

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 76710/2015

DATE: 1 JUNE 2016

In the matter between:

CHRISTINE MARIE ROOS APPLICANT

And

JOHANNES WILHELM JANSEN VAN VUUREN RESPONDENT

JUDGMENT

PRETORIUS J.

- (1) In this application the only issues to be decided are whether the minor child must be allowed to stay over with the applicant from Thursday after school, or Friday after school, as well as who should pay the costs of this application.
- (2) The applicant's application was initially launched to obtain primary residence of JC J v V, the eight year old son of the parties, alternatively to define the contact rights of the applicant, should the respondent be found to be the person who should be the primary caregiver. The alternative to prayer two in the Notice of Motion, was to request an investigation by the Family Advocate in regard to the primary residence of JC.
- (3) The Family Advocate supplied the report, after investigation, to the court on 16 May 2016. I was informed to read only the Family Advocate's report and not the papers of the application. I did read the Family Advocate's report, as well as the affidavits in the application.

- (4) The Family Advocate, in the report, found both parents capable and fit parents to care for JC. The social worker found JC had an intense need to spend more time with the applicant and that him missing her so much every day is at the heart of his present problem. JC is described as a very intelligent little boy who is “fragile”. He needs both parents, but not only as parents, he needs them not to insult one another, but to act in his best interest at all times and to work together to ensure that he feels safe under all circumstances.
- (5) It is so that the applicant initially was satisfied that JC visit her every second weekend from Friday afternoon until Monday morning, as that is what she requested in the Notice of Motion . The fact that the Family Advocate was of the opinion that due to his need for his mother, the contact should be extended every second weekend from Thursday afternoon until Monday morning changed her view. The main objection to this regime by the respondent is that JC will spend more time in the car with his mother driving from school and back again, which may be tiring for him. I cannot find that to be sufficient reason not to allow a longer weekend with his mother, which he desperately needs for his well-being at this stage. In any event, it will be the applicant who will be inconvenienced by driving him to school both on Friday- and Monday mornings.
- (6) Under these circumstances I find that it will be in the best interest of JC to have contact with his mother every second weekend from Thursday 14h00 until Monday 7h00, when she has to leave him at school.
- (7) Both parties’ counsel requested the court to make an order that the other party should pay the costs of the application. It is so that the applicant’s attempts at mediation were summarily dismissed by the respondent’s first attorney. The

second attorney, who came on record after the untimely demise of the first attorney, had a much more conciliatory approach, but still did not agree to mediation.

(8) In this application the best interests of JC is that no parent be regarded as a winner or a loser. The respondent retains primary residence of JC, but due to the Family Advocate's investigation and report the applicant has gained more contact rights with JC. I am of the opinion that in this particular case each party has to pay its own costs.

(9) Consequently I make the following order:

1. The parental responsibilities and rights over the minor boy, JC, shall be awarded to both parties jointly as envisaged in Section 18(2) of the Children's Act, 2005 (Act No. 38 of 2005).
2. The primary residence of the minor child shall be with the respondent.
3. The applicant shall have the following contact rights to the minor child:
 - 3.1 Alternative weekends from Thursday after school until the commencement of school on the following Monday, and for purposes hereof the applicant shall collect the minor child from school on the Thursday and return the minor child to school before the commencement thereof on the following Monday; 3.2 The weekend access shall be arranged in such a fashion that the child shall be with the applicant on the weekend of Mother's Day and with the respondent on the weekend of Father's Day; 3.3 Alternative public holidays from after school preceding the public holiday until the commencement of school on the day after the public holiday;
 - 3.4 Alternative long weekends from after school the day before the long weekend

commences until the commencement of school on the day after the long weekend;

3.5 Alternative short school holidays from after school at the commencement of the school holiday until the morning before school when the school commences;

3.6 Alternative long school holidays, being the June/July school holidays and the January/December school holidays, provided

that the December/January school holidays are divided in such a fashion that the child shall spend alternative Christmases with alternative parents;

3.7 To Skype the minor child twice per week on arrangement with the respondent;

3.8 Daily telephonic contact at all reasonable times.

4. In addition to the contact rights set out in paragraphs 3 *supra*, both parties shall enjoy at least three hours with JC on their respective birthdays and on his birthday, depending on where the child may be.

5. Each party to pay its own costs.

Judge C Pretorius

Case number : 76710/2015

Matter heard on : 24 May 2016

For the Applicant : Adv D A Smith SC

Instructed by : Schoeman Attorneys

For the Respondent : Adv L Bedeker

Instructed by : L Cirone Attorney at Law

Date of Judgment