

FAMILY Flyer



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DATE CLAIMER – NEW SEMINAR!

Our next public seminar is on 17 May! This seminar will provide invaluable information on separation and property settlement. This topic is one of our most popular and it will be presented by our Principal, Accredited Family Law Specialist, Michael Lynch.

Upcoming date:

- 17 May – Brisbane (lunch time)

Mark your diary now and keep an eye out for the next e-flyer, for more details.

THE CHALLENGE OF A SMALL PROPERTY POOL BUT LARGE SUPER

The court recently considered a case where the assets of the parties were modest, including vehicles, credit cards and some personal loans. By contrast, the superannuation of the parties totalled almost \$900,000.

Of the super amount, the husband had around \$780,000 in a 'defined benefit fund' and a small accumulation fund. The wife had about \$45,000.

The husband and the wife cohabitated for approximately 12 and a half years. They had 3 children together, who lived predominately with the wife.

When they commenced their relationship, the husband already had some accumulated superannuation, the wife admitted that the husband had made a greater financial contribution. The wife argued, however, that this contribution was equalled out by her post-separation contributions, including care of the children which allowed the husband to continue working and increasing his superannuation.

The court found that the wife had contributed 45% to the husband's superannuation interest and made an order that the wife receive a 'super-split' from the husband's superannuation interest of 45% and that the wife retain her superannuation interest. Overall, this equated to a super split of 47.7% to the wife.

WORKING WITH THE WISHES OF A 14 YEAR OLD

The Family Court has recently decided that a 14 year old boy 'spend time' with his father in accordance with his wishes after initial time on 4 occasions over 4 months.

Facts

Since birth, the father spent irregular time with the child and for significant periods, no time. The family report writer described the child's relationship with the father as 'tenuous'.

The mother's view was that it would not be beneficial for the child to have a relationship with the father and that she would not positively encourage the child to have a relationship with the father in the absence of a court order. Her proposal was that the child 'spend time' in accordance with his wishes.

The father proposed that the child 'spend time' with him on 9 separate monthly occasions.

Courts Consideration

The judge found that whilst respecting the views of the child, orders for the child to 'spend time' with the father on a limited basis should be made to advance the child's then tenuous relationship with the father towards a 'meaningful relationship' without overwhelming the child.



Further, the judge noted that this opportunity may well be the last opportunity for this development to occur. The court was of the view that the father's proposal would risk the child being 'oppositional' to such time

Decision

The court ordered that the child 'spend time' with the father on 4 separate consecutive monthly outings over the period of 4 months as well as attending school and extra-curricular activities in that period involving the child.

Following that 4 month period the court ordered that the child 'spend time' with the father in accordance with the child's wishes and the Father be permitted to attend school activities.

JUDGES SHOULDN'T SPEAK TOO SOON

There is a danger with judges expressing a 'preliminary view' at the start of a hearing, about the likely outcome of a case. The obvious risk is that after the hearing, the 'losing' party may suspect that the judge had made findings in the case that were necessary to support their preliminary view.

A mother recently appealed a decision preventing her from relocating her child's residence after the trial judge expressed a 'preliminary view' prior to hearing any evidence or receiving submissions.

The Facts:

The parties separated before the child was born. The mother asked the court to allow the child (and her) to relocate to a town near where her new husband was working on a fly in/fly out basis.

The mother had a 1 year old child with her new husband.

The trial judge gave a 'preliminary view' that his focus was on maintaining a 'meaningful relationship' between the child and both parents and that a proposal that did not involve the maintenance of such a relationship would be unlikely to find favour.

A final court order was made preventing the mother from relocating with the child from Perth to a town in the Pilbara, Western Australia.

The mother appealed against the order. The father opposed the appeal.

Courts Considerations:

The Appeal Court said that the difficulty with the judge's 'preliminary statement' of a 'view' is that it immediately suggested his Honour's attention was already focussed on the maintenance of a 'meaningful relationship' between the child and both parents. The Family Law Act places a consideration, not an obligation, that there is a 'meaningful relationship'. The trial judge was not in a position at the start of the trial without having heard the evidence to express a 'preliminary' view as he did.

Decision:

The judge had taken the wrong course and not given the mother procedural fairness. The mothers appeal was allowed and the matter returned for re-hearing.

BEING POLITE AND COURTEOUS IN COURT

In considering a mothers 'stay' of judgement application in a recent case, the judge commented that it was not surprising that the mother was unhappy with the decision – the judge had made a range of findings that were adverse to and critical of the mother both as to her credit and her reliability as a witness

The judge went on to say that the mother's demeanour and comments to the court during the hearing showed hostility and disrespect to the court. It got to a point that the judge asked her to remove herself from the court. The judge had given the mother more latitude in relation to her attitude and general disgruntlement towards the court, probably because she was self-represented, and certainly more than he would have given to any legal practitioner, but that is no excuse. A judge holds a position that commands respect and politeness.

We caution any self-represented litigant to go against such values, as you could end up detained in the court jail (yes, it exists!) by the Federal Police, on a charge of contempt.

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