

Speaker 1: On 882 6PR, this is Peter Bell.

Peter Bell: It's 20 past one. We're with Portia Jonasi from Friedman Lurie Singh & D'Angelo. We're talking of family law issues, 9-2211-882 is the number to call if you've got a question. We've got a stack of calls to get to. [inaudible 00:00:17] to Frank in Civil Road. Good day, Frank.

Frank: Hey, how are you going Peter?

Peter Bell: Good. Fire away, mate.

Frank: Okay. Well, I just broke up with my wife over the last five days. Found out she was having an affair with her [00:00:30] best friend's husband. Yeah, and we're both splitting a house, we're in a rental house. I'm going to stay in the house, I'm trying to get her out of the house, but she's on the lease. Don't know where to go, don't know what to do.

Peter Bell: Okay. We spoke a little bit about this last week, Frank. First of all, sorry to hear that you're in this situation. But Portia, what should Frank be considering now?

Portia: Frank, there's a lot of considerations. I would obviously be talking to your landlord about the next step in terms of dealing with a lease. And [00:01:00] obviously, I would be possibly [inaudible 00:01:02]- do you have children, Frank?

Frank: Yes, I do. Yes.

Portia: Yeah. I would also be contacting a lawyer to try and find out what's the next step because we've just been talking about children. In terms of whether this next step are for you and your wife to deal with the children. And obviously, property settlement. Because I'm not sure whether you've got any other property somewhere else that you need to consider.

Frank: No, it's only a rental. I've already spoken to the real estate and I basically said that she's got to sign it over to me, and she's refusing to sign.

Peter Bell: [00:01:30] Okay.

Frank: From what she's been saying to me, she's entitled to stay in [here 00:01:34] so she's staying in it.

Peter Bell: I would suggest without going and knowing all the circumstances here, Frank, it might be time for you to get legal advice in that situation. If she's the only name on the lease, I would suggest that you need to get some help there with regard to what the next step

would be. Sorry we couldn't be of more help, but that would be the advice at this stage. Thanks for your call, Frank and all the best. To Gary in Forestfield.

Gary: Yeah, hi Peter and Portia. [00:02:00] Yeah, my friend's actually been to court and had a ruling on access to the children. They're both seven in age. The respondent is just refusing to go along with the court orders.

Portia: Okay. When were these court orders made.

Gary: On the ... 25th of February.

Portia: 25th of February. So-

Gary: We're due back in court [00:02:30] of the 24th of April.

Portia: On the 24th of April. I would bring it up on that occasion with the magistrate or the registrar that you've not, your friend has not been able to see the children and hopefully the magistrate can give you some direction on the next steps. I mean, I would advise you to go get some legal advice in terms of [crosstalk 00:02:49]-

Gary: Well, we've had legal advice, yeah.

Portia: So you've got a lawyer working for you currently?

Gary: Yeah. But I just don't understand here how a respondent can just ignore [00:03:00] a court order.

Peter Bell: Does it happen frequently, Portia?

Portia: It does. It does happen frequently. But however, it depends on the breach. If it's a minor breach, then it's off, it's not that important. But if it's-

Gary: She just ignores total [access 00:03:15]. [inaudible 00:03:16] cannot have any access to his children. She just ignores any access.

Peter Bell: Okay, then I guess, given that it's the 24th of April, that'll be the appropriate time to air these issues, Gary, and that would be the recommendation, I guess, [00:03:30] for your friend, to air those issues on the 24th of April. Good luck with that. Tony in Herne Hill. Hi Tony.

Tony: Yeah, good day Peter and Portia. You were speaking earlier about some partners bringing on allegations of hypothetically showing child abuse and they've been putting that before the courts to possibly get an advantage. My question is if the alleged partner [00:04:00] was then found to be, to falsify these allegations, what kind of penalties have been put on to the alleged partner?

Portia: Okay. Well, I'll have to correct you in the first place. It's not about who's telling the truth and who's lying. The family court is not there to consider that. It's just to consider whether the allegation has been substantiated or unsubstantiated. So if DCP or the family court has found it to be unsubstantiated, then they just started dealing with the matter [00:04:30] through that way. It's not the court that deals with criminal or those sort of penalties at all.

Peter Bell: I think what Tony is saying though, is if someone makes some allegations, and then the DCP are involved. And there's found that they totally unsubstantiated, they cannot be substantiated in any way, are there any ramifications for the person who made the allegations?

Portia: Not if it's through the family court as I've said. Because it's not a criminal court per se, so they can't do any penalties because it's about- the problem with sexual [00:05:00] abuse allegations is that you don't know whether it happened or whether it didn't happen because it's usually just two people in a room, so it's about whether or not there is enough information to say it actually happened or no it didn't happen in the circumstances. So you can't been turn around and made accusations that this person totally lied about it because then you don't know, you don't have proof. Then in that circumstance, you'd have to take it to the magistrate's court to bring criminal charges.

Peter Bell: Okay. Thank you Tony for your call. Hopefully that [00:05:30] clarified that. To Lyndon in Banksia Grove. Hi, Lyndon ... No, Lyndon has gone. If you've got a question for Portia, 9-2211-882 is the number to call. Just some traffic news, quickly from main roads. Kwinana Freeway southbound at Armadale Road, [inaudible 00:05:45] caught the right lane, he's blocked. There's been a car crash so I'm just repeating that, Kwinana Freeway south bound in Armadale Road in [inaudible 00:05:52], the right lane is blocked, so be aware of that. There's probably going to be delays, and be careful if you're in the area. Also, Portia, just wanted to ask you, in the case [00:06:00] of a divorce, what rights do both parent have to an input, say, in to the schooling, access to medical records, dental records, all sorts of things with the child in question. Your child. Do you still have- is there still a mechanism there where you have good input into that?

Portia: Oh yes, most certainly. There's something called shared parental responsibility. It doesn't mean equal time, but it means that you can make decisions about the day to day welfare of the children, and [00:06:30] the major long-term decisions. Major long terms about schooling, about religion and so forth. So you are entitled to find out how the child is progressing in school, the medical records and so forth. What we normally do at Friedman's is that we would write that into any parenting order that we get for you to ensure that you can show that order to the school and get the records. Same with the medical records as well.

Peter Bell: Okay. Before we were talking about seriousness, or assessing seriousness of breach [00:07:00] of orders. If it was written in the parenting orders that for instance one

parent should have access to school records, academic records, that sort of thing and they're deliberately withheld, is that a serious matter or not really serious? How do you go about rectifying that situation?

Portia: It's not really a serious breach. I mean the first protocol is to go to the school. You don't necessarily need to wait for your other partner to give you access to these documents. Because that's why we write it in, because the school can just give it to you and then provide you with [00:07:30] the details that you require.

Peter Bell: Okay. We'll come back to that one. To Jason in Cottesloe. Hi Jason.

Jason: Good afternoon. I've got a question. I've got joint parental responsibility through some court orders with my ex-wife. She subsequently moved internationally with my children. My question is, although the orders have legal relevance which would be the great countries, so therefore the UK where she resides, how difficult is it to me to really enforce those orders and ensure [00:08:00] that what's been agreed here in Perth actually occurs internationally as well?

Peter Bell: Good question, Jason. Portia?

Portia: I would recommend that you contact the central authority here in Australia and you bring your concerns to them, because it sounds as if- I don't know if you gave your permission to go internationally and she decided not to come back, because they would be able to actually organize with that country to either bring her back into Australia, or to actually register your parenting orders over there in that country, but [00:08:30] you need to contact the central authority because there's usually more to it than one you've just said.

Peter Bell: Jason, did you give your consent for your ex-wife to travel overseas?

Jason: Well, what it is is she's actually [inaudible 00:08:40] an international relocation. I didn't agree with the orders but I didn't oppose them if that makes any sense. So what actually occurred is she's taken the children to the UK and my question revolves around just some of the parts of the orders' [arrangement 00:08:56]. Yeah, for example, one of the orders is about her paying for [00:09:00] flights for the children to obviously come and visit their father and their family in Australia. Now if she determines or suggests, "No, I'm not going to do that," for any reason, is there any really legal fallback?

Peter Bell: Okay, so ...

Portia: Again, as I've said, the central authority is a board to contact, because yes your orders can be registered in that country, especially because it's the UK and we're really connected to them. You can organize for your orders to be registered with the courts in the UK.

Peter Bell: Okay- go on, Jason. Sorry to interrupt.

Jason: No, I was [00:09:30] going to say absolutely, that is the step that she should have taken. I don't believe it's being done, but I do believe it will be done. As you can imagine, obviously, I just have a concern about having zero control on the other side of the world over my children.

Peter Bell: But Jason can register the parenting orders.

Portia: Yes, almost certainly.

Peter Bell: Jason, you can as well.

Jason: Yeah. The orders are registered here so if there are any ... [inaudible 00:09:53] in the area, they are my behalf but it is her duty, I understand the family court of Western Australia [00:10:00] to register them in the UK.

Portia: Well, I'm not sure- okay, I haven't read the order so I'm not sure where the orders have specifically stated, but in the same light, as we've just stated to you, you can also register them.

Peter Bell: Okay, Jason. You might want to investigate that and I think you were assuming here that you might be able to register them as well in another jurisdiction, as part of the parenting orders so that's what I'd investigate if I was you. Thank you very much for your call, Jason and all the best. Portia, thank you. [00:10:30] It was enjoyable. Thank for your time. That's Portia Jonasi from Friedman Lurie Singh & D'Angelo talking about family law. Thank you to everyone who called.