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Issue #74

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 - Solicitor Appointment!
- Strain on Family Relationship Centres
- Can illness affect a property settlement?
- Tips for child support!
- Unusual decision in change of name case
- "Holey dump" - The case of the missing coin

WELCOME - SOLICITOR APPOINTMENT!

We are pleased to announce the recent appointment of Nina Hood as a Solicitor at our office. Nina practices exclusively in Family and Relationship law matters.

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

STRAIN ON FAMILY RELATIONSHIP CENTRES

The Law Council of Australia advises that the feedback it has received from Solicitors in regional areas indicates that the waiting time for relationship counselling at Family Relationship Centres has grown to between 4-5 months.

CAN ILLNESS AFFECT A PROPERTY SETTLEMENT?

The Court recently considered whether a greater adjustment of property should be made to a Wife on the basis of a degenerative illness she had.

The Wife was 45 years of age and the Husband, 41 years of age. Both were employed, the Wife earning \$50,000 per year and the Husband earning \$55,000 per year.

The Wife proposed a 15% adjustment in her favour for 'future needs' due to her poor health, and an additional adjustment for being the primary carer of 2 of the 3 children from the marriage (the eldest child being 19 years of age.) The children cared for were aged 17 and 14 years.

The Husband proposed a total adjustment of 5% to the Wife after consideration of his input into house renovations.

The Court noted that, although the Wife had made a larger contribution to the welfare of the children, the Husband paid child support and the

children stayed with him for nearly half of the time.

A significant factor of concern to the Court, however, was the Wife's ill-health and her inability to continue employment in the future due to her illness.

The Court took the Wife's poor health into consideration, giving it a percentage weighting of 15%. A final adjustment Order was made giving the Wife a total entitlement of 70% of the property.

TIPS FOR CHILD SUPPORT!

- **Income:** If your income decreases during the tax year, you should lodge an "Estimate" form with the Child Support Agency as soon as possible as the CSA does not back-date information.
- **Reporting Changes:** The Child Support Agency and Centrelink are different Government bodies, so any changes made with Centrelink do not apply with the CSA. Make sure the CSA is updated on any relevant changes.

UNUSUAL DECISION IN CHANGE OF NAME CASE

The Court recently had to determine whether the surnames of two children should be changed to hyphenated surnames to represent both households.

Facts:

- The children were 2 years old and 3 years old at the time of the trial.
- The Mother and Father had been separated for 2 years at the time of the trial.



- The children had different surnames to one another.
- 1 child had the Father's surname, whilst the other child had the Mother's Father's surname.
- The Mother proposed the children have a hyphenated surname with the Father's surname and the Mother's current Husband's surname. The Father opposed the proposal.
- The Father had significant Child Support arrears and the Mother's Husband had been primarily financially responsible for the children.

Court Findings:

- There would be no short term benefit for the children if their surnames were changed to a hyphenated surname, due to their young age and lack of concept of the significance of a surname.
- When the children are older, the hyphenated surname may provide long term benefits as it would allow them to identify with both households.
- The change of the children's surnames would depend on the Mother's continued relationship with her Husband.

Court Order:

- The children would have the registered surname of their Father, so as to be consistent with one of the parents. The connection of both surnames of the Father and the Mother's Husband would be reconsidered when the children turned of school age.

"HOLEY DUMP" - THE CASE OF THE MISSING COIN

The Federal Magistrates Court recently considered a contravention application by a Husband alleging that the Wife did not deliver a coin collection, including a highly prized Colonial "Holey Dump" 1813 coin.

Facts:

- Delivery of the entire coin collection was agreed to as part of a Consent Order.
- The Husband claimed that not all coins had been delivered by the Wife.
- The Husband had not seen the coin collection for 3 years and compiled a list from memory.
- Only the Husband's parents had allegedly seen the "Dump" coin, valued at \$50,000.

Court Findings:

- Evidence established that the coins were not stored in a systematic way and were scattered in the home and in toolboxes.
- The Husband's list was unlikely to be reliable and was rejected as an indication of the nature and size of the collection, as it was an approximation.
- The Husband did not make full and frank disclosure of the 'Dump' coin, failing to mention it in his Financial Statement.
- The Wife's evidence was accepted that she had not seen the coin and therefore there was no evidence that she had disposed of the coin.

Court Order:

The Husband had failed to establish the size and nature of the coin collection and that it included the 'Dump' coin. Therefore, the Wife was held to have delivered the collection she had in her possession.

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