

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 1234/13

Date: 23 April 2014

In the matter between

S[...] I[...] C[...]

Applicant

And

N[...] M[...] C[...]

Respondent

JUDGMENT

BAM J

1. The applicant and respondent divorced on 1[...]. Two children were born from the marriage. Since before the divorce the parties litigated about custody of the two girls, now aged 12 and 10.
2. In terms of the settlement agreement between the parties, incorporated with the decree of divorce the respondent was granted sole custody of the children with certain rights of contact granted to the applicant.
3. In the beginning of 2013, due to certain events, the applicant removed the children from the custody of the respondent, further litigation between the parties followed. On 17 January 2013 an interim order was granted to the respondent ordering the applicant to return the children to the respondent pending the finalization of the applicant's application to amend the settlement agreement in order to be awarded custody of the children and subject to the Family Advocate's investigation of the matter. Subsequently the interim order was on various dates extended, eventually to 10 March 2014.
4. The interim order makes provision for the applicant to visit the children every alternative Saturday and Sunday, amounting to six hours per week. Since the order

was granted the applicant exercised his visitation rights, under supervision of the respondent, in accordance with the said court order.

5. The applicant intends to relocate to the United Kingdom after having been offered promotion and job opportunity by his present employer, as from the end of March 2013. An agreement was however reached to extend the date to end of April 2014.
6. The applicant now, on an urgent basis applied for the variation of the interim order as set out in the Notice of Motion. The variation sought by the applicant includes an order that the applicant be granted contact with the children every alternative short and long school holidays and, for purposes of contact with the children, that the applicant would be entitled to remove the children outside the borders of South Africa.
7. The respondent opposed the application.
8. The Family Advocate's report was concluded on 16 October 2013. It confirms, inter alia, that there is a poor relationship between the parties. However, according to the report, the relationship between both parties and the children is good. In regards to the contact between the applicant and the children it was recommended that the applicant be granted the right to contact alternate weekends from Friday 17:00 to Sunday 17:00 and alternate short school holidays and share of the long school holidays.
9. It appears that the applicant, when relocating to the United Kingdom, will have to search and find appropriate residence. Presently, for obvious reasons, there is no arrangement in place. The applicant stated in his replying affidavit that he will, apparently temporary, reside at a Bed and Breakfast while searching for a home.
10. I am satisfied in the circumstances that the application was correctly brought on an urgent basis, in view of the fact that the parties in matters of an urgent nature are entitled to a speedy result, there was no time to prepare a comprehensive judgment in this matter, also due to the fact that there were 19 other urgent applications on this

court's roll for the week.

11. After having considered all relevant facts and issues I am satisfied that the applicant is entitled to at least part of the relief sought, more specifically in regards to his access to the children. I am however not prepared, at this stage to grant an order entitling the respondent to remove the children to the United Kingdom before the applicant has found an appropriate residence to accommodate the children.

12. In regards to the costs of the application, I am satisfied that the respondent was entitled to oppose the matter and that the applicant should therefore be ordered to pay the costs.

13. Accordingly the following order is made:

1. The application to remove the children from South Africa is postponed *sine die*.
2. The interim court order dated 17 January 2013 is amended and varied to the following extent:

The applicant will have full parental responsibilities and rights to have contact with the minor children, as follows:

- (a) To visit the children every alternative Saturday and Sunday from 14h00 until 17h00;
- (b) To take the children in his care, within the borders of South Africa, alternate weekends from Friday 17h00 to Sunday 17h00, subject to the children's scholastic activities;
- (c) To take the children in his care, within the borders of South Africa, alternate short holidays and share half of the long school holidays;
- (d) To have reasonable daily telephonic and electronic contact with the children;

3. The applicant is ordered to pay the costs of the application.

AJ BAM

JUDGE OF THE HIGH COURT

16 April 2014