

FAMILY Flyer



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“CLOSE-UP” EDITION

‘Parental responsibility’ is a basic Family Law Act concept, which is considered in every parenting case. But, what does it really mean? Get a clear understanding of this somewhat complex issue in this edition’s close-up article: [“Can you have sole and equal shared parental responsibility?”](#)

NEW (AUDIO) PODCAST ON WEBSITE!

We are delighted to announce that we have added a [NEW](#) podcast (audio recording) to our website. The recording is of the recent and popular presentation by our own Accredited Family Law Specialist, Amy Campbell, Senior Associate and is entitled [“Counsellors, Courts and Confidentiality”](#). You can access it on our website in the “Media” section.

The 1 hour audio recording was made during a recent webinar presentation. Many thanks to Pathways for making this available.

Access to the podcast is FREE and will be of valuable assistance to relationship counsellors.

FAMILY LAW IN THE USA – GETTING STRANGER!

The strange Court outcomes from the USA just keep coming.

One of the common issues for separated couples the world over is child support. Sometimes those payments are not made even when ordered by the Court.

A Michigan Court recently had to deal with an Ohio man, who was the father of four children. He had fallen into arrears with child support. In early 2013 the man was placed on probation for five years due to outstanding payments. However, his payments had not resumed and when the matter recently came back before the Court, he was overdue by almost \$100,000.

The Court was not satisfied that there was any legitimate basis for the arrears accruing and therefore did not modify the amount outstanding. The Court ordered that the man not father any more children until he had paid his Child Support arrears!?

NO OVERSEAS HOLIDAY

In a recent Australian case, the father sought to take the couple’s 7 year old son on a holiday overseas to Vietnam, Turkey and the USA. The mother opposed this fearing that the father would not return to Australia with the child. The court found the father’s plans to be vague and the court was critical that the travel plans would not be for the purpose of the child meeting with relatives or to see something of the land of his parents’ heritage.

The father said that he would offer a \$5,000 bond by way of security that the child would be returned to Australia.

The court said that travel plans should focus on the child’s best interests and that specific conditions should be:

- The length of the proposed stay;
- The genuineness of the application and the effect on the child of not having contact with the other parent;
- Any threats to the welfare of the child by the circumstances of the proposed environment;
- The degree of risk that the departing parent will not return;
- Whether the country of travel is a signatory to the Hague Convention on Child Abduction and the risk of deviation to a non-convention country; and
- The financial circumstances of each parent and sufficiency of any proposed bond.

Expert evidence from the Family Report writer suggested strongly that such time overseas would not promote the child's relationship with the father.

The court was concerned the father might not return the child to Australia and that the money the father proposed spending taking the child out of Australia, could be better used for the support of the child in Australia. The father's application was unsuccessful.

SETTING ASIDE A PROPERTY SETTLEMENT

When a final property settlement order is made there is limited scope to have it set aside. A recent interim hearing considered the wife's request to have an order set aside on the basis that the husband had not disclosed relevant information.

- The consent order was made in 2009. The property

was valued at \$300,000 and consisted of real estate and superannuation.

- After the order was made the wife alleged that the husband had not disclosed a foreign bank account (solely in his name) with a balance of approximately \$380,000. The wife said she became aware of the alleged bank account through a work colleague; however the work colleague could not provide documents verifying this. The wife's evidence as to the existence of the bank account was hearsay.
- The husband denied any interest in the bank account and sought that the wife's application be dismissed.
- As the Bank was overseas, a subpoena could not be used. The bank would only produce statements to the wife upon receiving a signed "customer authority" from the husband.
- Despite the fact that the wife's affidavit would have been inadmissible at a final hearing, it was allowed at the interim hearing. The judge said that, the fact that the wife persisted with the application despite the risk of a costs order against her if her application was found to be unsuccessful, suggested that there may be "something in it". As there was little prejudice to the husband in providing a "customer authority" to the bank, the court ordered that the husband sign the "customer authority".

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