

House of Representatives Standing Committee on Family and Community Development
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Secretary:

As mentioned in the introduction of my submission I am a grandmother who has experienced the trauma and sheer frustration of having my two grand daughters taken from a very loving and caring mother and put in residency with the father who had left the family home over two years previously. Both girls had told the court through the court psychologist that they wanted to live with their mother and gave very explicit reasons for wanting to do so.

The mother is a trained and registered psychologist and a trained Schoolteacher. Is currently employed as a TAFE Counsellor with the Dept. of Education having been a school counsellor with them for some years. Not only is she a loving, and caring mother but the children, two girls aged 11 and 9, have a very close emotional bond with her. Not only did she care for their physical and emotional needs but also home educated them. The mother is skilled at craft and has passed this skill on to the girls and they spent many enjoyable and productive hours with their craft. The mother is also a qualified piano teacher and the girls loved to sing and dance while she played for them. She had also commenced piano lesson with the girls. With these common interests naturally there is a very strong bond and friendship between the mother and daughters, which is what we hope to see in all families, but in this instance it was taken and twisted by the court psychologist to be something evil and "anormal". Because of this strong bond and being home educated, the court psychologist said she was afraid the children were socially and emotionally isolated, and were too emotionally dependent upon their mother. Again she failed to recognise that both girls were very much involved in guides, tennis coaching, dancing lessons, Childrens Drama and Theatre soc., church Youth groups and even did meals on wheels with other adults, once a month, to expose them to an understanding of community work and needs. In addition to these activities they regularly attended the activities arranged by the Home Education Organisation.

The court took the children from this warm caring environment, against their express wishes, and placed them with the father where there is no female support or influence. The father has a relationship with a lady he met on the Internet but she lives in the USA and doesn't plan to come to Australia until 2005. The father has no sisters; his mother and grandmother are deceased and one brother living in Sydney and the other in China. The girls are at an age when they need their mother and certainly some female guidance and support.

The mother has the support of a close extended family and a very caring church congregation. My husband and I have a very close relationship with the girls and they stayed with us with very regularly. The mother has three brothers who are very supportive and with whom she keeps in close contact. Her eldest brother is a medical practitioner on the central coast and has always been there for them in times of need. Unfortunately extended family, grandparents or great- grandparents are not recognised formally in custodial orders so we are left to bargain and plead for time with the girls.


From a very early age both parents ensured the girls were brought up to have a Biblical and Christian worldview. The mother continued this after the family break down and still continues it on her access weekends. The father has ceased actively encouraging the girls in this area and this has become a further frustration for them.

Given the above facts it is not hard to understand that, even after nine months of living with their father, both girls still think of home as being where their mother is. The result for them is that mentally and emotionally they are constantly "living away from home" and the constant tension for them is that they are always waiting for something to happen to fix that. They have the ongoing dilemma of wanting to leave so many of their possessions "at home" but because of the court orders the major proportion of the settlement goes to the resident parent so the mother is left with a much smaller residence. This unfortunately becomes another negative for the children. The way our law stands at the moment, even if the mother did regain residency, the financial situation remains. That now can't be changed. These children should not be suffering this trauma. If their best interests had been considered, and their own personal wishes listened to, then they would have continued living with the mother and continued to have contact with the father twice a week as previously. Surely it is always in the best interests of the

children to impose on them as little change and interruption to their lives as possible, thus giving them a stronger sense of security and stability as possible.

Hence my submission that the presumption should be that children will spend a similar amount of time with each parent post separation as they did pre separation unless there are strong practical, physical or emotional circumstances that would cause such a presumption to be rebutted. Similarly, the same presumption should be held regarding contact with grandparents and extended family.

Unfortunately, under our present Family Law System, there is no way this situation can now be changed. The orders were based on assumptions made by the Family Court Psychologist, and therefore accepted by the Judge, but these assumptions have been proven wrong over the ensuing months. They assumed because the girls were home schooled they were behind in their education. They assumed that because of the close emotional bond with the mother they would have difficulty settling into school. They assumed that because the mother had been committed to home education she would not support them in their schoolwork. All of these assumptions, and many others, have been proven to be totally incorrect and I would submit that consideration be given to implementing a re- assessment period so that the non-resident parent and the children have an opportunity to present their case. When orders are made on the presumption of what might happen, it is only time that proves them right or wrong and our Family Law Court, as it is today, makes no provision for this situation.

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I have been employed as a Family Counsellor in the Wyong Shire for the past six years. During that time I have counselled many families who have been hurt, and in many instances, totally devastated by Family Court Judgements and orders. Some Observations:

- 1) Family Court Environment. Cold and intimidating. Parties made to feel like criminals. In country where we espouse the theory of "no blame" in family breakdown this is unacceptable.
- 2) Family Court Report. Interviewers are aggressive and intimidating, particularly with children. Children become tense, afraid, and distrustful and give answers they think the interviewer wants. They are asked inappropriate questions and I've been given as examples "who do you love most, mummy or daddy" or "Daddy or grandma"? These questions are abusive to children. One 8yr. Old put it very precisely when she commented after one such interview, "I don't understand why they get someone like her to do it, she's not really a family sort of person is she!"
- 3) Power given to Court Psychologist preparing Family Report. This person conducts interview, records notes in folder clearly marked "Not to be seen by Anyone" then proceeds to interpret, omit or add to, and draw conclusions according to their own bias, beliefs preferences and prejudices. I have seen many clients, including men, in tears as they read reports which have twisted what they have said, or omitted important relevant information or highlighted some remark made in passing. True these people are trained psychologists but in one brief interview they presume to make professional judgements in all fields, medical, mental health, educational, physical development, dietary needs, relationships and so the list goes on and if you have an expert in the field contradict them, you are threatened with contempt of court. That happened to a client. Unfortunately in over 90% of cases the Judge follows their recommendations to the letter. Surely it is time we had interviews conducted by more than one person or more than one interview.
- 4) Lack of enforcement of Family Court Orders with respect to access. This applies to both the residential and non-residential parent. At the present time all legal responsibility to facilitate access rests with the parent having residency. There is no way of ensuring the non-residential parent fulfils their responsibility to spend time with the children. Had clients who take children to Sydney by train every alternate weekend but invariably the other parent doesn't appear. If my client hadn't taken them they faced charge of breaking orders but no legal binding on the non-residential parent. Access is all about what is best for the children, meeting their needs, yet so often it is the "need" of the parents that are considered.
- 5) Prohibitive cost of Appeal. No matter how wrong or unjust court orders may be it is impossible to have them changed without going through the ordeal of an appeal, the cost of which is prohibitive with very little likelihood of success. It is very well known that an appeal very seldom, if ever, changes the orders but rather, simply orders another hearing which could take months and lots of expense. There has to be a better way, but unfortunately, while ever the Family Law Court is dealt with as litigation it remains a game that barristers play to the detriment of our children and makes loving and caring parents feel guilty, inadequate and complete and utter failures in an area where they have tried so hard to succeed.

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