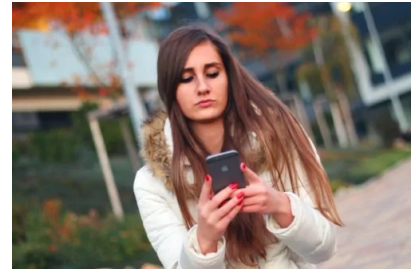


COURT DOES NOT ACCEPT TEENAGERS WISHES – A CASE STUDY

6 February 2018

Two teenage brothers aged 16 and 14, express their wishes to live with their father but the court says otherwise. The High Court has recently agreed with the Family Court in ordering that the 2 brothers, leave their father in New York and return to Australia despite their expressed wishes to the contrary.



Background

In 2014 the mother and father agreed on interim parenting orders for the boys and their daughter aged 12 years to “live with the father and mother as agreed between the parents or at the children’s own election”. This order did not however permit any of the children to decide independently whether or not they would live in Australia or abroad.

An Independent Children’s Lawyer was appointed in 2014 and the parents were ordered to attend an interview with a family consultant in January 2016 for a family report to be prepared.

In January 2016 under some pressure from the father, the mother reluctantly agreed to allow the 2 boys to travel to New York for a holiday with the father. The daughter was not included in the holiday. By 25 January 2016 after the boys were flown by the father first class and business class respectively to New York, the father had decided not to return to Australia. The father’s solicitor informed the mother’s solicitor that the boys

whether he would return to Australia or not, orders were made that provided for the boys, if the father did not return and they chose not to live with the mother, to live in accommodation provided by the father with paid supervision services or each boy could live separately with the mothers of respective friends of theirs.

The father appealed and a majority of the Full Court of the Family Court dismissed the father's appeal. The father appealed to the High Court.

High Court Appeal

The father argued that the trial judge was required to give "proper, genuine and realistic consideration" to the views of the boys and that the judge was wrong to discount the boys' views about remaining in New York because the judge had formed an adverse view of the father's actions.

The other argument was that parenting orders could not be made in favour of strangers to the proceedings i.e., the mothers' of the boys' friends.

High Court Outcome

The High Court found unanimously that although the trial judge gave less weight to the preference of the boys to remain in New York, this was not motivated by reason of the father's actions. The factor that the trial judge identified as relevant was the extent to which the boy's views had been influenced by the father. The court concluded that there is no express or implicit requirement that the court must seek the views of the child although when deemed appropriate it may inform itself of a child's view. There is however a requirement that the views which are 'expressed' by a child be considered by the court and in this consideration there is an obligation to give proper,

orders can be made in favour of a parent or a child or “some other person” and that in fact the mothers’ of the boys friends were not strangers. They had provided undertakings to the court to offer nurturing and care, to implement arrangements for monitoring homework and transport to and from school and offered proposed sleeping arrangements of the boys.

Family Law matters could get complicated and are also quite sensitive, especially when children are involved. To achieve the best possible outcome for you and your children, please seek independent legal advice.

We offer a fixed-fee initial consultation. Please phone Michael Lynch Family Lawyers today on (07) 3221 4300 to arrange.

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