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FAMILY COURT OF AUSTRALIA at BRISBANE

*In the Marriage of YANN*

Demack J

29 March 1976 — [1976] FLC 75,120 (¶ 90-027)

**FAMILY LAW – JOINT CUSTODY ORDERS – WHETHER ON AN APPLICATION FOR CUSTODY THERE IS ANY JUSTIFICATION FOR A JOINT CUSTODY ORDER: FAMILY LAW ACT 1975, S61(i).**

The argument before the Court was whether there was a case for joint custody or sole custody and the extent to which the father ought to have access to the child.

**HELD: That the wife have sole custody with access as defined for the husband.**

**DEMACK J:** ... I find the concept of joint custody a very difficult one to understand, but under s61(i) of the *Family Law Act*, Parliament has enacted that the married parents of a child have joint custody of that child. Whatever this means, it appears to me that it is a state of fact and law which can only continue where the parties are in full amicable agreement about all aspects of the care, protection, custody, control, education and welfare the child. Once there is disagreement on any of these issues, there must be some source of authority to determine what the solution of the disagreement is to be.

It seems to me therefore, that in most instances, once the matter comes to Court, there is no place for an order for joint custody. To make such an order once the parties have chosen the path of litigation is to either encourage further litigation or to require the parties to achieve some kind of promise which will almost inevitably have a disturbing effect upon their relationship with the child.

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