

Unhappy with your current Parenting Arrangement? How to Change your Family Court Orders

Date : December 5, 2019

In 2016, the Federal Circuit Court of Australia made Orders with the consent of both parents. In summary, they were that the child live with the mother and spend time with the father and the time with the father was to increase as the child increased in age. The parents lived, and continue to live in different towns. In 2018, the father's divorce lawyer brought fresh proceedings based on two possible scenarios:

1. If the mother relocates near the father, the child to spend equal time with the parents, or
2. If the mother does not relocate, he sought Orders in the reverse so that the child lives with him.

In order to revise family law court Orders, the case of *Rice & Asplund* [1978] FamCA 84 requires the existence of a material change of circumstances. The father's divorce lawyer argued that since the time of making the consent Orders, his circumstances had changed in three ways:

1. His relationship with his new partner had developed,
2. He began operating a business that made his commute to collect his child longer, and
3. The growing tension between the parties made their equal shared parental responsibility more difficult than before.

What the father needed to prove was that the change in circumstances was sufficiently significant to warrant revision of the existing orders in any particular way.

In the case of *SPS and PLS* [2008] FamCAFC 16 the court considered this.

The trial Judge rejected the father's arguments and did not find that there was a significant change of circumstances as required by *Rice & Asplund*. Accordingly, the Court held that it was not in the child's best interests to reopen the matter and begin a new hearing.

In another case of *Hadaway & Beckham* [2019] FamCAFC 137 the father's divorce lawyer appealed. The appeal was dismissed for lack of merit. Having been wholly unsuccessful in establishing a *Rice & Asplund* argument of material change, the Court also ordered the husband to pay the wife's costs of the proceedings.

For advice about revising family law Court orders 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.