

FLPA TWILIGHT SEMINAR

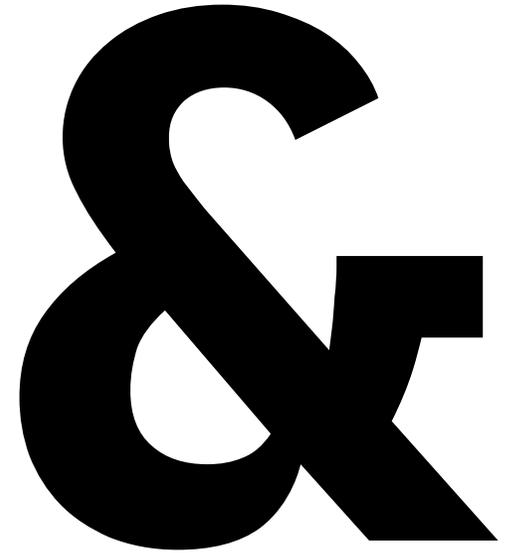
Parental Alienation

24 September 2020

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**LANDER
& ROGERS**



WHAT WE WILL TALK ABOUT

1. *Legal Framework for determining matters where there are allegations of Parental Alienation*
2. *Case Studies*

PARENTAL ALIENATION



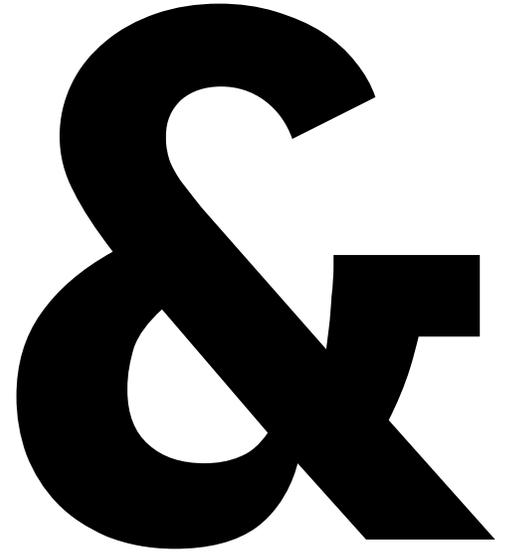
Is there a special process for determining cases like this?

In respect of parenting proceedings under Part VII of the *Family Law Act 1975* ('the Act'), s.60B sets out the objects of Part VII, and the principles which underlie those objects.

Section 60CA of the Act - when a Court is determining whether to make a particular parenting order in respect of a child, the child's 'best interests' is the paramount consideration.

When determining what is in the best interests of a child, a Court must consider the considerations set out in s.60CC of the Act, informed by s.60B of the Act.

Section 61DA provides a presumption, that if a Court makes a parenting order, it is in a child's best interests for the child's parents to have equal shared parental responsibility for the child.



PARENTAL ALIENATION

s60CC considerations – how do we consider parental alienation in parenting matters?

When determining what is in the child's best interests, the Court must consider the matters detailed in 60CC(2) (primary considerations) and s 60CC(3) (additional considerations).

The primary considerations are:

- children benefit from having a meaningful relationship with both their parents (s 60CC(2)(a))
- the need to protect children from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence (s 60CC(2)(b)). This consideration is given greater weight than s60CC(2)(a).

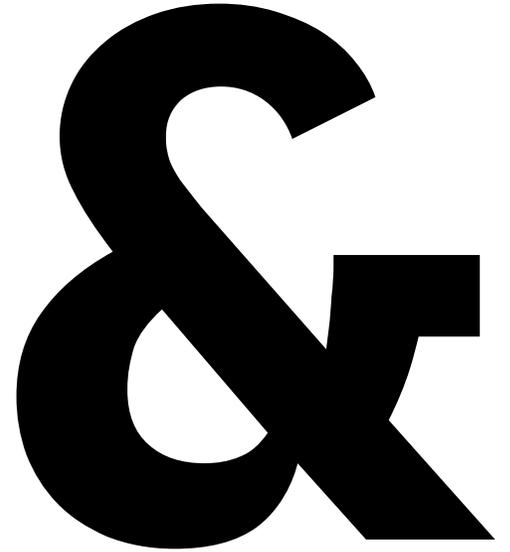
PARENTAL ALIENATION



s60CC(3) additional considerations

Including:

- any views expressed by the child and the weight the Court thinks it should give to those wishes
- the nature of the relationship the child has with each of his/her parents (including grandparents and other relatives)
- likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either of their parents, or any other child or person (including grandparent or other relative) with whom the child has been living
- maturity, gender, lifestyle and background of the child and parents (including being Aboriginal or Torres Strait Islander)
- parental attitude toward child and parental responsibilities



PARENTAL ALIENATION

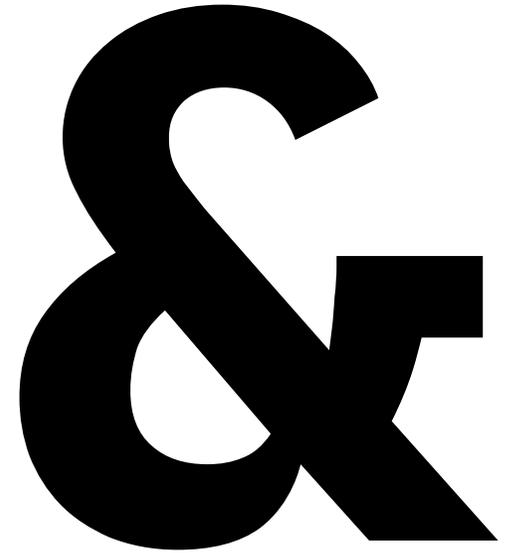


What is a 'meaningful' relationship?

s.60B(1)(a) provides that the best interests of children are met by ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child.

The preferred approach to this consideration is to consider the prospective benefit to the child of having a meaningful relationship with his or her parents McCall & Clark (2009) FLC 93-405.

The term 'meaningful' is not defined in the Act but has been the subject of a number of judgments.



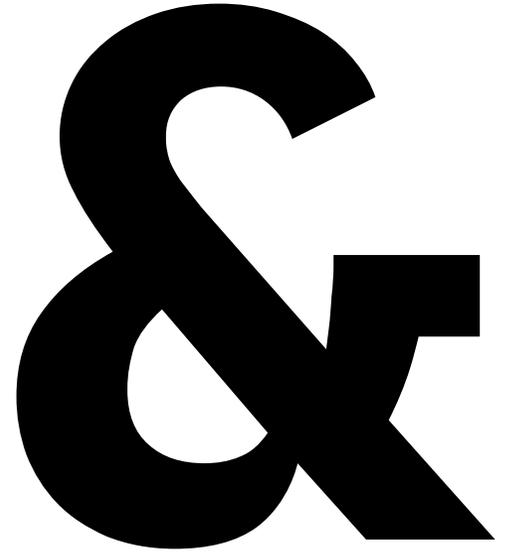
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Mazorski v Albright (2007) 37 Fam LR 518

Brown J considered the dictionary definitions of 'meaningful' and then went on to say:

What these definitions convey is that "meaningful", when used in the context of "meaningful relationship", is synonymous with "significant" which, in turn, is generally used as a synonym for "important" or "of consequence". I proceed on the basis that when considering the primary considerations and the application of the object and principles, a meaningful relationship or a meaningful involvement is one which is important, significant and valuable to the child. It is a qualitative adjective, not a strictly quantitative one. Quantitative concepts may be addressed as part of the process of considering the consequences of the application of the presumption of equally shared parental responsibility and the requirement for time with Children to be, where possible and in their best interests, substantial and significant (at 526-527).



PARENTAL ALIENATION

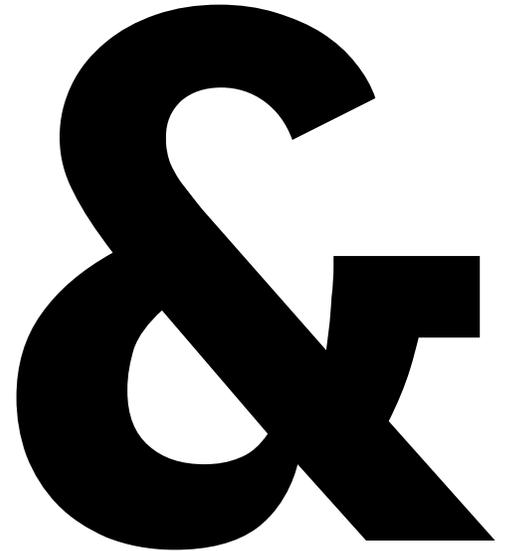


Children's Wishes

H v W (1995) FLC 92-598

Fogarty and Kay JJ noted:

The wishes of Children are important and proper and realistic weight should be attached to any wishes expressed by Children. As a matter of practical day-to day experience the problem in this area usually relates to the ascertainment of the wishes of the child and their interpretation and assessment in the face of conflicting evidence. Against that background the Court will attach varying degrees of weight to a child's stated wishes depending upon, among other factors, the strength and duration of the wishes, their basis, and the maturity of the child, including the degree of appreciation by the child of the factors involved in the issue before the Court and their longer term implications. Ultimately the overall welfare of the child is the determinant.



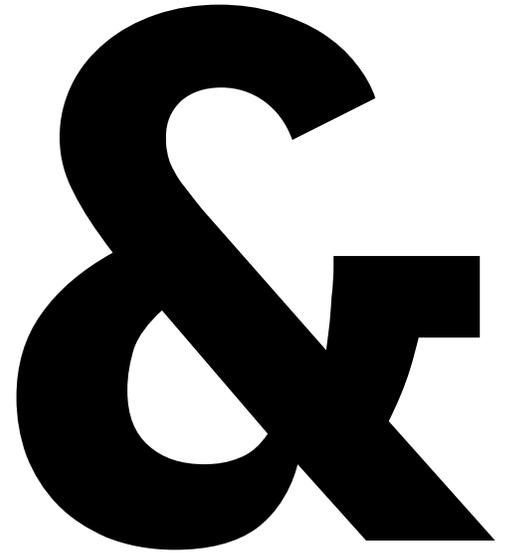
PARENTAL ALIENATION



Children's Wishes

R and R (Children's Wishes) 2000 FLC 93-000 Full Court cited with approval the decision of H v W noting that:

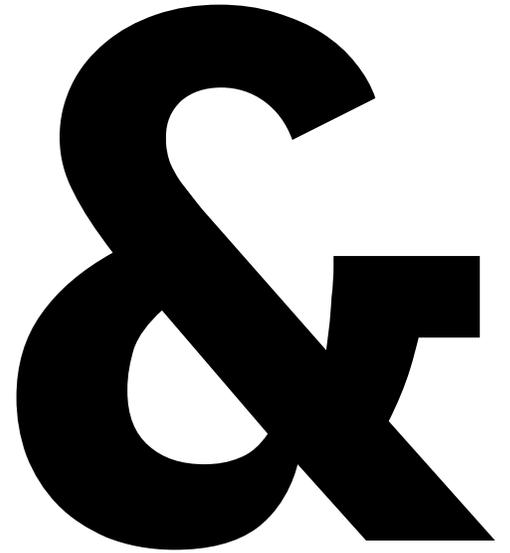
There are many factors that may go to the weight that should be given to the wishes of Children and these will vary from case to case and it is undesirable and indeed impossible to catalogue or confine them in the manner suggested. Ultimately it is a process of intuitive synthesis on the part of any trial judge weighing up all the evidence relevant to the wishes of the Children and applying it in a common sense way as one of the factors in the overall assessment of the Children's best interests. (at para 54)



MCGREGOR & MCGREGOR (2012) FLC 93-507

There must be expert evidence for the Court to make a finding of Parental Alienation

- Three children of the marriage who had been alienated by the Father against the Mother
- The Father had encouraged the children to think badly of their Mother. He had demeaned her in front of them
- The Court ordered that the children live with the Mother on the basis the Father had alienated them from her
- The then Federal Magistrate's findings were based on articles and professional writings
- Expert evidence did not support a finding of alienation 'sense of alienation'
- Father successfully appealed the Orders



SEABROOK & SEABROOK [2018] FCCA 2311

- 2 children – 15 and 13 years old
- Father had applied to the Court for orders that the children (who lived with the Mother) live with him and there be a three month moratorium of time with the Mother
- Time with the Mother would then be each alternate weekend
- The children had not spent time with the Father since September 2017
- The Mother opposed the Father's application
- Both parties sought an order for sole parental responsibility
- Father was a credible witness
- Mother was not a witness of truth. In closing submissions the Mother's Counsel conceded the Mother was not a good witness and that the usual adverse inference would follow
- The Mother was overtly critical of the Father and in interviews gave the impression of being a law unto herself
- She was diagnosed with a Personality Disorder with Cluster B (Borderline) Narcissistic features
- Mother is over-involved with the children's lives, enmeshed, and controlled every aspect of their lives with holidays spent almost exclusively in the company of the Mother attending hobbies together

SEABROOK & SEABROOK [2018] FCCA 2311

- Father had consumed too much alcohol on occasion and may have been inclined to speed when driving
- Concerns about the children's mental health given the environment at home
- Time with the Mother would then be each alternate weekend.
- Experts could not agree in whether it was appropriate to change where the children lived; one considered a hard intervention and change of residence was the only way, the other considered it was too concerning given previous risks of self-harm
- Imposing children who have been highly indulged and will have serious issues with interpersonal relationships with others in the future
- There had been counselling with a clinical psychologist
- Children told the psychologist they would not see their Father
- The therapeutic process broke down and was not a viable option for some considerable period of time
- The children described the Father as abusive and violent towards them, but showed no sense of fear of him. Rather, they showed contempt for him.
- Abusive email from the Mother once she was made aware the Children appeared to enjoy their time with the Father on one occasion
- Children expressed wishes were not to see the Father

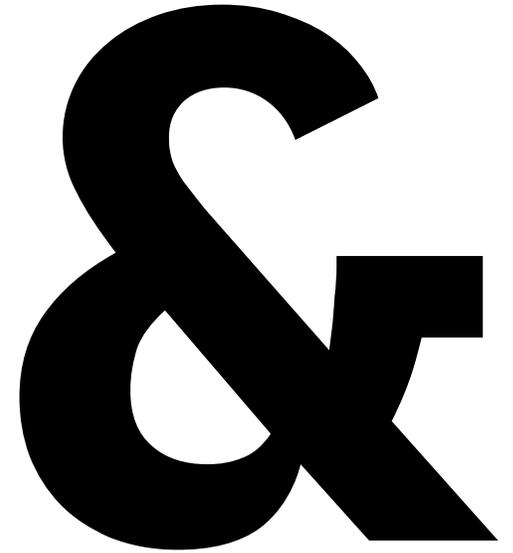
SEABROOK & SEABROOK [2018] FCCA 2311

Court held:

- The Children need to be listened to but the influence the Mother has had on their wishes had to be recognised
- The Children were enmeshed with the Mother in an unhealthy relationship
- Not persuaded the Father had the skills to make a change of residence work
- The Children are over empowered and use threats of violence and self-harm to manipulate others
- Accepted the expert evidence that the Children were too far along in a developmental stage for a change of residence to be viable or appropriate
- Equal shared parental responsibility
- The Children live with the Mother
- The Children spend time and communicate with the Father in accordance with their wishes
- The Mother consented to an Order that she engage in counselling

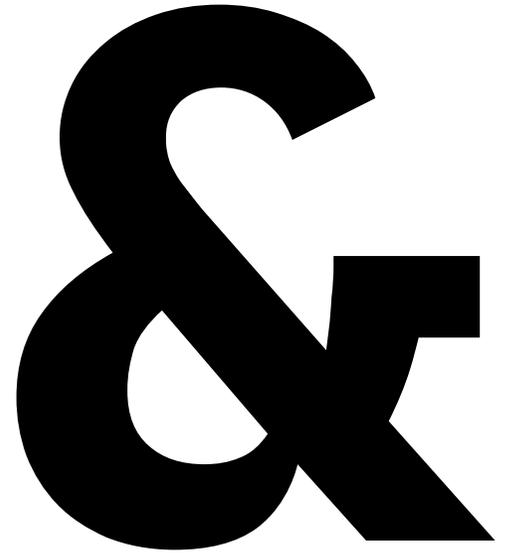
MALAVE & RATCLIFFE (NO 3) [2020] FCCA 328

- Another complicated matter involving allegations of parental alienation, enmeshment, and realistic estrangement
- Application in relation to two children initially, 16 and 13 years old
- Application filed by the Mother seeking a change of residence. Ultimately, no orders sought in relation to the 16 year old
- The child was the youngest of five children.
- All of the children lived with the Father after separation and had no relationship with their Mother
- The family had a long history of litigation and there were two previous written decisions



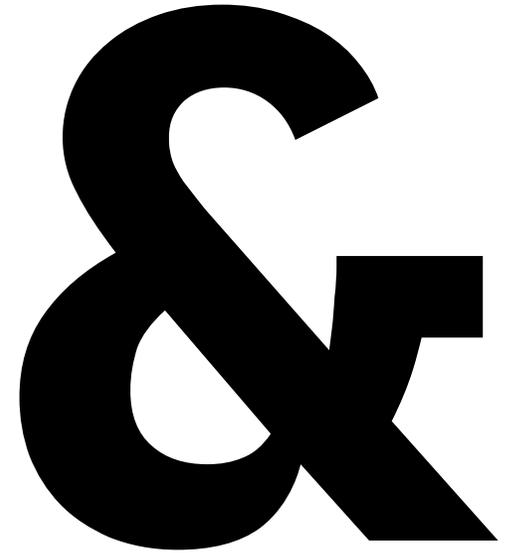
MALAVE & RATCLIFFE (NO 3) [2020] FCCA 328

- Previous orders for therapeutic counselling and for the child to spend regular time with the Mother on alternate weekends
- Parents agreed not to attend counselling but agreed on a parenting plan which quickly collapsed
- Concerns in the litigation that the Mother was not accepting responsibility for her actions which would require her to acknowledge that she had been violent and abusive to the Children
- Mother had provided an 'apology' which was not accepted
- The child had suffered from anxiety prior to separation



MALAVE & RATCLIFFE (NO 3) [2020] FCCA 328

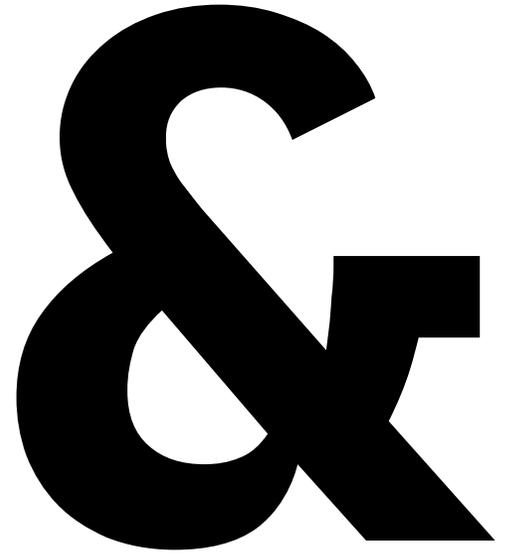
- Deficiencies in the Mother's parenting
- Allegations of violent and demeaning behaviours towards the children
- Mother did not accept her behaviour may have contributed to the estrangement from the children
- Father had taken the child to a psychologist without engagement from the Mother
- An older child had been a supervisor of the child's time with the Mother but that had not gone well
- The Father was not without his faults – evidence of denigration of the Mother
- No attempts to restore the Mother's relationship with any of the children had worked



MALAVE & RATCLIFFE (NO 3) [2020] FCCA 328

Court held

- Mother lacks insight into her own behaviour
- Change of residence not considered to be in the child's best interests
- Mother not found to have the parenting skills or insight to enable a change of residence to restore her relationship with the child
- No orders for the child to spend time with the Mother
- Child to spend time with the Mother in accordance with her expressed wishes



BUNT & CHARRING (NO 3) [2019] FCCA 3452

- Another matter with many years of litigation
- The child, around 8 ½ years of age, had lived primarily with the Mother
- Time with the Father had been problematic due to the unpredictable conduct of the Mother
- Mother had relocated twice since separation and each move put the child geographically further away from the Father
- There had been contravention proceedings and the Mother was found to have contravened orders without reasonable excuse
- Father sought a change of residence. Felt he had no other option
- Mother had assured the Court she would change her ways
- One family report writer early in the matter described the Mother as 'a bitter, hostile, dysfunctional woman [who] has no understanding of the importance of [the Father] having a role in the child's life
- Mother's perception of the Father was as a violent paedophile
- Mother had an entrenched view the Father had sexually abused the child
- Mother also denigrating the Father's new Wife and encouraging the child to do so
- Inevitable that the child would be caught up in conflict

BUNT & CHARRING (NO 3) [2019] FCCA 3452

- There was evidence of poor to no communication between the parties
- Mother has one view about her own conduct and another about the conduct of the Father.
- She saw the Father's conduct (such as sms messages) as constituting domestic violence; her own messages were 'communication'
- Mother had an inability to prioritise the child's relationship with the Father
- Effect of the Mother's ongoing contraventions was that the child did not spend regular time with the Father in accordance with existing orders
- Matter listed for a 'show cause' hearing where there was to be a change of residence for the child if the Mother did not comply with an Order to relocate back to Canberra by a certain date
- The Mother failed to comply
- Consideration of principles of relocation matters *AMS v AIF (1999) 199 CLR 160*
- Given the child's age, the Court needs to act cautiously and not place too much weight on the child's wishes; these have differed over time
- Concerns about the Mother's capacity to provide for the child's emotional and psychological needs

BUNT & CHARRING (NO 3) [2019] FCCA 3452

Court held:

- No confidence the Mother can promote the child's relationship with the Father
- The Mother will continue to take every opportunity to minimise the role and importance of the Father in the child's life
- The Father appears able to encourage and make proper arrangements for the child to spend time with his Mother
- If the Mother hinders the child transitioning to the Father's care, her time may be supervised
- Child was to spend the first half of the upcoming Christmas holidays with the Mother, then would live with the Father
- The Father have sole parental responsibility with an obligation to keep the Mother informed of decisions
- The child was to spend time with the Mother one weekend per month and half of school holidays

KEY CONTACTS



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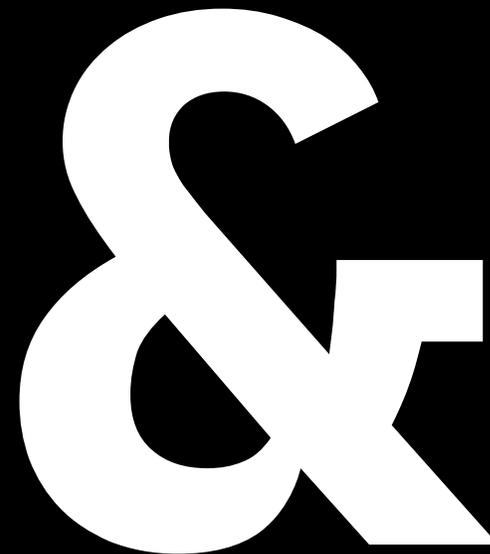
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