



REPUBLIC OF SOUTH AFRICA

**SUMMARY - JUDGMENT DELIVERED IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG
LOCAL DIVISION, JOHANNESBURG**

From: The Registrar, High Court Johannesburg

Date: 5 June 2014

Status: Immediate

DUGGAN v DUGGAN

[1] The applicant, and father of the two minor children, brought an application for variation of a settlement agreement which had granted joint custody to him and the respondent, the mother of the minor children. This had been made an order of court in 2008. The applicant seeks full parental rights and responsibilities over the two minor children. The applicant exercises daily control as the minor children reside with him and have done so since the divorce.

[2] Two reports from the family advocate as well as a private clinician respectively detailed a deteriorating emotional and mental health as well as allegations of drug addiction by the respondent. She had no permanent place of abode and was unemployed.

[3] The court reviewed the nature and content of the rights in Section 18 of the Children's Act 38 of 2005 and held that these rights are divisible as a person may have full or specific parental responsibilities and rights in respect of a child. In this case it noted that the applicant had and already exercised the rights in Section 18(2)(c) dealing with guardianship. It held further that the rights in Section 18(3)(a) and (b) were integral to the common law right and duty of guardianship as guardianship relates to the legal duty to assist the minor children in juristic acts. It noted that the common law term of 'custody' in its wide sense incorporates the right to guardianship.

[4] The court noted that the applicant was required to seek the respondent's consent even on those matters such as medical care, treatment and related consents. This was an untenable situation and not in the best interest of the minor children, having regard for the circumstances of the case.

[5] The court refused a total / blanket deprivation of the respondent's parental rights and held that notwithstanding the condition and life circumstances of the respondent, such termination ought to be a remedy of last resort. It held that the rights are divisible but care should be taken that this is not done in a way that renders them impractical to exercise or in a way that is not in the best interest of the minor children. The life circumstances of the respondent warranted a curtailment of her parental rights and the applicant must be placed in a position to fully discharge all duties necessary and ancillary to day-to-day parenting.

[6] The settlement agreement was varied while retaining the joint exercise of the rights in Section 18(3)(c). The court held further that to the extent that the health circumstances of the respondent prevailed, the applicant could make a testamentary appointment of a primary care giver who shall exercise the same rights currently enjoyed by the applicant in the event of death