IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY **NO S 6 OF 2019**

BETWEEN: **MASSON**

Appellant

AND: **PARSONS**

First respondent

PARSONS

Second respondent

INDEPENDENT CHILDREN'S LAWYER

Third respondent

ORAL OUTLINE OF THE THIRD RESPONDENT

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PART I FORM OF ORAL OUTLINE

1. This oral outline is in a form suitable for publication on the internet.

PART II ORAL OUTLINE

(a) The real issue is the construction of the word "parent" in the *Family Law Act* (3RS [18]–[26])

2. The issue before the primary judge was what "parenting orders" should be made pursuant to the power in s 65D(1) of the *Family Law Act*. As part of determining this, the primary judge had to determine who was a "parent" as that term is used in various provisions of the *Family Law Act* (eg ss 60CC, 61DA(1)). That was, and was only, a question of construction of the *Family Law Act*.

3. The meaning of the word "parent" in the *Family Law Act* can be affected by expansions or limitations of the status of parenthood effected by State and Territory laws if and only if the word as used in the *Family Law Act* is to be construed as encompassing such changes. That is not a question in relation to which s 79 of the *Judiciary Act* has any relevance. The real issue is the construction of the word "parent" in the *Family Law Act*.

(b) The word "parent" when used in the *Family Law Act* does not, of itself, pick up State or Territory laws which specify who is and who is not a parent (3RS [27]–[33])

4. The word "parent" is *prima facie* to be given its natural and ordinary meaning, save as modified by the *Family Law Act*.

5. The way in which s 60H of the *Family Law Act* applies only in *certain* circumstances and only where State or Territory laws have been *prescribed* would be undermined if, in *other* circumstances and *whether or not* State or Territory laws have been prescribed, those laws applied. The same may be said about s 60B.

6. The definition of "parent" in s 4(1) of the *Family Law Act* to include an adoptive parent of a child expressly picks up State or Territory adoption laws. That would have been unnecessary if the word "parent" had this result in any event.

7. There is a direct clash between s 69R of the *Family Law Act* and s 14 of the *Status of Children Act*.

(c) Where not expressly affected by provisions such as s 60H (which had no application in this case), the word "parent" in the Family Law Act bears its ordinary meaning, which clearly encompassed the appellant (3RS [34]–[38])

8. Section 60H did not apply in this case, as the first and second respondents were not in a *de facto* relationship at the time B was conceived: CAB 21–24 [59]–[84]; CAB 109 [8], 127–128 [98]–[100]

9. Section 60H is not exhaustive.

10. The appellant falls within the ordinary meaning of the word "parent".

(a) He is the biological father of child B.

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(b) The findings of the primary judge were that, in addition to contributing genetic material, it was intended that the appellant would help to parent B, by financial support and physical care, and he in fact did so: CAB 24–26 [85]–[102].

(c) The primary judge also found that, from B's perspective (and indeed that of B's sibling), the appellant was a parent — the children called him "daddy" and saw him as a parent: CAB 14 [4], 15 [9], [11], 66–68 [445].

(d) It is not necessary in this case to determine exhaustively who is a "parent" within the ordinary meaning of that term as used in the *Family Law Act* (RS [39]–[50])

11. If "parent" bears its ordinary meaning, it may be that more than two people could be
20 regarded as parents of a particular child.

12. Certain provisions of the *Family Law Act* appear at first sight to contemplate that a child will have only two parents.

Family Law Act, ss 4 ("major long-term issues"), 60B(1)(a), 60CC(3)(d), 61C(2)

13. These provisions should not be construed as forbidding a conclusion that a child has more than two parents for the purposes of the *Family Law Act*.

NSW Registrar of Births, Deaths and Marriages v Norrie (2014) 250 CLR 490

(e) To the extent that it matters, s 14(2) of the *Status of Children Act* is not the kind of
30 **State law to which s 79 of the *Judiciary Act* applies (3RS [7]–[17])**

14. Section 79 of the *Judiciary Act* applies to State laws conferring or governing powers that State courts have when exercising State jurisdiction. Section 14(2) of the *Status of*

Children Act is not a law of that kind. It is a law having application independently of anything done by a court. The "presumption" it creates is irrebutable. It is not limited on its face in its application to court proceedings; it applies in administrative contexts.

Rizeq v Western Australia (2017) 262 CLR 1 at [87], [105].

15. The submission to the contrary should be rejected:

(a) The contrary view would read a limitation into s 14(2) which is not there.

(b) Section 14(2) may be contrasted with s 14(5) and (5A) which *are* expressly limited in their application to proceedings.

(c) Anomalous results would follow if s 14(2) did not apply in administrative contexts.

Education Act 1990 (NSW), s 71.

Status of Children Act, s 21

Births, Deaths and Marriages Registration Act 1995 (NSW), s 19, sch 3 cl 17

(d) The contrary view would render s 14(2) more limited than its predecessor.

Artificial Conception Act 1984 (NSW), s 6.

(e) The matters relied upon in support of the contrary view do not sustain it.

Status of Children Act, ss 12(1), 16, 17.

(f) Response to Victoria's second alternative submission

16. The word "parent" in the *Family Law Act* does not have a "common law meaning" which the Court can "develop" by reference to the content of State and Territory laws.

Dated: 16 April 2019

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