

FAMILY Flyer



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No. 238

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HAPPY NEW YEAR! DATE CLAIMER

Welcome to a New Year and a NEW seminar series. Our next public seminar series starts on 24 February! 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:

- [24 February](#) – Grange (property).
- [25 February](#) – Holland Park (children).

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

WHAT DOES “WITHOUT PREJUDICE” MEAN?

The term “without prejudice” is often used by lawyers in negotiations. It is commonly used in Family Law negotiations, but what does it actually mean?

It is usually used when “offers to settle” are being made, it means the offer made during the settlement negotiations between the parties may not be disclosed to the Court unless the only outstanding issue is “costs”.

“Without prejudice” negotiations can be revealed, however, if the parties agree to this.

Anyone representing themselves should be very careful if thinking of getting involved in “without prejudice”

negotiations. Legal advice should be sought.

GETTING READY FOR SCHOOL

With the start of the new school year, parents are often faced with many decisions. For separated parents, there is even more to consider – completion of enrolment forms, getting information from schools, attending school events, etc. To assist you with the start of the new school year – read “[Getting Ready for School](#)”.

TO SEE A CHILD THERAPIST OR NOT?

Should a child see a therapist? Who decides? Is it appropriate? What does the Court think?

There are many questions that arise when a parenting arrangement has become difficult and a child’s behaviours are being seriously affected.

The Court recently looked at such a situation.

The facts:

- 7 years earlier, the parents had agreed on a consent order that provided a “week about” arrangement for the 3 children then aged 8, 6 and 5 years.
- The matter came back before the court after the father took the eldest child (now 12 years old) to the doctor for a cough. Whilst there, the father asked

the GP about the child's anxiety. The GP recommended the child see a therapist. The father made an appointment and only told the mother on the day of the appointment.

- The father continued to take the child to sessions with the therapist and when the mother requested to attend one of the sessions, the mother was initially not allowed to attend, however the therapist allowed both the mother and father to attend a joint session with the therapist and the child. The child exhibited anxiety in the session and the child indicated a wish to live with the father. The mother formed the view that the child's answer was unusual and felt the child had been pressured by the father and/or therapist into the response given.
- Following the session, the father arranged for the child to attend upon a psychologist as it was recommended by the therapist. The mother denied this was ever recommended in the joint session.
- The father subsequently retained the child and filed an application in the court to vary the Court Order for the child to live with him.

Court found:

The Judge said the case was a textbook example of "how not to do things". Whilst the Judge accepted that the father sought to act protectively, the Judge found there were significant gaps in the explanation of steps that the father took and particularly his failure to notify the mother.

Court ordered:

The court ordered that the child be returned to the mother and that the "week about" arrangement resume.

Both parents were restrained from taking the children to see

any health care professional (including any therapist) without the written agreement of the other parent or Court Order.

GLOSSARY

Here are some explanations of common Family Law terms:

- **Affidavit:** a written statement by a party or witness, it is the main way of presenting the facts by a person in court.
- **Consent Order:** an Order approving an agreement between parties in financial matters and/or children matters.
- **Contravention:** when a court finds a party has not followed a court order, that party has then breached (or contravened) the order.
- **Sealed copy:** a document that has been filed in the court and has a court seal (stamp) on it.
- **Service:** the process of sending or giving court documents to the other party to a case.
- **Subpoena:** a document issued by a court at the request of a party, requiring a person to produce documents and/or give evidence to the court.

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