A child custody lawyer outlines the presumption and evidence of parentage

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In uncommon and unfortunate circumstances a child custody lawyer may be called to advise a client who doubts the identity of the biological parent of their child. When this scenario arises, the law applies a presumption in respect of parentage and the evidence that may be obtained to decide the identity of the biological parent by law.

How does the law determine a presumption?

A child custody lawyer can recognise how the Court is able to make presumptions. More precisely, how the Court will readily make a presumption for the following:

- If a child has been born while the mother is married; and/or
- If a child has been born and the mother has been living with a man; and/or
- The registration of the birth certificate of the child and the names noted on the certificate; and/or
- If the Court has made a finding that a person is the parent or it could not have been any another person, and that finding has not been challenged; and/or
- If there is an acknowledgment or declaration in a document by the man that he is the biological father of the child.

Can the presumptions be rebutted?

The above presumptions may be rebutted by evidence which satisfies the Court on the balance of probabilities. A parent may also apply to the Court to obtain evidence in respect of parentage of a child where parentage is an issue in the proceedings before the Court.

The Court after receiving evidence may make a declaration as to the parentage of the child which will be conclusive evidence of the parentage of that child for the purposes of all laws in Australia.

Parentage testing order

The Court may make a parentage testing order on its own initiative or on the application of a party or an independent children's lawyer. Failure to comply with the order does not result in a penalty per se, however the Court will use the failure to comply with the Order to draw an inference against the person who failed to comply with the testing order.

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.