REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/8877

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO

25 MARCH 2019 **RT SUTHERLAND**

In the matter between

A R **APPLICANT**

and

S S **FIRST RESPONDENT**

D C **SECOND RESPONDENT**

J U D G M E N T

Headnote – urgent application by grand-mother for access to granddaughter and the appointment of an expert to investigate whether denial of access has caused the child "alienation syndrome" or other psychological harm
Held: application not urgent, abuse of the process to exploit courts in principle stance that all matters involving a child are urgent without proper motivation in the given case
Held: the application, on the facts, did not make out a proper case to warrant the intrusion into the lives of the child or her parents– application dismissed with attorney and client costs

SUTHERLAND J:

[1] This is an application brought urgently, by the applicant (R) against the two respondents who are respectively her former daughter in law (S) and her son (D). The purpose of the application is to compel the respondents to grant R access to the respoindents' daughter T, at present eight years old, every alternate Saturday between 10h00 and 17h00, "reasonable" telephonic contact and, furthermore, to procure an order that Dr R Fasser investigate the circumstances of T to determine whether she is at risk of " emotional and phycological harm … including alienation syndrome" with a view to establishing the "need" for R to have "liberal" rights of contact with her. The ancillary relief sought compels co-operation in this exercise. Also, R seeks an interdict against removal of T from the country.

[2] It was incumbent to justify an urgent application. Two grounds are relied upon. First the threat of removal to Russia. That risk, as the answering affidavit shows could never have been bona fide. S, who is Ukrainian, and both her parents are permanently living in Johannesburg and have been since shortly after T's birth, these facts are known to R. The ground has been shown to be unsubstantiated. The second ground is

that T's psyche is imperilled because the respondents have not allowed R access since 10 February 2019.

[3] The application was initiated on 8 March and set down for 18 March 2019. That is, 26 calendar days after the last visit, and on 10 calendar days' notice, the application was set down.

[4] An affidavit stretching across 41 pages was filed in support. The aspect of why these circumstances are urgent (other than the unsubstantiated removal allegation) is addressed by alleging that the welfare of children is an automatically urgent matter. I view this sweeping allegation an arrogant abuse of the process in the absence of any further substantiation. Such abuse trades on the assumption that judges will be reluctant not to assess a matter involving a child despite a failure by a litigant to do justice to the court process. In this R's attorney is as much at fault as is R.

[5] However, in a traverse of R's tome can the urgency with which the application has been brought be justified? In my view, it cannot. What is absent is any suggestion that S is an incompetent mother or neglects T in the least. True enough, D seems to be an incompetent adult and is at present, and for the foreseeable future, in a drug rehabilitation home to wean him off his taste for drugs and prostitutes. It bears mention that the respondents were divorced on 5 March 2019 and among the arrangements are that S is the sole guardian for these very reasons. T's safety is not an issue.

[6] Of course, that sort of danger to the child is no part of the case R seeks to make. R's case is confined to the effect of *her not seeing the child regularly* and often. R's

affidavit is a long narrative of her perception of how important she is in the life of T. She claims that her relationship is more than a grandmother in the ordinary sense, but that she has a “special” and “unique” relationship. The facts alleged by her are denied, almost in all, by S. S does not suggest that R was remote during T growing up, and freely admits her presence in the life of the family, but asserts that R’s account is exaggerated and, in several instances, mendacious. There are several material facts in dispute: of greater importance: whether T longs for R, cries when she cannot be with her, once hid in the bathroom to evade being taken home and suffers psychologically when apart from her. Paradoxically R herself mentions long periods during which no contact occurred, one passage being 9 months.

[7] The context in which R’s demands are made is significant. R is obviously a very wealthy person. Her affidavit states that she has spent millions on D and his family. According to her he owes her R12m. At the time this application was brought she was deep into a barrage of litigation against the respondents. A business, DSC Transport, capitalised by her for D and badly run by him is the subject of a pending liquidation application at R’s instance. The respondents say that whilst driving that liquidation (a previous liquidation application was brought in 2017 and then dropped), R has appropriated the assets of the business and diverted them for use in her own business Phoenix Transport. Not content with that, R admits she got D arrested for drug abuse and that action led to his de facto court-ordered incarceration in a rehabilitation clinic. S says R got her arrested on fraud charges relating to alleged misappropriation of DSC business assets. Then R has launched sequestration proceedings against the joint estate of the respondents. On top of that, the proceeds of the recent sale of their

matrimonial home, at present in trust, was the subject matter of a freezing application. That order was taken ex parte and the return day of the rule nisi came before me on the same day as this case was heard when the rule nisi was discharged. The fate of that matter is the subject of a separate judgment.

[8] Thus, in the context of this plethora of litigation and its implications on family dynamics, this application concerning T's welfare has been brought. S says that in this climate, access by R to the child has been denied. I hasten to add, at the time the matter was heard access had been denied for a period of five weeks. S alleges that the litigation as a whole is mala fide and is part of R's obsessive need to control people; indeed, it is alleged that R has used her wealth to control D and that this application must be seen in that light. In my view, that thesis is by no means implausible but in these proceedings no firm finding is necessary.

[9] The relief sought is grossly intrusive and warrants firm and convincing grounds to justify it. Instead I read the founding affidavit to be reflective of a highly narcissistic perception of the world in which it is R's subjective needs that are being pandered to.

[10] I am unconvinced that the allegations made, read together with the denials of the respondents which stand unrebutted justify the relief sought nor the urgent nature. The application is to be dismissed.

[11] The considerations mentioned by me relating to the abuse of the process warrant a costs order on the scale of attorney and client.

[12] **The Order**

(1) The application dismissed.

(2) The applicant shall bear the respondents' costs on the attorney and client scale.

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ROLAND SUTHERLAND
Judge of the High Court
Gauteng Local Division, Johannesburg

Date of hearing: 20 March 2019
Date of judgment: 25 March 2019

For the Applicant: Adv RM Courtenay
Instructed by: JM Shoot Attorneys

For the Respondent: Adv I Ossin
Instructed by: Scalco Attorneys Inc