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FAMILY COURT OF AUSTRALIA at SYDNEY***In the Marriage of WILLIAM (W and G)*****Cook J****14 August 1978****FAMILY LAW – CUSTODY OF CHILDREN OF THE MARRIAGE – COURT TO DECIDE IN THE CHILDREN'S INTERESTS – WHICH PARTY SHOULD HAVE THE DAILY CARE AND CONTROL OF THE CHILDREN.**

Where the husband accepted that the only viable alternative to the dispute concerning custody of the two children of the marriage was that one of the parents should be charged with the day-to-day care and control of the children, the Court decided that the children should be in the care and control of their mother.

COOK J: The parents of these two young children have appeared to the Court at all times to be intelligent, caring and very much involved in seeking to assist their children after their marriage breakdown.

The Court has been much impressed by both parents. Charged with its undoubted role of deciding upon the welfare of the children, the Court has had to take into account a very large number of factors and exercise an objectivity which has brought it into conflict with the essentially subjective approach of the husband.

Where parents have, with their own knowledge of their children's needs and requirements, arranged care and control and access situations, this Court must be slow to interfere with such arrangements. But the intense emotional disturbance and conflicts affecting each of the parents often cloud their vision and recognition of the needs and requirements of their children, and with the best will in the world, parents become unable to adequately sort out their own conflict in their relationship from the needs of their children.

Recourse is then had to the Courts by either one or both of the parents. This Court has available most highly trained and experienced counselling staff, able to interview parents, examine and observe situations, and generally provide expert information and opinion to aid the best possible decision to be made in the children's interests. It is possible for the Court to find itself, on an overall consideration of all the evidence before it, to be persuaded to a different view to that expressed by the Counsellor. The Court must then act on its own conclusions, but that in no way detracts from the quality and expertise of the report.

In this case the husband considers himself as an expert in the caring for, management of and determination of the daily life requirements and needs of his own children. He says, in effect, I hold a particular view, based on my own intimate understanding and observations of my children, and you, the counsellors, have another – why should your view prevail over mine unless you can prove to me that my view is not an acceptable view in that actual detriment to and interference in the development of the children is happening in the present arrangement?

He has a scientific and researchers mind, involved in the collection of data and experience, and this Court does not criticize him. He appears to the Court to love his children deeply and has shown a dedication to find solutions which he strongly believes are within their interests.

But the Court cannot fail in its obligation to the children and if its decision conflicts with the husband's views, then it must be accepted by him (subject to rights of appeal).

The girl M. – for a time, she actually attended one school for a week, and another school the next week. When that matter came before Ross-Jones J, he was quick to bring about the only possible solution in the interests of the child – that is that she attend one school, continuously. Since he

was old enough, the youngest child P. has been attending the same school ... as his sister J., and this is clearly desirable for a number of reasons.

The husband's single-mindedness and determination reveal, however, a rigidity of personality that causes a pause for reflection by the Court recognizing clearly, as it does, his love for his children. The court must state that it sensed in all of his evidence, in his demeanour a great determination by him to win his case. It is entirely understandable in human terms, but if it causes a party to lose sight of factors and features as applicable to the real welfare of the children as should always be clearly before all parents in such situations, then the Court's calm objectivity is needed to preserve the true needs and requirements of the children.

Reports have alerted the Court to the very real dangers to the interests of the children in perpetuating the existing week by week arrangements, in the interests of the children, a different arrangement must be created.

As the husband himself accepts, the only viable alternative is that one of the parents should be charged with the day to day care and control of the children and proper and adequate access in the real interests of the children with the other parent be fixed, subject to sensible and sensitive alterations required in the children's interests.

The husband, in the Court's opinion, genuinely believes that the children should have equal time with each parent. But I must decide, in the interests of the children, the best and most effective situation for them to be in and this requires a decision involving a selection from two suitable situations.

On the totality of the evidence and material before me, I am satisfied that, in the obligation of providing a determination in which the welfare of these children is paramount, they should be in the daily care and control of their mother. No efforts should be spared by either parent to bring about effective and valuable experiences for these children in their access with their father. He has much to offer them, and there should be that sensitivity to their needs, at all times in the forefront of the parents' thoughts about access.
