



IF CHILD CUSTODY ISN'T ABOUT WINNERS AND LOSERS, THEN WHY IS OUR LEGAL SYSTEM DRIVING PARENTS TO DESPAIR? BY MELISSA IRONSIDE

It's Friday morning and 38-year-old father of two, Mick Fox, has brought Sydney traffic to a standstill. The ex-military man is standing on top of the Harbour Bridge advocating for child welfare during divorce. Fox has two flags. One reads 'kids first' and the other 'plz help my kids'.

"I've asked for help many times," he says on radio during the protest. "There are systematic fails in both federal and state governments. The police and also the school systems are letting down our children. The children don't have a voice. No one is looking after our kids when parents separate and divorce."

Just days later, Fox's sentiments were tragically proven when Queensland mum Tania Simpson, her friend Antony Way and her daughter, Kyla, were murdered by Simpson's ex-partner, Paul Rogers.

After the break-up of their eight-year relationship, Rogers reportedly stabbed Simpson, then abducted their daughter and fled to Casino in northern NSW, where police found their bodies in a car.

Sadly, Kyla's death isn't an isolated case. About 25 children are killed by a parent each year in Australia, most as the result of actual or impending separation from the other parent.

Kyla's death brought back horrific memories for Brisbane mum Dionne Fehring, whose two children, Jessie, 17 months, and Patrick, 12 weeks, were suffocated by their father, Jayson Dalton, on Anzac Day in 2004, hours before he was due to hand them over to Fehring, who'd been awarded primary care.

"The system doesn't protect us," she says. "How many more lives do we have to lose?"

There are more than a million children living in separated families across the country. For many of their parents, the issue of child custody has been one of the most fraught parts of their break-up.

Sydney mum Heather*, 38, split with her ex, Scott*, in 2006. Heather admits they never had a particularly good relationship, but she hoped once they started a family, things would change. "I wanted children so badly, and our little ones are such miracles,"



she says. "I tried to make it work with Scott, but after six years together, we broke up."

They now share custody of their children. Heather has them on Mondays, Tuesdays, Fridays and every other weekend, while Scott takes care of them on Wednesdays, Thursdays and alternate weekends.

It's not an arrangement Heather's happy with, but one ordered by the Family Court. "I wanted primary care," she says. "I believe stability and more time with their mother are best for them. Scott wanted shared custody."

Heather went through two rounds of mediation, several lawyers and thousands of dollars fighting for custody of her children. She had to go back to work after her second pregnancy as Scott had given up his job to start his own business. This meant he looked after the kids more than usual. The courts saw this situation as habitual and sought to continue it.

"I was advised, in mediation, that the court would look favourably on me if I showed I'd trialled 50/50 custody," Heather explains. "But after six months trying to negotiate with Scott through mediation, it was clear to me it wasn't going to work."

By the time Heather went to see a lawyer, she had already agreed to a "habitual parenting arrangement", which was difficult to overturn in court.

"The lawyers looked at the current arrangement and pushed for it to stay the same, even though it wasn't in the kids' best interests," says Heather. "I didn't want to be seen as not co-operating, because it could work against me, so I agreed to the order."

Heather and Scott are a by-product of the Howard government laws introduced in 2006, which created the concept of 'shared parenting' (the old laws were about 'custody'). They focus on the right of children to have a relationship with both parents, and encourage mediation in the hope couples can work things out without the need for a judge.

"I believe parents should be able to be in their children's lives as much as possible, but the idea of shared parenting is ludicrous," says Heather. "You're asking two people who don't live in the same house, and can't get along, to raise children as a couple."

Heather's kids, like many others in their situation, struggle with having one routine

with Mum, and another with Dad, including different mealtimes, bedtimes and boundaries. This often means one parent gets lumped with all the disciplining.

"I'm the one dropping them off at play dates and doing homework," says Heather. "I don't doubt Scott loves them, but he uses our kids to hurt me. He criticises my mothering skills and bombards me with abusive text messages. Some of my friends think it's great I have every other weekend off, but I spend the whole time missing and worrying about them."

The picture Heather paints is far from rosy. But the shared parenting situation becomes even worse in cases where there's evidence of violence or substance misuse.

Around one in five separated parents report safety concerns over contact

with the child's other parent. Just under one fifth of separated parents say their relationship is full of conflict, while 26 per cent of mothers and 17 per cent of fathers say their partner has physically hurt them before or during separation.

"The problem is, the courts are bound by law to place the utmost importance on 'shared parenting', and staff aren't trained to identify or deal with allegations of abuse," says child abuse expert Dr Elspeth McInnes.

"I have personal knowledge of cases where children have been placed in the custody of convicted child sex offenders by the court," she adds. "Their suffering in such circumstances is unimaginable. The emotional trauma they'll suffer will be severe and damaging to their lives for years to come."

Of course, violence and abuse are at the worst end of the spectrum. But even in less volatile situations, >



the way in which separated couples resolve parenting arrangements has a significant and lasting impact on their children's lives.

"The best way to help children adjust to divorce is to provide stability," says Michelle Morris, a psychologist and family therapist from Life Resolutions. "I tell my clients not to let their children become ping-pong balls, where they shuttle between homes and live out of suitcases.

"In my experience," she continues, "people who make their own arrangements and work around the children seem to be happier.

Brisbane mum Michelle Hansson, 39, says she and her ex-husband, Todd, vowed to put their son first. "Initially, it was a bit of a nasty break-up, but aren't they all?" she asks.

The couple didn't use a lawyer because Todd felt it was too expensive, but Michelle sought advice from a free women's legal service. "Our custody arrangement isn't official, but it works for us," says Michelle.

Hunter now lives with his mum and goes to his father's house every second weekend. "I take care of school runs and homework because I live closer to the school," she says. She also lets Todd know about school events and he comes along when work permits.

Michelle now has a new baby and partner and says he and her ex-husband are on good terms. She believes being flexible and not fighting in front of their son has helped them maintain a happy compromise. "It shows Hunter that his mum and dad can get along, even though they're not married any more."

Although Michelle and Todd chose not to go through official channels, and it worked for them, this may not be an option in cases where a marriage has descended into all-out warfare. For these families, legal channels could be the only way. But despite anecdotal suggestions to the contrary,

experts such as family law specialist Stephen Page believe that, in 80 per cent of cases, the situation is working better than it was before the 2006 change. The new laws have seen more parents use family relationship services rather than the courts, which has freed up the system.

Nevertheless, the Family Law Act is under review. The proposed amendments will fully recognise the rights of children under the United Nations Convention and, in particular, establish the rights of children to be protected from abuse and exploitation. Perhaps most notably, if the amendments succeed, children will have a say in decisions affecting their lives.

For Heather, a change in the law can't come soon enough. "All I want is the best for my children. I wish the courts would allow me to do that." ■

For more information on child custody and family law, visit www.australiandivorce.blogspot.com or www.nccps.org.au.



Michelle Hansson, pictured with son Hunter, has an unofficial custody arrangement with her ex.



CHILD CUSTODY
checklist

- Seek legal advice.
- Keep aggravation to yourself and don't offload onto your children.
- Keep your social life separate from theirs.
- If you're unhappy with the arrangement or your ex-partner's behaviour, keep a detailed diary.