



Family Court Orders Child to Live with Mother after Father Disappeared with Child for Five Years

Risk of harm to the child in the care of father and willingness of the mother to establish a relationship with the child taken into account by Court

INTRODUCTION

In the case of *McLeod & Needham & Anor* [2015] FCCA 2808 (1 October 2015), the issue discussed is regarding a child being removed from the home under the presumption of “respite” by the father and paternal grandmother and disappearing with the child for five years with no contact with the mother. The court then had to decide if it was in the best interest of the child to return her back to the mother after all the years.

BACKGROUND

In this case, the mother and father began living together when they were 17 and 20 years old. They have an older son together, but the mother was very conflicted with the second pregnancy. She was conflicted due to the violence in the relationship. After her second child was born, the mother did not cope well. The child was airlifted to Adelaide for treatment soon after she was born.

When the child was three to four months old, the mother was still not doing well, so the father and paternal grandmother took the child. To this day, the paternal grandmother believes the mother willingly gave up the child to the father permanently. However, the grandmother was never present during any conversation that took place between the mother and father regarding the child.

ISSUES

Judge Terry had to consider the following issues based on affidavit material before the court:

1. Is the child better off remaining with the paternal grandmother? The grandmother is aware the father is using ice and she still allows the child to go off with the father even overnight. The grandmother claimed the child has not been physically harmed by the father. The issue was not only the physical well-being of the child, but the emotional harm the child is exposed to by the father’s violent lifestyle. If the child remains with the grandmother, the child will continue to be exposed to the father and there is no one to protect the child from the father’s behavior.



2. Along the same line, if the child remains with the grandmother, the child's relationship with the mother will fail to thrive due to the antagonism the paternal family feel for the mother. This could lead to lack of telephone communication and failure to meet changeovers.
3. On the other hand, if the child is handed over to the mother after this many years, the fear was the child will not settle with the mother. The child may have certain behaviors modelled to her and this may cause a challenge to the family.

FINDINGS & ORDERS

The mother is currently 30 years old, employed, in a good place in her life and is studying with no drugs or alcohol in her life. The paternal grandmother is frail and the mother feels as if she relies on the child as a crutch.

The Court decided that no matter what the risk was, they found that a change had to be made and the child could not remain residing with the parental grandmother with exposure to the father. The child will at least be given a chance, which she would not have if she remained in her current residence.

The Court ordered that the child with the mother for 12 months. The parental grandmother was allowed supervised time at the Interrelate Children's Contact Service.