The Presumption of Equal Shared Parental Responsibility - What this means and how it affects your child – Child Custody Lawyer advice

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The presumption of equal shared parental responsibility is a consideration of the Court when determining child custody applications. The “best interests of the child” is an enshrined consideration under Australian law and is the foremost consideration in child custody cases. As such, the Act set out under section 61DA (1) that it is ‘in the best interests of the child for the parents to have equal shared parental responsibility for the child.’ It is important to note however that this presumption looks to shared responsibility, not shared time. Furthermore, it requires both parents to make joint decisions about the long-term considerations for the child. Therefore parents are required to make a genuine effort to consult with the other parent and come to a general consensus about such decisions. This is all in the best interests of the child.

The Court’s presumption applies to interim and final orders. There are circumstances where this presumption does not apply (s61DA (3)). Such circumstances are specific and the presumption will not apply if the Court finds there are reasonable grounds to believe that a parent (or person living with the parent) has engaged in either abuse of the child or another child who was a member of the parent’s family at the time or in family violence in general (s61DA(3)).

In child custody interim proceedings, for the presumption to be rebutted there must be evidence to satisfy the Court that it is not in the best interests of the child for equal shared parental responsibility to be presumed.

The key point to consider for any parent about to engage in child custody proceedings, is to be aware that the Court will usually assume equal shared parental responsibility. Parents are encouraged if at all possible, to work jointly with the other parent as to the arrangements for the care of their children.

For more information, visit our page on parenting and custody disputes.

For advice about the presumption of equal shared parental responsibility 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.