

M A C Q U A R I E
L E G A L C E N T R E I N C .

Our ref: MLC: GVU:

7 August 2003

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **482**

Date Received: **8-8-03**

Secretary:

The Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody arrangements inquiry
Department of the house of the representatives
Parliament House
CANBERRA ACT 2600

Dear Members,

We wish to make the following submission on the questions been considered by your Committee.

I am the Principal Solicitor of Macquarie Legal Centre. Our centre is to celebrate its 25th Anniversary in September 2003. Our centre has 3 full time solicitors. I am predominantly involved in providing clients with family law advice. Last year we provided 6636 clients with legal advice of those 2165 clients sought advice in the area of family law.

I urge the committee to be very careful in changing the focus away from what is in the best interests of the child, to a presumption in favour of the parents.

I seek to share with you four cases in which I have been involved recently. In each of these situations the children spending equal amounts of time with each parent is unrealistic and unlikely to work and in some instances did not suit the non resident parent anyway. As the committee is no doubt aware this option is currently available to parents and the courts.

Case study 1:

The parties had separated while she was pregnant with their first child. At the time of separation an apprehended violence order was sought by the mother and made by the court. Some 6 months later the father wished to attend the birth of the child and sought to vary the apprehended violence order to allow this to take place. The Local Court declined to grant him this variation. I saw the father and advised him of his right to contact and how he can make an application with the court.

I could not imagine a joint arrangement in this situation. The difficulties posed would be primarily practical and to name but a few

if the child is being breast fed how the father can participate,

the need of the father to be home on a full time basis while the child is in his care noting that there is only limited day care available for an infant child and it is very expensive.

establishing a routine for the child's which is vital for the infant's wellbeing.

There would be a question as to dad's skills with the baby and the need for him to gain parenting skills.

One has to bear in mind that these practical difficulties will have to be negotiated in a climate when mum wants as little to do with dad as possible.

Case study 2:

In this case I was called on to advise the mother. The parties had recently been living together in Newcastle. The mother believed she had been enticed to move up there from Sydney. She had recently returned to Sydney. She had the residence of the children a boy and a girl both under 10. She specifically consulted me in relation to the interpretation of consent orders lodged with the court. The orders had anticipated her moving to Sydney. Were there a presumption that the children would spend equal time with each parent she would have been required to continue to live in Newcastle area unhappily pending the determination of the court. The father would have been less likely to agree to allow her to move back to Sydney steeled by the knowledge of the presumption of equal time. A key issue here would be the children's schooling. Obviously it is not possible for the children to attend two different schools, one in Newcastle and the other in Sydney. The writer would be fearful that the amount of litigation would increase as either party attempts to change or defend the presumption of equal time with the children in accordance with their agenda.

Case study 3:

In this situation I was assisting the father to define contact. There had been some antagonism between the parents. The father was inclined to want contact at his pleasure. The mother came to resent this and indicated that she would be declining any future contact. Both parties were feeling the financial pressure of the separation. The father had moved out. We successfully negotiated defined contact orders. During the course of those negotiations, the father who worked for an employer, that was inflexible, declined to want the usual order giving him half of all the school holidays. It was his view that it was impossible as he would not be able to take sufficient time off work to spend with them. He further felt that he had insufficient resources or support to supervise the boys, when he was at work. I also found it of interest that overnight contact initially needed to be delayed as he did not have suitable housing to accommodate the children. I am not sure how he would have managed if there was an expectation that he would have equal time with the boys immediately after the parties separated.

Case study 4:

Our client the father had not seen his children for some months. The mother had refused to allow him contact. We assisted him to bring an application for contact. On the first return date interim orders were agreed by the parties. The matter is due back before the court soon. In anticipation of that date the mother's solicitor has outlined concerns and is seeking to further restrict the contact. Our client is a truck driver in full time employment. He is making a significant financial contribution to the care of the children and this has put him in a difficult financial position. He is renting a town house which he shares with a male flatmate. The children when they have contact occupy the spare third bedroom. The mother has some issues with the presence of this flatmate who apart from being male also smokes. My client desires a relationship with his children. When asked whether he could spend equal time with the children he advised me that he could not see how this was possible having regard to his job which has him leave home at 7am in the morning and returning after 5.30 in the evening. The children a boy and a girl are aged 7 and 6 respectively.

Needless to say there are many other cases in which equal time with the children will not work.

Based on the writer's experience a presumption of joint contact will only work in a limited number of circumstances in particular

- it will require the parties to have very similar approached parenting
- live in the immediate vicinity of each other
- be relatively affluent so as to both be able to afford suitable accommodation
- be able to communicate well with each other.

The existing system which in my view already has four clear principles about the parenting of children namely

- Children have a right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- Children have a right of contact, on a regular basis, with both their parents, and with other people significant to their care, welfare and development; and
- Parents share duties and responsibilities concerning the care, welfare and development of their children, and
- Parents should agree about the future parenting of their children.

should not be changed and the best interests of the child should continue to be the paramount consideration

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