



Motherly love can put you in gaol

In a recent decision before the Full Court of the Family Court, the court was required to consider the harshness of a penalty with regard to a mother breaching family court orders.

The facts were a child had lived with his mother in New South Wales since his parents separated in 2001.

Parenting orders were made in 2006 for the father to spend time with the child during weekends and during school holiday time.

In an ABC interview the mother's solicitor said the boy would run away and hide when it was time to see his father and there was concerns about the father's alleged alcohol consumption.

Instead of bringing the father back to court for the court to consider the alleged concerns of the mother, the mother secretly moved to Perth, Western Australia with her son and she changed the child's name. The court ordered a recovery order that the mother should return the child to New South Wales.

The mother was brought back before the court.

The mother admitted she had no reasonable excuse for breaching the court orders on six occasions and was sentenced to six concurrent terms of six months in prison. The child was placed to live with the father. The mother was released sixteen days from the date of the original sentence. The Appeal Judge declaring that the sentence was manifestly excessive.

The issue of using criminal law concepts of punishment and deterrents in family law matters has divided judges and lawyers. It has been suggested there should be a separate set of guidelines for these types of cases. Also there are those that would argue that there are cases where you must punish or a court becomes a paper tiger and cannot enforce its own rules.

This article only reflects the dilemma that the courts in the family law jurisdiction face on a daily basis. It also emphasises the importance of competent legal representation.

If you have any queries in relation to a Family Law matter, at Everingham Solomons we have the experience and expertise to assist you, because *Helping You is Our Business*.



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