, and raises issues for consideration regarding the manner in which the respective contributions of the parties to long marriages may now be assessed, having regard to the absence of a principle or starting point of equality. 112

CHILD SUPPORT

The vexed question of s 116(1)(b) of the Child Support (Assessment) Act – Simon Bacon

Section 116(1)(b)(ii) of the *Child Support (Assessment) Act 1989* (Cth) allows a court to hear and determine a child support departure order at the same time as it determines other family law issues between those parties. In *Parsons v Kemp* [2014] FamCA 1091, Benjamin J said (at [169]): “I accept the legislation discourages parties using the curial process and encourage[s] the parties to the administrative process. However, I am satisfied in this case ... that the special circumstances exist pursuant to s 116(1)(b)(ii)”. What are the criteria to be considered by a court when deciding whether to exercise its discretion under s 116(1)(b)(ii) of the *Child Support (Assessment) Act*? 120

RECENT CASES – Judge Geoffrey Monahan (Ed) – Michelle Fernando – Dean Foley – Olivia Rundle

Fields v Smith (Property – Contributions – Special contributions) 123

Jurchenko v Foster (Relocation – Preliminary view – Competing proposals) 131

Carriel v Lendrum (Procedure – Further evidence – Rice and Asplund principle) 140

Winch v Jackson (Procedural fairness – Contravention – Level of penalty – Bond) 145

Bilal v Omar (Binding financial agreement – Legal professional privilege) 149