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LOOKING AFTER YOURSELF AND YOUR MENTAL HEALTH DURING FAMILY LAW MATTERS

Having an unresolved family law matter, whether it be children's arrangements, unresolved property issues or child support can be a source of significant stress and worry for parties.

When the worry and anxiety about the health, economic and social impact of the COVID-19 pandemic is added to everything else, it is understandable that you may feel overwhelmed, frightened, isolated, stressed or depressed.

It is our experience that the family law courts support parties in family law matters availing themselves of counselling and support service when they experience mental health issues, whether it be 'situational', or a longer term diagnosed mental illness.

It is our experience that a party's diagnosed illness or condition, be it mental or physical, is treated sensitively and with empathy by the Court, as are parties who are availing themselves of medical and/or therapeutic support, including prescribed medication such as anti-depressants.

Take care of yourself. Don't hesitate to talk to your General Practitioner, a Psychologist or some such other mental health practitioner. Feel comfortable with reaching out for support and don't feel embarrassed about participating in therapeutic counselling.

“ WE ACT FOR CLIENTS FROM ALL WALKS OF LIFE, AND WE KNOW HOW IMPORTANT IT IS TO PROVIDE A FULL RANGE OF SERVICES ”

YOUR FAMILY LAW TEAM



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WHEN TIME RUNS SHORT— WHEN WILL A COURT CONSIDER EXTENDING A LIMITATION PERIOD?

In the last few years, on several occasions, the family law courts, including the court of appeal have considered whether to let parties start court proceedings even though the time to do so had passed.

The law says proceedings for property settlement and spousal maintenance must be started within one year of divorce in the case of a marriage or two years of separation for de facto relationships.

It is useful to re-visit what the court considers when deciding whether to extend this time.

There is a threshold. If the applicant cannot show hardship, the extension of time will not be granted.

So what is hardship? It doesn't have the everyday meaning. It is not necessary to prove that someone is living in poverty.

It is necessary however to show that it would have been worthwhile to have gone to court within the limitation period ie a strong probability of success, taking into account the costs of going to court. It must have been a commercially viable claim if brought within time.

In one decision considered in 2018, the wife did not succeed because the court "was unable to see how the de facto wife's potential claim could conceivably approach, let alone exceed, what she currently held in terms of assets together with the total payments she had received from the de facto husband after separation".

It is only if hardship can be identified that the court then looks at delay – the length of it, whether the explanation for it is reasonable, and whether prejudice will be suffered by the other party if leave is granted.

Obviously the longer the delay the harder it will be to explain it away. The court has considered explanations such as the parties were distracted by parenting issues, that the applicant thought there was an informal agreement in place, solicitors did not inform the wife about a limitation period, and the wife was financially dependent on the husband and did not want to raise a settlement for fear of disrupting that arrangement.

From 25 October 2018, the parliament changed the law so it is now possible for parties in de facto relationships to consent to an extension of the limitation period for consent orders. Married parties have been able to do that for many years.

It is best not to have to test the law about extensions by starting court proceedings in time so you should seek early legal advice once you separate so you can make an informed decision about whether or not you have rights to protect.

THE CHALLENGES OF RELOCATION IN FAMILY LAW MATTERS



There is no automatic right for a parent to be able to move away with children.

Generally, 'relocation' in family law matters is a move which will result in changes to children's living arrangements that make it significantly more difficult for the children to spend time with a parent.

You should either obtain the other parent's agreement to the children moving or an Order from the court allowing the children to move with you.

Firstly, try to talk to the other parent.

When considering how to approach and discuss with their other parent your proposed move with the children, it may assist if you to take time to form a considered proposal for how the 'relocation' would work in a practical sense.

Ask yourself – how can arrangements be put in place to maximise the children's time and communication with the other parent, take into account school and extra-curricular activities, and how travel for changeover would take place?

In formulating your proposal, think about how to ensure the children and the other parent can remain engaged and connected on a daily basis – a significant fear for any parent being left behind is their relationship and connection with the children and their day to day lives becoming remote.

Consider whether coming to an agreement about arrangements would be assisted by:

1. You, as the relocating parent, undertaking the bulk of the additional travel for changeover and/or incurring the extra travel cost that may arise as a result of the children's relocation.
2. In circumstances where the children's time with the other parent will be reduced during school term as a result of distance, whether the children could stay with the other parent for longer periods of time in school holidays and/or longer visits during the year.
3. Discuss how you can ensure that the 'flow' of information between you and the other parent about all matters relevant to the children's day to day care, including activities, achievements, interests, events, social activities, medical appointments and dental appointments is not affected by any reduction in their time with the children.
4. Formulate a plan with respect to how you will ensure that both parents continue to be involved in decisions about the children, whether it be selection of schools, sporting and extracurricular activities and health decisions, such as dental and medical treatment.

If you can't agree informally, consider arranging for a family dispute resolution conference (mediation).

Conflict can arise from uncertainty. If you reach agreement with respect to relocation and the new parenting arrangements, certainty can be achieved by entering into a written agreement by way of a Parenting Plan or Consent Orders.

If you cannot agree about relocating, you can apply to a court for orders to allow you to move. The court may not grant permission. The court will consider the best interests and welfare of the children.

Caution should be exercised with respect to moving with children when their other parent objects to their move. If you were to move without the other parent's agreement or a court Order allowing you to do so, a court may require you to return the children to their 'original area' until the matter of whether the children can move with you in the long term is resolved.

Relocation matters can be complex and the court deals with each case on its own facts. Measured, appropriate legal advice from a solicitor experienced in family law may very well make all the difference to the conduct and outcome of your 'relocation' matter.

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