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THE PERILS OF FACEBOOK

We have written previously about the perils of social media, and particularly Facebook, for separated couples who are in dispute. A recent case deserves mention however, in highlighting just how foolish and damaging some comments can be. The parties had two children, aged 7 and 10, following a 12 year relationship.

At the court hearing, the mother raised concerns about the father's mental capacity and drinking habits, however during the preparation of the family report, a Facebook post by the mother was found, which read:

"Don't know if I will get away with what I am doing because the kids miss him and the (expletive) I told my solicitor might not stand up in court, just let him suffer, I can say anything I like."

The court found the post had been done by the mother, and the mother's anger towards the father had interfered with the father's relationship with the children, and she was emotionally harming the children.

An interim order was made for the father to have sole parental responsibility for the children and the mother to spend time with the children each alternate weekend.

WHICH SCHOOL IS THE RIGHT SCHOOL?

Which school a child attends can be a difficult question for a

court, as the facts of each case are always different. An Appeal Court recently considered such a case.

The Facts

- The question was, 'What school the 6 year old child should commence Grade 1 at?'
- The father wanted the child to continue at the school where the child had attended kindergarten and preschool. The school was 500 metres from the father's residence and 5.7 km from the mother's residence.
- The mother wanted the child to attend a school 1.9 km from her residence and 5.1 km from the father's residence.
- The consent order in place provided for the child to spend 9 days a fortnight with the mother, with 7 of those days being weekdays. The school that the father proposed had slightly higher academic results than the school that the mother proposed.
- The trial Magistrate had decided that the child should attend the school proposed by the mother, finding that the considerable saving in travelling time for the child over a 7 year period slightly outweighed the father's argument that his proposed school had higher academic results.
- The father appealed the decision claiming that the Magistrate had failed to consider the father's financial circumstances and the convenience of the parents.

- By the time of the appeal the child had started at the school selected by the mother.

The Court Found

- The appeal court found that the Magistrate had made an error by failing to consider that the change of school would be a considerable inconvenience to the father and would have financial implications for him.
- To expedite the matter, the Appeal Judge exercised his discretion to re-determine the matter rather than having the matter remitted for re-hearing.

Appeal Court Held

- The convenience of the parents was a factor, but both were inconvenienced. In the absence of any compelling factors, it would be inappropriate for the court to focus on the small levels of inconvenience to either parent.
- The child to remain at the school selected by the mother.

PROPERTY SETTLEMENT – WHO BENEFITS FROM A GIFT?

When a gift is received by a couple, which spouse should receive the benefit for it in a property settlement?

When determining a property settlement, the Court is required to consider the “contributions” made by each spouse. This includes “financial contributions and non-financial contributions”.

Frequently, the parents of one of the spouses will provide a financial gift to the couple, which raises the question as to whether that spouse should receive a “percentage benefit” for

that contribution?

The Family Court has long held that “where there has been a gift or advance by a relative to one of the parties to the marriage, the first step is to determine ownership of the benefit, i.e. whether the parent giving the gift intended to benefit themselves, the parties, or one of the parties”.

Where the gift is made solely to one spouse (e.g. a gift by parents to their daughter) and that spouse applies the property to the marriage, that is a direct financial contribution solely by that party and will be assessed in that way.

In other cases, if the evidence shows that the gift was intended to benefit both spouses then the Court will most likely treat that as an equal contribution by both of them.

GETTING A SECOND OPINION

Family Law is a complex and ever-changing area of law.

All of the lawyers at Michael Lynch Family Lawyers are Accredited Specialists and practice solely in family and relationship law. We are often requested to provide a second opinion on legal advice people have received elsewhere.

We are happy to assist in providing this Specialist assistance and have a fixed fee initial consultation of \$330 (incl. GST).

To make an appointment call us on (07) 3221 4300.

HAPPY CHRISTMAS!

We will be closed over the Christmas period from 5.00pm on Monday, 23rd December 2013 until 8.30am on Thursday, 2nd January 2014.

Merry Christmas and Best Wishes for the New Year from all of us at Michael Lynch Family Lawyers.

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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

