

20/76

FAMILY COURT OF AUSTRALIA at CANBERRA

In the Marriage of BAINROT

Watson J — 5 February 1976

FAMILY LAW – CUSTODY APPLICATION BY FATHER FOR CUSTODY OF TWO CHILDREN OF THE MARRIAGE – CHILDREN LIVING WITH PATERNAL UNCLE AND AUNT – FACTORS TO TAKE INTO ACCOUNT WHEN CONSIDERING APPLICATION: FAMILY LAW ACT 1975, SS62(10, 64(5).

HELD: Application granted with conditions. The Family Court is more concerned with a humane approach to the failure of marriage, and particularly to the future of the children. It is difficult when relatives are living close to a situation not to allow their judgementalism and their natural feelings as siblings to perhaps overwhelm their compassion, but the warning is sounded that they will only be acting adversely to the two children if they create scenes or difficulties between the mother and the two young children. If they really love these two young children, they will accept the basic fact of life that the children should grow up with the utmost respect they can achieve for both parents, that is both their mother and their father.

WATSON J: This is an application by Alexander Bainrot, the father of two children, seeking custody of those children, Christopher Alexander Bainrot and Tandy Lee Bainrot. Christopher is aged 5 and Tandy is aged 3½. On the evidence before me at this stage, it appears that the children are living in the home of their paternal uncle and aunt and that their father is also living in that home. The mother and father separated in September 1975 so over 6 months must elapse before they can, before either of them can take action to dissolve the marriage, if as it appears at this stage, the marriage has irretrievably broken down. The mother, Mary Dorothy Bainrot is in full-time employment. She is associating with another man at Queanbeyan, and she does not, at this stage, seek to have the children physically removed from their present environment, although she does ask that access be defined. Not unnaturally the father's brother and perhaps his sister-in-law tend to take sides against the mother.

It is not unusual for relatives to see all virtue on one side and all vice on the other. I would remind them however, that we are not concerned here with the rights and wrongs of the breakdown of this marriage. This court is more concerned with a humane approach to the failure of marriage, and particularly to the future of the children. I know it is difficult when relatives are living close to a situation not to allow their judgementalism and their natural feelings as siblings to perhaps overwhelm their compassion, but I do sound the warning now that they will only be acting adversely to the two children, these two young children, if they create scenes or difficulties between the mother and the two young children. If they really love these two young children, they will accept the basic fact of life that the children should grow up with the utmost respect they can achieve for both parents, that is both their mother and their father. Because there are many difficulties in this case, I propose to combine the resources available to the court under s62(1) and under s64(5), I therefore make the following orders:

- that until further order the factual care and control of these two children remain with the father at 54 Boddington Circuit, Kambah;
- that the mother is to have access to the children each Saturday from 9.00a.m. to 8.00p.m. She is to call for the children at their residence and return them to that residence. It is implied in this order that the father both personally and by persuasion of his relatives will ensure that the children are dressed and ready to go with their mother and that nothing has been done physically or emotionally to spoil these periods of access.

I further order that the parties, that is the husband and wife, attend a conference with a welfare officer attached to this court for the purpose of discussing their differences concerning the future welfare of these children. It is the intention of this order that these conferences should continue from time to time as changes may or may not take place.

I further order that the orders, both as to care and control and to access be supervised by a welfare officer attached to this court. The intention of this order is not that such welfare officer should police my orders in the same manner as a probation officer or a child welfare officer may have done in the past. It is, however, the intention of this order that all parties being all parties having any relationship with these children, that is the father, the mother, the uncle and the aunt may have available to them a properly trained resource person to whom they can turn and discuss problems and difficulties.

I would point out to the parties that any conferences that take place under s62 of the Act are completely privileged from later disclosure. No report can come back to the court of what happens at each conference or what is said and such conferences are to be treated as completely confidential. On the other hand I would further point out that by making an order under s64(5) I have placed in the hands of a welfare officer the ability on his own motion if he considers that the children are not being properly treated by the parties or by others on his own motion to bring the matter back before the court to invite the court to consider other orders.
