

Submission No: 1644

Date Received: 29-7-03

Secretary:

Submission re Child Custody Enquiry

My background in making a submission:

I am a divorced custodial parent, having survived domestic violence and other family crimes from my ex-husband. I won a contested child custody case against my then husband in 1995. I informally support other survivors of domestic violence, run a Bible study for such survivors, and have been a member of a self-help support group for survivors. I am writing two books about domestic violence and Christianity, and have read widely on the subject, both in the secular field and the religious field.

The question: Should there be a presumption that the child should spend equal time with each parent? And if so, in what circumstances should such a presumption be rebutted?

In my view there may be a presumption that the child should spend equal time with each parent, but there should still be one parent designated as 'residence parent' and one parent designated as 'contact parent'. The presumption of equal time in each parent's home would not override this designation of 'residence' and 'contact'.

The presumption of 'equal time' should be rebutted under a wide range of circumstances, viz:

- The decision as to who is the residence parent should be made in a similar fashion to how it is presently made, except that *much* more consideration be given by the court to allegations of domestic violence.
- If there are allegations of d.v., the court should weigh those allegations and the evidence thereto on the 'balance of probabilities'.
- By domestic violence, I mean all power and control tactics used in marriages, not just physical violence.

- At present, allegations of d.v. are mentioned in hearings, but are not much tested or evaluated. It is a case of 'claim whatever you like, as no evidence need be presented, because the allegations are fairly immaterial to the welfare of the child.' The Court seems to take the view that there can be domestic violence in the adult relationship, but the abusive spouse may nevertheless be a good parent. This is, in my view, ridiculous. If an adult does not behave like a civilised person with another intimate adult, what makes the court think that this adult will be quite capable guiding children into civilised life patterns?
- If the court finds that the allegations of d.v. are most probably true, it should seriously consider that the parent who is the alleged abuser will be a person of lower moral principles, so that parent will not provide as good parenting as the parent who was not abusive in the marriage.
- The child must attend one school/place of education.
- The school must be one suitable (in travelling distance) for the child when living at the 'residence parent's' address.
- If the contact parent lives close enough to the child's school that the child will not have an unreasonable distance to travel to school from the contact parent's home, and if no other conditions (see below) would contravene the assumption of 'equal time at each parent's home', then there may be a presumption of equal time in each parent's home.
- Sexual, emotional, physical abuse and neglect of the child should *all* be conditions which would contravene the assumption of 'equal time', and should perhaps even contravene any contact at all from the abusive parent.
- Emotional abuse of the child needs to be given a lot more attention and action by DOCS and the Family Court. It is pointless having an Act regarding child abuse if the only time the authorities 'take action' in cases of physical or sexual abuse, or severe

material neglect. Emotional abuse is far too often ignored or downplayed by the FCA and by DOCS.

- If domestic violence allegations are found on the balance of probabilities to be valid, then this should always overrule the assumption of 'equal time at each parent's home'.

Does the existing child support formula work fairly for both parents in relation to their care of, and contact with, their children?

My only comment about this is that some women I know have had to suffer a reduction in their family payment from Centrelink. This occurs because their Family Court orders specify that the contact parent (in this case, the husband) is to have more than the minimum 2 nights per fortnight that most orders commonly state. If the orders give him more contact, he becomes eligible for some of the family payment from Centrelink, and the mother's payment is correspondingly reduced. This may seem fair on paper, but turns out far from fair in reality. The father refuses to pay for children's clothes, school excursions and camps, swimming lessons, sporting activities, and any special requirements the children might have, and the mother has to finance all of these out of less money than other single mums would have.

She can do nothing about it because Centrelink cannot spell out how the father should spend his family payment. And she does not want to recommence proceedings in the Family Court just to get the orders changed, because of the cost and because the trauma of another fight is too daunting. It is even more unfair when the FC orders specify (say) five nights per fortnight that the children spend with the contact parent, but the contact parent does not avail himself of those nights. One woman I know has even told Centrelink that her ex is not availing himself of all his permitted contact, and Centrelink say they can do nothing about it because they 'have to go by the Orders'. The mother looses out badly: she has to feed and care for the children almost all of the time, while the father happily collects family payments!

I don't know how you make such matters more fair, but you need to know they are occurring. There must be some way of equalising things. Perhaps the residence parent should be automatically given *all* the family payment, so that the above situation can not occur. If so, the understanding should be that the residence parent pays for all the major needs of the child. The contact parent then would only have to pay for feeding the child and providing a roof over their head when on access. This is how it used to be, I believe, and then the access-father's lobby group changed the minds of the lawmakers. I believe this has been a backward step for the children. If a parent is considered the most suitable parent for the residence (custodial) issue, surely the responsibility of paying for the child's major needs should fall on their shoulders. A 'split system' of family payments is too easy to abuse and misuse, to the detriment of the children.

- TERMS OF REFERENCE

- > (a) given that the best interests of the child are the paramount consideration:
 - > (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
 - > (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- > (b)
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 - > The Committee has been asked to have regard to the Government's recent response to the report of the Family Law Pathways Advisory Group.
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 - > link to this report is available on the inquiry website.
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 - > For media comment from the Chair, please contact:
 - > Mrs Kay Hull, MP (Chair), Tel. (02) 6921 4600 (electorate office)
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 - > For further details on the inquiry, including background documentation,
 - > contact the Committee Secretariat on (02) 6277 4566 or visit the