



family flyer



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:

- Parental Alienation Syndrome
- International Child Abduction
- Child Support Agency sets aside Property Settlement Order
- Changing Forms
- Family Flyer
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- Assistance

PARENTAL ALIENATION SYNDROME

The term "parental alienation syndrome" has often been raised in Family Court proceedings and is the subject of intense debate.

The Family Court recently considered this situation. The facts were:

- Both parties sought residence of the children;
- The Mother made sexual abuse allegations against the Father;
- The Father contended that the Mother was engaging in parental alienation;
- An expert's report was prepared that found that there was an inappropriate involvement by the Mother and the children's counsellor in preparing the children for the interview and that there was a negative atmosphere in the Mother's household towards the Father. It concluded that there was a likelihood the children were not sexually abused by the Father.

The Court Ordered on an Interim basis that the children remain living with the Mother subject to their relationship with the Father being restored and sustained, otherwise the children were to live with their Father.

At the Final Hearing of the matter, (2 months later) the Court determined that the Mother was unable (or unwilling) to comply with the Interim Orders and therefore a Residence Order was made in favour of the Father.

The Mother made an Application for a Stay of the Order pending her Appeal. The Court dismissed the Stay Application.

INTERNATIONAL CHILD ABDUCTION

Many countries in the world are signatories to the Hague Convention, a Treaty that provides for international child recovery.

The Convention provides that children that are taken to a country (that is a signatory to the Convention) that is not their country of domicile (i.e primary country of residence) should be automatically returned by that country, to their country of domicile.

How parents conduct themselves and the application of the Hague convention were brought into sharp focus recently in a matter before the Court.

The facts were:

- The Mother and Father lived in the United States;
- The Mother brought the child to Australia in November 2005 without the knowledge of the Father;
- In December 2005 the Father travelled to Australia with a view to saving the marriage;
- In January 2006 following marriage counselling the Mother told the Father that cohabitation would not resume;
- In May 2006 the Father commenced proceedings pursuant to the Hague Convention for the children's return to the USA.

The Trial Judge dismissed the Father's Application on the basis that the Father had acquiesced (i.e consented by inaction) to the retention of the child in Australia. This decision was on the basis that the Father was aware in November 2005 of his ability to apply to have the child returned to the USA.





CHILD SUPPORT AGENCY SETS ASIDE PROPERTY SETTLEMENT ORDER

Setting aside Court Orders is extremely difficult, however the Child Support Agency has recently succeeded in setting aside a property settlement Order between a Husband and Wife.

The facts were:

- In December 2003 the Registrar's Enforcement Summons was listed in Court.
- The Child Support Agency brought an Application in the Federal Magistrates Court and the Federal Magistrate determined that there had been a "miscarriage of justice" because of the failure to notify the Registrar of the Consent Orders however he refused to set aside the Consent Order.

The Court of Appeal disagreed with the Trial Judge's decision and Ordered that the Consent Order be set aside.

CHANGING FORMS

The Family Court and Federal Magistrates Court are trialling a new Application Form and a new Response Form. The use of these Forms will run as a pilot program from 8 January to 30 June 2007 and form part of the Courts Combined Registry Program.

During the trial period parties have the choice whether to use the current Forms or the new Forms.

FAMILY FLYER

If you know anyone who would like to receive the Family Flyer forward the Flyer by clicking on the link below.

NEXT EDITION

Our next edition will be a hardcopy and email edition. If you would like to receive multiple copies of the hardcopy please contact us immediately so that adequate copies are available.

ASSISTANCE

Our 4 Solicitors specialise in Family and Relationship Law. If you need assistance call us on (07) 3221 4300 or visit us at www.michaelynychfamilylawyers.com.au.

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