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## Child custody: one mother's bitter lesson in sharing the kids with dad

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This was not one of those cases where the children had been abused and neglected, and therefore had to be removed from their mum's care for their physical safety. She loved them very much and she made sure they were well fed and attending good schools, yet they now live, by court order, with their dad and can see her only once a fortnight, supervised, in a child contact centre.

What did the mother do to provoke such a change in circumstances?

As the Full Court of the Family Court noted, she didn't beat or starve her children, but neither did she encourage a relationship between them and their father and, as far as the Family Court is concerned, that was putting their psychological development at serious risk.

“This matter is plainly urgent,” Judge Grant Riethmuller had said when the matter first came before the Federal Circuit Court. Forcing the children to live with their father could leave them “devastated” in the short term because they barely knew him, but to leave them in her care “would effectively remove the father from their lives”.

Judge Riethmuller was not prepared to do that and now the Full Court agreed. The stakes are considered too high. And so, under the “shared care” provisions of the Family Law Act, brought in by the Howard government in 2006, he there and then switched the children’s residence from mum to dad without so much as a weekend’s goodbye.

“This case shows exactly how far we’ve come in 10 years,” says family law expert Stephen Page. “We’ve moved from dad getting one weekend a fortnight and half the school holidays, if he was lucky, to a situation where you really have to tell the mum — and I’m not saying this is a problem only for mums — look, if you don’t support them seeing their dad, no matter how much you hate him or how bitter you feel, they will be taken off you because this is not about you. This is about the kids.”

Les Stubbs, director of family law specialist firm Harris Freidman, agrees, saying: “It’s hard to believe but we do still see parents who say, ‘They’re my kids.’ Not ‘our kids’ but ‘my kids’, and when that happens the court will have no hesitation in moving them. It’s not about punishing the mother. It’s about the rights of the child to know both of their parents.”

The Family Law Amendment (Shared Parental Responsibility) Act 2006 was introduced by the Howard government in controversial circumstances. Critics complained that prime minister John Howard was in thrall to men’s rights groups, which had complained for years about the Family Court’s perceived bias against fathers. Supporters said it would tip the balance towards dads who had been paying hefty maintenance — or not — for children who had been turned against them.

The law has been in effect for a little more than a decade and it remains the most radical change to Australia’s family law since the original act was devised by the Whitlam government in 1975. Under its provisions, when making a parenting order, the court must apply a presumption that it is in the child’s best interests to have a relationship with both parents, except in exceptional circumstances such as where there has been sexual abuse or violence.

The idea was to encourage parents to co-operate on child-rearing in the hope that this would lead to less acrimonious disputes, which are spiritually and financially costly for all parties and affect a child's right to know and love both mum and dad.

The law enables the Family Court to take radical action, and the recent case known as Ralton and Ralton, summarised above, provides what may be the starkest example of how the system now works.

Mrs Ralton was three days into the five-day hearing when the reality of the situation dawned on her. "I could have my children taken off me?" she asked, and that is what happened.

The court heard that Mr and Mrs Ralton — not their real names — had "a relatively brief relationship" that started in 2005 and was completely over by 2009. Their two children — a son and daughter — were aged three and one when they split, and they stayed living with their mum.

Court records suggest the two households were very different. Mrs Ralton was described as "intense" about parenting matters. She organised a lot of extra-curricular activities for the children, such as sport and birthday parties, and she let them sleep in her bed when they were distressed. Mr Ralton was described as "a physically large man" and "certainly some would find him imposing, and the mother certainly feels that way about him now". He works in a trade and used colourful language at home, such as telling the kids "I'll cut your fingers off" if they put their hands in the biscuit tin.

Mr Ralton told the court he wanted to have a relationship with his children even after he split from his wife, but everything he did — such as the time he got them to play under the sprinkler on a cold day — seemed to be taken the wrong way. He didn't go to court to try to get them to come and live with him. He's in a new relationship and has a new family, so he was happy, as he put it, being a "Disney dad", albeit with a bit more "rough and tumble" than the children were used to at mum's house.

But he couldn't make a contact regimen work: he would call the house and the children — in particular the boy, who was described as a "sensitive child" — wouldn't come to the phone, or else Mr Ralton would go to pick the children up for his weekend visits and their mum would have taken them to a birthday party instead.

A counsellor was assigned to the family to try to help the parents work it out, but overnight time kept breaking down and, despite court orders, there was

no contact between the dad and his children on Father's Day 2015 or Christmas Day 2015. Then in February last year the boy — who is now 10 — ran away from school after telling teachers his father had assaulted him. He called triple 0, and while he was “very polite and very calm” on the phone with police, he simply said he would not go with his dad because he was frightened.

Police investigated but found no evidence that the dad had assaulted the children. He'd roughly rubbed his head, maybe out of frustration.

The court called the family together for yet more mediation but the boy refused to take part, kicking and screaming when he was told he had to have a supervised visit with his dad. Two psychologists stepped in and both concluded that the boy was “not free” of the mother's views about her ex. By the time the final court date came around, the boy was so upset that police had to accompany him into “a safe and contained environment” within the courthouse because he didn't want to go inside.

“It is against this background,” Riethmuller said, “that a decision must be made.”

The court heard that while the couple's daughter, who is eight, had always been pretty happy to see her father, the boy had become “strongly resistant to spending time” with him and, across time, the girl also started wavering. Part of the problem was the way Mrs Ralton reacted when her ex-husband called the house, making it plain to the children that she didn't like him; and also her habit of accepting invitations to school birthday parties on “dad's weekends” and then asking them to choose what they'd rather do.

The judge considered all the evidence, and the magnitude of the decision clearly weighed on him: if he moved the children, they would be “devastated” since their only real relationship was with their mother, yet they were also entitled to know and love their father.

“This is an outstanding example of a child who is in distress,” he said. “A nine-year-old who will not even come into the court building.”

If he moved the children, there would be “considerable grieving in the short term for the loss of the mother” because “the father has not been the primary carer. He does not have a particularly strong relationship with them” but “living with the mother was a very unhealthy relationship for the children to be developing in”.

So he made orders that to the mother seemed inconceivable: the children were, from that date forward, to live with the father, who would be permitted to enrol the children in a new school closer to his own home, effective immediately. A counsellor would be called to court “to tell the children the outcome of this case, and the reasons for it”, and the counsellor would decide “whether or not a farewell can occur”.

There would be no contact with the mother at all for six months except for two hours on her daughter’s birthday and for four hours on Christmas Day, all of it supervised. Eventually her time with the children would increase to two hours a fortnight, supervised at the contact centre, and, provided all went well, in time she would be able to see them every other weekend and during the school holidays, but they will probably never live with her again.

Stubbs says the case “appears harsh but only for people who don’t understand the law. They don’t believe the judge will move the children because they are fixated on the idea of ‘my children, my children’. They say, ‘I had them, I raised them, I take them to school, I feed them. And if you say, ‘Yes, but that is because you don’t allow the other parent to do it,’ they say, ‘That’s because I’m the better parent.’ ”

Page says the amendments have encouraged some parents to mediate and eventually co-operate in ways that the separated fathers of the past century would probably envy.

“I once acted for mum in a case where there had been no contact between the child and the dad for three years, and the mum was quite rigid in her thinking, and the outcome was no surprise to me. The judge changed their residence,” he says. “The children went to live with the dad and it was all very traumatic, but the dad very quickly agreed to alternate weekends and eventually they were doing equal time, so it did work.

“One good thing about the changes, which everyone forgets, was they also brought in compulsory mediation, and the relationship centres (established as part of the shared care regimen) try to educate parents about the impact on a child, so they are child-focused and not focused on themselves before it gets to court.

“But the problem is, you’re still dealing with human nature. People are hurt, and if they cannot mask their conduct it washes over the children like a tsunami, and the courts are right: children can drown in this stuff.”