



Family Court Directs Parents to Change Their Attitude and Behaviour in Recent Decision

Court confirms Children's mental health at risk when exposed to family violence

INTRODUCTION

In the case of *Marsden & Marsden*, FamCA855 (14th October 2015), the Family Court decided on whether the three children of the marriage should reside with their mother or their father. The welfare of the children was central to the Court's decision as it was identified that the parents had a toxic relationship which affected the children's wellbeing. The children were identified as 'M', 13 years, who resided with the father; and 'A', 11 years, and 'V' 8 years, who resided with the mother.

BACKGROUND

On 3rd February 2011 the parents entered into final consent orders which allowed all of the three children to reside with the father. Under the consent orders, the mother was allowed alternate weekends, overnight each Thursday and for half of all school holidays and special days.

On 27th August 2014 the mother claimed that the father assaulted both M and A, leaving bruises on M's face. Although the father denied these accusations, he was interviewed by police and subsequently charged with stalking, intimidation and intending to cause fear, physical or mental harm toward M and A.

On 30th August 2014 an intervention order was made naming M and A as protected persons.

On 16th September 2014 the mother petitioned the Court for the children to live with her and spend no time with their father.

On November 9th 2014, the mother called the police reporting an incident involving M physically abusing her.

On 12th November 2014 the Court ordered that the children commence living with their mother.

On 23rd June 2015, the criminal proceedings against the father were discontinued with agreement by both parties. However, the father was subject to an intervention order for a period of nine months. The intervention order disallowed the father from spending time with the children outside of a clinical setting.

On 14th July 2015, the mother called the police again reporting that M displayed violent behaviour towards her. At this time the police took M to hospital for the mental assessment.



ISSUES

There were two main issues in this case. The Court identified the highly volatile nature of the relationship between the parents, along with the impact of the physical and psychological abuse on the welfare and wellbeing of the children.

CONSIDERATIONS BY THE COURT

The Court identified the following key components in this case:

1. The importance of both parents having a meaningful relationship with the children;
2. The need for the children to be protected from abuse, neglect and family violence;
3. The weight that the Court determined on views expressed by the children;
4. The relationship that each child had with either parent;
5. The capacity of each parent's provision and maintenance of the needs of each child;
6. Whether each parent had fulfilled or failed to maintain the children;
7. The parent's behaviour and attitude toward each other.

The father stated that the mother tried to influence the children against him. The mother claimed that the father sent her angry, inappropriate SMS messages. The independent children's lawyer that was appointed had very serious concerns of specifically M and A. It was recommended that the children spend time with their parents in the company and under the guidance of a family therapist. The mother asserted that as A had been the subject of physical and psychological abuse by the father over a long period of time, it would be inappropriate for the child to spend time alone with the father. The father argued that there was no evidence to support the mother's claim that the children were afraid of him. He further argued that the mother tried to prevent him from spending time with the children.

The Court heard that M did not regularly attend school when living with the mother and that she used medication and police intervention to control the child's behaviour. The father maintained that the children attended school regularly and achieved good grades when in his care. The Court was told by the father that the mother had difficulty in the provision of school fees and meeting the emotional and physical needs of the children. The mother blamed the father's controlling behaviour and stated that they had ongoing psychological challenges which affected their school attendance.

FINDINGS AND ORDERS

It was determined by the Court that if children M and A remained with either parent they faced serious risk to their mental health. The Court recognised a number of serious allegations of domestic violence that must be dealt with in the Final Hearing of this matter. As a consequence of those allegations, it was not appropriate that shared parental responsibility be granted at that time.



The Court decided to uphold the November 2014 order which allowed child V and child A to remain with the mother and child M to remain with the father. In addition, the Court ordered that child M spend alternate weekends with both his mother and his father.

CONCLUSION

Although the Court decided to separate the parental responsibility and care of the children at this time, it was not a successful outcome in terms of the three children residing and spending time together. The Court identified that the evidence presented clearly indicated the effect that the pattern of family violence was having on the children. The Court directed that a fundamental change in each parent's behaviour was vital; otherwise there was no real prospect to achieve a resolution in this matter.



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