

Submission No: 777

Date Received: 11-8-03

Secretary:

"Every second weekend and half the school holidays" -- was the first comment a lawyer made when I inquired about access to my children. This comment would not have been unusual except that he had not asked my name, or if I was the primary care giver, or the age of the children. However he saw I was a male and this was about as good as it got and gets.

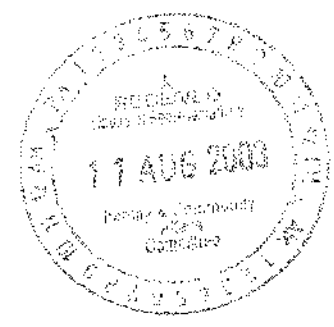
Separation, particularly when children are involved, is clouded by a lot of emotional issues. It is a stressful time for all involved, parents, children, grandparents, family members and friends. It places stress on the welfare system, decreases an individuals productivity and hence their contribution to the community whether it be local or global. The present 'family law' system while is an improvement from the 1960s where a husband could have an affair and 'kick the wife out' with nothing more then what she could carry, and with no financial compensation while he retained the farm. (Reference farmer at Binya, 20kms north of Griffith NSW. Name withheld). The laws associated with family law, I believe, are bordering on ridiculous.

When one partner leaves a relationship there is hurt on both sides. However the law is such that one person effectively has control. It is the person who is deemed the primary care giver, usually the female (from my research only about 7% of fathers receive custody). The 'primary care giver' definition does not allow for contributions made by the other partner or whether they intended to finish work in a couple of years to raise their children. For example, if both people in the relationship work and share the care of the child how is this recognized? Remembering separation is clouded by emotional issues. The primary caregiver may not and probably does not want to acknowledge the contribution by the other partner. Why would they! Their interests are best served by not acknowledging the other partner's contributions. That is, the defined primary care giver receives up to near 100% of custody or access of the children without even proving their case. This happened to me, my two oldest children [redacted] and [redacted] were allowed to come around 25% of the time and [redacted] I got to see for 3 hours a fortnight which translates to 0.89% because he was a new born. The family law has assumed that because I am male I can not feed changes or care for my child. I believe that is a big assumption after all 'women' in the seventies were only considered capable of working as secretaries! No woman could govern a country like England, for example, or hold a position of importance in our government!

Or could they?!

In addition, the other assumption made which is I have seen no relevant data to substantiate is that the primary care giver is the best person to control the finances for the children. If that were the case all accountants would be mothers, and not men.

In contrast, to not being able to find data to support that the mother was the best person to control the finance matters for the children after separation I was able to find copious



11-AUG-2003 12:34

amounts of data that stated how important it was for the father of a child to bond with his new born.

If a bond is not established early in a child's life with their father the bond may never occur. This I personally find true. I have a ten-year-old son to a previous relationship and while his mother and I get along well and she does not prevent me from having contact with my son and I do not have the same relationship as I do with my two children [REDACTED] and [REDACTED]. This lack of bonding is due to the lack of opportunity for me as a father to bond with him. The distance between my 10 year old and I is 16 hours by car as he lives on the [REDACTED] while I live in [REDACTED].

For the lack of bonding I do not attribute blame to any party, it is simply a fact of geography. This little boy is an unfortunate casualty of separation in vast country like Australia. We make the best of an unfortunate situation. I believe that to restrict his mother from moving so far away would be wrong, even though some primary care givers would abuse this opportunity. It is my belief that the less time for a couple required to spend in court and seeking legal advice the better from all concerned.

Intrinsically the family law promotes partners to degrade one another and causes conflict between the two parties. In the courtroom, each party by the nature of the process has to try to convince the judge by presenting themselves in the best possible light as possible. This invariably means the one party inevitably degrades the other party. This continual criticism at a time when both parties are under stress promotes bad will between the separated couple, which can linger for years.

Property settlement

In regards to this matter I think it is best described as:

Winner takes all

The person who gets the majority access with the children gets most of the assets too. I agree with the basic concept but it could be refined. The 10% share per child could be put into an interesting bearing deposit which could only be accessed for specific use of school fees and clothes for example. This could have a positive effect on the property settlement. The amount of money attributed to the trust for the children would not cause any, or at least reduce, the 'bitter taste' in one's mouth. The other aspect, which we need to consider, would be intrinsic deterrent to separation. It could be hoped that if one realizes that they are not going to get a 'large pot of gold at the end of the rainbow' (a reward for leaving) they may reconsider separation. The statistics I have state that 1 in 3 thought they made a mistake when they left their partner. (Please note I am not going to state every source, as this could become a never-ending paper as it is. Your access to statistics would confirm my readings.)

The other 'money tree' or 'pot' of gold, which can also leave a sour taste, are maintenance payments. This can be result a persons net wage being half of their gross

11-AUG-2003 12:35

wage and they still have to supply accommodation, bedding, food for themselves and children plus other things to numerous to mention.

RECOMMENDATIONS

If you consider 'family law' as a pendulum that is swinging in time you would notice that it was unfairly in favor of the non primary care giver earlier this century but now has swung back past center to unfairly favor the primary care giver. I believe you have a real challenge, firstly you must determine what is fair and best for the child, parents and whole community. Secondly, you must implement you findings into law.

The law must be simple, so to relieve stress on welfare, family law courts, separated parents and kin but most of all on the children. It must be quick to avoid waiting periods. The law must cater for many different scenarios and to do this I would suggest a shift from the presumption of access of the children to a more equitable form. That is, access to be shared 50%-50%.

If a partner can bring forward a case to show that a parent can not look after the children adequately then the parents would attend court in the best interests of the child.

If one partner did not want the children 50% of the time and was happy with a smaller amount this could act as a positive. This would allow the other party to have increased access to the children. Naturally a decrease in percentage of care would be compensated for by an increase in financial assistance.

One of the other aspects I believe would be beneficial would be to release pressure on the children about choosing where they would live at the instant of separation or later when some children are faced with the option of living with one parent or the other.

Another benefit would be that both parents would be able to appreciate the effort of caring for the children's sake. This would, in some instances, allow ex partners to develop a respect for the other. While also removing the continual stress placed on a 'full time mum'.

In addition, the paternal grandparents would be able to develop a more substantial bond with their grandchildren. This would be beneficial to the children.

Finally the other aspect of '50/50 assumption' would be that the primary care giver would be able to support them and still have a career which can be essential after the children leave home for personal development and the community.

DISCLAIMER

11-AUG-2003 12:36

P. 04

I have presented some facts on my readings and life experiences above but I have not gone into the facts from the primary care giver's point of view. I am aware that the primary care giver, mostly the mother undergoes great hardship after separation. However to comment on those aspects is outside of this paper. However if I had the opportunity: -

- I would discuss how salaries are hidden to avoid paying child support
- When men move away from their separated partner and leave almost soul responsibility of childcare to the mother.
- The effects on the children when they're primary care giver re-partners.
- Loss of family assets from previous generations when a separation occurs.
- How going up in a sole parent family can lead to bias, imbalances and lack of understanding of how heterosexuals interact on a private and intimate level.
- In addition, the view of the other sex. Both sexes have different attitudes to different aspects of life. That is, you can not get a 'man's' opinion from women ~~or~~ visa versa.
- Manufactured AVOs or assault charges to ensure custody of the children.
- Lack of motivation to work and at to the national gross production.