FAMILY LAW LAWYER EXPLAINS THE PRESUMPTION OF EQUAL SHARED PARENTAL RESPONSIBILITY AND WHERE EXCEPTIONS OPERATE

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A family law lawyer understands the dissolution of a relationship brings difficult and unforeseen changes to living arrangements. When there are children to a relationship this task is burdened by the extra question of whom and or where the children will live.

Understandably, it is within the court's interest that children to a relationship are afforded the opportunity to spend equal and shared time with each parent. This is a presumption that is outlined in s 61DA(1) of the *Family Law Act 1975* (Cth) which provides for the court to be conscious of this consideration when making a parenting order.

Importantly, this section applies only to the court's decision to *allocate* parental responsibility and not its consideration of the amount of *time* that is to be afforded to each parent.

Does the presumption apply to interim and final orders:

The Full Court in *Goode* [2006] FamCA 13446 at [55] – [56] and [70] confirmed that the presumption applies when the court is making both interim and final orders.

Are there any exceptions?

A family law lawyer will advise you that the court does not always have to apply the presumption as there are limited circumstances that allow for the court to sideline the consideration. They include if there are reasonable grounds to believe that a parent (or even a person who lives with a parent) has engaged in:

1. Abuse of the child, or another child who, at the time, was a member of the parent's family (or that other person's family); or
2. Family violence (see s 61DA(2) *Family Law Act*).

During interim proceedings, for the presumption to not operate, there must be circumstances where the court would consider it inappropriate (i.e this will occur on a case-by-case basis).

Approaching a family law lawyer for advice is recommended when trying to navigate through complex litigation. Parenting disputes are a big part of family law litigation and the court's role will be to administer justice in the interests of children first.

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.