

TO SUCCEED WITH A CONTRAVENTION – GET THE DETAIL RIGHT

5 April 2021

The Family Court recently heard an appeal against a contravention application where the trial judge found that the contraventions had been established. The trial judge found that 4 contraventions were made out and ordered that the mother enter into a bond for 18 months.

On appeal, the court examined the evidence that was before the trial judge to determine whether, based on that evidence, the contraventions could be made out. The appeal court determined that there was insufficient evidence to establish some of the contraventions.

As an example, one of contraventions involved the mother attending a sports game and having contact with the children. This was not provided for under the court order. The evidence put forward by the father to support this claim gave a description of the day and stated that the mother had “coaxed” one of the children to sit with her while watching the game.

The appeal court was critical of the evidence, stating that it did not state specifically whether, by spending time with the mother, that meant that the child was not spending time with the father, how far the child went away from the father, for how long and whether the child was even spending time with the father prior to the mother “coaxing” them away.

Although the court found that some of the contraventions could be made out, as the volume of contraventions was taken into account when imposing the bond, the appeal was allowed and the matter was remitted back to the Federal Circuit Court for rehearing.

This case acts as a reminder to anyone who is frustrated with another parent’s breach of a court order and is thinking about making a contravention application to ensure that all details and evidence is clearly set out in the application.