FAMILY Flyer

THIS ISSUE - No. 218

RELATIONSHIP COUNSELLOR'S - SEMINAR

Client confidentiality is a crucial part of practising as a relationship counsellor and yet it is widely misunderstood.

With the increasing role of mediation and other forms of dispute resolution, the provisions of the Family Law Act have come under increasing scrutiny. In the last year we have seen a dramatic increase in the number of court cases in the area.

Don't be in the dark and hope that the issue won't affect you.

DON'T MISS our upcoming seminar (just for counsellors) "Counsellors, Court and Confidentiality" presented by Accredited Family Law Specialist, Amy Campbell.

The seminar will be held from 6.00pm – 7.00pm on Tuesday 29 April 2014 at Broncos Leagues Club, 98 Fulcher Road, Red Hill. Attendance to this special topic is $30, payable at the door.

Brochures will be mailed out to "Relationship Counsellors" over the next week.

ACT NOW! Attendance is by registration and seating is limited. Register now by calling (07) 3221 4300 or email law@mlynch.com.au.

MANAGING FEARS

The court recently considered a case where the mother wanted the father to only have limited and supervised time with their 4 year old son, until his 16th birthday.

The basis of the mother's concern was a fear that she had that the father, who was of middle eastern decent, was conspiring with the paternal grandmother to organise a false passport for the child, to then sneak the child out of Australia to Egypt (a non-Hague convention country) at the first available opportunity.

The court had to assess whether there was an *unacceptable risk* that the father would do as the mother feared. The mother had very limited evidence that there was any real risk that the father would or could obtain a forged passport or that he had ever threatened to do so. Her evidence at its highest failed to establish any objective basis for her fear and really amounted to a debate about the relative ease of gaining a false passport in Egypt.

After considering the evidence the Court held that on an objective basis the mother's fear was little more than a *purely theoretical risk* and orders were made granting unsupervised time between the father and son. It is interesting to note that the Court still made orders restraining the parents (including their agents) from taking the child overseas, placed the child on the "airport watch list" (until he was 15 years old) and placed conditions on both parents should they travel with the child more than 75km from the CBD.

Michael Lynch Family Lawyers

WHEN IS AN INTERIM RELOCATION ALLOWED?

Relocations are always difficult because there are often many legitimate competing interests that the Courts must consider, although the 'best interest' of the child will always be paramount.

Recently a mother wanted to relocate to a new town with her 13 year old daughter. The mother had remarried and her husband had been working in the new town for 12 months prior to her application being heard. The mother's eldest daughter, who was 18 years old (and sibling to the 13 year old) had voluntarily moved and was living with her step-father while completing her senior education. The mother sought to expedite the final hearing so that she and her family could have certainty moving forward. The father opposed both the relocation and the application for an expedited final hearing, on the basis of his ill-health. He stated that his ill-health would prevent him being able to adequately prepare for the final hearing and further sought that the matter be listed for *mention only* at some predetermined date in the future.

The father was successful in getting the trial dates vacated however the Court then made orders for there to be consideration of the issue of relocation by way of an interim hearing. The Court was concerned that without a decision the parties and importantly the subject child would be left in a state of limbo. Ultimately, the Court allowed the relocation on an interim basis. In this case the Court considered the strongly held views of the child, the separation of siblings and the attachment of the child to each parent.

SETTING ASIDE A CHILD SUPPORT AGREEMENT

The Child Support Agency uses a formula to assess the amount of child support payable. If parties agree however, they can document a Child Support Agreement, either a limited agreement or a binding agreement, separate to an assessment.

A binding agreement is particularly difficult to change.

A father recently applied to the court to set aside a binding child support agreement he had entered into with the mother in 2007 with respect to the parties' two children, aged 13 and 17.

The father claimed there where "exceptional circumstances" that had arisen, namely that he was experiencing financial hardship due to the mother's relocation, which was not reasonably foreseen when they entered into the child support agreement.

The question for the court was whether the father's change in circumstances amounted to "exceptional circumstances".

The court said that the change must occur unexpectedly, unusually and not as a result of reasonable contemplation between the parties.

The father was self-represented and the court found that he failed to adequately present his case. The father failed to provide adequate information on his own financial hardship, instead he had focussed on his dissatisfaction with his child support commitments.

The father's application to set aside the agreement was dismissed.

Note: There is a very high threshold for setting aside a child support agreement. There must be exceptional circumstances and clear evidence that hardship will be suffered if the agreement is not set aside. Ultimately, the decision is at the discretion of the court. If you have any queries about your situation, please contact us on 3221 4300.

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