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LawTalk Blog



Does the mother get "care of children" preference in Family Law?

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I'm a Father and I've heard the mother gets preference when working out the care arrangements for children after separation. Is this true?

Scenario:

Scott and Courtney have been married for 10 years. They have two twin girls, Billie and Bobbie aged 8.

Scott and Courtney's marriage has overall been a happy one, until recently when Scott came under enormous pressure from work. Courtney has been angry at Scott for spending so much time at work, however he is due for a promotion and he feels gaining a promotion is imperative to support his family, pay for the mortgage, cover the girls' private school fees and support Courtney who works in a lesser paying job.

Scott feels trapped and like he just can't win. Scott's mounting stress has resulted in him considering a separation from Courtney. He is however too scared to suggest a separation as he believes that he will have no chance of being able to have the care of the girls as the legal system favours mothers over fathers. Is Scott right?

Answer:

"The primary consideration is what's in the best interests of the children."

The *Family Law Act 1975* (the "Act") was not designed to promote the role of the mother over the role of the father. The primary consideration under this Act when looking at the most appropriate care arrangements for the children is "what is in the best

[interests of the children](#)". The "best interests of the children" principle does not take into account presumptions such as the mother automatically provides a better role model for the children, or that the mother is a better parent.

Under the Act, the Court looks at the follow factors when considering what care arrangement is in the best interests of the children:

Primary Considerations

- the benefit to the child of having a meaningful relationship with both parents; and
- the need to protect the child from physical or psychological abuse, neglect or harm.

Additional Considerations include:

- the child's views;
- the practicality of the child having contact with a parent (here a parent's work commitments may come into consideration, as well as the location of each parents house etc.);
- the extent of the child's relationship other people important to them (siblings, grandparents, extended family);
- the effect of change on the child;
- the child's individual personal characteristics (maturity, age, psychological wellbeing etc.); and
- whether there is any history of family violence.

It is understandable that Scott feels concerned about any future care arrangements for the children. Thirty years ago, the Family Court was known for awarding fathers an "each second weekend" care arrangement, where the father only got to spend time with their children each second weekend. In contemporary times however, the Court have strayed far away from any such trend.

The best care arrangements for the children are based strictly on the considerations specified under the Act and are assessed on a case-by-case basis. Today, it is not uncommon for fathers to have the primary care of the children.

For any fathers who feel unsure or worried by the potential future care arrangements for their children, we urge you to follow "[Dad's in Distress](#)". This website provides a male support network for fathers who are approaching separation, in the midst of separation or have experienced separation and are concerned about the care arrangements for their children.

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