



## TESTING A CHILD'S WISHES

12 October 2015



The paramount consideration for the court when considering parenting arrangements for a child, is that the orders are in the best interests of the child. In considering this, one of the factors considered by the court are any views expressed by the child.

In a recent case, the question arose as to whether the strong views expressed by a 9 year old child were his own or whether they were enmeshed in the mothers own views.



### Facts:

- The parties had been in a brief relationship and at the time of the trial, the child was 9 years old.
- Following separation, the child had lived with the mother and spent time with the father.
- The matter had had a difficult history, with the parents having been involved in litigation over many years, and the mother having a history of making unfounded abuse allegations against the father.
- In 2013, the mother left Victoria and went to Sydney, and did not return. The father succeeded in an application for the return of the child to Victoria. He then sought orders that the child remain living with him. The mother opposed this and sought an order that she have sole parental responsibility.
- A family report was prepared and the child expressed strong and consistent views that he preferred to live with his mother.
- The report recommended that the child live with the father, as the father provided stability at home and for the child's education.

### Findings:

- The report noted that the child was of an age where his wishes should be given substantial weight, however the difficulty was that his views were tangled in the parenting role the child had taken on whilst living with the mother.
- The court was unconvinced as to the mother's alleged reasons for moving to Sydney, and then insisting on remaining.

### The Order:

- The child live with the father and spend time with the mother.

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