

Western Australia

Breastfeeding

Whether women are revered or reviled for breastfeeding their children (and both approaches are clear throughout history), the way in which women do (or don't do) this has been the subject of much controversy and external intervention. There have been no reported decisions directly concerning breastfeeding and weaning in the Australian family law arena. However, the Family Court of Western Australia has now entered the fray. In *D v D*, a recent unreported decision, an order that forced a mother to wean her 11-month-old son so that his father could exercise lengthy contact periods, has been upheld on appeal.

In interim residence proceedings a Magistrate had granted the father three days a week residence of the couple's two children. This order was deferred in respect of D for two months, during which time D's visits were limited to three days (not nights) each week. This deferral recognised that D was still breastfed, the Magistrate expecting, however, D to be weaned within the two months. The mother sought unsuccessfully to vary this order and then appealed. Not surprisingly, her case relied upon proving some psychological detriment would flow from weaning at this stage. The husband's experts, on the other hand, suggested that psychological problems might flow from, among other things, the mother's selfish indulgence of her need to continue breastfeeding. Unfortunately, the parties' total reliance on expert evidence allowed the Court to avoid a crucial issue: to what extent should the Court become involved in parenting issues such as weaning, simply because an application is made? For instance, how would the Court approach an application to force a mother to breastfeed a newborn infant? Hiding behind the mantra that each case turns on its own facts merely helps to obscure the more important issues underlying the court's decision-making in this arena.

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DownUnderAllOver was compiled by Alt.LJ committee members Maddy Chiam, Jenny Earle, Jeff Giddings, Stephen Gray, Daniell Misell, Phil Ritson, Sarah Todd, Peter Wilmshurst; together with invited writers listed under their contribution above.

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective



Testing time for feminists

In a landmark decision on 15 May, the Family Court ordered that an 18-month-old girl be returned to her birth mother after a failed surrogacy agreement. Baby Evelyn's birth mother used her own genetic material to act as surrogate for her infertile friend and the baby's natural father. Despite living with her genetic father for over a year, the Full Court held that it was in the child's best interests to return to her birth mother and be raised with her biological siblings.

This decision coincides with the 10th birthday of the first (publicised) surrogate child in Victoria, Alice Kirkman, who was born after her mother's ova and donor sperm were implanted in her aunt's womb under the IVF program. This kind of arrangement is unlikely to be allowed under current law. The *Infertility Treatment Act 1995* (Vic.) has effectively outlawed even altruistic surrogacy in Victoria, banning all payments for surrogacy, including hospital fees. Additionally, even in States where altruistic surrogacy is allowed, surrogacy agreements are unenforceable.

The sensitive issue of surrogacy has raised the ire of both right wing moralists and feminists in the past. Mainstream arguments surrounding it mesh the conservative claims that it 'undermines the fundamental concept of the family' with the feminist considerations that surrogacy dehumanises women by treating their bodies as incubators.

Girlie suggests other questions need to be raised, such as the right of autonomous women to use their body as they see fit; as well as the privileged legislative criteria for IVF candidates. While feminists have fought long and hard for the right to our children, the primacy given to this question has often been used to limit our choices. With increasing numbers of women undertaking paid surrogacy in the US, and the potential abuses this evokes, it is an important issue for feminist consideration!

Equality at last

Girlie readers will be relieved to know of course that some of these tricky decisions may be (continue to be) made for us. *Girlie's* Man of the Month (hardly), Vincent Patrick, recent founder of the men's Equity Network wants men to 'regain control of their own reproduc-

tive capacity', including having a say in abortion.

Patrick was just one of hundreds of men who attended a Men's Forum in Canberra early in June, organised by Federal Attorney-General Darryl Williams. While a number of academic speakers pointed out that men are not actually operating at a disadvantage under the heavy burden of ferocious feminists, the high attendance of members of men's networks reflects the burgeoning number of men's networks worldwide. While ranging in extremes, a great many of these organisations believe that feminism has 'gorn too far' in one of *Girlie's* favourite phrases; that the Family Court discriminates against men, that child support is punitive etc.

Barry Mathias, founder of the oldest men's movement in Australia is pushing for a class action by men against the Family Court and Federal Government (which may save the Court from facing those other niggly questions) and explains that men are simply seeking equal opportunity. John Clarke, head of Dads against Discrimination, says that the men's movement is where feminism was 20 years ago and that men are simply doing what feminists have done (well that's alright then!).

The problem is, Clarke explains, that there is no funding available to bring this equality about. 'We're not coloured, we're not handicapped, we're not gay', says Clarke. 'We don't qualify as a disadvantaged group in our own right.'

Girlie thinks that Mr Clarke may not get out that much, and would like to helpfully suggest that she can think of a few men who are coloured, handicapped and, at a stretch, even gay, but perhaps these men haven't suffered the ultimate discrimination on the basis of their gender that Mr Clarke seems to have experienced.

Echoing movements in the US, such as the Promise Keepers, who seek to 'reinststate men to their rightful role as head of the family', these movements are apparently encouraged by 'feminists who concede that feminism has gone too far'. *Girlie* is not too sure who these unidentified unhelpful feminists are, but no doubt *Girlie* readers are equally excited at the prospect of equality at last after so many years in a patriarchy.

Dee Lusion

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