

WEIGHING THE WISHES OF A 13 YEAR OLD

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When deciding arrangements for a child, one of the considerations, is any views expressed by the child, taking into account the child's maturity and level of understanding of the legal proceedings. A recent case has considered how much weight should be given to the wishes of a 13 year old.



The Facts

- The couple had 3 children. At the time of hearing the oldest was over 18 and the second eldest was nearly 17 years of age. The parents agreed that the second child should spend time with the father as he wished. The unresolved issues were what time the youngest child, aged 13, should spend with the father and whether the mother should have sole responsibility for the children.
- The 13 year old was born with profound deafness. An interim order had been made for the child to spend 4 nights a fortnight with the father. Despite this order, the child ceased spending time with the father the following year.
- At the hearing, the father sought that the youngest child 'live with' the parents equally.
- The mother sought an order that the 13 year old child spend 'no time' with the father. It was her case that she could not (and further would not) force the child to 'spend time' with the father if the child said that she did not wish to see the father.
- A family consultant was engaged to prepare a family report. Throughout the proceedings the children had to be

given to her views.

Court Found

- The court found that due to the 13 year old's emotional immaturity and lack of understanding the implications of a view to spend no time with her father, limited weight should be given to her views. The court also found that the child's view of her father had been negatively impacted by both the mother and her new partner. Neither had sought to encourage the child's relationship with her father and had improperly kept her from school on days that the father was to collect her.
- The court noted that there was likely a resistance by the child nor would she emotionally cope with 'equal time' or 'significant or substantial time' with the father. The court however did consider it would be better for the child to have a relationship with the father, than the mother's preference of no time at all.

Court Order

- The child 'live with' the mother and 'spend time' with the father at a supervised contact centre for several hours each alternate weekend. The court further ordered for both parents to engage with the child in a parenting orders program (POP).

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