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LawTalk Blog



Separating siblings after a relationship breakdown

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Sometimes we find that a parent who is going through a separation will propose that the children of the relationship should be separated into different homes. For example, they propose that one child should live with the mother and the other child should live with the father. This in effect splits the siblings up and means that they will not live in the same home together.

"There is an overwhelming amount of Australian case law in support of keeping siblings together in care arrangements."

There are many reasons a parent might think this proposal is acceptable such as ensuring that each parent has a child living with them at all times, ensuring the siblings have space as they don't get along or believing that one child is closer to one parent than the other.

Generally speaking, the Family Court expresses a reluctance to separate siblings. This is due to a variety of reasons, such as:

- The sibling relationship is noted as one of significant importance and benefit in a child's life.
- Separating siblings may result in their bond diminishing.
- The fracture of the family unit should not extend to the children.

There is an overwhelming amount of Australian case law in support of keeping siblings together in care arrangements. Reasons such as "the siblings argue" do not generally bode well with the court as established in the case of H and H (1995) FLC 92-599. There are however also cases where it is acknowledged by Family Court judges that there is no option other than to separate the siblings due to numerous reasons.

The Court will assess each case on an individual basis regarding whether it is appropriate to separate the siblings of a relationship. Given such a matter will fall under the “childrens” category in the Family Court, the Court will also take into account the relevant legislative provisions in relation to children such as the “best interests” principle.

Weight may also be given to the children’s individual wishes. Under the “best interests” principle, a variety of evidence would have to be obtained in order for the court to decide whether or not it was in the siblings’ “best interests” to be separated. Such evidence may include affidavit evidence, court ordered psychological reports, an assessment of the childrens’ wishes and an evaluation of the practicality of any such proposal.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.