

FAMILY LAW ACT 1975

**IN THE FEDERAL CIRCUIT
COURT OF AUSTRALIA**

AT BRISBANE

No. (P)BRC5678/2014

BETWEEN

Anthony Black Family Law Services
PO Box 15630
Post Shop
CITY EAST QLD 4002

MARK JAMES ALLEN

(Applicant)

AND

Ms Katy Zdrilich Allen
16 Bradworthy Street
ALEXANDRA HILLS QLD 4161

KATY ZDRILICH ALLEN

(Respondent)

ORDER 1/12/2014

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AUSTRALIA**

FILE NO: (P)BRC5678/2014

BETWEEN:

MARK JAMES ALLEN

(Applicant)

AND:

KATY ZDRILICH ALLEN

(Respondent)

BEFORE:

JUDGE HOWARD

DATE:

1 December 2014

MADE AT:

BRISBANE

UPON APPLICATION MADE TO THE COURT made in Chambers

THE COURT ORDERS BY CONSENT ON A FINAL BASIS (in relation to Property):

1. That this order is made by way of alteration of property interests pursuant to section 79 of the *Family Law Act 1975*.
2. That within thirty (30) days, the husband and wife shall do all acts and things necessary and sign all such documents as may be required to effect a sale of the real property situated at 16 Bradworthy Street, Alexandra Hills in the State of Queensland (the “Alexandra Hills property”).
3. That the Alexandra Hills property be listed for sale by private treaty upon terms and conditions and at a price agreed between the parties and failing agreement as nominated by the Chief Executive Officer of the Real Estate Institute of Queensland.
4. That within thirty (30) days the husband shall attend at the former matrimonial home and undertake all repairs/maintenance to ready the property for sale in a manner as agreed between the parties. Failing agreement, a handyman shall be engaged by the parties as agreed or recommended by the listing agent to undertake this work. Any costs of the repairs will be paid jointly by the parties from the money currently held in their names on Trust in Anthony Black Family Law Trust Account.
5. That the listing agent shall be as agreed between the parties and failing agreement the husband shall provide to the wife a panel of three (3) agents within fourteen (14) days with the wife to select one (1) within a further seven (7) days and that in the event that the wife does not nominate an agent, the husband shall nominate the agent in the alternative.

6. That pending the sale of the former matrimonial home pursuant to Order 3 hereof:
 - a. the wife shall have the right to sole use and occupancy of the former matrimonial home and shall pay all rates due and payable.
7. That should the former matrimonial home not sell by way of private listing pursuant to these orders within a period of three (3) months from when the property is listed for sale, the parties agree that:
 - a. the sale of the former matrimonial home shall proceed to a first auction, with the reserve price and auctioneer to be agreed between the parties and failing agreement as determined by the chief Executive Officer of the Real estate Institute of Queensland;
 - b. the first auction shall occur within six (6) weeks of the expiration of the private listing period;
 - c. should the former matrimonial home fail to sell at the first auction, then the parties will arrange for a second auction to take place which is to be in exactly the same terms as the first auction save that there shall be no reserve;
 - d. the second auction shall occur within six (6) weeks after conclusion of the first auction; and
 - e. should the former matrimonial home sell at auction, then the sale proceeds shall be distributed in the way as referred to in order 8 below.
8. That the proceeds of sale of the Alexandra Hills property shall be applied as follows:
 - a. firstly, the costs, commissions and expenses of sale and to pay any council and water rates and maintenance levies outstanding in respect of the real properties;
 - b. secondly, to discharge the mortgage, and any other encumbrances affecting the property;
 - c. thirdly, to discharge the Toyota Finance liability secured against the Mazda 3 motor vehicle;
 - d. fourthly to discharge the St George liability secured against the Hyundai motor vehicle; and
 - e. the balance of the proceeds of sale of the former matrimonial home thereof be divided between the parties such that the wife retain 67.5% and the husband 32.5%.

9. That the wife shall ensure that she continues to meet all repayments due and payable that are owing on the Mazda 3 motor vehicle pending the discharge as set out above.
10. That the husband shall ensure that he continues to meet all repayments due and payable that are owing on the Hyundai motor vehicle pending the discharge as set out above.
11. That the balance of monies held in the Trust Account of Anthony Black Family Law Services, after payment of all sale costs and any other such agreed costs, shall be divided between the parties as 67.5% to the wife and 32.5% to the husband.
12. That, except as otherwise provided for in these orders, the husband is entitled to be the sole legal and beneficial owner of the following:
 - a. all bank accounts held in the husband's sole name;
 - b. the Hyundai Motor vehicle;
 - c. the husband's furniture and effects;
 - d. the husband's right, title and interest in ABC Alarms Pty Ltd; and
 - e. the husband's superannuation entitlements in AMP Easy Super Superannuation Fund less a splittable payment to the wife as per the terms of these orders.
13. That, except as otherwise provided for in these orders, the wife is entitled to be the sole legal and beneficial owner of the following:
 - a. all bank accounts held in her sole name;
 - b. the wife's Mazda 3 Motor Vehicle;
 - c. the wife's furniture and effects in her possession; and
 - d. the wife's superannuation entitlements in addition to any splittable payment made in favour of the wife pursuant to the terms of these orders.
14. That within fourteen (14) days of the date of these orders, the husband and wife shall do all such acts and sign all documents necessary to transfer the Mazda 3 into to the wife's sole name, including but not limited to any encumbrances or liabilities, attached thereto.
15. That except as otherwise provided for in these orders, the husband and wife are entitled to be the sole legal and beneficial owners of all items of property including money, motor vehicles,

insurances, equities, superannuation entitlements and personal effects currently in the possession or control of each of them respectively.

16. That each party shall indemnify the other with respect to any expenses, outgoings and liabilities related to those items of property which they retain or receive pursuant to these orders.
17. That except as otherwise provided for in this order, the parties remain individually liable for any taxation liability that may accrue or has accrued up to and including the date of separation and shall continue to remain individually liable for any such liability accruing thereafter and shall indemnify the other regarding same.
18. That Orders 18 to 21 of these Orders has effect from the operative time.
19. That pursuant to section 90MT(1)(a) of the *Family Law Act 1975* (“the Act”) whenever a splittable payment becomes payable in respect of the interest of the husband’s AMP Super (member number 948053145, under the Superannuation Savings Trust), the wife shall be paid a base amount calculated in accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001* (“the Regulations”) in the sum of thirty-five thousand (\$35,000) and that there be a corresponding reduction in the entitlements to the husband to whom the splittable payment would have become payable but for these orders.
20. That the operative time for the purposes of paragraphs 18 and 19 of these orders is four (4) business days from the date of these orders.
21. That there be liberty to apply to each party and the Trustee of the Fund in relation to the implementation of the orders affecting the superannuation effect.
22. That in the event that either party refuses or neglects to do any act or sign any document required to be signed or executed in compliance with the provisions of this order, then pursuant to section 106A of the *Family Law Act 1975*, the Registrar or Deputy Registrar of the Federal Circuit Court of Australia at Brisbane is hereby appointed to execute all deeds and documents in the name of the defaulting party and do all acts and things necessary to give validity and operation to the said order and the Affidavit of the solicitor for the non-defaulting party shall be sufficient evidence of such non-compliance. The party in default is ordered to pay all reasonable solicitor/own costs incurred by the non-defaulting party.

THE COURT ORDERS BY CONSENT ON A FINAL BASIS (in relation to Children):

Parental Responsibility

23. That the mother and father have equal shared parental responsibility for the child, JACK HENRY JAMES born 27 December 2012 ALLEN (“the child”).
24. That in the exercise of equal shared parental responsibility, the mother and father shall consult with one another about the decisions to be made in relation to major long term issues, as such may arise, including but not limited to:
- a. education and child care, including decisions about the type of schooling at which the child shall attend;
 - b. the child’s health, with the parents to keep each other informed and make joint decisions about their health, in particular the need for any operation, dental treatment, speech therapy, physiotherapy, any specialist treatment, any alternative medical treatment and medicating the child on a long term basis, as well as attendance by the child for any reason upon a child psychologist, counsellor, family therapist or psychiatrist;
 - c. the child’s religious and religious observations; and
 - d. the child’s involvement in any sporting, cultural or a community activity involving competition and training.
25. That the mother and father each have sole parental responsibility for making decisions about the day-to-day care, welfare and development of the child during those periods whilst the child is in their care, except as otherwise provided for in these orders.

Time and Communication

26. That the child shall live with the mother.
27. That the child spend time with the father as agreed and in default of agreement as follows:
- a. from the date of these orders until such time the child turns two (2) years of age, on a fortnightly cycle as follows:
 - i. from 1:00pm to 6:00pm each Thursday, with the father to collect the child at the commencement of such time and the mother to collect the child at the conclusion of such time; and

- ii. from 8:00am to 12 noon each Saturday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
- b. from the child's second birthday and for a period of three (3) calendar months, on a fortnightly cycle as follows:
 - i. Week One:
 - 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time; and
 - 2. from 8:00am to 12 noon Saturday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
 - ii. Week Two:
 - 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time;
 - 2. from 8:00am Saturday until 6:00pm Saturday; and
 - 3. from 10:00am Sunday until 2:00pm Sunday.
- c. until the child's third birthday, on a fortnightly cycle as follows:
 - i. Week One:
 - 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time; and
 - 2. from 8:00am to 12 noon Saturday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
 - ii. Week Two:

1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time; and
 2. from 8:00am Saturday until 12 noon Sunday.
- d. from the child's third birthday, on a fortnightly cycle as follows:
- i. Week One:
 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time; and
 2. from 8:00am to 12 noon Saturday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
 - ii. Week Two:
 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time; and
 2. from 8:00am Saturday until 4:00pm Sunday.
- e. from the child's fourth birthday, on a fortnightly cycle as follows:
- i. Week One:
 1. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
 - ii. Week Two:
 1. from 8:00am Saturday until 9:00am Monday, with the father to collect the child at the commencement of time and the father shall deliver the child to kindy or daycare at the conclusion of such time. In the event that the child is not attending any formal care then the mother shall collect the child at the conclusion of such time; and

2. from 1:00pm to 6:00pm Thursday, with the father to collect the child at the commencement of time and the mother to collect the child at the conclusion of such time.
- f. upon the child commencing his formal schooling in his prep year on a fortnightly cycle as follows:
- i. Week One:
 1. from after school on Thursday until before school on Friday.
 - ii. Week Two:
 1. from after school on Friday until before school on Monday and in the event that Monday is a Public Holiday then until before school on Tuesday.

28. That if the mother or father are unable to care for the child for a continuous period of twenty-four (24) hours or more, they shall give the other first option to care for the child.

29. That unless where otherwise specified, for the purpose of changeovers, the father shall collect the child at the commencement of his time and the mother shall collect the child at the conclusion of such time.

Special Days and Holidays

Holidays

30. That upon the child attaining the age of two (2) years, the father and mother be at liberty to spend time with the child for two (2) block periods of three (3) consecutive nights in each calendar year, upon providing the other party with written notice at least eight (8) weeks prior, with such time not to run consecutively with time set out in orders 27(b) and 27(c) herein. Each parent must be available to provide full time care during holiday time.

31. That upon the child attaining the age of three (3) years, until such time that he commences his Preparatory schooling, the father and mother be at liberty to spend time with the child for three (3) block periods of four (4) consecutive nights in each calendar year, upon providing the other party with written notice at least eight (8) weeks prior, with such time not to run consecutively, with time set out in orders 27(d) and 27(e) herein. Each parent must be available to provide full time care during holiday time.

32. That upon the child commencing school until such time he enters Year 3, the child shall spend time with the mother and father during school holiday periods as follows:
- a. during the March/April, June/July and September/October holidays, with the mother during the first half in even numbered years and the second half in odd numbered years and with the father during the first half in odd numbered years and the second half in even numbered years;
 - b. with the mother and father in a week about arrangement for the December/January school holiday period with the mother to have the first week in even numbered years and the father in odd numbered years.
33. That upon the child commencing Year 3, the child shall spend time with the mother and father during school holiday periods as follows:
- a. with the mother during the first half in even numbered years and the second half in odd numbered years and with the father during the first half in odd numbered years and the second half in even numbered years.
34. That school holidays shall be deemed to commence from the conclusion of school on the last day of school and recommence on the day school returns following the holiday period.
35. That the time referred within these orders be suspended so that the child spends time with the parents on special occasions as agreed and failing agreement as follows:

Christmas Day

- a. in 2014 with the father from 8:00am to 12 noon;
- b. with the father from 5:00pm Christmas Eve until 2:00pm Christmas Day in odd numbered years commencing in 2015 and from 2:00pm Christmas Day until 5:00pm Boxing Day in even numbered years commencing in 2016;
- c. with the mother from 5:00pm Christmas Eve until 2:00pm Christmas Day in even numbered years commencing in 2016 and from 2:00pm Christmas Day until 5:00pm Boxing Day in odd numbered years commencing in 2015.

Father's Day

- d. with the father from 5:00pm the evening prior to Father's Day until 5:00pm Father's Day with the father to be responsible to collect and return the child, should such time fall when the child is not in his care pursuant to the terms of these orders.

Mother's Day

- e. with the mother from 5:00pm the evening prior to Mother's Day until 5:00pm Mother's Day with the mother to be responsible to collect and return the child, should such time fall when the child is not in her care pursuant to the terms of these orders.

Child's birthday

- f. with the parent whom the child is not otherwise spending time with pursuant to the terms of these orders:
 - i. from 8:00am to 1:00pm in odd numbered years and from 1:00pm until 6:00pm in even numbered years, should such time fall on a weekend or public holiday.

Parent's birthday

- g. with the parent on their respective birthdays, if the child is otherwise not in their care pursuant to the terms of these orders:
 - i. from 3:00pm until 7:00pm should such time fall on a weekday (not including public holidays); and
 - ii. from 9:00am until 5:00pm should such time fall on a weekend or public holiday.

Telephone communication

- 36. That both parents are at liberty to communicate with the child by telephone when the child is not in their care, with either parent to facilitate such call and afford the child some appropriate privacy.
- 37. That each parent shall use their best endeavours to facilitate telephone communication between the child and the other parent upon the child expressing a reasonable request to do so.

Travel

- 38. That each parent is at liberty to travel interstate with the child, upon providing to the other parent with:
 - a. written notification of their intention, at least two (2) weeks prior; and
 - b. telephone numbers and addresses where the child will be staying throughout this period.
- 39. That both parties sign all documents necessary to ensure that the child has a current passport, with such passport to be held in safe keeping by the mother.

40. That neither party is at liberty to travel overseas with the child without the written consent of the other party. That for the purpose of any travel the travelling parents shall:
- a. provide the non-travelling parent with a detailed itinerary including all flight details, at least eight (8) weeks prior;
 - b. provide the non-travelling parent with all contact details, including addresses and phone numbers; and
 - c. facilitate telephone communication or Skype between the non-travelling parent and the child, at least twice in any weekly period.

Changeovers

41. That changeovers for the child shall take place at the front gate of each parents residence except for when the child is attending school when changeovers shall be at his school.

General Provisions

42. That each parent shall facilitate the child's attendance at agreed extra-curricular activities (including training) when the child is in their care.
43. That neither parent shall relocate the residence of the child more than thirty (30) kilometres from his present residential address at the former matrimonial home.
44. That each party is to keep the other informed of any change in their residential address, telephone, mobile telephone and email address and notify the other of any change within forty-eight (48) hours.
45. That both parties notify each other as soon as practicable of any accident, emergency, significant injury or serious illness affecting the child, which occurs whilst the child is in their care.
46. That each party irrevocably authorise any person or institution including, but not limited to, any doctor, carer, teacher, hospital, child care institution, school, any social, sporting or recreational organisation to release any and all information (verbal or in writing) reasonably requested by the other party in relation to the child.
47. That each party hereby authorise (and shall do such things to communicate this order to the children's care provider or school) the other:
- a. to obtain copies of the children's reports, any newsletters or other notices issued by the school/provider from time to time; and

- b. to attend parent teacher interviews, sporting activities, excursions or any other such activities where the school requires parent support or participation.

48. That each party inform the other of the name of the organisation and all details of the activity in which the children shall participate including times, places/addresses, contact persons, contact telephone numbers and the like, and that the mother and father be at liberty to attend.

49. That each parent shall advise the other in relation to enrolling the child in any new activity, with neither party to enrol the child in an activity which occurs during those times the child is to spend time with the order parent pursuant to the terms of these orders, unless the parties otherwise agree in writing.

50. That during the time the children are with either parent that parent shall:

- a. respect the privacy of the other parent and not question the child about the personal life of the other parent;
- b. speak of the other parent respectfully; and
- c. not denigrate or insult the other parent in the presence or hearing of the child and use their best endeavours to ensure that others do not denigrate or insult the other parent in the hearing or presence of the child.

Dispute Resolution

51. That in the event that there is a dispute about the child or about the interpretation, implementation or enforcement of these orders, the parents before making any further application to a Court shall:

- a. either attend counselling or mediation with an organisation recognised under the *Family Law Act 1975* (as amended) or by the Commonwealth Attorney- General; or
- b. participate in family dispute resolution with a Family Relationship Centre or a person authorised under s.10G of the *Family Law Act 1975* (as amended).

THE COURT ORDERS:

52. That if either party fails or refuses to sign the Passport Applications, then pursuant to section 11 of the *Passports Act 2005* the requirement for the defaulting party's signature on the passport applications for the child be dispensed with and an Australian passport issue for the child.

IT IS NOTED:

- A. Pursuant to section 65DA(2) of the *Family Law Act 1975* 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 “Parenting Orders – obligations, consequences and who can help” and these particulars are included in these Orders.

By the Court

JUDGE HOWARD

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.familylawcourts.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.familylawcourts.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.FSPO.0807.V5