

Family Court has the authority to order child vaccination

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With the COVID vaccination program ramping up across the country, it's not unexpected that we would start to see disputes between parents, about vaccination (of any kind) of their children. The recent Family Court of Australia case, Covington &Covington shows how the court can intervene when two parties (usually parents) disagree about whether or not their children should be vaccinated.

While Covington &Covington does not explicitly deal with the COVID-19 vaccine, it provides some guidance as to how the court deals with vaccines generally and may, in the future, deal with the COVID-19 vaccine for children.

Background

Covington &Covington was a case before the court that was concerned with parenting arrangements for the one child of the relationship between the parties. At the time of trial, the child was 10 years old.

The father wanted the child to be vaccinated and the mother disagreed. The child had not received any vaccinations to date.

The matter had progressed to a trial, but on the fourth day, the parties reached an agreement. Orders were made by consent for the parties to have equal shared parental responsibility for the child and for the child to live with the mother and spend time with the father. Orders were also made in regard to vaccinations (amongst the other usual things, such as travel and communication).

The Orders provided for the child to receive all future vaccinations (and anti-venom treatments) as recommended by the child's doctor or treating medical professional as and when they are recommended to occur.

The mother later appeals to have the Court Orders set aside

The mother filed multiple appeals, essentially seeking to set aside the Court Orders for multiple reasons, the main ones being:

1. She had only consented to the Orders relating to vaccination because she was under duress, coercion and pressure to do so. As she no longer consented, the Orders should have no legal effect; and/or
2. Her child had a constitutional right to be afforded a freedom from mandatory vaccination (and, therefore, the Family Court did not have the power to make an order about mandatory vaccination).

The court ultimately dismissed these appeals as they had no merit.

The Orders were also amended so that the mother was restrained from attending any medical appointments about the child's vaccination and could not contact any of the child's treating medical professionals insofar as the communications related to vaccines.

The parties still shared equal parental responsibility of the child.

Until the child was to be vaccinated, the court further ordered that the child live with the father and spend time with the mother to ensure that the mother did not complicate the process and cause the child distress. After the child was vaccinated, the regular parenting arrangements were to resume (being that the child live with the mother and spend time with the father).

Key takeaways

The main takeaways from this case:

The court will only make an Order if it is in the best interests of the child

Notwithstanding the mother's appeals to remove the Order that the child be vaccinated, she did not provide any evidence as to why the child remaining unvaccinated was in the child's best interests. The mother's arguments mainly rested on her assertion that she had withdrawn her consent.

Alternatively, the father's submissions (presented at the trial) relied on opinions of the child's medical professional and other medical research that basically showed that failure to vaccinate may expose the child to harm. The father's arguments were child-focused and based on the best interests of the child.

The court can only make a decision based on the evidence before it, and it will only do so if it is deemed to be in the best interests of the child.

The general considerations in determining what is in the child's best interests include:

- The safety of the child and people who care for the child (including safety from family violence, abuse, neglect or other harm);
- The child's views;
- The developmental, psychological, emotional and cultural needs of the child;
- The capacity of each person who will be responsible for the child to provide for the child's developmental, psychological, emotional and cultural needs;
- The benefit to the child of having a relationship with their parents and other people who are significant to them; and
- Anything else that is relevant to the particular circumstances of the child.

There are also a number of factors that the Court must consider when determining the best interests of Aboriginal and/or Torres Strait Islander children.

Read our earlier article about how the court has dealt with vaccination disputes in the past.

The Federal Circuit and Family Court of Australia has the power to order that a child be vaccinated

The mother relied on a section of the Constitution (section 51xxiiiA) that she asserts gave her child freedom from mandatory vaccination (meaning that because of this 'constitutional right', the Family Court has no power to order a child to be vaccinated).

The court followed an older High Court decision to determine that the section in question actually relates to preventing the Government from forcing a doctor or dentist to perform compulsory medical or dental services and has nothing to do with the court's power to make an Order that a child be vaccinated.

The High Court of Australia also affirmed these decisions, confirming that the Family Court does, in fact, have the power to make Orders for a child to be vaccinated.

Consent does not have to be continual for Consent Orders to be valid

Once Orders are made by the court (including Orders made by consent), the Orders continue to be valid even if, after the fact, one party withdraws their consent.

There is no requirement for parties to continually reaffirm their consent once Orders have been made.

Get help from a family lawyer

Get in touch with us if you cannot come to an agreement with another party, such as an ex-partner or another family member, about your child’s vaccination or any other parenting arrangements.

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