



family flyer

Michael Lynch
Family Lawyers

Issue #121

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:

- “Close-up” – Edition
- Family Consultants – Court Update
- The High Court looks at Relocation

“CLOSE-UP” – EDITION

Quite often an angry spouse will say that they are going to take all the money out of a bank account. What can be done to stop this? Something can be done, read our latest “Close-up” – [“Protecting Money”](#).

FAMILY CONSULTANTS – COURT UPDATE

The Federal Magistrates Court in Brisbane now has (internal) Family Consultants assigned to the Court. The Family Consultants are not required to undertake any confidential work with families in dispute. Any therapy or mediation is to be referred to external Agencies.

The Consultants are available to undertake early intervention in matters. A matter may be referred to a Consultant for advice, from the Duty Intake – when a Court Application is first filed.

Depending on the matter, that intervention may occur on the day of the first hearing, or the hearing may be adjourned to enable the children to be involved in an assessment.

The assessment will involve interviews with the parents and the children. The Consultant will then appear in Court to provide oral advice to the Court. No cross-examination of the Consultant will be allowed without the Court approving it.

The Consultant’s comments will assist the Court to determine the interim parenting arrangements for the children and also provide some advice as to the programs that might assist the parents to achieve a better co-parenting relationship.

Guiding tips from the Court on how the process will work include:

- There will be no written report.
- The advice of the Consultant will be taken orally.
- Questions to the Consultant may be asked by the Federal Magistrate.

THE HIGH COURT LOOKS AT RELOCATION

Not many cases get to our country’s highest Court – the High Court. So when a Family Law case goes to the High Court, it is something special – especially when the topic is as controversial as “relocation”.

Since the “Shared Parenting” changes came into the *Family Law Act* in 2006 – the Court has wrestled with how to deal with a parent’s wish to move with a child geographically away from the other parent.

Many cases have been reported in the media of extreme situations occurring. The case recently considered by the High Court was just such a case.

The Mother appealed from the decision of a Federal Magistrate, to the Full Court of the Family Court and then to the High Court – and won!

The Federal Magistrate had Ordered an “equal time” arrangement for the child between the parents, and this required the Mother to remain living in Mount Isa, where she had no house and no job prospects.



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The facts:

- The couple had lived in Sydney for 14 years. They had a child aged 7 at the time of the Hearing.
- The couple moved to Mount Isa for the Father to work as a mechanical engineer with a mining company. His contract was initially for 2 years but was extended.
- Shortly after moving to Mount Isa, the couple separated. The Father said that the Mother should find alternative accommodation. The Mother and child moved to Sydney and lived with the Mother's family.
- The Father opposed the Mother's move and made an urgent application to the Court. The Court Ordered the Mother and child return to Mount Isa.
- The Mother wanted to remain living in Sydney with the child, however the Father did not want to live in Sydney due to his employment. He proposed an "equal time" arrangement for the child, with both parents living in Mount Isa.

Federal Magistrate Order:

- As the Father would not move from Mount Isa, the only way for the Mother and Father to have "equal time" was if both parents lived in Mount Isa.
- The Court found this was in the child's best interests.
- The Full Court agreed, noting that the Federal Magistrate had impliedly considered if the arrangement was "reasonably practicable".

High Court Comments:

- Considering a child's "best interests" is one of two factors to consider.

The Federal Magistrate did not consider whether it would be "reasonably practicable" that the child spend equal time with the parents, in Mount Isa.
- From the time the Mother returned to Mount Isa, she had lived in a caravan (caring for the child week-about) as rental accommodation was scarce and she had no employment opportunities in Mount Isa (she worked casually and received Centrelink).
- The disparity between her and the Father's income had not been addressed by the Court.
- The Mother was isolated from her family and not happy living in Mount Isa. However, the Federal Magistrate said this could be dealt with by counselling.

High Court Order:

- It was not "reasonably practicable" for the Federal Magistrate to make Orders for equal time parenting. The Federal Magistrate should have proceeded to consider whether "significant and substantial time" with the child was in the child's "best interests".
- The Federal Magistrate should not have made Orders for equal parenting. The matter should be heard afresh.

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