

Forbes, Bev (REPS)

House of Representatives Standing Committee
on Family and Community Affairs

From: [REDACTED]
Sent: Wednesday, 13 August 2003 6:48 PM
To: Committee, FCA (REPS)
Subject: re Child Custody Arrangements Inquiry

Submission No: 886
Date Received: 13-8-03
Secretary:

Dear Sir or Madam,

I apologise for the belated submission and ask that it be considered even though it has been sent to you after the expiry of the deadline. This e-mail attempts to set out my own personal experience with the current custody/access arrangements and what I think are the shortcomings.

As a starting point, I think that the perceived wisdom, routinely given effect by the Family Court, that a child is better off with the mother, is fundamentally flawed because it appears to rely on a premise that joint parenting is unworkable. In reality, the presumption that the best interests of the child are served by being with the mother has now reached the level where it is almost considered to be a right. This works against the father in any negotiations on access.

If a father thinks that the best interests of the child are served by being with him, he has to prove two things:

1. that the mother is totally unacceptable and a hopeless carer (to the extent that the child will be at risk by continuing to be in the care of the mother); and
2. the father is a good carer.

Even where a father tries to be a model father and is prepared to make significant changes to his life in order to ensure that the best interests of the child are served, he is still told that the child will be with the mother. Invariably, this is without the mother showing a similar willingness to make sacrifices.

Because of the strong emphasis on mediated settlements in the Family Court, in my case, extraordinary pressure was brought to bear on me to agree to my ex-wife having custody of our daughter. At the time, my ex-wife was living in Melbourne while I was living in Sydney. I spent just about all my leave and a lot of money, trying to create a meaningful relationship with my daughter. Eventually my ex-wife moved to Tasmania making access all the more difficult. Again, at the time, the combination of being told by my lawyer that I had next to no chance of being able to stop my ex-wife, and me wanting to not place any stress on my daughter, resulted in me agreeing to this arrangement, making access even more difficult for me. I have seen my daughter for a week since she moved to Tasmania in May.

My point, is that if the starting point was one of equal parenting, then if one parent wanted to create a situation which impacted on the ability of the other to provide adequate parenting, then the party wanting the change would have to suggest an arrangement which was acceptable to the party who would be effected by the change. As it currently stands however because of what appears to be a presumption in favour of the mother, the result is that she can introduce arrangements making access by the father very difficult and without the father having much chance to get a more equitable arrangement if he goes to the Family Court.

In my own situation, in order to have access to my nine year old daughter in Sydney, I have to arrange for her to be accompanied by an adult on her flight to Sydney. Likewise, when she travels back to Tasmania. My ex-wife does not agree to my daughter travelling in the company of a hostess so this makes the cost of access in Sydney prohibitive. What is also done is to isolate my daughter from my partner, ensuring that my daughter does not get the chance to spend time with her and get used to this new relationship. In my case, this has added difficulty to my relationship, as I have to deal with the suggestion that I am complicit in this arrangement. If I want to spend time with my daughter, I fly to Tasmania because the harsh reality is that I cannot afford two return airfares to Tasmania. If the presumption was of joint parenting, then my ex-wife would have been forced to be more reasonable when she moved to Tasmania.

I have found it difficult to adopt to the situation of seeing my daughter infrequently.

My daughter misses me and I miss her. When we meet we pick up where we left off when we were last together. It is the hardest thing in the world to say good-bye to your daughter, knowing that you won't be seeing her again for months. I cannot see how this is good for my daughter and it has resulted in my parenting being unnatural. It is not parenting in the normal sense of the word, but instead, the opportunity to visit my daughter. I do not get the joy in discussing my daughter's schooling, what sports she plays, the opportunity to share in her achievements, or consoling her in her failures, other than over the phone.

The fact is that my ex-wife and I are both the parents of our daughter, and our daughter loves both of us. The current arrangement which results in one parent having the primary parenting role, in reality takes away or reduces the parenting role, usually of the father. The current arrangements, from a practical point of view, do not recognize that both parties are the parents.

During the process of my divorce and the discussions on who my daughter would live with, because of the adversarial nature of the proceedings, and the extreme stress from which I was suffering, I often did not think of my own best interests. My lawyer was mostly interested in a negotiated outcome, and so he was happy for me to agree to things which were not in my best interests, particularly where it was highly likely that would be the end result anyway, if we went to court. His view of my rights in respect of my daughter was that the only right I really had, was a right of "access". And even that seemed to be in name only as my ex-wife was free to go and live interstate, in this case Tasmania. My view of relationships which fail, where children are involved is that the relationship in fact has not failed, but changed. Whether we like it or not, the parents of the child must of necessity continue to have some kind of relationship. Both parties, or more commonly, one party (for whatever reason) no longer wants that relationship to continue. It is inaccurate to conclude though, that a party who no longer wants to be in that relationship, wants to necessarily give up a role as a parent. Under the current approach, irrespective of who leaves the relationship, invariably the father is the one whose parenting role is compromised. I believe that insufficient emphasis is placed on the desirable goal of both parents continuing to have meaningful parenting roles after separation.

What would be the situation where both parents were responsible for parenting? For a start, the child might just see that both parents were actually parents. This may have the added bonus of reducing the stress that children currently suffer with the revelation that parents are to separate. It might force parents to fashion a relationship which acknowledges that each of them has an important role in the future of their child/children, which they both love. It might over time create respect between the parents which would also be of benefit for the child/children, and maybe best of all, it might lead to a reconciliation.

The role of a person as a parent should not be dependent on the continuation of a relationship which led to the birth of the children. Whilst it would be difficult, there is no reason why the nexus between being a parent, and being in the relationship could not be cut. Under this proposal a parent would continue to perform the role of a parent even after the relationship had ended. This should, could apply even where the children of the relationship are adopted.

Admittedly, there are likely to be difficulties where one party leaves the relationship for another person and the confusion that this might cause where a new partner would also like to have a relationship with the child/children.

There will also be situations where the parents refuse to agree and refuse to discuss arrangements for the child/children. Hopefully however, the risk of having limited access to the child/children because of a reluctance to agree, might reduce these situations. Ultimately a court may be forced to make one parent the primary care giver, however, under this proposal, the court would consider the question with an open mind so that neither party could be sure that they would be the primary care giver.

I hope these comments are of some assistance. If you would like any further information, I can be contacted on this e-mail. Alternatively, my work contact number is [REDACTED]

[REDACTED]
Thank you for the opportunity to comment.
Yours faithfully
[REDACTED]