Advice from a separation lawyer in a child custody dispute

Date : March 31, 2022

Seeking advice from a separation lawyer during a divorce can be necessary especially if there are children from the marriage who are under 18 years old. Generally, a parenting order allows for a child's parents to have equal shared parental responsibility. Once this order has been made (and the presumption not rebutted) then the court must consider if the child spending time (equal, substantial or significant) with each of the parents is reasonably practicable.

In the recent decision of *Miley* [2021] FedCFamC1A 62, the Court heard a mother's appeal against a decision which ordered the return of a child from Victoria to Western Australia. With assistance from a separation lawyer, the parents of the child separated in 2017. Prior to then, the parents were all residing in Western Australia.

The evidence before the court confirmed that the father spent limited time with the child. On the 7th of January 2021, the mother relocated to Victoria, taking the child with her but did not give notice to the father. After seeking advice from a separation lawyer, the father filed an application in the Family Court of Western Australia to seek the child's return. It was successful.

The Court heard the mother's appeal. With consideration of the threshold requirement of reasonable practicability outlined in s 65DAA of the *Family Law Act;* the appeal was allowed in part. This is due to a lack of regard to factors such as how far apart the parents are living from each other or their current/future capacity to implement an arrangement for the child. Therefore, Strickland J applied the High Court's decision in *MRR v GRI* [2010] HCA 4, that a court is subsequently not able to consider making such an order. After deciding that the appeal should be allowed in part, it was concluded that there should only be a partial reconsideration. This meaning that only the question of reasonable practicability should be reconsidered by the court.

Therefore, it would be up to the separation lawyers involved in the matter to assist the court's consideration of whether the child spending substantial and significant time with each of the parties is reasonably practicable.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.