

Can a child decide which parent they want to live with?

Date: Tuesday September 1, 2020

In short, a child cannot decide where they wish to live. A child can influence a decision of a Court as to where they live however, but they cannot be the ultimate decision maker.

What will the court consider when deciding who the child should live with?

There are many factors a Court will take into consideration when deciding who a child should live with.

These factors are set out in section 60CC (3) (a) – (k), of the *Family Law Act* 1975 (Cth).

Without boring you with the long list, some of these include:

the practical difficulty of the child spending time with both parents;

the extent that both parents have cared for the child during their lifetime; and, importantly

any wishes expressed by the child.

When a child expresses a wish, there is broad discretion for any judicial officer to decide on the weight given to those wishes.

The Court will look at the age and maturity of the child, together with any possible influences over the child when expressing their

wishes.

There is no prescriptive age that says when a child turns XX, they can decide where they live. If anyone tells you there is, this is simply not correct.

In the Bondelmonte case, the court goes against the wishes of the children

Only most recently, in the case of *Bondelmonte*, the Court ordered to the contrary of what a 15 and 17-year-old expressly wished to do. The 15 and 17-year-olds expressed a strong wish to remain living in the United States with their Father.

The Court, against the children's wishes, ordered the children to return to Australia and live with their Mother.

In this matter, the two boys went on a holiday to New York to see their Father. The Orders provided for this holiday to occur. Whilst travelling in New York, the two sons decided they did not wish to return to Australia and live with their Mother and, rather, expressed a strong wish to remain living in New York.

The Family Court ordered the return of the children. The Court found that although the children had expressed this wish, the Father had played a role in orchestrating this wish of the children and that it was in the two boys' best wishes to return to Australia to live with their mother and their 12-year-old sister.

What resources does the court use to make its decision?

The Court will often make orders to attempt to ascertain a child's views. This is designed to assist the Judge with decision-making.

The Court may order the child, particularly those children who are able to express a view, be interviewed by a Family Consultant (a person with an experience in social work and counselling) or a Single Expert Witness. These people are trained to write reports for the Court to assist in making decisions about the insight and maturity of a child when they express a view.

Try not to influence your child's decision-making process

If your child is expressing a strong view, it is imperative that you respond in age-appropriate and development-appropriate language that does not influence or attempt to cement their view.

We encourage our clients to seek assistance from a qualified child development psychologist, preferably a psychologist who has experience in family law disputes or breakdowns of families, to support their child during this time.

Get help from a family lawyer

If you require any assistance in managing children's expectations, and presenting a child's wishes to the Court with clarity (and without influence), pleasecontact one of the lawyers at Meillon & Bright who can assist. We have extensive experience in complex

parenting matters for children of all ages.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.