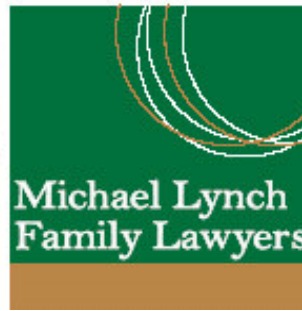


family flyer



Issue # 149

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:

- Seminar Series Underway – Don't Miss out!
- What is a Case Guardian?
- A Sleepwalking Parent
- Recent News

SEMINAR SERIES UNDERWAY – DON'T MISS OUT!

Are you separated or considering separation and want some simple Family Law answers? Our 1 hour easy-to-understand public seminars will assist you in understanding the latest in children and property arrangements in Family Law.

Each seminar will not only provide an opportunity to ask questions, but will also provide a **SPECIAL OFFER** only extended to attendees. For more information and comments from previous attendees visit www.mfl.com.au/seminars.

Don't delay! Upcoming seminars are:

“Separation & Children”

- Sunnybank: Wednesday, 1 June – 6pm at Paloma Reception Centre, 121 Mains Road.

“Separation & Property”

- Redland Bay: Tuesday, 31 May – 6pm at Redland Bay Golf Club, North Street;
- Brendale: Wednesday, 8 June – 6pm at Wantima Country Club, 530 South Pine Road.

To register – call us on 3221 4300. Attendance fee is \$20, payable on the night.

WHAT IS A CASE GUARDIAN?

In the Family Court, a ‘Case Guardian’ (also known as a ‘litigation guardian’ or a ‘next friend’) is a person appointed by the Court to assist a spouse that is disabled or unable to understand the nature and possible outcomes of a Family Law proceeding. Many of the applications are decided on medical evidence, but if the lack of capacity is clear, it is not required.

What does a Case Guardian Do?

A Case Guardian stands in the shoes of the party requiring assistance and provides instructions to their solicitor.

Here are some guidelines on who can be a case guardian:

- the person must be an adult;
- they should have no personal interest in the case;
- they should be able to fairly and competently conduct the case for the person needing the Case Guardian; and
- they have consented to act as a Case Guardian.

A SLEEPWALKING PARENT

A Mother's concern for the safety of her two children recently had the Court questioning whether a Father that was prone to sleepwalking should spend overnight time with his children. Did the Court believe there was a genuine risk?

The Facts:

- The parents were married for 5 years and had two children, aged 5 and 3.
- After separation, the Father relocated to Perth for work and then for almost a year the Father did not spend any time with the two children. They continued to live in South Australia with their Mother.
- The Mother asserted that the Father sleepwalked and was a risk to her and the children's safety.
- The Mother had allowed the Father to stay overnight with the children at a



friend's holiday home, but she said this was only because there were other adults present.

- The Father proposed that the children see him 4 times a year, each visit being for 7 days. He said he would meet the costs of the children's airfares.
- The Mother wanted any overnight contact by the Father supervised, as she was worried the Father would be a risk because of his sleepwalking.
- The Mother said that during the marriage the Father would sleepwalk frequently. She also said that 3 years earlier, the Father had sleepwalked and squeezed her arms and on another occasion, grabbed her around the neck. She said the Father had also walked into the children's rooms while he was asleep.
- The Mother admitted that the children had never been harmed during the time the Father sleepwalked and the children had not witnessed it.
- The Father admitted he had walked in his sleep, but denied the Mother's allegations of his behaviour while he was asleep.
- The Father submitted to testing by a Doctor, which indicated that he slept normally and did not have movement disorder in his sleep. The Doctor said that if he had any sleep behaviour disorder it would be mild.

Court Found:

- The Mother overstated her concerns for the Father's sleepwalking. The Doctor's report

provided a more reliable assessment of the Father's sleepwalking.

- The Father's tendency to sleep walk did not represent an unacceptable risk to the safety of the children.
- The Court supported the Family Report recommendations, that the Father first spend time with the children in SA and then the time 'step-up' to longer visits in WA, where the Father lived.

Court Order:

- The children 'live with' the Mother and 'spend time' with the Father, including:
 - 3 blocks of 2 days during the Easter holidays.
 - 2 blocks of 3 days during the mid year holidays.
 - The children travel to WA with their Mother during the October holidays, where the children will spend 3 days with their Father, 1 night with their Mother and then another 3 days with their Father.
 - For 7 days in each subsequent school holiday other than the end of the year.
 - For half the end of year school holidays from 2014 onwards.

RECENT NEWS

A recent family tragedy reported by the media has highlighted the emotional vulnerability of families in the midst of separation. Attached is a Courier Mail article – '[Fatal risk in family break-ups](#)' stressing the need for people to obtain counselling and legal assistance.

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