

Jayden Hedley – Should the Family Court have published its decisions?

Have the Weekend commentators got it right? Should the Family Court have published its Decisions concerning Jayden Hedley or not?

The Weekend newspapers contain several commentaries on the Court's actions. The Weekend Herald columnist, inferred the Court was wrong because Jayden's mother would now have no hope of a fair trial on the alleged criminal kidnapping charges that she faces. Another Sunday paper columnist suggested the Court had released its Judgments because it was frustrated that Jayden's mother had ignored Court rulings on numerous occasions. Both commentators have missed the boat significantly.

With the exception of the Family Court and Youth Court, the general rule is that all hearings are public and all decisions published. The main reason for not publishing Family Court decisions is that a primary objective of family law is that the interests of the child are paramount.

For the Family Court to balance these two principles is not easy. Where the sole aim of one parent is to use their child or children as pawns to fight the other parent, generally they should not be protected by a cloak of silence. But equally, the child's best interests should not be prejudiced by the Court becoming involved in some publicity war or bowing to outside pressure for openness, wherever that pressure arises.

The actions of Jayden's mother were extreme, including ignoring Court Orders and faking DNA tests to ensure that Jayden had no contact with his father. There were strong reasons to disclose her behaviour to the public – particularly when the case had been already widely publicized. The release of the Judgments by no less than 3 Family Court Judges were not out of frustration.

Rather the release was to ensure the public better understood Jayden's mother's conduct. It is a good thing that her destructive behaviour is no longer protected by Court secrecy.

Balanced against that, one has to wonder how much more difficult Jayden's life has become as a result of his family's dirty washing being laundered in public. The more adverse publicity of his family's actions, the more difficult it will be for Jayden to live a normal life at school, on the sports field, or with his friends. In deciding whether to release the Judgments the Court said the parties themselves had already put a lot of information into the public arena. Accordingly, the release of the Judgments probably did little to make Jayden's already difficult position worse. Conversely, the release did enable the actions of Jayden's mother to be properly exposed.

The balancing exercise between the interests of the child, the parties and the public highlight what a difficult task the Family Court has. As between individual parents publicity for their actions, particularly adverse actions, seems appropriate. The Court's difficulty is to balance the pressures from the media and from disgruntled litigants, against the interests of the child which will generally incline against publicity.

For columnists to suggest that publication results in Jayden's mother being prejudiced in any subsequent criminal trial is surely a red herring and lacks merit. This is particularly true when the Family Court as part of its Judgment made an Order suppressing evidence regarding any criminal allegations concerning Jayden's mother and his maternal grandfather. People can incur criminal prosecutions for traffic accidents and subsequently litigate civil claims of negligence arising out of the same facts. Often civil and criminal jurisdictions overlap. Criminal law has many principles to ensure that Jayden's mother receives a fair trial should she face any charges. Refusing to disclose the

Judgments because they may impact on some later criminal prosecution against Hayden's mother would have been mistaken. Taken to its logical conclusion such a principle not to publish would see serious actions with an alleged criminal component always kept secret. While lesser actions, with a destructive but not criminal element, often published. Surely that is upside down.

Regrettably this case confirms what any experienced Family Court lawyer will corroborate, that one parent can deliberately use their child or children as a weapon against the other parent in order to vent hurt and even revenge on that parent.

Men's groups have long argued that the Family Court is biased. Recent legislative changes have helped to ameliorate this belief. Family Court Judges, lawyers, counselors, psychologists and other people working in the Family law area recognize the importance of a child having contact with both parents. However, people like Jayden's mother, who intentionally set upon a path of alienating their child from its father, can result in the effectiveness of the Court to deliver a fair result being prejudiced. Consequently, there is still much work to be done to ensure a speedy resolution of child related matters without the lengthy acrimonious affidavits which have marked past custody disputes. The new pilot scheme, known as The Parenting Hearings Programme, which allows parents to talk to the Judge directly is a step in the right direction.

In summary, while the arguments for opening up the Family Court are strong, there must always be care and discretion exercised in child related matters which may not be present when it comes to considering the release of a Court Decision concerning the division of relationship property. It's a balancing act of competing interests and the line upon which the Court proceeds is very fine. Commentators would do well to recognize this fact because Jayden's case highlights that to publicize the Court's Judgments is not an easy conclusion to reach. Some might even say of the Family Court: "you're damned if you do and you're damned if you don't".

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