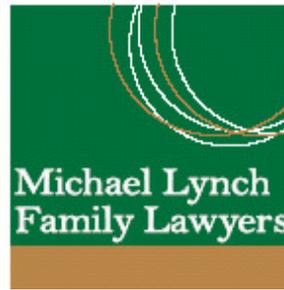


# family flyer



Issue #82

## Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

## This edition includes:

- Welcome to Our New Solicitor!
- Public Seminar Series
- Multi-million Dollar Divorce
- Getting a Paternity Test
- Who Can Remain in the House? – Part 2

## WELCOME TO OUR NEW SOLICITOR!

We are pleased to announce the recent appointment of Leanne Schmetzer as a Solicitor at our firm.

Leanne is a welcome addition to our professional team and reinforces our position as one of the largest Specialist Family Law Firms in Queensland.

## PUBLIC SEMINAR SERIES

Our Public Seminar Series is well underway! If you have missed the first 2 seminars on “A Guide to Family Law – Everyday Answers,” - don’t panic! You have another chance to gain a useful and easy-to-understand insight into Family Law at our next seminar:

- Monday, 8 September, 6-7pm at Carina Leagues Club, Creek Rd, Carina.

Another seminar not to be missed is the information packed “7 Secrets to Protecting Your Assets and Surviving Separation” on:

- Wednesday, 10 September, 6-7pm at Sunnybank Community & Sports Club, 470 McCullough St, Sunnybank.

For more information visit [www.mlfl.com.au/seminars](http://www.mlfl.com.au/seminars).

## MULTI-MILLION DOLLAR DIVORCE

English Pop star Phil Collins has recently paid-out the biggest divorce settlement in show-business history, with a settlement of \$53.73 million. The payment was made to his third ex-wife following a 6 year marriage. The payment is reported to represent a third of his total estate.

The payment exceeds the recent \$53 million paid by Sir Paul McCartney to Heather Mills.

## GETTING A PATERNITY TEST

A DNA test result provides a clear answer in paternity cases, but getting a DNA test is not always as easy as it may seem.

To convince a Court that an Order for DNA testing should occur, an Applicant needs to establish under one of the specified tests, that there is a “presumption of parentage.” If that can be satisfied and a DNA test is Ordered, there is then the question of what happens if a party refuses to comply with the test procedure.

The Court recently considered such a complex case.

### Facts:

- The Husband and Wife were married for 20 years. There were 5 children in the family.
- The Applicant was a close friend of the family. He claimed he was the biological Father of 2 of the children, aged 7 and 5 years.
- The Applicant also claimed that he:
  - was present at the birth of both children.
  - had a physical relationship with the Wife for more than 12 years.
  - spent time with the Wife and the children on holidays (the Husband did not deny this) and visited the family most mornings and evenings.
  - gave \$4000 to the Wife when the 7 year old child was born.
- Difficulties arose when the Wife told the Applicant that he could not see her or the children anymore.



- The Husband stated he was the biological Father of the children and that the Applicant was a “close family friend.”
- The Wife did not provide any evidence.

#### Court Findings:

- The Applicant satisfied the “presumption of parentage” test and an Order for DNA testing was made.
- The Husband refused to take a DNA test stating this was due to his religious beliefs.

#### Court Order:

- When a party refuses to comply with a DNA test, they are deemed to have failed.
- The Applicant was declared the Father of the 2 children.

## WHO CAN REMAIN IN THE HOUSE? – PART 2

In our last edition we detailed a case where the Court agreed with the Wife’s request that the Husband vacate the home.

In contrast, this edition we report on a case where the Court did not agree with the Wife’s request that the Husband leave the home.

These two cases highlight the circumstances that are relevant to the Court when deciding if someone needs to vacate the house, in the absence of Domestic Violence Orders.

#### Facts:

- The Husband and Wife were married for 8 years and had no children. They

continued to live in the home for more than 1 year after separation.

- The couple had sold their previous homes to buy the matrimonial home that had 6 bedrooms, 2 living rooms and 2 bathrooms.
- The Wife’s Application to the Court sought sole occupancy of the home. She claimed that the home environment was too stressful for both of them to remain living together and that her only source of income was an aged pension.
- The Husband argued that the home was large enough for both of them to live in and lead separate lives. He claimed he could not afford to move out as he paid all of the outgoings on the home.
- The Wife was seeing a health professional and was diagnosed with an “adjustment disorder,” however the Husband claimed she had a tendency to exaggerate.
- The Husband also alleged that the Wife had a capacity to earn an income for “special abilities” that she advertised in a national women’s magazine.
- The Wife disputed that this business was continuing to provide her with an income.

#### Court Finding:

- The Court found the Wife was ignorant to her business affairs and had an income of \$355 per week.

#### Court Order:

The Court was satisfied that both the Husband and the Wife could lead separate lives in the same house due to the large size of the house. Therefore, neither spouse was ordered to vacate the home.

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