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**REPUBLIC OF SOUTH AFRICA
THE GAUTENG DIVISION, JOHANNESBURG**

Case number: 061732/2022

Not reportable

Not of interest to other judges

In the matter between:

P M N

Applicant

and

N N

Respondent

Coram: FISHER J

Heard: 28 December 2022

Delivered: 29 December 2022

Summary: An urgent application by the biological father of a minor child who seeks to interdict the Respondent, the minor child's biological mother from relocating with the

minor child from Johannesburg to Cape Town.

ORDER

I make an order which reads as follows:

1. The matter is dealt with as one of urgency.
2. The respondent is interdicted from removing the child, S N to CT for the purpose of him residing there, pending any further court order in relation to such removal.
3. The respondent is to pay the costs of this application.

JUDGMENT

Fisher J

Introduction:

[1] This application comes before me in the urgent court. It is brought by the father of a minor child who seeks to interdict the respondent, the child's mother from implementing her the unilateral decision to relocate the parties' minor son (S) from Johannesburg to Cape Town.

[2] The relocation is to take place in a matter of days.

[3] The applicant was given notice of this intended move by way of a letter dated 08 December 2022, sent to the applicant's attorney. The applicant alleges that this letter only came to his attention on 13 December 2022.

[4] The decision has been presented as a fait accompli.

[5] This urgent court is called on by the respondent to endorse this unilateral decision. This is asked for against a factual backdrop which is complex to say the very least.

[6] I turn to set out such facts.

Material facts:

[7] The parties are married to each other but have been living apart since June 2018. They had been married for 22 years prior to them parting. The applicant accuses the respondent of having conducted an extra-marital affair. She denies this.

[8] The parties have two children, a daughter K who is 20 years old and S who is 14 years old.

[9] K and S have lived with their mother since the departure of their father from the matrimonial home in June 2018.

[10] The departure was precipitated by catastrophic events which led to the applicant's hospitalization and the obtaining of a protection order against the applicant by the respondent.

[11] The events which are described in this application and the domestic violence application are distressing. The applicant was overwhelmed by emotion and punched a hole through a plate glass window at the family home. This resulted in the severing of an artery in his arm which, in turn, resulted in a significant loss of blood. Regrettably,

these events took place in the presence of the children.

[12] From June 2018 to July 2022 S exercised weekend visits with his father every weekend. There was also daily telephonic contact between S and his father.

[13] The relationship between the applicant and both of his children is strained.

[14] On 17 July 2022 the applicant and S had a disagreement. This resulted in S stating that he no longer wanted to have contact with his father. The relationship between K and her father broke down some time before that. K and the applicant have not had contact with each other for some years.

[15] The applicant presents as distressed by this breakdown in his relationship with his family and particularly S. He says that he will do everything in his power to restore their relationship.

[16] The respondent alleges that the applicant has behaved in a manner which is combative, controlling and unreasonable in relation to the children and her. She says that it is this behaviour which has led to the breakdown in the applicant's relationship with his children. The applicant alleges that the breakdown is due to the respondent's efforts to alienate the children from him.

[17] After the contact between S and the applicant was terminated and on 25 August 2022 the applicant approached the Children's Court in Roodepoort for an order that he be allowed contact with S.

[18] The first Children's Court appearance took place on 27 October 2022. The matter was stood down until 01 November 2022.

[19] At this second appearance it was ordered by the Children's Court that S and the applicant undergo bonding therapy and that a social worker be appointed to assist in the preparation of a parenting plan.

[20] Thus this was the legal status quo at the time of the handing down of the order.

[21] As I will explain later, it appears that the respondent had as at this date already decided to leave Johannesburg with S and was making plans to facilitate this move.

[22] The respondent makes the following points in relation to the family position should she not be allowed to embark with S on this relocation:

‘The prejudice that we will suffer if the interdict is granted is immense, and profound, including but not limited to:

9.1. K will be forced to choose between pursuing her dreams of studying her chosen career path at UCT versus remaining in Johannesburg to be present as a support framework for S;

9.2. S will be faced with one of two scenarios:

9.2.1. Losing the support of K on a daily basis, since she will be in Cape Town, if she decides to leave; or

9.2.2. Feelings of guilt about K not being able to pursue her studies, if she decides to stay.

I will:

9.3.1. be prevented from furthering my career to enable me to earn more money to better cater for the financial needs of both children under circumstances where Applicant makes no contribution to maintenance save for S's school fees up to 2022.

9.3.2 Forfeit the amount of R 73 000.00 already paid in respect of accommodation, moving costs, and school registration for S at C[....],

notwithstanding uniform and textbook costs.'

[23] The respondent furthermore gives the following undertaking which she suggests should serve to assuage any prejudice to the applicant and the process which has been ordered by the Children's Court as to the bonding therapy which is to ensue per its order:

'25 I unequivocally undertake to:

25.1. In respect of the Children's Court Application pending in the CC:

25.1.1. Consent to the jurisdiction of the Roodepoort Magistrate' Court to obviate the transfer of the matter;

25.1.2. Ensure, at my own cost, that I am present for all Court appearances, and to ensure, at my own costs, that S is present for all Court Appearances if required by the Court, including an interactional recommended by Malatjie, if same is ordered by the CC "

25.1.3. Make myself and S available for any interviews, investigations, or other interventions which may be ordered by the Children's Court;

25.1.4. At my own costs ensure that S commences with therapy as soon as possible, but no later than 30 days from the date of our arrival in Cape Town.

25.2. In respect of Contact, insofar as S is willing to permit such contact:

25.2.1. I tender to pay for return air tickets from Cape Town to Johannesburg three times per year, to coincide with half of each long holiday, and every alternate short holiday;

25.2.2. I tender to ensure that S has a cell phone with data and

airtime to ensure telephonic / video contact between S and Applicant;

25.2.3. I tender to do all things reasonably necessary to encourage contact between S and Applicant.'

[24] The respondent attaches to her answering affidavit, evidence in the form of an acceptance of application by C[....]2 school in CT of an application for S to begin grade [...] at the school during February 2023. The acceptance letter is dated 08 November 2022.

[25] The respondent furthermore attaches an account statement relating to a lease which she has concluded as to accommodation in CT. The statement discloses that payments were made to the landlord at the beginning of December.

[26] The respondent does not attach any documentation relating to her alleged employment opportunity in Cape Town and neither does she provide any details as to such employment.

Discussion:

[27] The respondent does not disclose when she took the decision to relocate with S and K to Cape Town. This omission is, in itself, a problem. It shows a reluctance on the part of the respondent to take this court into her confidence.

[28] What this court has been able to discern from the patchy and insubstantial version provided by the respondent is that the plans were afoot in October already. This notwithstanding, the respondent did not place these plans before the Children's Court and seek guidance on the way forward from that court.

[29] This seems subversive as does the fact that the intention to relocate was only brought to the attention of the applicant long after these plans were laid. He was literally the last person to be informed that his child was being removed from the jurisdiction of

the court proceedings which are underway and the jurisdiction of this court.

[30] The behaviour of the respondent is not inconsistent with the applicant's allegations of parental alienation. Such alienation, were it occurring, would be characterised as abusive.

[31] The central dispute which arises in relation to this family is whether the relationship between S and his father has been subject to manipulation by the applicant. This is a complex question. It will not be easily resolved. The Children's Court has wisely pronounced that part of this process should be facilitated by bonding therapy.

[32] I agree with Mr Vally for the applicant that this prescribed process will be impossible of implementation if S is removed to Cape Town.

[33] It would be an unusual state of affairs for a child to be relocated by one parent to another province without a proper engagement with the other parent.

[34] The litigation between the parties which is taking place in the Children's Court is a consideration which makes such engagement even more crucial.

[35] There needs to be a proper assessment of the implications of the order by the Children's Court. This assessment cannot take place because of the timetable which the respondent has sought to impose on the applicant as to the removal of the child from Johannesburg.

[36] To my mind, this is a classic case of orchestration of urgency. The respondent has through stealth, created a situation where the removal of S from the Children's Court jurisdiction and that of this Court will not allow for proper investigation and processes to follow.

[37] The case raised by her at this stage fails to address the considerations relating to the relationship between father and son. It as if she has completely discounted any

involvement of the applicant in S's life.

[38] I agree that the undertakings given by the applicant do not serve to alleviate this position.

[39] This Court cannot be held hostage to the respondents ill-considered and irresponsible conduct. To my mind, the interests of S are not served by such an approach.

Conclusion

[40] The respondent has created the urgency in this matter. In doing so she has sought to circumvent a process which is already underway in this jurisdiction.

[41] This is an untenable approach and cannot be countenanced by this Court in the interests of the minor child and justice.

[42] The child cannot simply be removed from the Jurisdiction of this Court and that of the Children's Court without an order of court or the consent of the applicant.

[43] The remedy of the respondent is to seek such an order or such consent.

Costs

[44] There is no reason why the costs of this matter should not follow the result.

Order

I make an order which reads as follows:

1. The matter is dealt with as one of urgency.
2. The respondent is interdicted from removing the child, S N to Cape Town

for the purpose of him residing there pending any further court order in relation to such removal.

3. The respondent is to pay the costs of this application.

APPEARANCES

For the Applicant: Mr. Muhammed Valley

Instructed by: Farhana Ismail Attorneys.

For the respondents: Adv. S.P Stone

Instructed by: Vermuelen Attorneys