

Adult Child Maintenance - Putting the Child to Work

In **Heath [2014] FCCA 1033** Judge Burchardt dealt with a mother's Application that the father pay \$400 per week in Adult Child Maintenance in respect of the parties' daughter who was a first year TAFE student.

The parties had separated long ago and financial settlement orders were made in October 2000.

The Court's power in relation to such maintenance Applications is relatively restricted by being described in negative terms. Section 66L(1) reads:

- *(1) A court **must not** make a child maintenance order in relation to a child who is 18 or over **unless the court is satisfied** that the provision of the maintenance is necessary:*
 - *(a) to enable the child to complete his or her education; or*
 - *(b) because of a mental or physical disability of the child.*
- *The court may make such a child maintenance order, in relation to a child who is 17, to take effect when or after the child turns 18.*

An interesting indicator that the litigation of such claims is relatively rare and that the outcome of such claims is fact specific, was the absence of any case citations in the 'Reasons for Judgment'.

The child in this case was in excellent health and therefore the only issue before the Court was whether it was satisfied that the provision of the maintenance sought was necessary to enable her to complete her education.

If the Court is not so satisfied it must not make an order.

The father's financial situation was very much better than that of the mother.

However the child was living with the mother rent free, in good health and attending TAFE for no more than three days a week during the academic term.

The father asserted that the child could obtain a part-time job while each parent had their own estimate of the child's weekly expenses, the father said \$350 and the mother, \$400.

In this scenario the Applicant mother had the task of convincing the Court that an order for Adult Child Maintenance should be made because the maintenance was necessary to enable the child to complete her education.

While the lack of precision about critical matters to do with the child's actual expenditure meant it was no easy matter for the Judge to reach firm conclusions, he accepted that the \$400 asserted in the mother's Financial Statement was not too far wide of the mark. However the Judge also considered it was not unreasonable to suggest that the child obtain employment to contribute as much as possible to her outgoings, especially as the mother was unable to make a significant contribution apart from providing her with accommodation.

The Judge was certainly not persuaded by the mother's submission that it was inappropriate for the child to seek part-time employment during her first year of tertiary study even if it was as she suggested, 'a time of some turbulence in the life of many students'. Indeed, the Judge observed that for many students the requirement to obtain some employment would be a 'grounding and enlivening experience'.

The Judge emphasised that while it was for the mother as the Applicant to prove her case, he concluded that the father should pay \$105 per week Adult Child Maintenance until the child completed her degree in three years time.

An ancillary order was also made requiring details of the child's continuing results to be made available to her father to satisfy him that she remained enrolled.