

WITHHOLDING A CHILD

17 September 2019

Occasionally in family law, circumstances arise which cause one parent to withhold a child and not return them to the other parent, in accordance with a court order. This usually results in an application for a “recovery order” being made. In these cases, the court has to carefully consider any allegations that may be made by the parties against the need to preserve the child’s relationship with both parents.

The court recently considered an application for a ‘recovery order’ by the mother in circumstances where the father of a 9-year old child had withheld him following school holiday time. The father alleged that the mother’s parenting of the child was marked by neglect, and that she had exposed the child to abuse by her current partner.

Evidence showed that the Police had made an application for a domestic violence order against the mother’s partner which had included an allegation that he had pushed the child and caused him to fall and suffer bruising. It was also ascertained that the mother had a temporary DVO against her previous partner and that the children were protected persons under that order.

Decision

The court found that while neglect and family violence figured prominently in the evidence before the court, no allegations of violence were made against the mother. The court noted that the child was in need of stability and should be in a position to continue his relationship with his older siblings, who also lived with the mother.

The court ordered that the child be returned to the mother and that the mother not allow her partner to be alone with the child at any time.