

GET LEGAL ADVICE EARLY

March, 2010

If you have been to any of our public seminars, you would have heard many reasons - real life examples - why it is important not to delay getting Family Law advice.

Working out children's care arrangements is just one example.

Being aware of how the law applies to your situation does not mean that a legal process has to start, it is all about being informed. By being informed, you will be calmer and less anxious about what is happening around you and what you should - or shouldn't - be doing.

Whatever you do - don't rely on the experience or suggestions of friends or family!

It may seem like a daunting experience making your first appointment to see a lawyer, but the prospect of what could happen if legal advice is not sought when parenting arrangements are falling apart - or communication becomes difficult - is far more daunting!

AN EXAMPLE:

A case before the Court last month highlights the need for getting Family Law advice early. The Mother and Father did not seek legal advice early and the situation soon got out of control. By obtaining legal advice initially, the parents could have saved costs and avoided a complicated and disruptive situation, not only for themselves but for their 3 children.

In this recent case, the Mother - who was the primary carer of the children - wanted to relocate from South Australia to Queensland. The Father was opposed to the children moving and therefore took over as the primary carer.

Unfortunately, at the time the parents did not see the need to seek any Court Orders to resolve the issues that arose from the Mother's wish to move to Queensland. Consequently, neither the Father nor the Mother had considered the long term arrangements for the children and how this would impact on them.

The Facts:

- The Father and Mother were married for 8 years and had 3 children, 8, 7 and 5 years of age.
- The Father worked as a manager in the retail industry during the marriage.
- The Mother continued to live in the family home in South Australia, while the Father had moved out.
- The Mother met a man who lived in Queensland on the internet and formed a "serious friendship" with him. She decided that she wanted to live in Queensland.
- She moved to Queensland the next year and it was agreed the 3 children would live with the Father and spend time with the Mother on school holidays.
- The Father cared for the children while working full-time. The Mother's sister and mother moved closer to help care for the children.
- After a month living in Queensland, the Mother returned to South Australia to spend time with the children in the mid-year school holiday break.
- When the Mother returned to Queensland, she became engaged to her partner.

- Towards the end of the year the parties agreed that the Mother would pick the children up from the Adelaide airport so they could spend time with her in Queensland during the school holidays.
- The Father claimed that the children were to be returned to him in Adelaide on 13 October 2009.
- The Father claimed that 5 days before the children were to be returned to him, the Mother told him that the children would not be returned.
- The Mother said that she asked the Father if he would agree to the children staying longer and he refused. She then indicated to the Father that if he wanted the children back before 20 October he would have to come to Queensland to collect them.
- The Father took time off work and drove to Queensland to collect the children. Due to other issues that had arisen, the Mother would only allow the Father to take the 8 year old child back with him to South Australia.
- Following their meeting, the Mother made a complaint to the police, alleging that the Father had forcibly pushed her.
- The 8 year old child returned to school in South Australia, while the Mother enrolled the other child in a Queensland school.
- At the Interim Hearing the Court found it inappropriate for the children to be separated from each other in different states. The Mother was Ordered to deliver the children to the Father.
- At the end of the year the Mother had ended her relationship with her partner and had moved back to South Australia.
- The Father wanted the children to continue to live predominantly with him and spend time with the Mother on alternate weekends during the school term and for half of the school holidays.
- The Mother, wanted the children to live between the parents on a shared care basis, with the children moving between the households on a week about basis.

Court Found:

- Each of the children had a "meaningful relationship" with both parents.
- The Father's incident of forcefully pushing the Mother was found to be the only incident of that nature that existed.
- Both parents had been the children's primary care provider for long periods of time in the past.

Court Order:

- The children live with each of their parents on an equal time basis.
- During the school term the children change households on Monday. Each parent to have "time with" the children for half of the school holidays.