

FAMILY Flyer



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FREE BOOK – ‘GUIDE TO FAMILY LAW’ – OUT NOW!

We have just released the latest reprint of our popular book – “**A Guide to Family Law – Everyday Answers**”. Over the years, more than 130,000 copies have been printed and distributed – all at NO COST!

The book is FREE and is an invaluable resource and includes information on children’s arrangements, child support and property division and is a MUST for anyone going through separation.

Deliveries are occurring this month so if you have not received your copy from us in the next 2 weeks and would like a copy (or if you are with an organisation and would like a bulk delivery) please call us on (07) 3221 4300.

Q & A

Q: After separation do both parents automatically share time with the children equally?

A: No. The Family Law Act requires that the court must consider making an order that children spend ‘equal time’ with their parents. The court will only do this if it is in the ‘best interests’ of the children and it is ‘reasonably practicable’ to do so.

ENCOURAGING CONTACT – WHAT’S REQUIRED

Under a Court Order the primary carer parent is required to

take all reasonable steps to encourage the child to have time with the other parent. A recent case has considered whether a mother failed to take all reasonable steps in complying with an interim Court order.

- The Consent Order provided for the father to have (at that time) unsupervised daytime contact with the children (aged 11 and 12).
- The father filed a contravention application in court against the mother, alleging that the mother had failed to comply with the order on (9) occasions. That father said that although the children came to the changeover location on each occasion, when he approached the car the children would say they did not want to spend time with him. On each occasion the mother stayed silent and did not engage with the father or encourage the children.
- The mother denied the contraventions saying that she had taken the children on each occasion and given their ages they had expressed their wishes to the father that they did not want to spend time with him.
- The mother admitted that she had not made any effort to speak to the father at changeover, had not wound down her own window, had not intervened in the children’s action in winding up their windows (when she had controls at the front of the vehicle to do so), had not opened the children’s doors or undone their seatbelts or made any attempt to persuade them to go with the father.
- The court found that the mother made no reasonable



attempt to comply with the orders and that the mothers obligation under the orders went beyond just driving to the changeover point. The mother should have through words and actions promoted the children going to their father, rather than sitting idly in the car.

- The court ordered the mother to enter into a bond of \$1,000 with the conditions that she complies with the interim order and is of good behaviour for a period of 12 months.

HEAD IN THE SAND IS NOT A PLAN

Difficulties arise in property settlement proceedings when one spouse refuses to provide disclosure of documentation of their finances. What can the court do?

In a recent case, the husband commenced an application but just prior to the trial decided that he would not participate. He sought an adjournment (for a non-defined period) on the basis that he was broke. The court refused to grant the adjournment but postponed the trial for 2 days to give the husband the opportunity to travel to attend the trial. The husband failed to attend the trial or produce any evidence, he simply emailed the court stating that he could not attend the court for the same reasons advised earlier.

The wife was allowed to proceed with the case. The difficulty for the wife was that without the husband engaging in the process there were substantial gaps in the financial information available to the court. Some of those gaps had been filled by the wife issuing subpoenas but even then the court acknowledged it was difficult to determine the nature and value of the property.

The husband had received various distributions from a trust (upward of \$100,000) and had re-partnered. The amount the husband had received could not be explained away by the normal costs of living and the value of the assets in the husband's possession were substantially less than the funds

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actually received by him. Whilst the court acknowledged that his earnings through the trust would be taxed there was no evidence of what tax was payable and the trust had not lodged a tax return. The husband was in substantial arrears for child support and he was living in the home and not making any mortgage payments, resulting in the bank being close to foreclosing.

The wife sought a 70/30% split in her favour. The court ordered an 80/20% split in the wife's favour on the basis that the non-participation and non-disclosure by the husband should not go to his benefit.

CAN I CHANGE A COURT ORDER?

If you have a final court order for your child's care arrangements and you are wanting to change it, you have some obstacles to overcome.

The largest obstacle is known by lawyers as the rule in Rice & Asplund. This rule says that "where there has already been a final order in respect to parenting issues, before the court embarks on a re-hearing of those issues, the applicant must establish a significant change in circumstances".

In determining this, every case will be different but here are some guiding principles to keep in mind:-

- Consider the history of the matter – including the reasons for the prior decision and the evidence on which it was based.
- Whether there is a likelihood of the orders being varied in a significant way, as a result of a new hearing.
- If there is such a likelihood of change, then it must be weighed against the detriment to the child caused by further litigation.

If you are wanting to change a court order, call us on (07) 3221 4300 to discuss it, before taking any action.

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

