

FAMILY Flyer



THIS ISSUE -

No. 194

- Date Claimer – New Seminars
- Conflicting Wishes and Separating Siblings
- What is Property?
- Property Entitlement Reserved to Pay for Supervisor

DATE CLAIMER – NEW SEMINARS

Our next public seminar series starts on 22 May! These popular seminars are presented by Accredited Family Law Specialist, Michael Lynch, and offer invaluable information on children, property and separation. There are 2 topics to choose from, “Separation and Children” or “Separation and Property”.

Upcoming dates are:

- 22 May – Oxley
- 29 May – Grange

Full details in our next flyer, or watch our website.

CONFLICTING WISHES AND SEPARATING SIBLINGS

Determining where children live and spend time is a difficult task faced by the Court on a daily basis. These decisions become even more difficult when the wishes of siblings conflict about where they want to live. This was the issue facing the Court in a recent case.

Facts:

- The two children involved were aged 12 and 8. Both children lived with the father in Perth. The mother lived in Melbourne.
- The 12 year old expressed a wish to continue living with the father. The mother accepted this and did not make submissions for the situation to be changed.

- The 8 year old child expressed a wish to live with his mother, although both children told the report writer that they wished to continue to live together. The report writer noted there was a strong sibling bond between the two.
- During the proceedings, the children were also interviewed by the independent children’s lawyer (ICL). At these interviews, both children told the ICL they wanted to live with their father.
- The Court noted the young age of the youngest child, and determined that his desire to live with his mother at that age was normal.

Finding:

- There was no argument between the parents that the 12 year old should remain living with the father.
- The change in wishes of the 8 year old was a result of the passage of time and his attachment to his mother subsiding.

Court Ordered:

- Both children remain living with the father in Perth.
- The children share holiday time between both parents, the cost of travel to be equally shared.
- The mother may also visit the children during term time in Perth.

WHAT IS PROPERTY?

The definition of 'property' in a family law property settlement is very broad. A recent Court case considered a more unusual example of 'property' for inclusion.

Facts:

- The Husband and Wife has been together for 19 years.
- The Issue in dispute involved the water rights in relation to a parcel of land purchased by the parties during the relationship. Although the land was in the husband's sole name, the husband and wife were joint mortgagors.
- After separation and without the wife's knowledge, the husband sold the water rights for \$102,000.
- The husband argued that the water rights were not property at all, and (if it was) that so much time had passed since separation that the wife was not entitled to any of the proceeds of sale.

Court Found:

- For property settlement cases, a commonly referenced precedent case (which the Court was bound to follow) involved the sale of a taxi licence after separation. In that case, the taxi license was held to be property and was added back to the property pool.
- In this case, the Court held that the water rights were similar to the taxi licence.

Court Order:

- The water rights were property and the \$102,000 was added back into the joint property pool for distribution.

PROPERTY ENTITLEMENT RESERVED TO PAY FOR SUPERVISOR

A recent family law case has taken an interesting approach to meeting ongoing child supervision costs.

The case involved 2 young children, aged 6 and 7. The Mother had a long history of drug abuse, including many attempts at rehabilitation and many relapses. The Mother had been assessed by various professionals throughout the Court process, and had been diagnosed as having substance abuse disorder and borderline personality disorder.

Prior to the hearing, the Mother had been spending time with the children under the supervision of the maternal grandmother. The Mother sought Orders to continue with this arrangement. The Father sought Orders for the Mother to spend time with the children once a month under the supervision of a professional supervisor.

Based on the repeated relapses, the Mother's failure to engage with services to help her recover and the likelihood of her remaining involved with the drug culture, the Court found that the Mother presented an "unacceptable risk" to the children, and would therefore require supervision when spending time with the children.

The next issue before the Court was whether the maternal grandmother was an appropriate supervisor. In this respect, the Court found that the grandmother did not show insight into the issues of the Mother, and had in the past been deceived by her as to the extent of her drug use. The Court found that the grandmother was not an appropriate supervisor, and ordered that a professional supervisor be used.

In terms of payment for the supervisor, the Court ordered the Mother be solely responsible for payment. Given the potential risk of giving the Mother cash, the Court ordered that a sum of \$11,000 (enough to cover fortnightly visits for 1 year) be held in trust for the payment of the professional supervisor.

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Principal: Michael Lynch*
*Queensland Law Society
Accredited Family Law Specialist



CONTACT:
Telephone: 07 3221 4300
Address: Level 6, 193 North Quay
Brisbane QLD 4000
Website: www.mlfl.com.au

