

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

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1264

Date Received: 8-8-03

Secretary:

I make the following submission in regard to "*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*".

In his address to the Royal Society in London in March, 2002, Chief Justice Nicholson stated that "*presumptions do not operate*" in Australian Family Law, but then gave his opinion that "*shared parenting only works where the parties and children are highly co-operative*", which gives the lie to his previous statement. FCA judge Justice Barry said, "*Joint Custody is a contradiction in terms. I have never, and will never, order it*". Presumptions seem very much the go in the FCA.

Nicholson CJ has elsewhere said that this required co-operation extends to such things as what TV programs the children can watch. Can he be so out of touch that he does not know that even in intact families children have always played one parent against the other? That dad lets them do this, mum that? That one set of rules applies when they visit this friend, another when they visit that friend? That one grandmother gives them lollies and the other fruit? That children are extremely adaptable and cunning?

I have been told that Nicholson CJ had a dysfunctional childhood – living in PNG, a strict father and being banished to boarding school. If true, that may explain his apparent lack of understanding of children, but should not be reason for other children to miss out on one parent.

I do not merely think Nicholson CJ is wrong when he says "*shared parenting only works where the parties and children are highly co-operative...*", every time I see my daughter, I know he is wrong. He gives no evidence; it is just an ill-informed opinion, whereas I see evidence that it can work with minimal co-operation.

Consequent to an acrimonious 8-day trial in the FCA, an Order for shared residency, albeit with a 65-35% time split, was made. I spend as many waking hours with my daughter during the 35% as the mother does during the 65%. My daughter (4 years 10 months at the time of the trial, 8 years 2 months now) says of the fact she spends more days with her mother than with me "it should be 1 day with you, one day with mum, or 1

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week, 1 week; it's only fair".

There is no co-operation between the mother and myself other than adhering to Orders of the FCA and FMS. We have been back to Court three times on matters relating to the residency and once regarding Child Support. We seldom talk and never meet. Change of residency is by my daughter getting out of one car in a shopping centre and walking to the other car.

Looking at some matters that people claim need consistency:

TV: At her mother's my daughter has a TV in her room and the one in the lounge is on from dawn to lights out. At our home we have watched four programs in as many years on the 12 year old 34cm TV I own. She does watch videos that I selectively buy for her.

Exercise: I take my daughter to swimming classes but the mother refuses to, even though I have offered to pay all costs. Her mother drives her the 700 metres to school whereas I park some way from the school and we walk the rest. Her mother won't let her carry her school-bag; I make her do so.

Religion: I take my daughter to Church every Sunday she is with me, which is half the time, whereas the mother has just once since in four years.

I could continue for a long time, but I'm sure you get the picture. However, similar different approaches existed during the marriage, and would surely still do if we remained an intact family. As they do in many, even most, marriages.

BUT, my daughter is a happy, polite, confident and extremely well functioning child who excels at school, both academically and socially, and in her out-of-school activities. I enclose a copy of her last school report. Her previous 3 teachers all used either "delight" or "delightful" in their final report when describing their experience of having taught her.

Nicholson CJ is wont to talk about the problems of distance. I live in Sydney 9 days a fortnight and fly to Adelaide for the 5 days my daughter is with me. I rent a house in Adelaide exclusively for that purpose. I'm not silly enough to say such a set-up is usually practical or can always work, but nor am I foolish and arrogant enough to dogmatically say "*shared parenting only works where....*". Those who so do would exclude my daughter from the obvious benefits she is receiving from shared-parenting. Sure she would prefer her parents were together, but she is not just coping, she is thriving.

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"Given that the best interests of the child are the paramount consideration", every child should have the best chance of being involved with both parents after a family break-up and that would be, in my submission, most likely to be achieved if there were "a presumption that children will spend equal time with each parent". If there had been, it is likely that the trauma and bitterness of our trial would have been avoided, as would the cost to the taxpayer of the trial and counselling, and it is likely there would now be an extra \$100,000 available to provide for my daughter. If it can work in our case, it can work in most.

L. Loveday 7/8/2003.

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