

Submission No: 1445

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Secretary:

I thoroughly support the idea of %50 shared residency being the starting point for custody disputes arising from separation and divorce disputes.

My experience of the Family Law Court of Australia was one of utter dissatisfaction, bewilderment, frustration and pain. I wanted to use mediation to settle the separation of myself and my former partner, knowing that we had neither the financial resources to pay for legal costs and that our asset (house) was not worth a great deal. My former partner knew that statistically she would probably win in court using legal action and promptly refused mediation. She was right and, of course, won.

The court system is highly adversarial. Certainly in the area of interim orders, the court is not a place for facts. My former partner delivered an affidavit that painted herself as a saint and me as some demon spirit who was never around and always at work. It bore little semblance to reality. I fell apart on receipt of this and struggled to respond, finally employing a lawyer to help. I was to be in court 6 days after receiving this affidavit, our case being rushed into the court as my former partner had said that 'she was concerned about the welfare of the children when in the presence of their father'. To accuse me of being potentially violent to the children was easy and unquestioned. In court, her barrister:

- accused me of being a tax fraud (as I had said in the affidavit that I spent \$20 a week on petrol, an amount which I would be able to claim back in tax),
- pointed out that as I was at work, the wife was obviously the primary carer of the children,
- attested that my income was ~\$2768 by showing a deposit into the mortgage account and not the amount that was in my affidavit, so therefore I was also a liar about my income. I later realised this deposit was actually 2 weeks wages for myself and my former partner combined.

As these points were made, the registrar nodded her head in enthusiastic agreement. My lawyer turned to me and said we had to immediately adjourn and try to reach an out of court settlement as to present our case would mean the registrar would have to make a ruling. Given the registrar's response to my former partner's barrister, I was likely to wind up with only fortnightly contact as offered by my former partner.

My former partner was able to utilise the prejudice of the Family Court and society; that which believes the 'at home parent' was doing all the

housework and contributing in non-financial ways to the family, ie the homemaker.

This parent must be the one that has been looking after the children in a hands-on way. In our case this was untrue. I would bath the children, do the night-time routine, read and put them to bed, get up for them at night, and get them out of bed in the morning before going off to work.

The situation as it stands means that if you are a working parent, you will lose your children. To improve one's chances of keeping one's children, one should stop work and go on welfare. At least then they can be regarded as a primary carer. The job of providing shelter and food is not as relevant in the eyes of the Court as being at home as a parent is. Truly, if you work to provide for your family, you are playing a 'mugs game'. And the rewards for sitting on your backside and not working are pretty good: you end up with the kids, property and financial support.

The term 'contact' is pretty meaningless, as my former partner can move away from me such that I am unable to see my children, and that's OK, as the High Court has ruled that people have a free right to live where they choose. The fact that my children 'reside' with my former partner essentially gives her ownership of them. She can (and has done so) choose schooling or whatever without consulting me. In the court orders we both have 'responsibility for the long term welfare and development of the children'. However, in effect it means that my former partner can do whatever she likes with them and I must pay for it, even if I do not agree with decisions being made about their upbringing or have been consulted about them. In effect, I have been rendered utterly powerless with regard to my children, not through any wrongdoing on my part, but because my former partner left me for another man. I am no longer relevant.

Why is it that mothers are the owners of children? How come they have the power to say "OK you can see your kids like so..." Am I not equally the parent of my children? No investigation of her claims occurred and for me to fight it would have cost a great deal of money. I was bullied entirely into becoming a contact parent only and am left with no financial resources or assets. I can't afford rent at all and have moved back into my parent's home. On the other hand, my former partner now receives Family Assistance, Single Mother's Pension (I can't prove the de-facto relationship she is in but of course the opinions of my children are irrelevant) Child Support, and Rental Assistance, not to mention the money from the sale of the house. She

did her research well and has stumbled on a very effective 'get-rich-quick' scheme, which has the full support of the courts and government. And to top it off, she is of course eligible for Legal Aid.

I believe that the Child Support Calculation is unfair and biased. Some facts to consider:

- My former partner got 68% of the property settlement, amounting to \$88,000.
- She contributed nothing financial to the house or marital assets.
- I got \$41,000. Of this, \$13,000 went in legal fees, \$7,125 went towards repayment of credit card expenditure of my former partner (in setting up her new home), another \$10,000 went in Child Support and maintenance. Initially \$4,968 determined by interim orders was paid and then a further \$4,850 after settlement till I ran out of money this year. Additionally, \$10,000 had to be repaid to my Stepfather who had lent the money to myself and my former partner to buy the home. Balance remaining approximately -\$8925 in the red.

My former partner and I have 2 children, 5yrs and 3yrs. In settlement, I requested that I pay Child Support as determined by CSA and through the agency. My former partner did not want this but wanted a fixed amount to continue until each child is 18yrs old. In the end, Child Support was not included in the Final Orders.

My former partner informed me that the CSA assessment would not be enough to support our 2 children, and that it would probably be under \$100 per week. She said she needed at least \$100 per week per child. I agreed to try and pay this amount, which was over \$800 per month. I was in the process of moving back to my parents' house and missed out on the CSA assessment that must have been posted. As far as I was concerned, I was paying at least the amount required, probably a bit more, and was doing the right thing, and I could not afford to pay rent for myself.

My contract work ended January 2003. In March, I contacted CSA to find out what amount I was meant to be pay. They informed me that the total assessment was \$187.50 per month. I had way overpaid. I asked them to register the agreement. I was informed that only the Payee is eligible to register an agreement. I continued paying \$100 per week, per child, hoping that the drought in my work would soon be at an end. By April/May I had run out of all cash reserves and had no paying work. I stopped paying child

support and maintenance and informed my former partner that the amount of money I had paid was more than required for this calendar year. That did not stop her from then registering our case with the CSA, which then contacted me and informed me that I was in arrears! As they have no record of my payments (oh yes, I have deposit evidence) they can do nothing but 'follow the legislation' and act as a debt collector for my former partner. I am treated as though I am some sort of criminal.

I travel 36 kms each way to have contact with my children. Per fortnight that is 288 kms. My former partner is about to relocate a great distance from me. This will make my fortnightly travel 880 kms. What about my children's' right to have contact with their father? Oh that's right, they are too young to have an opinion about their parents but not too young to be interviewed by a court phycologist if they had witnessed a murder.

After having been the sole income earner for the family and putting %100 of earned income into the house (leaving me with no savings whatsoever) I am now in a situation where:

- I have no assets.
- Virtually no income (I am self employed and have had about 20 days paid work in 2003)
- The income on which the CSA bases it's calculations all went into the property, the benefit of which flowed to my former partner and not myself.
- My children have been taken away from their loving father.

Oh it's a wonderful world.

Sincerely,

