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Welcome

Welcome to our March 2007 issue of the Hartley Healy Newsletter.

The purpose of this Newsletter is to keep you informed of important developments in Family Law and De Facto Law which may be of interest to you. We also aim to keep you up to date regarding our firm and the services we provide to our clients.

In this issue we cover:

- An important decision relating to shared care handed down by the Full Court of the Family Court on 15 December 2006;
- Details about our expansion and opening of a Gold Coast office of Hartley Healy;
- Why it's important to resolve property settlements sooner rather than later.

Recent Developments at Hartley Healy



Gold Coast Office

We are pleased to announce that we have expanded our services and from 1 April 2007 we will be operating a Gold Coast office of Hartley Healy.

Our Associate, Beata Leszczuk will be employed on a full-time basis at the Southport office. Brett Hartley and Joe Healy will be working at both the Brisbane and Southport offices.

Our office is located at Suite 1405, Southport Central, 56 Scarborough Street, Southport QLD 4215. Our decision to expand our services to the Gold Coast comes as a result of our desire to service more effectively our clients in the South East region of Queensland.

Our Gold Coast office will also make it more convenient for clients on the Gold Coast and Northern New South Wales region to attend and meet with us more regularly. We shall circulate shortly our specific contact details (including phone numbers) once our Gold Coast office is operational.

Publications and Seminars

Brett Hartley recently presented a Legal Wise Seminar paper on the Topic of "A Review of Recent Property Law Cases in the Family Court" on 24 November 2006. A copy of Brett's paper can be found at the following link on our Website - www.hhfamilylaw.com.au/docs/legalwise.pdf.

Our Partners, Associates and Solicitors regularly present various Seminars, not only to other groups of lawyers, but also to various Financial Planners, Accountants and other professionals. If there are any presentations or topics that you feel would be of benefit to people in your organisation, then please do not hesitate to contact us to discuss arranging an appropriate Seminar.

Sarah Minnery presented a Workshop Seminar for LexisNexis on the Topic of "Running Complex Property Disputes in the Family Court".

Landmark Decision on Shared Care – *Goode -v- Goode*

One of the most important decisions over the last twenty years in the Family Court was delivered on 15 December 2006. The Full Court of the Family Court delivered a unanimous judgement in the case of *Goode -v- Goode* (2006) FamCA 1346 which in our opinion will have a significant impact upon the manner in which the Family Court determines future Parenting Orders.

Brett Hartley has written a detailed article and analysis of this case and if you wish to peruse a very in depth analysis of this case then the article can be found at our Website on the following link www.hhfamilylaw.com.au/docs/goode.pdf.

The case, in particular, concerned the law to be applied for interim/interlocutory proceedings in the Family Court for the care of children. In other words, often Applications for children are made to Court on an urgent basis and the Court has to make a decision upon an interim basis until such time as the matter can reach Trial (which can be some eighteen months – two years later in the Family Court).

Since 1980, the Court has developed a long line of authorities that essentially stated that in these interim Applications for children, the Court should keep in place the current status quo (or environment) that is in place for the children unless it can be demonstrated that there is some real danger to the welfare of the children should that arrangement not be changed.

In other words, if the parents had separated for a period of six months and the child had been seeing the Father every second weekend then any urgent Application to Court to change that current arrangement would more than likely fail because the Court would place heavy reliance upon the current arrangement that was in place and would not change it unless it could be shown that the child's welfare was endangered if it was not changed.

In our October Newsletter we set out in detail the amendments that had been made to the Act. We expressed the view at that stage that we expected that shared care Orders would be made more regularly than they were prior to the amendments. The decision in *Goode's* case confirms that view.

It is suggested that in the following types of situations, the Court will more than likely order shared care:

- the parents live in reasonable proximity to each other;
- both parents can organise their working routine/environment to be able to adequately care, and supervise the children on a week about basis;
- the children are not of a particularly young age (ie baby/toddlers) nor have any significant and mature wishes against a shared care

arrangement. Even in this context, in relation to wishes of the children, the wishes would have to be significant to demonstrate the risk of significant stress and/or emotional stress and/or pressure to be placed upon children if the wishes against the arrangement are not granted. The mere preference by a child not to live in a shared care arrangement in my opinion would not be considered sufficient. The wish must be mature, and genuine risk and a corresponding anxiety or risk of welfare to the child attached to it for the Court to elevate its importance as a significant additional consideration under section 60CC;

- where the parents are able to communicate effectively about major decisions effecting the long term care and welfare of the children. Often, in the past it has been argued that conflict between the parties (difficulties in communicating etc) is an argument against shared care. It is suggested that that no longer will be such a strong argument. The objects and principles of the Act together with the primary considerations and forceful statements by the Full Court in *Goode's* case make this clear;
- in any event, it is suggested, that a shared care arrangement on a week about (with one changeover at school) is an arrangement that leads to a lessening of conflict. The consideration here is whether the parents can communicate effectively and make decisions – even in a situation where there is high conflict the Court now has expressed powers pursuant to section 13C to order parents to attend family counselling or family dispute resolution. It is suggested that the Court is going to be more likely to make those Orders to help parents resolve conflict rather than to use conflict as a significant “impracticable” purpose to not order shared care.

In situations where there is family violence and/or abuse of a child then the Court would be reluctant to order shared care. Therefore, the presence of family violence will become more relevant to parenting disputes in the Family Court. However, once again, it is submitted that the context and degree of such family violence will be particularly relevant in the Court's determination as to whether the presumption of equal shared parental responsibility can apply and further as to whether the practicability of a shared care arrangement can work.

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It is suggested that factors such as the close bonding of a child to one parent or the anxiety of that parent towards the child separating from it would no longer be considered as significant factors when considering the overall interests and welfare of the child. These factors are now only additional factors and all these factors must be read in light of the primary considerations under section 60CC together with the objects and principles and the strong statements made by the Full Court.

It is also suggested that it will now be more difficult for parents to relocate children interstate or overseas. The Court is more likely to restrain the removal of children from particular areas so that a shared care arrangement can be implemented each week effectively.

In all respects, it is suggested that the Court will positively tend towards making Orders for shared care on both an interlocutory and final basis.

It is important to remember, however, that each case is different and has peculiar circumstances and facts attached to it.

It is clear in our opinion at this stage, that the Court will more readily make Orders for shared care on both an interim and final basis for children.

However, we stress that it is important for clients to seek specific legal advice about their own case.

There is no presumption of the children spending equal time with each parent nor is it mandated that the children should do so. There will be some circumstances where shared care Orders are not made. Advice should be sought by clients at an early stage so that they are fully aware of their rights and possible outcomes in relation to children having regard to this significant development and change in the law.

Importance of Resolving Property Settlements Sooner rather than Later

For those of you who have attended any of our seminars or read our newsletters over the years, you will know that this is a recurring message that we try to convey to our colleagues.

It is such a simple message, but an extremely important one.

That is, once the emotional side of the relationship has broken down irretrievably it is almost always in the client's best interest to resolve their property settlement sooner rather than later.

One of the obvious reasons for this is it allows people to get on with their lives and not have to be tied financially to the former spouse.

However, and most importantly, the critical reason is that the Family Court always looks at and values assets at the time that the matter comes before Court and not at the time of separation. Therefore, if parties separate in 1999 but don't resolve their matter until in 2007 then the Court will look at all of the assets today and value those assets in determining a fair and equitable property split. This does not mean that each party obtains 50% of the assets acquired post separation but the issues become more complex in that the Court has to look at the current

assets and their value and then look at contributions to those assets.

Often, it is forgotten, that contributions to children of the family post separation are regarded as contributions relevant to the division of property under the Family Law Act. Therefore, just because one parent is working and has accumulated assets post separation doesn't mean that the other parent (who may be caring for three children) does not have a substantial entitlement to those assets accumulated post separation.

There have been a number of recent cases decided by the Family Court that have highlighted the difficulties that clients encounter when they do not resolve their financial settlement shortly after separation. In brief, some of these cases involved the following facts:

- Parties separated in 1999. Case came before the Family Court in 2005. At separation the asset pool was worth about \$445,000.00. By the time of the Trial some six years later the pool was worth approximately \$1.6M. Arguments as to contributions post separation. The Trial Judge got it wrong and the Appeal Court overturned the decision and made a different decision;
- Parties separated in 1996 but did not come before the Court until 2005. Parties had drawn up some documents in January 1997, but never had them formalised or filed in Court. Dispute took place by the time of the Trial, the asset pool had grown substantially to \$3.1M dispute as to contributions. Trial Judge got the decision wrong and once again the Appeal Court overturned the decision and made a new decision;
- Parties separated in 1995. At separation pool worth about \$360,000.00. By the time of the Trial, net assets worth about \$800,000.00. In the intervening period there were gifts and inheritance received by one party. Disputes about contributions and entitlements. The Trial Judge got the decision wrong, and once again the Appeal Court intervened and made new Orders.

The above cases highlight the dangers in not resolving matters sooner rather later. The obvious side effect of the above cases is the enormous expense in legal fees incurred by the parties. They do not get to get on with their lives for periods of six-seven years after separation and have to spend substantial monies on legal fees to go through a Trial and then to go through an Appeal process and perhaps another Trial.

It often becomes difficult to settle such matters because of the substantial change in the nature and size of assets post separation and the competing disputes as to contributions made by parties over that time. These cases are difficult, and as illustrated, even Trial Judges often get such decisions wrong.

A lesson to be learnt by all concerned is to advise clients that it is imperative to resolve financial property issues sooner rather than later, after separation.

Our Vision

To become Queensland's most desirable Family Law Service provider for our clients, staff and the community to be associated with.

Our Mission

Our Mission is to be proactive in resolving our clients' matters quickly and cost effectively to minimise their emotional and financial stress so that they can move on with their lives.

To achieve our Mission, we:

- Recruit and retain the best lawyers;
- Work as a united team;
- Provide "Big Picture" commercial and tactical advice;
- Educate our clients that there are no "winners" in relationship breakdowns if a matter escalates into a litigious, time-consuming and costly dispute.

Litigation promotes and feeds conflict between parties and their families and profits aggressive and litigious lawyers who do not care about their client's predicament. We are not such lawyers. Litigation must always be a last resort.

Our Values

At Hartley Healy, our firm's culture supports our seven core values of:

- **Absolute client focus and commitment** – we are a client focused firm, we strive for excellence in our service and seek to constantly exceed our client expectations.
- **Always proactive, never reactive** – our proactive approach is to ensure the best possible outcome for our clients in a timely and cost effective manner.
- **Ethics without compromise** – although we have a duty to comply with our client's instructions and to use our utmost skill and diligence in representing our clients, this duty is subject to our overriding duty to the Court / administration of Justice. Our role is to secure the best result possible for our client on the basis of the facts and the applicable law. By understanding our ethical obligations, it makes us better tacticians because an ethical lawyer will always approach a matter on a cost effective basis for clients where as unethical lawyers increase their client's costs either because their focus is on their monetary rewards as opposed to their client or they act in a manner which hinders settlement.
- **Teamwork** – We enjoy strong cohesion in a supportive working and social environment. We celebrate our successes, individual achievements and promotions. Furthermore, our team encompasses not only employees within the firm but our strategic partners. We seek to utilize and form relationships with the best professional advisers in the community who also assist in serving our clients (Valuers, Accountants, other Lawyers, Barristers, Financial Planners etc).
- **Recruit and retain the best** – we aim to attract the best talented prospective employees to our firm and to retain and develop our talented staff. We actively ensure our staff maintains superior technical skills and knowledge in Family Law. Our firm policy is to only employ Accredited Family Law Specialists or Solicitors who are prepared to undertake study toward achieving their Specialist Accreditation.
- **Continuously improve and grow** – we have a commitment to grow the business and to assist in the growth and development of our individual staff.
- **Give back to the community** – Helen Keller said "true happiness is not obtained through self gratification but through fidelity to a worthy purpose". As a business we create jobs and provide services but in addition we believe it is important that we give back to the community. We have a commitment to raise funds for certain charities and we encourage our staff to be involved in volunteer activities that support the community.

Our Staff

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PRIVACY
Hartley Healy Family Law Specialists uses your personal information to represent and advise you. We may use it to tell you about changes in the law and our practice. It is only used for other purposes if we are legally required to do so or with your consent.

If your name or contact details have changed or if the information we hold is inaccurate please contact us. You may have your name removed from our communication list or update your details by contacting us on 07 3220 1299 or email dianne.scott@hhfamilylaw.com.au