



Family Court Considers a Mother's Failure to Comply with Parenting Orders

Court considers contravention of parenting orders in relation to the child's medical care and share parental responsibility.

INTRODUCTION

In the case of *Drewett & Welsh* [2015] FamCA 40 (4 February 2016), the issue related to parenting orders. Specifically at issue were the child's medical care and more generally the mother's failure to comply with parenting orders made 8 September 2014.

BACKGROUND

Mr Drewett, the father of the child alleged that Ms Welsh the mother failed to comply with their parenting orders without a reasonable excuse. The Court must consider the alleged breaches under the *Family Law Act 1975* (the "Act") in order to determine the legal rights for each party. The Court will give priority to the child's wellbeing and consider the nature of each contravention. Under the Act, if the Court determines that a parenting order has been contravened, the Court will then determine if the breach was made with or without a reasonable excuse. Contraventions made without a reasonable excuse can be subject to a variety of different Court orders, while contraventions made with a reasonable excuse are excused.

ISSUES

There were three central issues in this case: 1) the child's ongoing medical health; 2) the father's right to see and communicate with his child; and 3) the civility in the communication between the parents for the purposes of the child's wellbeing.

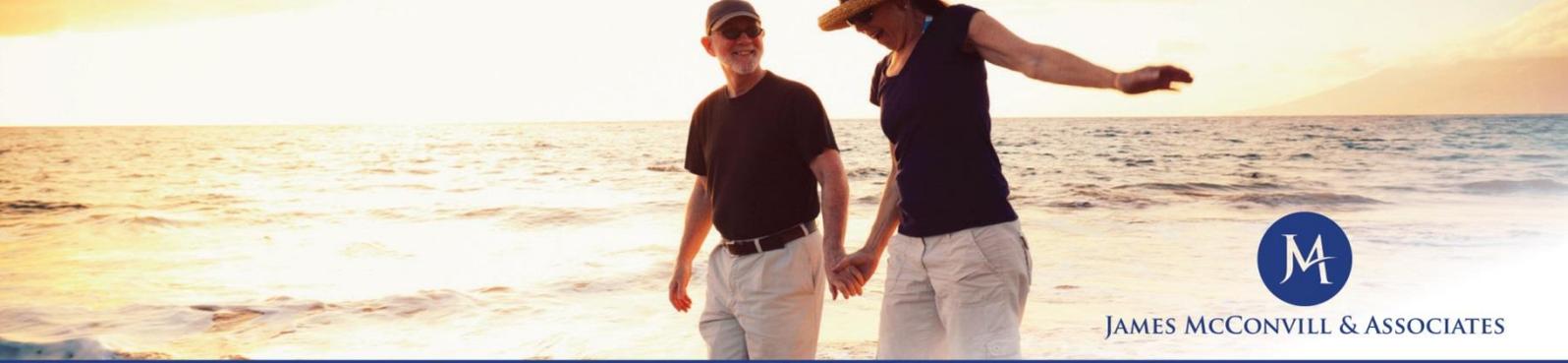
CONSIDERATIONS

The Court identified the following key components in this case:

1. The importance of both parents having a meaningful relationship with the child;
2. The need for each parent to respect and adhere to the parenting orders;
3. The parent's behavior and attitude towards each other; and
4. The inclusion of both parties in the long-term medical care of the child.

1. Parent Child Relationship

The Court had to consider two instances where a party was not complying with parenting orders. In the first instance, the mother was not following an ongoing arrangement for the child to have telephone time with the father. In this instance, the mother was unable to provide evidence to excuse her non-compliance. She provided evidence that 'someone' had told her she should not facilitate telephone contact between the child and the father as ordered. The Court decided that



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without a reasonable excuse provided by reliable evidence, the parenting order could not be contravened at the will of one party.

The Court also considered a matter related to a rescheduling of arranged parent-child custody. Here, the father had cancelled his arranged time with the child. He then reconsidered his position and advised the mother that he wished to spend time with the child as per their usual arrangement. The mother advised that it was too late and that alternative arrangements for the child had been made but provided no details. Under inquiry, the Court found no evidence that the mother had gone to any expense or had made plans that could not now be altered. As a result, the Court found there was no reasonable excuse for non-compliance with the orders once the father had given sufficient notice of his changed position.

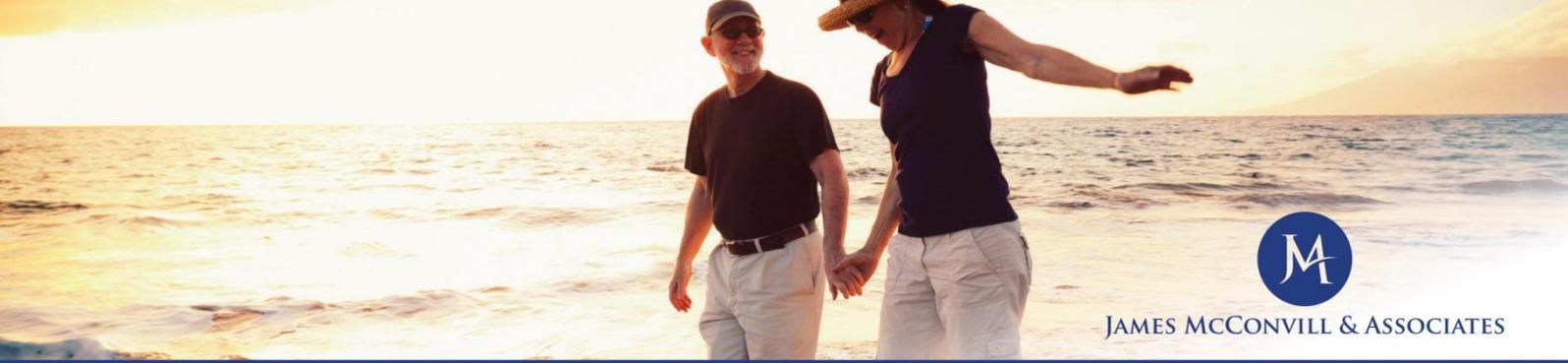
2. Parental Behaviour

In this case the Court focused its consideration on the mother's negative parental attitude towards the father. The mother confirmed that she had programmed her phone to display the father when he calls as 'robbed my life'. Here, the father's concern was that this would be seen by the child and have a damaging effect on their relationship. The Court recognised the mother's behaviour as immature and potentially damaging to the child. There was, however, no proof that the child witnessed the damaging content on the phone. Since the incident the mother has amended the father's contact name to something more respectable. So, the Court ultimately dismissed this claim based on a lack of evidence that the child saw the damaging content, yet the Court remained cautionary on the mother's parental behaviour.

The second consideration relates to an SMS text message. The mother admits to using her message for the purpose of causing the father irritation and upset. The Court found this communication to be outside the scope of the agreed communication, which was to be conducted in a courteous and respectful manner at all times. As a result, the mother was without a reasonable excuse for contravening the parenting orders.

3. Medical Care of the Child

The Court considered the medical needs of the child where parties have an equally shared parental responsibility. In this case, the child's ongoing medical care was for Attention Deficit Hyperactivity Disorder ("ADHD") which required ongoing prescription medication. The Court concluded that in the instance of routine medical care, there was no requirement for either party to notify the other. The Court recognised that the nature of parental responsibility is broad and often undefined. Here, the Court distinguished medical care that is beyond the day-to-day care of the child as requiring those decisions to be made jointly, unless the Court provides otherwise.



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CONCLUSION

Parenting orders exist for the betterment of the child and family structure. The aim of a parenting order is to create harmony and consistency in both the parent and child's life. There may be extenuating circumstances where it is justified to contravene parenting orders, but in general it should be avoided.

The Courts have taken a practical approach to interpreting non-compliance in parenting orders and will assess each alleged breach on its merits. Only parenting orders breached with a legitimate and reasonable excuse will be accepted and excused by the Courts. It is best not to make a habit of contravening orders as this can lead to unnecessary frustration, delay and legal costs. Instead, it is best to practice good communication between all parties and to consider family counselling if necessary.