

TAREE WOMEN'S DOMESTIC VIOLENCE COURT ASSISTANCE SCHEME

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 House of Representatives Standing Committee
 on Family and Community Affairs
 WOMEN'S DOMESTIC VIOLENCE
COURT ASSISTANCE PROGRAM
Submission No: 419Date Received: 7-8-03

Secretary: _____

7 August 2003

To Committee Secretary
 Standing Committee on Family and Community Affairs
 House of Representatives
 Parliament House
 CANBERRA ACT 2600

Dear Committee Secretary,

RE: PRESUMPTION OF JOINT CUSTODY.

We are concerned about clause (a) (i), the factors that should be taken into account in deciding whether children should spend equal time with each parent.

We consider that it is particularly important for this presumption to be rebutted in circumstances of Family violence. In order to determine what is in the best interests of the child, Section 68 F(2) of the Family Law Reform Act 1995 (Cth) already suggests the following:

- "...(g) *the need to protect the child from physical or psychological harm caused, or that may be caused by:*
- (i) *being subjected or exposed to abuse, ill treatment, violence or other behaviour; or*
 - (ii) *being directly or indirectly exposed to abuse, ill treatment, violence or other behaviour that is directed towards, or may affect another person;*
 - (i) *any family violence involving a child or a member of the child's family.*
 - (i) *any family violence order that applies to the child or a member of the child's family..."*

The effects of domestic violence on children can include aggressive behaviours, acting out, difficulty relating to peers, bedwetting, running away, inability to concentrate, drug and alcohol problems, over compliance, pseudo-maturity, depression and anxiety (WDVCAS Program Support Workers Kit, 2002).

Many violent men wield considerable power and influence over their partners by using their children as tokens of power, eg 'you can't leave because you'll lose the



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kids'. It is difficult for a woman to leave a violent relationship when she is afraid of losing her children. Knowing that the children are likely to be exposed to their violent and abusive partner under a presumption that they should spend equal time with each parent, may cause the woman to remain in a situation which is harmful for both her and the children (as stated in the Act).

Abusive men can also exercise their power and maintain control by withholding family income, and often refusing to let their partner work. A presumption of joint custody is likely to continue this financial domination after separation. This is because a presumption of joint custody will lead to a decrease in child support payments to the parent with the lower income (usually the mother). It is not in the child's best interests to have one parent who is able to provide them with anything they want, and one parent who is likely to be living in poverty.

A further issue, which may cause harm to the child, is that women who leave a violent situation may not be in a position where they can afford to live in the same area as their ex-partners. The presumption of joint custody would not be workable where this occurs. The woman may be forced to remain in a suburb which she cannot afford, or be safe living, or the children may be required to switch between different schools, sporting groups, etc. This problem will be further complicated if there is a need for one partner to move out of State.

The above issues are likely to cause further friction between the separating parents than is currently present, which will potentially cause a greater risk of violence than what already exists. This cannot be in the best interests of the child; thus a presumption of equal residency should not be considered when issues of family violence are involved.

In our experience, parents who can co-parent already do, without direction under the Family Law Act. A 2002 study of 35 resident mothers (Kaye, Stubbs & Tomie) found that 86% had experienced violence at contact changeover and visits. Whilst many males feel that they are good dads, we submit that being a 'good dad' includes non-violent role modelling behaviour and the presumption of joint custody would actually expose more mothers and children to violence.

The presumption of equal time will force some children to live with violent fathers, and will place mothers at greater risk when having to negotiate with and see their violent ex-partners. This legislation is likely to become a further weapon in the hands of abusive men who chose to continue to control their ex-partners after separation.

Sincerely,

 

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