

IS A COURT ORDER REALLY NECESSARY WITH REGARDS TO CHILDREN?

Often it is obvious that a Court Order is necessary with regards to where children should live, and how much time they should spend with both parents. This is always the case in high conflict matters, or where child safety issues exist.

Where uncertainty usually arises as to the necessity of a Court Order, is where the parents get along well and have amicably separated. Usually we see the following factors in this type of scenario:

- (a) the parents bear no ill-will towards each other and have not involved the children in adult issues and have not inappropriately involved the children during the separation process;
- (b) the parents have reached their own agreement as to their children's living arrangements, and are flexible with regards to such arrangements;
- (c) the parents may have something in writing regarding their agreement (not a formal Court Order), but often they do not;
- (d) the parents have a good level of communication between them and are able to discuss their children as needed and without arguing;
- (e) the parents are able to put their children's best interests/needs ahead of their own.

When looking at the above factors, one might take the view that a formal Court Order is not required. However, our view at Oner Family Law is that you should always formalise your child arrangements by way of Consent Order where agreement has been reached, just in case.

What does "just in case" mean? Over the years, we have seen many informal child agreements fall by the wayside due to the following factors:

- (a) one or both parents re-partner and the new partner is not liked by the children or the other parent for whatever reason;
- (b) a new child is born of a new relationship and suddenly half-sibling relationships also need to be taken into account;
- (c) blended families where step-siblings are involved cause major issues;
- (d) child support issues cause animosity to arise between the parents which damages their amicable relationship; and
- (e) the children become older and can start deliberately "trading off" one parent against the other to get their own way.

The above are just some examples which we have seen as the cause of amicable informal child arrangements falling apart. We then see parties ending up in litigation as they have no formal Court Order in place. Without a Court Order in place, there is no enforceable agreement. This is what causes parents to end up in litigation. Parents are often forced into this position because one parent will change their mind about the informal arrangement and decide, for example, that the children should live primarily with them instead of in an equal shared care arrangement.

To avoid potential difficulties in future, it is advisable that if you reach an amicable agreement with your former partner as to your children's living arrangements, you should document that by way of Court Order (a Consent Order is what is required where there is agreement). This safeguards both

parents' positions moving forward, and most importantly, provides stability and certainty for the children.

For all your family law needs, call us at Oner Family Law on (07) 3463 0688 for specialist family law advice.