

Relocation of Children

No one truly believed that the day would come when a judge would order in the favour of someone who had no biological link to “their” child. The changing nature of family law is seeing the unbelievable become the believable. This article will take you through who is allowed a say in a child’s life, and what happens if your ex-partner wants to relocate your children.



It is now more clear than ever that what you wear, the car you drive, and apparently, your DNA, will not be the deciding factor in a custody battle.

Despite no biological link to the child, a homosexual faced court recently, determined to stop her ex-partner from relocating with their child interstate. It was argued that she could not make such a claim as her name had been omitted from the child’s birth certificate and the child was unrelated to her. The woman fought tooth and nail to prove that she had raised and nurtured the child and deserved the same rights as a biological parent. Against all odds, Family Court Justice Paul Cronin ruled in her favour.



What rights are there for individuals who conceive a child through artificial insemination and they have a spouse or defacto partner? A 2008 amendment to the Family Law Act outlines that both individuals are legally considered to be the parent of the child, irrespective of biology or sexuality.

Have you made a significant contribution to a child who is not biologically your own? The above case sheds light on the notion that you do have rights where family law is concerned. Justice Cronin also drew upon the Family Law Amendment (Shared Parental Responsibility) Act 2006 when making his decision, noting that the child’s best interests outweigh all else.

Another recent case saw a two-year-old boy’s biological mother and her female partner opposing the wish of the biological father and his male partner to spend

significant time with the child. Justice Dessau stressed the importance of each figure in the child's life.

"Each party can contribute something important to him...[he] should have the benefit of the men's loving involvement in his life," Dessau said, ordering that the child should spend every third weekend and school holidays with the men.

This has not only been seen in artificial insemination cases, but is common when family friends or relatives make a substantial contribution to the child's life.

A Sydney court room recently heard the cry for help from a non-family member who argued that a mother and father were neglecting their children's education. The children's welfare and education were seen as paramount, and they were ordered to live with a family friend, and spend 3 out of 4 weekends with their father.

We all know that the demanding pressures of life can take their toll on even the best of people. Often, children today are cared for by their grandparents or a family member who is not their biological parent due to parental work commitments or an inability to afford child care.

Jennifer Freeman faced this issue when she had to commute from the Central Coast to Sydney for work, leaving her child, Ben, in the full-time care of his grandmother. Now, Jennifer sits across from her own mother in a courtroom, arguing for the rights to see her own child.

Why is it such a struggle when Jennifer is legally Ben's mother? Ben's grandmother has raised him since he was two years old, and has been the one to see him through kindergarten and primary school. She has made a significant contribution to his life, and has been a mother figure in his life.

This complex, heart-wrenching case highlights that biological parents do not always have the upper hand when it comes to family law and child custody. Not only do those around the child get a say, they often get their way where signs of neglect on the parents' behalf are evident.



The initial homosexual case also draws attention to the hardships of relocation in child custody cases. In our current global environment, travel and relocation for employment opportunities is not only a reality but is increasingly likely. ***So what happens to your child when your ex-partner wants to whisk your child away to Europe to live?***

Justice Cronin in the case of the homosexual mother, noted that it was not in the child's best interests to move interstate and that relocation could only occur when the child was old enough to maintain a long-distance relationship with her non-biological mother.

George Duncan currently faces this exact issue. His wife, originally from USA, wants to move back to her hometown. All would be fine if she didn't want to take his seven year old daughter with her. George is now in an intense legal battle in an attempt to keep his child on Australian soil. The likely outcome? The above case sheds light on the necessity of the child being able to sustain a long-distance relationship with the parent they will be leaving behind. If the child isn't old enough, and the parents fail to agree, the child may well not be allowed to leave this country.

What if George's wife is successful? A whole plethora of legal issues may surface for George if there are disagreements when the child is in a different country under a different court's jurisdiction. George will be reaching far into his pockets to face the burden of travelling overseas to solve any arising legal disputes.

You cannot become complacent if your child is 'just' being moved interstate. The same legal issues arise as those if your child is being relocated overseas. The court jurisdictions are different overseas.



What should you do? Make sure that you decide and agree upon consent orders that you are wholly satisfied with before your ex-partner is even able to find their passport. Enter into these consent orders in your own court jurisdiction and make the relocation conciliation upon ensuring those consent orders agreed upon are registered in the new jurisdiction where your child will reside.