What Do Child Custody Laws Say If Your Child Doesn't Want To See the Other Parent?

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Relationship breakdown can often be a difficult and turbulent time for your children. To navigate this time, some families seek parenting orders from the Court to determine where the children should live and when they can see the other parent. But what do child custody laws say if your child does not want to see the other parent? According to child custody laws, certain obligations exist for the resident parent to comply with the Court orders, some of which are considered below.

Positive Obligation to Encourage Access

In the matter of *Stevenson and Hughes* (1993) 112 FLR 415, the mother pinned the father's telephone number near the telephone and informed the child they could call the father whenever they liked. On a separate occasion, the mother took the child to the husband's residence in accordance with the orders but the child refused to go inside. The father made an application for contravention, claiming that the mother contravened the Court orders by failing to give the father access to the child. The Court found that "an access order imposes an obligation which goes beyond mere passive non-interference and it imposes upon the party who is obliged to give access a positive obligation to encourage that access." The Court found that the wife had not done all that was reasonable in the circumstances to encourage the child to come to the telephone and speak to the father but had, in effect, issued an invitation in a manner in which the child was given the option to refuse.

Justice Fogarty noted that child custody laws do not entitle custody parents to treat the other party as an enemy who are able to be thwarted wherever possible either by active steps or by passive resistance, that matter being emphasized in *In the Marriage of Stavros* (1984) 9 Fam LR 1025.

Forcing Children to See the Non-Resident Parent

The positive obligation to encourage access must, however, be reasonable in the circumstances. In the case of *Fooks v Clark* (2004) 32 Fam LR 149, the father brought an application for contravention over failed time on Christmas Day. The father argued that the child's refusal to see the father was encouraged by the mother before the failed handover. The father also argued that the mother failed to actively promote contact in accordance with Court orders that stated the father would have time with the child on Christmas Day. However, the Court held that the child was so upset that it would not have been reasonable for the mother to have taken further steps to require the child to attend contact that day. The Court stated that "although a resident parent, as the mother is, has a positive obligation to provide contact for a child to the other parent, it is not reasonable that the parent forcibly put a child in a position where they are resisting."

For more information, visit our page on Parenting and Custody Disputes.

For advice about child custody laws contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au

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