Federal Circuit and Family Court of Australia - Division 1 Appellate Jurisdiction

Helmold & Mariya (No 2) [2025] FedCFamC1A 163 (12 September 2025)

Last Updated: 19 September 2025

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

(DIVISION 1) APPELLATE JURISDICTION

Helmold & Mariya (No 2) [2025] FedCFamC1A 163

Appeal from:	*Helmold & Mariya* [2025] FedCFamC2F 858
Appeal number	NAA 268 of 2025
File number	MLC 12579 of 2023
Judgment of:	ALDRIDGE, CAMPTON & CHRISTIE JJ
Date of judgment:	12 September 2025
Catchwords:	**FAMILY LAW** – APPEAL – PARENTING – Where the appellant husban appeals against parenting orders made in his absence – Where the appellant was removed from the courtroom and alleges he was denied procedural fairness – Where the appellant was afforded ample opportunity to present his case – Where the appellant was warned numerous times at trial about the need to conduct himself properly – No denial of procedural fairness established – Where the appellant alleges bias on the part of the trial judge – Where a reading of the transcript reveals no such bias – The use of generative **Artificial Intelligence** ("AI") in Family Law proceedings – Where the appellant deployed generative AI to prepare his written documents – Where these written documents cite fictitious cases – Where this violates the obligations of a party to litigation not to mislead the court or their opponent – Where this use of AI also has the potential to breach Pt XIVB of the Family Law Act 1975 (Cth) – Where all grounds of appeal are misconceived and withou merit – Appeal dismissed.
Legislation:	*Family Law Act 1975* (Cth) Pt XIVB, s 102NA *Federal Circuit and Family Court of Australia Act 2021* (Cth) s 26

	Federal Circuit and Family Court of Australia (Family Law) Rules 2021(Cth) r 13.53 *Legal Profession Uniform Conduct (Barrister) Rules 2015* (VIC)
Cases cited:	*Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175; [2009] HCA 27 *Ayinde v The London Borough of Haringey* [2025] EWHV 1383 (Admin) *Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* (2006 229 CLR 577; [2005] HCA 55 *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; [2000] HCA 63 *Kioa v West* (1985) 159 CLR 550; [1985] HCA 81 *May v Costaras* [2025] NSWCA 178
Number of paragraphs:	50
Date of hearing:	28 August 2025
Place:	Heard in Melbourne, delivered in Sydney
The Appellant:	Litigant in person
Counsel for the Respondent:	Ms Chia
Solicitor for the Respondent:	Legal Aid Victoria

ORDERS

NAA 268 of 20

MLC 12579 of 20

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

DIVISION 1 APPELLATE JURISDICTION

BETWEEN:	**MR HELMOLD**
	Appellant
AND:	**MS MARIYA**
	Respondent
ORDER MADE BY:	**ALDRIDGE, CAMPTON & CHRISTIE JJ**
DATE OF ORDER:	**12 SEPTEMBER 2025**

THE COURT ORDERS THAT:

1. The balance of the Amended Application in an Appeal filed on 9 July 2025 is dismissed.
2. The appeal is dismissed.

Note: The form of the order is subject to the entry in the Court's records.

Note: This copy of the Court's Reasons for judgment may be subject to review to remedy minor typographical or grammatical errors (r 10.14(b) *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 10.13 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth).

IT IS NOTED that publication of this judgment by this Court under the pseudonym *Helmold & Mariya (No 2)* has been approved pursuant to subsection 114Q(2) of the *Family Law Act 1975* (Cth).

REASONS FOR JUDGMENT

ALDRIDGE, CAMPTON & CHRISTIE JJ

1. This is an appeal from parenting orders made by a judge of the Federal Circuit and Family Court of Australia (Division 2). Mr Helmold ("the appellant") challenged the orders which were ultimately made in his absence as being a denial of procedural fairness and made in circumstances which he contended indicated bias on the part of the primary judge. For the reasons which follow we reject those contentions and dismiss the appeal.
2. The Notice of Appeal and Summary of Argument do not clearly set out, in numbered paragraphs, individual grounds of appeal. Notwithstanding that deficiency, we are able to ascertain some distinct complaints and will proceed to deal with the issues raised in the appellant's documents in the manner which he has done in his Summary of Argument.
3. On 16 July 2025, Aldridge J heard and determined an Amended Application in an Appeal filed by the appellant on 9 July 2025 save and except the part of the application which sought to adduce further evidence on appeal, which was adjourned to the hearing of the appeal proper. The appellant did not file or serve either the foreshadowed affidavit of 25 July 2025 or a Contested Appeal Book prior to the hearing of the appeal and in those circumstances, the application to adduce further evidence is therefore dismissed for want of prosecution.

4. Before we proceed to consider the grounds of appeal, it is necessary to say something about the documents which the appellant has filed.
5. In the appellant's Notice of Appeal, filed on 5 June 2025, under the heading "Leave to Appeal" (erroneously completed since leave is not required), the appellant listed a number of matters which he contended constitute error – some appear as though they might be grounds of appeal but others are less evidently proper grounds of appeal. Towards the end of that section (and again under the heading "Grounds of Appeal"), the appellant listed several cases with citations as "authorities" for various propositions. These cases fall into two categories:

(a) They cannot be located (by which we conclude they are not in fact reported decisions); or
(b) They are not authority for the propositions contended.

6. At the hearing of the appeal, we inquired of the appellant whether generative **Artificial Intelligence** ("AI") had been deployed in preparation of the written documents filed in the appeal. The appellant confirmed that he had indeed deployed AI to assist in the preparation of his Notice of Appeal and Summary of Argument.
7. While acknowledging a potential in future use of AI in litigation, we endorse the cautions expressed by Dame Victoria Sharp, President of the King's Bench Division of the High Court of Justice in *Ayinde v The London Borough of Haringey* [2025] EWHV 1383 (Admin) at [5]–[9] cited by Bell CJ in *May v Costaras* [2025] NSWCA 178 (*"May v Costaras"*) at [12]:

> This comes with an important proviso however. **Artificial intelligence** is a tool that carries with it risks as well as opportunities. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained. As Dias J said when referring the case of Al-Haroun to this court, the administration of justice depends upon the court being able to rely without question on the integrity of those who appear before it and on their professionalism in only making submissions which can properly be supported.
>
> In the context of legal research, the risks of using **artificial intelligence** are now well known. Freely available generative **artificial intelligence** tools, trained on a large language model such as ChatGPT are not capable of conducting reliable legal research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source.
>
> Those who use **artificial intelligence** to conduct legal research notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example). Authoritative sources include the Government's database of legislation, the National Archives database of court judgments, the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales and the databases of reputable legal publishers.
>
> This duty rests on lawyers who use **artificial intelligence** to conduct research themselves or rely on the work of others who have done so. This is no different from the responsibility of a lawyer who relies on the work of a trainee solicitor or a pupil barrister for example, or on information obtained from an internet search.

> We would go further however. There are serious implications for the administration of justice and public confidence in the justice system if **artificial intelligence** is misused. In those circumstances, practical and effective measures must now be taken by those within the legal profession with individual leadership responsibilities (such as heads of chambers and managing partners) and by those with the responsibility for regulating the provision of legal services. Those measures must ensure that every individual currently providing legal services within this jurisdiction (whenever and wherever they were qualified to do so) understands and complies with their professional and ethical obligations and their duties to the court if using **artificial intelligence**. For the future, in Hamid hearings such as these, the profession can expect the court to inquire whether those leadership responsibilities have been fulfilled.

8. Legal professionals have specific ethical obligations to ensure that the written material placed before the Court is accurate. As Bell CJ observed in *May v Costaras,* all litigants (including those who appear on their own behalf) are under a duty not to mislead the Court or their opponent. Reliance upon unverified research generated by AI has the capacity to confuse, to create unnecessary complexity, to result in wasted time and to mislead the Court and other parties.

9. A specific issue arises in the context of family law litigation, by operation of Pt XIVB of the *Family Law Act 1975* (Cth) ("the Act"). If a person inputs court documents into an open AI program, we consider that this may have the potential to fall foul of the provisions which prohibit communication of an account of proceedings to the public or a section of the public. In a similar vein, input of documents arising out of the proceedings into a generative AI program which stores, collates and replicates data may waive privilege or fall foul of the requirements that certain matters be treated as commercial in confidence. These issues warrant extreme caution.

THE TRIAL

10. The appellant was the applicant in the proceedings before the primary judge. By way of an order made on 24 September 2024, the matter was listed for final hearing commencing on 17 February 2025. The Court made orders for the preparation of a Family Report, and a single expert psychiatrist was appointed to prepare a report in respect of the appellant's mental health. There were also orders made for the appellant to undergo urine drug screening tests. An order was made pursuant to s 102NA of the Act permitting the appellant to have access to a lawyer funded by the scheme.

11. The primary judge relisted the matter for case management when the appellant failed to comply with the orders for filing of trial material. At the case management hearing, the appellant was incarcerated and his lawyers indicated they would not be appearing after the case management hearing. The appellant was informed that he would need to secure new representation if he wished to cross-examine the respondent mother. The primary judge adjourned the original trial dates and allocated a new hearing date being 6 March 2025.

12. On 6 March 2025, the appellant had yet to particularise the relief he sought in an Amended Initiating Application but had filed an affidavit on 5 March 2025. The primary judge again adjourned the trial to 8 May 2025.

13. At the trial on 8 May 2025 the appellant appeared with a lawyer, whose services he indicated he had only recently engaged. No formal application for an adjournment was made. The primary judge marked an aide-memoire which the appellant had prepared with his lawyer as an exhibit in the proceedings. On a number of occasions, while in the witness box, the appellant asked the primary judge for an adjournment, which she declined.

14. The trial proceeded and the appellant was cross-examined by counsel for the respondent. The cross-examination was fraught. The appellant repeatedly interrupted counsel before she had the opportunity to finish her question. The primary judge patiently explained the procedure on multiple occasions. The appellant then proceeded to repeatedly interrupt the primary judge before she had the opportunity to conclude an instruction. The primary judge asked the appellant not to respond to counsel's questions with questions of his own.

15. It is clear from the transcript that the appellant was agitated at times, as he indicated to the Court that he would "try [to] calm" himself (Transcript 8 May 2025, p.16 lines 4–5). The primary judge gave the appellant warnings

about the need to “focus on the questions” (Transcript 8 May 2025, p.16 lines 27–33), as he was inclined to respond to the cross-examination with long discursive and non-responsive answers. The primary judge explicitly indicated that it may be necessary to stop the appellant’s evidence if he was unable to adhere to the guidance which was being proffered. The primary judge’s directions were an appropriate application of her case management powers.

16. Notwithstanding the entreaties to calm down, the transcript made plain that the appellant became loud in his answers such that even he characterised them as “screaming” (Transcript 8 May 2025, p.22 line 44).

17. The appellant was unable to follow the request to respond to the question he was being asked in cross-examination without interrupting or offering a non-responsive monologue. The primary judge took a ten-minute adjournment for the express purpose of giving the appellant the opportunity to calm down (Transcript 8 May 2025, p.35 lines 31–33). The appellant spoke with a court support worker during that adjournment.

18. The appellant continued after the adjournment in the same vein, that is, unable to follow the directions of the primary judge. The following excerpt is indicative:

> [HER HONOUR]: Sorry, sorry. I’m going to stop you there. You’ve answered - - -?
>
> [THE APPELLANT]: You know a - - -
>
> [HER HONOUR]: You’ve - - -?
>
> [THE APPELLANT]: -magistrate - - -
>
> [HER HONOUR]: Sorry. [Mr Helmold]?
>
> [THE APPELLANT]:...would have put me for a – two years in jail.
>
> [HER HONOUR]: [Mr Helmold]?
>
> [THE APPELLANT]: Yes.
>
> [HER HONOUR]: You must stop talking when I ask you to stop?
>
> [THE APPELLANT]: But the context. If I was – threatened to kill or said anything wrong, I would have – I will be in jail by now.
>
> HER HONOUR: Okay?
>
> [THE APPELLANT]: So what are you trying to oppose?
>
> HER HONOUR: All right.
>
> [THE APPELLANT]: Like, are the magistrates stupid?
>
> HER HONOUR: Okay, enough.
>
> [THE APPELLANT]: Is that what you’re saying?
>
> HER HONOUR: Enough, enough. [Mr Helmold] - - -
>
> [THE APPELLANT]: Are the judges stupid?

> HER HONOUR: [Mr Helmold], I'm going to ask you to stop. You need to wait for the question?
>
> [THE APPELLANT]: Yes.
>
> [HER HONOUR]: And if you can't control yourself, and need to continue - - -?
>
> [THE APPELLANT]: Yes.
>
> [HER HONOUR]:- - - going on like that, I will stop this, and you will - - -?
>
> [THE APPELLANT]: All right.
>
> [HER HONOUR]: - - - stop being given an opportunity to say anything. Do you understand?
>
> [THE APPELLANT]: Yes.
>
> (Transcript 8 May 2025, p.47 line 13 to p.48 line 1)

19. The above interchange did not positively impact upon the appellant's conduct in the witness box, and the witness accepted that he was unable to control himself. The witness asked for another break which the primary judge permitted (Transcript 8 May 2025, p.63 lines 14–21). She also gave the appellant another warning that if the conduct continued, she would end his cross-examination (Transcript 8 May 2025, p.63 lines 22–25).

20. During his evidence, the appellant accused counsel for the respondent of lying and misleading the Court. The appellant's evidence continued after the lunchtime adjournment at which time he apologised for his conduct and requested the proceedings be adjourned. The primary judge declined to adjourn and explained her reasons (Transcript 8 May 2025, p.81 line 28 to p.82 line 21). When the appellant began to address the respondent directly from the witness box and accuse her of lying, the primary judge told the appellant (consistently with her earlier warnings) that he had to leave the Court (Transcript 8 May 2025, p.89 line 36 to p.90 line 24). The trial then concluded in his absence.

THE APPEAL

21. We will proceed to consider the matters raised in the appellant's Summary of Argument in the order in which they appear in that document, save that we will, consistent with authority, consider the contentions which relate to denial of procedural fairness and apprehension of bias before turning to the remaining grounds (*Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* [2006] HCA 55; (2006) 229 CLR 577 at 611).

Denial of procedural fairness

22. The appellant submits that his exclusion from the courtroom resulted in him losing the opportunity to conclude his cross-examination, undertake cross-examination himself and make oral submissions. The effect, he contends, was a denial of procedural fairness; which impugned the resulting orders.

23. First it should be observed that the appellant was prevented from further participating in the litigation at a point which did indeed prevent him from concluding his evidence, cross-examining the respondent and making final submissions. However, it is necessary to consider the circumstances which led to the appellant's exclusion as set out above.

24. The appellant was entitled to be given an adequate opportunity to be heard and present his case: *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 at 582. We are satisfied the primary judged afforded the appellant that

opportunity. It was therefore necessary for the primary judge to consider the interests of the respondent and the Independent Children's Lawyer ("ICL") in determining that the proceedings ought be concluded in the appellant's absence, consistent with the principles in *Aon Risk Services Australia Limited v Australian National University* [2009] HCA 27; (2009) 239 CLR 175 at [94]. Any further opportunity for the appellant to participate was in effect forfeited by the appellant's own conduct in circumstances where he had fair warning this may occur.
25. The appellant has not established a denial of procedural fairness

Disparaging remarks and apparent bias

26. The appellant contends that the failure on the part of the primary judge to intervene when counsel for the respondent and/or counsel for the ICL made "disparaging and misleading remarks" about the appellant was indicative of bias and constituted error.
27. The appellant's Summary of Argument did not provide specific examples of the disparaging and misleading remarks, which makes it impossible to comment specifically about the submission.
28. A careful review of the transcript of the proceedings on 8 May 2025, in its entirety, does not demonstrate any examples of the lawyers making disparaging and/or misleading remarks about the appellant. It follows that we do not accept that the primary judge encouraged or lent weight to any disparaging or misleading remarks.
29. To the extent that the appellant contends that a discussion took place between the primary judge, the respondent's counsel and the ICL in his absence relating to the appellant's "duress", the transcript reveals no such exchange.
30. In oral submissions the appellant contended that the respondent's counsel ought not to have referred to a person (not the respondent) as a "victim" in her cross-examination question, and the primary judge ought to have prevented the use of the term "victim" and required counsel to use the expression "alleged victim" (Transcript 8 May 2025, p.62 lines 26–28). Counsel for the respondent quite properly indicated that she was reading from a note. There was no error by the primary judge.
31. The appellant says that the failure on the part of the primary judge to intervene when the lawyers implied the appellant "had undisclosed criminal issues or ill intentions" gives rise to an apprehension of bias on the part of the primary judge.
32. We do not accept that the primary judge had any duty to intervene arising out of matters which were put to the appellant in cross-examination. Counsel for the respondent was obliged to put her client's case to the appellant and to put to the appellant the contents of documents proposed to be tendered. The fact that the parties may be at issue about the extent of the appellant's criminal history is not unusual, and it is not the role of the primary judge to intervene during cross-examination designed to test the evidence. The position would be different if counsel had apparently infringed the requirement to make responsible use of court process and privilege as governed by the *Legal Profession Uniform Conduct (Barrister) Rules 201*5 (VIC). There is no suggestion on a fair reading of the transcript that the questions posed to the appellant transgressed these requirements. Accordingly, no basis is established for the primary judge to have intervened, and no apprehended bias claim is established.
33. The appellant has not demonstrated any matter which would satisfy the test set out in *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337 at [8].

Failure to consider the appellant's evidence

34. The primary judge twice adjourned the hearing to allow the appellant the opportunity to file material. The appellant did indeed file an affidavit with the assistance of lawyers on 5 March 2025. It was clear that the appellant was aggrieved by the content of that document (which he had amended by hand) but that was a matter between the appellant and his former lawyers. The appellant and the lawyer who appeared at the trial on his behalf prepared a document in the lead up to the trial, setting out the appellant's concerns and proposals, which was accepted by the primary judge as an aide-memoire. The appellant says he was prevented from presenting an affirmative case. It is more accurate to say that the appellant did not avail himself of the opportunity to present a case. No error is demonstrated.

Ignoring the appellant's urgent application

35. The appellant filed an Application in a Proceeding and affidavit on 11 March 2025. That application was appropriately listed at the final hearing since it sought interim parenting orders, despite the matter being listed before the Court less than 2 months later for final determination.
36. The Application in a Proceeding filed by the appellant sought the following:
1. Immediate Relocation of Child:

> That [the child], be relocated to [the appellant's] home at [B Street, Suburb C], until a final decision is made. This is essential for providing a stable environment.
> 2. Prevention of Parental Alienation:
>
> That the court addresses the issue of parental alienation and takes immediate action to prevent [the respondent] from continuing her harmful behavior.
> 3. Prevention of Duress:
>
> That the court takes immediate steps to prevent [the respondent] from using the child as a means to exert duress on [the appellant].
> 4. Disclosure of Financial Medical Schooling and Travel Information:
>
> That [the respondent] disclose her financial records INCLUDING travel star points and overseas accounts with investments from October 2023, March 2025 including bank statements Tax statements and few shopping receipts. Medical records and Schooling achievemnts dates attended from October 2023 - March 2025 Additionally, disclosure of any travel information, including the child's movement list from DHA and any international travel, is sought. Under name of [the child]
> 5. Coercive Relocation Order:
>
> That [the respondent]be compelled to relocate within 15km of [the appellant's] home to ensure ease of access to schooling and parks for the child.
> 6. Restoration of Privacy and Good Name:
>
> That [the respondent] be held accountable for the breach of privacy and falsified claims. An apology is sought to help restore my reputation and address the damage done.
>
> (As per the original)

37. At the time the appellant filed that application the parties had been separated for seventeen months, during which time the child had lived with the respondent and spent no time with the appellant. There was no objective urgency in the application which the appellant made for the child to live with him. The immediate listing of that

application was not an exercise of the judicial function of the primary judge and, in any event, its listing on the first day of the trial was an appropriate course. No error is demonstrated.

Systemic barriers to participation

38. The appellant was incarcerated at various points during the litigation. However, it is uncontroversial that he was not incarcerated in the months leading up to the hearing of the matter. The primary judge adjourned the final trial twice. The decision not to grant a third adjournment was an appropriate balance between the need to afford the appellant the opportunity to participate and the need to conclude the case in the interests of justice and having regard to the proper interest of the respondent and the ICL in timely disposition of the matter which had been on foot for eighteen months. Even if that were not so, the appellant's complaint is statute barred pursuant to s 26(2)(b)(ii) of the *Federal Circuit and Family Court of Australia Act 2021* (Cth). No error is demonstrated.

Flawed and one-sided Family Report

39. The appellant raises this issue by Ground 5. A report by a Court Child Expert ("the Report Writer") was ordered by the Court on 24 September 2024. The appellant did not participate as he was on remand. The Report Writer acknowledged that this was a limitation of the report. The Report Writer was careful to acknowledge the limitation and to express recommendations in a manner which was conditional on the findings of the Court. The Report Writer was not cross-examined because the appellant had been excluded from the courtroom resulting in the matter proceeding in his absence.
40. While the appellant submits that the report itself lacked impartiality, the complaint is not established as the report must be read in the context of the Report Writer's concession. Further, the primary judge did not merely adopt the position of the Report Writer but made findings in reliance upon the material contained in the subpoenaed material tendered at the trial.
41. No error is demonstrated.

Reliance on unverified or incomplete "evidence"

42. The primary judge accepted into evidence documents produced on subpoena by Victoria Police and Corrections Victoria. It is not evident that the documents which were tendered excluded material which had been produced. An entry in the documents produced on subpoena by Victoria Police recorded the appellant's conviction in early 2024 in respect of:

> Make threat to kill, commit indictable offence whilst on bail, contra[vene]-fam[ily] violence ord[er], stalk another person (Crimes Act), Persist[ently] contra[vene] family violence order N[ot] T[o] C[ontact]/Order, Unlawful assault, Contravene a conduct condition of bail, threat to inflict serious injury contra[vene]-fam[ily] violence final intervent[ion] ord[e]r, use a carriage service to harass
>
> (As per the original)

43. The appellant was denied the opportunity to object to the tender and to make submissions about the content of the tendered documents as a consequence of the matter being concluded in his absence. However, prior to his exclusion, the appellant said, on a number of occasions, that he disputed the account of the respondent and the police. We accept that the date of production for the subpoenas meant that there may have been more recent documents which would have been relevant to the disposition of some of the charges against the appellant. However, it is important to understand that the primary judge's findings were not dependent upon an acceptance by her that all the charges against the appellant had resulted in convictions. The primary judge did not make a specific finding in respect of the individual charges. The primary judge based her conclusions about family violence on the appellant's conviction and his actions in seeking, from police and child welfare authorities, details of the respondent's whereabouts. Separately, the primary judge considered the evidence of the appellant's messages

attached to numerous bank transfers and concluded (independently of the outcome in any other court) that she was persuaded these too met the definition of family violence. The primary judge's conclusions are unassailable.

Alteration of affidavits and false allegations

44. The appellant's complaint (raised by Ground 8) is two-fold:

(a) The respondent's evidence changed over time; and
(b) The Court should not have permitted the respondent to rely on the evidence.

45. The respondent filed an affidavit about a month prior to the trial. No formal objection was taken to the respondent relying on that affidavit at the hearing before the primary judge. The fact that the appellant does not accept the accuracy of its contents does not establish error.
46. This contention is misconceived, and no error is demonstrated.

Ignored evidence supporting the appellant (selective omission)

47. The appellant argued that the primary judge failed to take into account a material (uncontroversial) fact. The appellant submitted that on 24 September 2024 the respondent's lawyers conceded that the child "is not reminded of [the appellant]" by the respondent.
48. There is no admissible evidence which establishes that the primary judge knew that the respondent had conceded on 24 September 2024 that the child "is not reminded of the [the appellant]" by her. However, even if this had been established at the hearing before the primary judge, the circumstances of this case would not have required the primary judge to place any weight on the concession. The primary judge found that the respondent and the child had left the home following family violence, and the appellant had been steadfast in his attempts to locate them (notwithstanding the terms of an Interim Family Violence Order). It is unremarkable that the respondent may not have reminded the child of the appellant in these circumstances. Hence any failure by the primary judge to have regard to the respondent's alleged conduct does not amount to error.

Conclusions

49. It follows from the above discussion that none of the matters identified by the appellant have established error on the part of the primary judge and the appeal will be dismissed.

COSTS

50. No costs schedules were filed in accordance with r 13.53 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) and no application for costs was made. It follows that there will be no order as to costs.

I certify that the preceding fifty (50) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Aldridge, Campton & Christie.

Associate:

Dated: 12 September 2025