

# FAMILY Flyer



THIS ISSUE -

No. 266

- Public seminar – tomorrow!
- 'Close-Up' article
- How is superannuation valued ?

- Costs awarded in a parenting case - unusual
- Importance of a date

## PUBLIC SEMINAR – TOMORROW!

Don't miss this opportunity to learn from Accredited Family Law Specialist, Michael Lynch. Only 1 seminar left – so don't delay – **BOOK NOW!**

In "plain-English" Michael will simplify the complexities of Family law. Tomorrow it's all about property! Anyone about to separate or recently separated needs to hear this!

For ONLY \$30 you will receive a 1 hour information session with hand outs and have the opportunity to ask questions. There will also be a **SPECIAL OFFER** for all attendees. .

### "Separation and Property"

- Grange – 6pm – Wednesday, 24 February, Brothers Grange Community Sports Club, 41 Agincourt Street, Grange

**TO REGISTER:** call (07) 3221 4300 or email us at [law@mlynch.com.au](mailto:law@mlynch.com.au). Payment at the door.

## 'CLOSE-UP' ARTICLE

A parenting arrangement should hinge on the 'best interest' of the child. There are a number of aspects to 'best interests' in the Family Law Act, one of these is a child's cultural background. Aboriginal and Torres Strait cultures are referred to specifically. So - when parents are from different cultures and are in conflict, what does the court do?

For more information, see out article "Orders to preserve culture".

## HOW IS SUPERANNUATION VALUED?

There are different types of superannuation. The superannuation splitting legislation sets out methods for valuing most types of superannuation, but there are exceptions, including self-managed superannuation funds, they are generally valued with the assistance of an expert such as an Accountant.

'Accumulation funds' provide members with a benefit based on the aggregate of contributions plus earnings less fees. 'Defined Benefit' funds provide benefits according to an amount calculated by a formula. Hybrid funds are a combination of Defined Benefit plus Accumulation funds.

Splitting superannuation is complex and specialist expert advice on the particular fund should be obtained.

## COSTS AWARDED IN A PARENTING CASE – UNUSUAL

'Each party meet their own costs', is the usual approach the court takes, particularly in parenting cases. The court does however have the power to make a cost order.

A recent parenting case considered whether a mother who was unsuccessful in her application for parenting orders should pay the fathers costs related to the trial.



## The Facts

- A final parenting order was made for the father to have 'sole responsibility' for the children (such as education, religion, health and name change decisions), that the children "live with" the father and that the children "spend time with" the mother every second weekend.
- The mother represented herself during the hearing. The father was represented by a barrister.
- After the court order was made the father made an application to the court for the mother to pay his legal costs of the hearing which he claimed were \$44,587.35. The mother opposed the father's application.
- The father was self-employed in the financial industry and the mother was self-employed in a healthcare role. The father's weekly income was approximately \$400 higher than the mothers.
- The mother had remarried and her husband was a registered sex offender.

## Courts Considerations

The court considered the financial circumstances of each party, each party's conduct during the trial, that the mother was not successful on any part of her parenting case, that the father had made an offer to the mother to resolve the case and that the mother did not tell the father about her husband's criminal record.

## Decision

The judge decided that there were grounds to order that the mother pay the father's costs although only half the amount the father claimed given the financial circumstances of the mother.

The basis for the order (in particular) included the way the mother conducted the trial taking into account, the father having made an offer to the mother to settle some months before the trial and that offer being in similar terms to the order

made by the court and that the mother was completely unsuccessful in the orders she asked the court to make at the trial and that the mother prioritised her relationship with her husband over her relationship with the child.

## IMPORTANCE OF A DATE

If an agreement for property division is not reached within 2 years of a defacto couples separation then a court application should be filed to keep rights alive. If the deadline is missed an application can be made to the court to 'extend that time'.

In a recent case the trial judge refused to extend the time, but on appeal, the extension was granted

The couple's relationship ended on 9 January 2011. An application was filed with the Court on 9 January 2013. It was agreed that the 2 year period commenced on 10 January 2011, however the question on appeal was whether 9 January 2013, being the date of filing of the application, was 'within' the two year period.

The court noted that despite 'year' and 'years' appearing in a number of sections in the Family Law Act when referring to periods of time, this expression was not defined.

The appellant was successful with the Full Court concluding that the two year limitation period commenced on 10 January 2011 and ended at midnight on 9 January 2013, therefore the Judge was found to have been in error in holding that the appellant filed the application outside this period. The case was remitted for hearing of the initiating application filed in 2013.

Note: Such a case highlights the importance of being aware of limitation periods and ensuring dates are recorded to ensure an application is filed or (at the very least) had regard to, if negotiations become delayed.

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