

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA
REGISTRY:**

File number:	
	COURT USE ONLY
Court Location	
Court date	
Court time	

Applicant 1

Respondent 1

AFFIDAVIT

Name of deponent:

Date sworn / affirmed: 10/11/2011

I, _____ of _____ and _____

do hereby **make oath and say**, as follows:

1. I am the applicant father named in the within proceedings and was born on _____ and am aged _____ years of age.
2. The respondent mother is _____, born on _____ aged _____ and is a _____.
3. The mother and I met through the _____ The mother become _____ after we met and we started living together when she was 7 months pregnant in a rental home in _____.

Signature of deponent _____

Signature of witness _____

Filed on behalf of _____
 Prepared by _____ Lawyer's code _____
 Name of law firm _____
 Address for service in Australia _____
 State _____ Postcode _____
 Email _____ DX _____
 Tel (_____) _____ Fax _____ Attention _____

4. One child was born of the relationship born on
now aged
5. We moved to rental accommodation in help control my asthma and hay
fever which is exacerbated in the city/close surrounding CBD suburbs. I work in the
city during the day and my asthma has been improved in the evenings since I moved to
live in the hills.
6. The practices her business from the home that she jointly owns together
with her sister in and her parents live at Living in the hills was
an ongoing cause of dispute between us as the mother wished to live closer to her
parents and her sister. This topic eventually led to our final separation.
7. We separated for a few days initially in April 2008 when the mother and child left the
home. There was no warning of this. She moved out while I was at work. I could not
locate her and until she returned.
8. We separated finally on 2 April 2009. The mother and child moved out again to an
undisclosed location but this time she warned me she was leaving.

Agreement as to Child Care Arrangements as from Separation

9. We had a verbal agreement before she left that I would spend time each Friday after
child care at around 4.30pm until Monday at the commencement of child care at
8.30am.
10. I had wanted to have until the Tuesday morning but the mother disagreed.
11. This arrangement was in place until Friday, 14 August 2009 on which date we both
attended at mediation at the Legal Services Commission. We were unable to agree on
certain topics raised and the mother and her lawyer walked out of the mediation. When
I rang the mother that day she repeated what the mediator had passed on to me, namely
that as I did not agree to what she wanted she would not allow me to see
again.
12. She said on the telephone "...You can't see him till Court" and "...You can't see him
any more" and "...I will tell him he can't see Daddy".

Failed Mediation

Signature of deponent _____ Signature of witness _____

13. The mother and I attempted mediation shortly after separation first at _____
_____ t.
14. This mediation failed because although I attended and spoke to “_____” for about an hour the mother declined to attend.
15. Annexed hereto and marked with the letters “CS1” is a true copy of the letter from _____
16. Both the mother and I attended at mediation at the Legal Services Commission of _____
_____ on Friday 14 August.
17. I requested that a male person chair the conference and a solicitor named _____ did so.
18. I cannot set out the issues that were raised at the conference because of the confidentiality clause that I signed.
19. The mediation failed and the chair of the conference told me that the mother and her solicitor _____ had walked out of the conference with the message for me that I wasn't going to see _____ again.
20. Annexed hereto and marked with the letters “CS2” is a true copy of the letter from _____ Legal Services dated 30 July 2009, which set up the conference. There is no other certificate or letter setting out that the mediation failed.

Father's parenting of _____ prior to separation

21. I was present at his birth. I took three weeks off work to help the mother with home duties and parenting. For the first 16 weeks after his birth, I was less involved with him during the day (I was at work) but when I came home from work I would be more than equally involved. _____ was never breastfed. The mother returned to work 40 hours a week when _____ was 16 weeks old.
22. The mother and I shared the parenting of _____ equally from the age of four months until separation.
23. We were both equally involved in preparing his bottles, changing his nappies, preparing his meals, dressing him, putting him to bed, getting up when he cried at night, each evening and in mornings. I was the one who bathed him in the evenings.

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24. The mother returned to hairdressing work (at _____ ome) when _____ was four or five months of age, from around 8.30am until 6.00pm each Monday, Tuesday, Thursday and Saturday working around 40 hours per week.
25. I cared for him alone each Saturday while the mother worked. Her parents cared for him each Tuesday and Thursday while the mother worked. The mother cared for him each Wednesday while I was at work. On Monday's and Friday's he was at child care centre " _____ at _____
26. The mother works as many hours as I do. My working hours are flexible as long as I complete 40 hours each week, I am contracted by _____ to design _____ and using computer graphics. My employer is amenable to me working from the home computer. I do not have to work on specific days or between specific hours. I can therefore work in the evening and weekends at home instead of the day time. I generally come into town to work Monday to Friday during the day but can vary this arrangement to fit in with my responsibilities to _____
27. _____ was placed at the _____ hild care centre in _____ n Monday's and on Friday's from the time that the mother returned to work. These were the only two days with vacancies available.
28. The mother and I shared equally in preparing cooking the meals. I love cooking and have an extensive repertoire of soups, casseroles, many vegetarian dishes as well as simpler items such as steak and roast chicken and meats.
29. On Sundays we spent time together as a family unit and visited our respective relatives or friends or spent time at home with _____
30. For a period of a week the mother went to Bali on 8th November 2008 and left the child in my sole care. At that time she had said that when she returned home she would move out with the child (but did not do so when she returned). I took a week of leave from work so that I could care for him. I could have worked in the evenings when the child was in bed but did not do so.

Father's Parenting of _____ since Separation

31. Up until Friday, 14 August 2009, _____ was lived with me each Friday from around 4.30 pm (I collect him from the child care centre) until Monday at 8.30 am when I deliver him back to Child Care.

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32. Our routine each weekend is as follows:

- a. Dinner is at around 6.30 pm. I prepare a range of foods such as homemade soup, steamed vegetables, chicken and meat, roasts or casseroles, mornay or goulashes. I prepare _____ lessert which could be as simple as ice cream and fruit or chocolate custard tarts.
- b. After dinner _____ as a bath and I put him in his pyjamas.
- c. Bedtime is at 9.30 pm and so between his bath and bedtime I will either read him a story, or play on one of his toys with him.
- d. He has a number of toys including miniature cars which he can sit in such as a dump truck or an excavator, he has a xylophone musical instrument, we read books together, we colour in with crayons, we play with a small car racing set, watch children's movies such as Bob the Builder and the Wiggles.
- e. I read to him in bed.
- f. He sleeps from 9.30 pm until he wakes at around 7.00 am to 7.30 am. His bedroom is right next to mine and I hear him if he calls out to me during the night. He generally sleeps solidly through the night.
- g. When he wakes at 7.30 am I prepare his breakfast which is Nutrigrain and yoghurt drink and fruit juice and sometimes a crumpet.
- h. During the course of the morning _____ eats various snacks such as orange juice, dried apricot squares, little biscuits, dried fruit and nut snacks (in squares not single nuts).
- i. _____ sleeps for two hours during the day from around 12.00 midday until he wakes around 2.00 pm when I feed him lunch.
- j. Lunch will be homemade soup or a frittata or a sandwich.
- k. During the afternoon I play with _____ with his toys as listed above.
- l. On Saturday's that we take my mother (whom _____ loves and refers to as "_____") to the Central Market. _____ treat is a "Baby Chino" which is warm milk. _____ loves going to the market and looks forward to seeing _____ and getting his Baby Chino.

Signature of deponent _____

Signature of witness _____

- m. After we finish shopping we go back to my mother's home and then return home when _____ is ready for his two hour daytime sleep.
- n. On Saturdays _____ also has swimming lessons which I take him to.
- o. I also enjoy such activities with _____ as playing on our property which is an 1800 square metre home with land.
- p. We play in the garden and in the sand pit or we walk across the road to the _____ Primary School playground which has various swings and children's toys in it.
- q. We go on walks in the local _____ suburb where _____ walks for a short distance and I then carry him along the various walking trails.
- r. _____ is being toilet trained at the moment and I would still be changing his nappy around 6 times a day.

Mother's Parents' Care of

- 33. I have expressed concern to the mother about her parents' care of _____ on numerous occasions and have argued with her that _____ should not be placed in their care.
- 34. The mother's father, _____ is very argumentative. He drinks very heavily. Until separation I visited with the mother and _____ round every alternate weekend and would observe him drinking for the whole day, from before lunch time. He would comment that he already had "a few beers" at 11.00am. I would observe him drink steadily throughout the day and observe the number of empties.
- 35. He seems proud of the amount of alcohol that he can drink and has told me how he brews his own home brew beer. He has commented casually that he drink around half a bottle of vodka a day in addition to the beer which I have estimated at around a dozen stubbies a day.
- 36. He is not fit to care for _____ with this amount of alcohol. I have told the mother repeatedly I am really worried about _____ being left at her parents without a responsible adult present and I would rather care for him myself on her working days but she ignores this and says she wants her parents to have the relationship with the child. I don't object to the relationship with the child, I just don't want him left there without a responsible adult. Her mother is almost as irresponsible. She is a chain

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smoker and will have a cigarette hanging from her mouth while bending over the child blowing smoke all over him.

37. I am not confident of asking the said [redacted] directly not to smoke over [redacted] as she is a very aggressive person and I am a non-confrontational person. I have asked the mother to speak to her but it has made no difference at all to the grandmother's behaviour.
38. I have alternately suggested to the mother that [redacted] be placed into Child Care on more occasions than Mondays and Fridays to avoid him being in the care of her parents but she has been adamant that [redacted] should go to her parents.
39. I ask that any Orders that are made in respect to the mother's time with [redacted] should include an injunction restraining the mother from leaving [redacted] unsupervised in the presence of the maternal grandparents and that the mother be present at all times while they are present and that she do all things to restrain the maternal grandmother from smoking in the presence of [redacted].

Father's Work and Living Circumstances

40. I work 40 hours a week generally from Monday to Friday from 9.00 am to 5.00 pm.
41. I am able to vary my work hours and I can work on any days and I am able to work from home.
42. I am therefore fully able to care for [redacted] on weekdays and can make up the work time otherwise on weekends or evenings.
43. I live in the home we all lived in up until separation which is a rental 3 bedroom 70's solid brick home and fully furnished.
44. [redacted]'s bedroom is fully furnished and although the mother took nearly all of his clothing and toys when we separated I have replaced those things.

Mother's Current Work and Circumstances

45. Up until the date of separation the mother was working every Monday, Wednesday, Thursday and Saturday from around 8.00 am or 8.30 am until around 6.00 pm.
46. I have been informed by my solicitor that she spoke to the mother's solicitor [redacted] on 17th August in an effort to set up some time for me to spend with the child but that the mother had instructed her solicitor to refuse any time unless I first had

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Signature of witness _____

psychiatric examination. This is ridiculous and has no basis. I instructed my solicitor that I declined to go through this process (which would be lengthy as I would first need to obtain a referral and then wait on the appointment).

47. I say that I sought a counselling referral from my doctor when the mother told me she intended to leave the relationship and take the child with her. I was very distressed about the prospect of a failed relationship and worried about how we would manage the ongoing parenting of [redacted]. It was not pathological distress and I have been well able to deal with the situation. I simply wanted to talk to a professional about my situation.
48. Mr [redacted] psychologist was the person I was referred to see and I consulted him twice being on the 24th March 2009 and the 14th April 2009.
49. Annexed hereto and marked with the letters "CS3" is a true copy of a letter of report from the said Mr [redacted] dated 18th August 2009. In the said report he states:-

"...no evidence of past psychiatric history...mild adjustment symptoms...neither a drawn out nor pathological process...representing a normal process of adjustment as what would be expected from a relationship breakdown. In my opinion [redacted] had the psychological tools and resilience to manage the adjustment process, and I supported his desire to cease seeking psychological support... (he) reported high insight into the needs of his child...(he).sought additional information and advice to support [redacted] through the separation process....(he) demonstrated notable concern for [redacted] welfare....(there was) no evidence that [redacted] adjustment symptoms were having a detrimental impact on his child's welfare..."

Injunction and Urgency.

50. The mother's solicitor informed mine that the mother intends to stop work altogether or has already stopped work altogether. The mother has refused to take [redacted] to the child care centre since Friday 14th August and has said that she will not return him there.
51. The mother's history of:-
- a. twice moving out of the home with the child without letting me know where she is going (and her family refusing to tell me where they had gone);

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Signature of witness _____

- b. not taking him to child care anymore;
 - c. telling me on Friday 14 August "...you will never see him again";
 - d. her solicitor telling mine that she is not working at all now"
 - e. previous expressions by her of wanting to go to Perth to "visit" her Aunty and Uncle there and her expression of interest in the "lifestyle" there;
- makes me very worried that she may intend to move interstate or out of [redacted] with the child.

52. The mother's high handed attitude to me and treating the child as though he were a piece of "property" that she owns and that I do not have "rights" to makes me extremely concerned and I therefore seek:-

- a. an injunction preventing the mother from removing the child from [redacted] metropolitan area without my written permission.
- b. that the matter be listed urgently.

Orders Sought

53. I ask that this Court make the following Orders:

54. That [redacted] lives with each of the mother and I for an equal amount of time at times as determined by this Court or in the alternative that each of the parties have the child live with them each alternate three nights from 5.00pm on the first night until 5.00pm on the fourth night.

55. At Christmas that [redacted] live with me:-

- a. from 5.00 pm on Christmas eve until 12.30 pm on Christmas day in even years commencing in 2010 and with the mother at the same times in odd years commencing in 2009;
- b. from 12.30pm on Christmas day until 12.30 pm on 26th December in odd years commencing in 2009 and with the mother at the same times in even years commencing in 2010;

56. During Easter time for the first half of the holiday period from 5.00pm until 12.00 midday on the Sunday.

Signature of deponent _____

Signature of witness _____

57. On Father's day if it falls on a day where [redacted] is living with the mother from 10.00am until 8.30pm (and on Mother's day should it fall on an occasion when the child is living with me then my time is suspended so that the mother may spend time with him from 10.00am until 8.30 pm).
58. On the child's birthday that we share time equally with a handover to the party with whom the child is not living with on that occasion from 12.30 pm until 8.30 pm.
59. That the mother be restrained and an injunction be granted restraining her from:-
- a. Removing the child from the metropolitan area of [redacted];
 - b. From leaving the child in the presence of the maternal grandparents of the child without her being present at all times;
 - c. From permitting the child to be exposed to persons particularly the child's maternal grandmother to smoke in the presence of the child;
60. That in the event that the mother does not instruct a solicitor to respond to the application filed contemporaneously with this affidavit and/ or comply with orders made in this Court that the mother do forthwith deliver up the child to me.
61. That in the event that the mother fails to deliver up the child [redacted] that pursuant to s 67U of the Family Law Act that a Recovery Order do issue authorising and directing the Marshall of the Family Court of Australia and to all officers of the Australian Federal Police and all officers of the Police forces of all States and Territories of the Commonwealth of Australia requiring them to return the said child [redacted] to the father and for that purpose to stop and search any vehicle, vessel or aircraft and to enter and search any premises or place in which there is at any time reasonable cause to believe that the child may be found.
62. That this matter be listed urgently.

Signature of deponent _____

Signature of witness _____

Sworn / Affirmed by the deponent

at (place)

.....

on (date)

...18...../.....August...../.....2009.....

.....
Signature of deponent

Before me:

.....
Signature of witness

Full name of witness:

Qualification of witness: ...Solicitor.....

Signature of deponent

Signature of witness