



family flyer



Issue #72

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:

- Not Happy with Child Support?
- Shared Care for 15 Month Old Child
- Spousal Maintenance – Getting it Right!
- Family Violence and the Family Law Act
- Who Can Apply to the Court?

NOT HAPPY WITH CHILD SUPPORT?

If you are paying or receiving child support, and you are not happy with the assessment there are (potentially) 4 steps you can take to challenge it.

The steps are:

- Departure Application.
- Objection.
- Review by the Social Security Appeals Tribunal (SSAT).
- Appeal (on a legal error) to the Court.

The only exception to this process is if the issue in dispute is paternity. This is determined by the Court.

Section 80 of the *Child Support Act* provides a list of the types of decisions that can be objected.

An “objection” must be lodged within 28 days of the review decision.

SHARED CARE FOR 15 MONTH OLD CHILD

The Federal Magistrates Court recently decided that a 15 month old child was not too young to have overnight stays with both parents.

Facts:

- At the trial the child was 15 months old.
- The mother believed that the father should have no overnight contact with the child until the child was 21 months old.
- The mother said that the father lacked experience in caring for the child.

- The father asserted that he had assisted in the care of the child and had also started a parenting course.

Court Findings:

- Overnight stays involve the child going to bed and waking up, which are events of significance to a child of 15 months of age.
- There were no concerns with the relationship the child had with either of the parents.
- The father had the capacity to care for the child.

Court Order:

- There was no reason not to allow the father overnight contact and begin to gradually introduce overnight time.
- The graduated steps were:
 - 15 months to 18 months of age: 3 days per week
 - 18 months to 20 months of age: 2 days and 1 night per week.
 - 21 months of age and onwards: 3 days and 2 nights per week.

SPOUSAL MAINTENANCE – GETTING IT RIGHT!

The Court must give adequate reasons when making a spousal maintenance order, otherwise it is open to being overturned.

A husband recently appealed against a Court Order made against him for lump sum spousal maintenance and child maintenance.

The trial Judge had ordered the husband to pay to the wife a lump sum spousal maintenance amount of \$3,750,000.



Michael Lynch
Family Lawyers

Issue #72

On appeal, the husband argued the trial Judge had not given sufficient reasons for his decision to award a lump sum payment instead of periodic maintenance.

The Appeal Court found the trial Judge's reasons for ordering a lump sum payment were clear and that the trial judge ordered a lump sum payment as it was unknown for the length of time the husband should maintain the wife.

However, the Appeal Court could not ascertain why the trial Judge ordered the amount of \$3,750,000 and it was considered the reasons were inadequate therefore a partial appeal was allowed.

FAMILY VIOLENCE AND THE FAMILY LAW ACT

Family Violence is the only exception in the *Family Law Act* to the presumption of shared parental responsibility.

If the Court finds that Family Violence exists then it is not required to proceed through the compulsory considerations of "equal time" or "significant and substantial time."

The Family Court recently considered what arrangements would be appropriate in a situation where a father wanted to re-establish a relationship with his 5 ½ year old son. The mother opposed contact and also sought to relocate away from the father on the basis that he was violent.

After separation the child lived with the mother and had no contact with the father.

The Court determined that the father had been violent towards the mother, her other children and the 5 ½ year old child.

The court ordered, the mother have sole responsibility for the child, the father have no contact and the mother be permitted to relocate.

"Family Violence" is a significant issue in determining children's matters. It is not satisfied simply by the existence of a Domestic Violence Order. Anyone in such a situation should contact us on (07) 3221 4300.

WHO CAN APPLY TO THE COURT?

The Court recently determined that a child's uncle could not bring a Court Application for parenting orders to spend time with his niece.

Facts:

- The 7 year old child lost her mother at birth and had been raised by her father with the assistance of extended family.
- The maternal uncle brought a Court Application to spend time with the child over Christmas.
- The last physical contact between the child and the uncle was 2 years earlier.

Court Findings:

- The *Family Law Act* provides that an application can be brought by either parent, a grandparent or any other person concerned with the child.
- There is a requirement that there needs to be a meaningful relationship with the child.
- In reality, the application appeared to have been one for the grandparents who were coming to Australia.

Order:

- Uncle's application was dismissed as he did not have legal standing.
- If the application had been brought by the grandparents it could have proceeded.

Contact details

Michael Lynch Family Lawyers

Principal

Michael Lynch*

Senior Associates

Helen Bryden*

Associates

Kirstie Colls

Elizabeth Millar

*Queensland Law Society
Accredited Family Law Specialists

Telephone: 07 3221 4300

Facsimile: 07 3221 9454

Email: law@mlynch.com.au

Web:
www.michaellynchfamilylawyers.com.au

Address: Level 6
193 North Quay
Brisbane QLD 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



Copyright 2008

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for a detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.