

B and B [Access]. [1986] FamCA 52; (1986) FLC 91-758 (18 July 1986)

In the marriage of B and B [Access].

(1986) FLC ¶91-758

Family Court of Australia at Parramatta.

Extempore judgment delivered 18 July 1986.

Before: Gee J.

1. **Gee J.:** The parties to these proceedings were married on 11 April 1981. They had lived together since about December 1980. The husband was then aged 21 and the wife was then aged 22. There are four children of the marriage for the purposes of the Act, although the elder two children were children of the wife by a prior relationship. They are J, born 4 April 1976, C, born 12 November 1978, A, born 30 October 1981, and D, born 22 March 1983.
2. The parties separated on 10 September 1984 when the wife moved to Sydney from Gulgong, having left the former matrimonial home together with the children, the parties then living at Gulgong.
3. On 25 October 1984, the wife filed in the Court of Petty Sessions at Parramatta an application seeking non-molestation orders and a denial of access. On 25 October 1984, pending further order, the husband was ordered not to molest, assault, phone or otherwise interfere with the wife and children and, pending further order, was restrained from knowingly entering or approaching premises in which the wife would from time to time reside.
4. The proceedings were transferred to the Family Court of Australia at Parramatta. On 12 December 1984, the husband pleaded guilty before *Loveday J.* in the District Court to a charge of committing an act of indecency involving the child J. Under sec. 558 of the *Crimes Act* (N.S.W.), a sentence was deferred conditional upon his entering into a recognizance for \$1,000 to be of good behaviour for a period of three years from that date, to appear for sentence if called upon, and a further condition that he accept the supervision and guidance of the probation and parole service for the period of the recognizance or such shorter period as that service might direct.

5. The husband pleaded guilty in respect of an incident on 12 July 1984. On 19 December 1984, it was ordered by this Court inter alia that the orders of the Court of Petty Sessions, Parramatta, continue. On 2 May 1985, the husband filed an application for access to the children. This is the application which is before me, save that on 1 July 1985, the application was limited to the children A and D and on that date, pending further order, the wife was restrained from removing the children A and D from the State of New South Wales.

[His Honour then dealt with the reasons for the wife's determination not to let the husband see the children. He discussed evidence concerning allegations by the children of sexual interference with them by the husband and evidence that the complaints were acted out by the children. He referred to the wife's belief that the husband had done something to the children and her conviction that he would hurt them if unsupervised. His Honour then continued:]

6. As I have said, I am convinced that this is [the wife's] implacable, unshakeable belief, that she has held it since July 1984 and that consciously or unconsciously she and the children have as between themselves added unwittingly, and assisted by the repeated interrogations (conducted in all good faith and many of them necessary) since then to build up in their own minds, much of what has been said and acted out in the girls' behaviour. Children's imaginations are sensitive and immature instruments, for good or ill. Whatever the factual origins of their complaints, (a) the mother's reaction to them, (b) the knowledge of what happened to the other children, perhaps gained from J, perhaps because the other children were present on the three occasions mentioned by the husband, which he has tried to blot out of his mind, (c) the repeated questioning, (d) the children's acted-out behaviour — all these factors, and others, taken together, have catalysed and built up the grotesque picture manifest in the remarks the children have made and their acted-out behaviour as revealed in the evidence.
7. The wife said that she had no male friends at the moment and the children do not need a male influence. She could not trust or relax with another man, not only with her children but so far as she herself is concerned. The exception appears to be the natural father of J and C, who now sees her regularly. One betrayal, she said, was enough.
8. Mr T has said that the wife's reaction is a normal one. Be that as it may, sexual abuse of her children and indeed sexual abuse of children in general upon the evidence has become an all-consuming matter to her.
9. Evidence was given by Mr T, a highly qualified social worker employed by Westmead Hospital. He had contact with the B family between 10 May 1985 and September 1985. Since September 1985 the wife has really had no ongoing counselling, save school counsellors, in an area health centre and an informal support group for wives and children.

10. He saw the family first on 10 May 1985. He dealt with the wife and children's admission to Redbank House and asserted that she had demonstrated a great capacity to care for the children. Undoubtedly, the wife's concern about the children excited by their complaints, whatever their objective basis, seems to have re-activated a capacity to care for the children that she may previously have had but not demonstrated to the same extent because of the assistance the husband gave her during cohabitation.

11. Mr T was of the view that the children suffered from problems which are set out in his evidence. Undoubtedly from his observation and having regard to his expertise in this field, they had, have and still have serious problems as a result of not only the grotesque nature of the complaints that I have mentioned but the inappropriate way, to say the least, which those complaints have been acted out in their behaviour, as observed by him.

12. He asserted that the problems that these girls were having related directly, in his opinion, to the sexual abuse which they had suffered. As hinted in some of the remarks I have so far made, the matter is much more complex than that simple statement.

13. One thing that did emerge clearly from the evidence of Mr T, and in this respect is a cogent matter which must be taken into account, is that the imaginations of children are sensitive and delicate instruments, for good or ill. They are often embarrassed to speak about matters that affect them greatly. Obviously questioning which is skilled and designed to draw out matters of significance which to children may not be significant is a matter which does require on the part of the relevant authorities skills and patience and a measure of persistence. In this regard, the approach of the relevant authorities, including the Child Protection Unit of the Department of Youth and Community Services, is to be commended.

14. However, there are matters of concern about his evidence and they are these. He had some 20 to 25 interviews with these children and that, to my mind, seems an inordinate number, even allowing for the qualifications I have made. Secondly, he did not interview the husband at all because, having had described to him by J a range of sexual abuse from masturbation to sexual intercourse, it seems to have appeared to him that, *a fortiori*, Mr B was guilty of the most grotesque of the complaints. Thirdly, while ongoing counselling would involve the husband, it appeared implicit in Mr T's evidence that the husband first must admit his guilt to the extent alleged by the children, and then and only then could he be involved in ongoing counselling.

15. Evidence was given by Dr W, a psychiatrist, who is a Bachelor of Medicine and of Surgery and a member of the Royal College of Psychiatrists and the Royal Australian College of Psychiatrists. He has worked as a child and family psychiatrist for the last ten years. His evidence was given in a most impressive manner, was impressive and I accept it. He interviewed the wife, A and D at Redbank House on 25 July 1985. He agreed that it was desirable for people to see people of both sexes, but sexually abused children might have difficulty in later life in forming satisfactory relationships. He understood that the husband denied the majority of the accusations the girls made, but was also of the view, as am I, that the wife was convinced of the truth of these allegations, although I suspect that even he did not understand fully the depth of the wife's conviction about the matter.

16. He pointed out that there have been multiple pressures and disruptions to the family, particularly over the past year, contributing to all the girls developing a range of emotional and behavioural problems.

17. He noted that the wife was concerned in providing a safe and secure environment and had made protection from the husband an issue. Certain it is that she is concerned to provide a safe and secure environment, and certain it was that she has made protection from the husband an issue.

18. I do not think that her wish to deprive the husband from seeing the daughters is vindictive. I do not think she is a vindictive type of person. In fact, I do not think that she has the slightest idea of what she has achieved by the course that she has taken. My concern is that it may take her some time to realise that.

19. Having regard to the presentation of the children and having regard to the attention-seeking that the girls displayed during the interview with Dr W, he was of the view that, while the majority of the allegations against the husband had not been proved, none the less as A and D were in the care and control of their mother and were completely emotionally dependent on her and her ability to provide a safe and secure home base for them, any plan involving access by the father quite apart from any direct effect on the girls, would be highly destructive for A and D, because it would be highly destructive of their mother and hence destructive of her capacity to provide for the safety and security they so much needed. In that paragraph is summed up the nub of this case.

20. He agreed that the wife was absolutely convinced of the truth of the children's allegations and was totally opposed to any contact with the husband. In his view, if

the younger children were seen by their father, even in a supervised access situation, they would be at risk as their emotional base would be destroyed.

21. The allegations being grotesque, that must colour the wife's attitude understandably for some time to come. He would not see it viable for the children to see their father for some years, until they could separate themselves from their mother and establish an independent view.

[His Honour then considered evidence by the husband, including evidence concerning his alleged sexual interference with the children. The husband agreed that there were three occasions when he behaved in an indecent manner in relation to the child J. His Honour then continued:]

22. The husband cannot suggest who can supervise access. His sister is in the sixth form at school, his father works in the mines and his mother lives at Gulgong. The Youth and Community Services Centre at Hurlstone Park is no longer available as they have no staff.
23. The husband believes that if he saw the children it would be for their benefit as well as his own. He agreed that the wife was quite distressed after access and that she would get upset as she would not let him see them at all costs.
24. The husband said that he would like to see the children once a week. He believed he had an understanding boss who would put him on night shift so that he might be able to see them during the week, the only time that counsellors would be available.
25. It was submitted by counsel on behalf of the wife, that she had a very genuine fear and concern over whether any sexual interference had taken place, and that created a dilemma, even assuming that the husband did not behave as alleged. Further, he submitted that access only in the Registry would be of no benefit to the children because such access would not lead anywhere.
26. It was submitted by counsel on behalf of the husband, that the children had been questioned by police, by authorities, by workers of voluntary agencies, to the extent that the allegations had been built up out of all proportion. If the relationship with the children was to be nurtured for their benefit, then it was imperative that the husband see the girls soon. If he did not see them soon, there would be really no point in him seeing them at all, and it was necessary to see them because, so counsel for the husband put, it would be their last hope of developing a proper relationship with the opposite sex.

27. So far as is here material, I do not accept the evidence of Dr C and I prefer the evidence of Dr B. Having regard to that evidence, together with the evidence of the husband, which I accept, and bearing in mind the standard of proof in *Briginshaw v. Briginshaw* (1938) 60 C.L.R. at pp. 361-362, referred to by Wood J. in *H and H* (1985) FLC ¶91-654, I am not reasonably satisfied that the wife has established that on 12 July 1984 the husband sexually interfered with J to the extent alleged by her and I am not satisfied that he sexually interfered with the children otherwise than as admitted by him in evidence yesterday.
28. There are many aspects of the wife's evidence that are unsatisfactory. However, I see no reason not to accept the evidence as to what was said, namely that allegations were in fact made by the children to Mr T and Dr W of the kind stated, nor that they acted out those complaints in the way so described so as to give rise to a not unreasonable suspicion on the part of the persons I have mentioned, including the wife, that the conduct alleged by the children did occur, however grotesque it may appear.
29. Further, their acted-out behaviour as described, particularly to Mr T and Dr W, certainly established a reasonable basis for the wife's fear, even if one cannot condone the elevation of that to an implacable belief that the husband should have nothing more to do with the children.
30. These matters must cause me therefore to proceed on the basis that, while the behaviour complained of by the children and acted out by them cannot be said from my point of view to have happened from more than the perspective of a real possibility (see *C & Anor v. D & Ors* (1983) 9 Fam.L.R. 161), none the less, I must proceed on the basis that from the wife's point of view she intractably and implacably believes that it has, that it has been acted out by the children and described by them in the manner set out in the evidence of Mr T and Dr W and that it has had an effect upon the children to the extent described by those two witnesses, particularly Dr W, having regard to the complete dependence of the children on the wife.
31. In the report of 2 August 1985, the counsellor said, summarising the supervised access of 29 July 1985, that there was nothing to indicate during the time spent with their father that either child saw him as a threatening or frightening person. At the time of the assessment, the husband's behaviour towards the children was seen as appropriate and considerate in view of the long separation and the children's alleged dislike of him. That I accept, subject to the comments I have made about it in the light of Mr T's evidence in that regard.

32. None the less, said the counsellor, the belief of the mother that the children had suffered traumatically because of the husband's behaviour could not be ignored; whether there was a factual basis for it or not, such a belief had become a reality. Access to the father under those circumstances would only increase the mother's anxiety and provide emotional confusion for the children. The counsellor discounted the only viable option, namely supervised access, because that must proceed on the basis that the mother was agreeable, and the mother was extremely resistant to any contact. This, said the counsellor, was exemplified by the fact that the mother refused any contact, even for the purposes of the handing over of the Christmas presents.
33. Now, it is clear that the welfare of the children is the paramount consideration. The real question in this case is whether making an order for access will promote the ongoing welfare of the children or whether it will undermine such stability as they already have. While it is desirable for children to maintain a meaningful relationship with both parents, something even more desirable when separated (see *Cotton and Cotton* (1983) FLC ¶91-330 a p. 78,252 and *Keaton v. Keaton* P. 468 of 1986, an unreported decision of *Rourke J.* of 20 June 1986), that desirability only operates where there is a chance of a meaningful relationship which is beneficial to the child (see *Cotton and Cotton, supra*).
34. Bearing in mind the evidence of Mr T in the report set out above and the evidence of Dr W, which evidence I accept, the fact remains that the wife is absolutely convinced of the truth of the children's allegations, is totally opposed to any contact with the husband and has on her track record acted consistently with her feet in relation thereto.
35. Further, A and D have been in the care and control of the wife since September 1984 and are completely emotionally dependent upon her and her ability to provide a safe and secure home base for them.
36. Accordingly, in my opinion, any plan involving access by the father, quite apart from any direct effect upon the girls, will be highly destructive for A and D because it will be highly destructive of their mother and hence destructive of her capacity to provide for the safety and security which they so much need from her at this time and for the foreseeable future.
37. I am not convinced that the access proposed on the husband's behalf, supervised in the Court context in the presence of a court counsellor, would in the circumstances be more than contact for contact's sake (see *Cotton and Cotton, supra*). I think that that is so because, regretfully, as counsel for the wife submitted, it will not lead anywhere.

That in itself may render it difficult for the children to separate themselves from their mother and establish an independent view of their father. One hopes that they will grow up, consistently with the view expressed by Mr T, with their imaginations and emotions being cured from past trauma and so be able to establish a meaningful relationship with men, including their father. It may be that they will grow up with the perceptions of men continuing to be lowered. It is possible, and indeed this was the evidence even of Dr W, that the immutable psychological barriers to forming satisfactory relationships with the opposite sex may result.

38. Regretfully, however, the fact is that they are very young children who are completely dependent upon their mother's capacity to provide for the safety and security which they emotionally need for the foreseeable future. One can but hope that as they grow up they will eventually come to desire information concerning him and seeking him out. One can but hope that when the proceedings are over the wife will feed the children as much information as she can, which I hope the husband will supply her, concerning the husband and what he is doing and what he is about.
39. The total effect of the situation, however, that has emerged in my view is that any plan involving access by the father, even the kind proposed by him, will therefore be indirectly highly destructive of A and D.
40. I do not therefore consider upon the evidence that there is a possibility of a meaningful relationship by these two children with their father in the foreseeable future which will be beneficial to them.
41. Accordingly, upon the whole of the evidence, I must refuse the husband's application.
42. In the result, my formal order is that I dismiss the husband's application for access filed 2 May 1985.
43. Before parting with this case, I make the following comments arising from consideration of the evidence.
44. Firstly, it is undoubtedly true that the prevalence of child abuse in the community is much wider than many people believe, but perhaps not as wide as some would proclaim. It is therefore clearly necessary that such organisations as the Child

Protection Unit of the Department of Youth and Community Services and other similar organisations exist, and that there be some sophistication in methods adopted to protect children and investigate complaints with respect to child abuse.

45. Secondly, a consideration of importance emerging from this case is that repeated questioning on these matters of a kind such as took place in this case, while necessary in order to elicit what children may be unwilling and unskilled in speaking about and to obtain details not of significance to them but of significance to the questioner, must of itself amplify, exaggerate and expand the original objective basis of the complaints which are made by the children. This can but reaffirm continually the truth of such complaints so magnified, not only to the minds of the children, the mothers of the children as well, but also the interrogators. This I am sure can lead to the temptation of interrogators to believe the guilt of every person complained about.

46. These considerations call for the necessity of:
 - (a) a continual monitoring of procedures for the investigation of complaints of sexually abused children, including interrogation;
 - (b) the changing around of those involved in these procedures, to give them some rest, refreshment and renewal from what must undoubtedly be the fatigue that is evidenced, and I have seen in other cases, in the exercise of such procedures.

47. Thirdly, there may be cases other than this one and of which this case is an instance, where no questions have been directed by those concerned with the protection of the children of the person who is alleged to have perpetrated the act.

48. There may be cases like the present one where it is asserted that the alleged wrongdoer can only be incorporated into a program to re-establish a relationship between the wrongdoer and the children alleged to have been wronged, if that person will first admit their guilt.

49. There appears to be a gap in the system which does not allow for the possibility that the person concerned may deny their guilt, or at least admit it only to a modified extent.

50. If, indeed, it is the purpose of society to strengthen and build up the family unit, as I have said so in *Obrenovic and McCauley* (1985) FLC ¶91-655 at p. 80,275, then it should be the purpose of society as expressed through the Child Protection Unit and other similar agencies, particularly in the case where the parents have separated, and

in fulfilment of the aim of maintaining a meaningful relationship by the children with each parent, that the alleged offending parent be approached and assisted actively to promote a meaningful relationship with the children.

51. In much of Mr T's evidence, there is discernible an assumption that such parents must *a fortiori* be guilty and unless they admit their guilt then they can play no part in the program. These are matters that have no doubt occurred to the relevant authorities in question. This case serves a timely purpose of reminding them to keep these matters constantly in mind.

52. Finally, I cannot but observe that a program which in the best interests of children seeks to keep them from their fathers so that they can recover from the undoubted traumas afflicted upon them, whatever the objective basis for such traumas, needs to keep steadily in focus the fact that it may have the indirect effect of programming those the subject of it against any contact with males whatever. That, to some degree, appears to have happened in this case, and, as far as possible, the authorities should take care that it does not recur.

53. I direct the Registrar to forward a copy of this judgment to the Director-General of the Department of Youth and Community Services.

[His Honour then considered submissions by counsel concerning custody and ordered that the wife have custody of the children until further order.]