

Submission No: 1662

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Secretary:

A BLUEPRINT FOR FUNDEMENTAL REFORM TO THE BEST INTERESTS OF THE CHILD WHERE SEPARATION OF THE PARENTS OCCURS

PREAMBLE:

The best interests of the child is a term often used well after separation of the parents, well after the child has moved address, changed schools, lost contact with friends and extended family and almost certainly confused and unsure over their relationship with the other parent.

What causes so much anger, angst and heartache is that the best interests of the child are determined well after the event of separation by the parents.

This proposal is about ensuring that the best interests of the child are protected in law and process, and effective from the moment of separation.

This proposal will;

- Determine where the child will live immediately following separation of the parents
- Guarantee the non resident parent minimum contact pending permanent contact orders
- Ensure contact between the child and non-resident parent is maintained

1. WHERE THE CHILD RESIDES FOLLOWING SEPARATION

It is traumatic enough for a child when parents separate. One can only imagine the compounded emotional burden of moving house, changing schools, losing friends and extended family. These all impact on a child's need for certainty and routine in their daily lives. It is paramount that, as much as possible, children are protected from the consequences of parental separation. To ensure this, the following general principle should be adopted as a corner stone;

“That the separating parent (that parent wishing to leave the relationship) is the person who leaves the family environment. The children of the relationship remain in the family environment with the remaining parent”

This means that at the point of separation, there is minimal disruption to the child's physical and emotional environment.

There are three exceptions to this principle;

- Where both parents mutually agree that the children should go with the leaving parent (notified in writing to the Court)
- Where the resident parent decides that the leaving parent should stay in the family environment and nominates themselves to leave (notified in writing to the Court)
- Where there is a prior, documented and proven instance of child sexual or physical abuse by the proposed resident parent against the child. Under this circumstance the leaving parent may apply for interim residency of the child prior to the point of separation

2. GUARENTEEING A QUALITY RELATIONSHIP BETWEEN THE CHILD AND THE NON-RESIDENT PARENT

So often, in the emotionally charged environment post separation, contact between the child and the non- resident parent is severely restricted or denied altogether. Similarly, some non - resident parents take separation as an opportunity to walk away from their relationship with the child as well as their relationship with the other parent.

The following principle addresses the need to ensure that the child has an ongoing, meaningful relationship with both parents immediately following separation.

“ That the non-resident parent be guaranteed minimum levels of contact with the child both as a right and responsibility pending permanent contact arrangements”

Put simply minimum contact could be established at, for example, 25 hours per week over at least two contacts. For children under the age of five, minimum contact may be 25 hours over at least four contacts. The hours per week should be mandatory but the amounts of contact flexible, depending on the age of the child.

An interim contact order can be obtained by the non-resident parent simply by advising the Family or Local court that they have separated and no longer living in the home and the age of the child. The Court then advises the resident parent of the terms of the interim contact order along with relevant compliance information. It is the resident parent’s responsibility to ensure that the minimum number of hours each week is made available to the non- resident parent. Repeated obstruction of contact between the child and the non- resident parent (the three strikes rule?) would result in an order transferring the child from the care of the resident parent to the non-resident parent. If the non-resident parent wishes to see the child less than the guaranteed minimum, they would need to show cause as to why such an application was necessary and not be detrimental to the best interests of the child.

If the leaving parent fails to obtain an interim contact order and /or refuses to initiate contact with the child, the resident parent may advise the Court and may take out a contact enforcement order against the non-resident parent, or the Court may itself issue an order following such notification. There would be monetary penalties for non-compliance with the interim contact order by a non-resident parent, and would prejudice an application by the non-resident parent for additional contact over and above the guaranteed minimum, should an application be made at a later date.

3. ESTABLISHING PERMANENT CONTACT ARRANGEMENTS.

The non-resident parent when lodging a request for interim contact, should also lodge an application for permanent contact orders. Permanent contact orders would deal with such issues as holidays, sharing of significant events in the child's life, the inclusion of significant others in the child's life and special circumstances (including relocation issues, schooling etc.) The following principle outlines clearly the intent of permanent contact orders.

“Guaranteed minimum contact is a platform on which permanent contact orders are built in order to ensure meaningful relationships between the child and both parents.”

The application would be heard within three months of lodgement or upon advisement by appointed counsellors following compulsory mediation over the terms of the permanent contact orders. The application would make reference to a raft of templated additional contact options set out by the Court as desirable and in the best interests of the child

The Family Court would also generally work off this template of additional contact options over and above the established guaranteed minimum when finalising permanent contact arrangements. The Court may make an assessment of contact outside these accepted templates if it establishes beyond reasonable doubt the granting of such contact would not be in the best interests of the child.

The resident parent must not re-locate the child away from their immediate environment prior to the granting of a permanent contact order, and both parents must comply with a permanent contact order, unless mutually agreed between them that relocation of one or both parents is both desirable and in the child's best interests and the Court is satisfied of same.

The non-resident parent may also seek residency of the children at this time under the following circumstances;

- Repeated failure of the resident parent to allow contact
- A notified, documented and proven incident of physical or sexual abuse by the resident parent
- Abandonment of the child by the resident parent
- The consent of the resident parent

The Family Court would determine, as it does now, the outcome of such applications.

The above proposal does not preclude any mutual agreement between the parents at any time, provided such mutual agreements are lodged with the Court and the Court agrees that the agreement is reasonable given individual circumstances and in the best interests of the child.

Summary of Benefits.

- Minimises disruption to the child's physical and emotional environment at the point of separation.
- Guarantee contact between the child and the non-resident parent from as little as seven days following separation
- Ensures that the child has substantial long term contact with the non-resident parent using the templated parental contact options
- Alleviate the burden on the Family Court by removing the reasons for a substantial number of contested applications.

Summary.

This inquiry is necessary in part because the interests of the child are often a secondary consideration in disputes between the parents. As much as an ideal world would allow greater scope for parents to do the right thing for their children's sake without the intervention proposals like this one, time and experience has sadly proven that couples in the midst of a relationship breakdown are often incapable of making crucial decisions that truly are in the interests of the child. Removing some choices from parents may seem at odds with the concept of freedom to choose. Experience shows that choices taken unwisely in these matters can have lasting adverse consequences for children.

The only way to protect the child's best interests in having a warm nurturing relationship with both parents is to guarantee it.

I would be prepared to travel to Canberra if a follow up interview is desired.

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