



Our ref:

The Family Courts Violence Review
C/-Family Law Branch
Commonwealth Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
Australia

19 October 2009

Via email: familycourts.violencereview@ag.gov.au

Dear Madam/Sir,

Submission to the Family Courts Violence Review

Kingsford Legal Centre (KLC) welcomes the opportunity to make a submission on the way the current law and courts system impact families at risk of child abuse or family violence in Australia. In particular, this submission provides some anecdotal evidence of the extent domestic violence is taken into account into decisions about children since the change to a new presumption of equal shared parental responsibility (*Family Law Amendment (Shared Parental Responsibility) Act 2006*) and community perceptions about this change to the law.

KLC is a community legal centre and part of the Faculty of Law at the University of New South Wales. KLC provides advice and representation to people who live and work in the Botany and Randwick local government areas and to staff and students at the University of New South Wales. KLC also provides advice in discrimination matters to people throughout New South Wales.

KLC provides basic family law advice but generally does not take on family law casework area. KLC provides advice in divorce, child contact and residence matters and in relation to apprehended domestic violence orders. In the period 2006 to September 2009 we gave

advice on family law or domestic violence issues to over 470 people. We opened cases in domestic violence matters in approximately 50 cases.

The overall impression we have from the advice and casework we have engaged in is that both men and women now believe that on separation, the law requires children to spend equal time with both parents, regardless of any evidence or allegation of domestic violence. The media has been active in sending this message and women, who have experienced domestic violence frequently make statements to the effect of “I’m scared of him: he threatens me every time I handover the kids.” And yet women believe that they are now required to continue with contact visits and do not seek legal help.

The new s60B states:

(1) The objects of this Part are to ensure that the best interests of children are met by:

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that (except when it is or would be contrary to a child’s best interests):

(a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and

(b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and

(c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and

(d) parents should agree about the future parenting of their children; and

(e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

The extent to which subsection (2) details the importance of both parents having contact with children and joint responsibility for them, and the single reference to family violence can be interpreted to diminish the significance of family violence in decisions regarding contact. In our experience, mothers and fathers have an understanding that fathers' rights to see their children have been strengthened, regardless of evidence of family violence. This then has the flow on effect of women who have experienced violence not seeking orders preventing contact or, accepting contact arrangements where they and/or their children are at risk of violence.

Case study

Veronica

Veronica was in an intimate relationship with Jorge from 2005-07 and in August 2007, gave birth to their child. However, they separated later in that year. During the time they were together and after they were separated, Gregory was emotionally, verbally and physically violent towards Maria. Veronica applied for and was granted an AVO. Both informally agreed that Jorge would have contact with their child on Sundays and Tuesdays.

When Veronica went to pick up the child on a particular contact visit in April 2009, Jorge became angry, kicked Veronica twice and grabbed the child and walked away. When Veronica tried to take the child, he grabbed her arms and twisted them, hurting her right arm.

Later in 2009, when Veronica was again picking up the child after contact, now through the police station, whilst she was putting the child in his car seat and had one leg inside the car and one leg outside, Jorge shut the car door on her leg several times, hurting it. No charges were laid.

Later in September 2009, Veronica's 2 year old child was taken without her permission by Jorge from her car. During this incident, Jorge punched Veronica several times; head butted her, grabbed her by her hair and threw her out of the car in which her child was being driven away. Police were involved in the child's return after approximately 36 hours. There are now family law proceedings on foot but no final decision has been made.

This case study reveals the impact of violence in a relationship where there is ongoing contact. In the past, an argument for no contact at all may have been made more readily, but

both our client and the father of the child have both expressed their understanding of the requirement for contact to continue despite questions about whether it is in the best interests of the child and whether the mother is safe during handover.

Change to the presumption of shared parental responsibility

Since the introduction of a new presumption of equal shared parental responsibility in the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (hereafter ‘FLA 2006’), some clients have mistaken it to mean that there is a right to equal shared time with the children in all situations.

Previously, the test of what is in the “best interests” of the child was paramount and it appears that lawyers may have been readier to argue for “no contact” orders because of the high risk of domestic violence and the detrimental impact this has on women and children. The current wording of S60B and S60CC would appear to make risk of family violence of lesser importance.

Recommendation:

Kingsford Legal Centre recommends that the law clearly state that the paramount concern is the best interests of the child. There should not be a presumption of shared responsibility rather various factors which will influence decisions on contact and residence. These should give proper emphasis to the risk of violence or witnessing violence.

Conclusion

Kingsford Legal Centre is concerned that both mothers and fathers have a simplistic understanding since the amendments, of the “equal rights” of both in relation to children. They construe the law to mean that mothers and fathers should both have equal time with their children, regardless of any previous violence or future risk of violence. The use of “best interests of the child” seems no longer to be paramount in community understanding as the test used to decide residence and contact. Greater emphasis is given to the role of fathers with their children, despite evidence of violence in the family.

We look forward to hearing from you in relation to this submission,

Yours sincerely,
KINGSFORD LEGAL CENTRE

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