

DELETE WHICHEVER IS IN THE HIGH COURT OF SOUTH AFRICA

REPORTABLE: YES/NO.

GAUTENG DIVISION, PRETORIA

OF INTEREST TO OTHER JUDGES: YES/NO.

REVISED.

30/5/16

CASE NUMBER: 36477/16

30 May 2016
DATE
Signature
SIGNATURE

In the matter between:

PIETER STEPHANUS DU PLESSIS

FIRST APPLICANT

SONIA FLORENCE DU PLESSIS

SECOND APPLICANT

CORNELIUS JOHANNES DU PLESSIS

THIRD APPLICANT

and

ARNEL MONICA DU PLESSIS

FIRST RESPONDENT

THE FAMILY ADVOCATE

SECOND RESPONDENT

JUDGMENT

TLHAPI J

[1] This is an urgent application in which the applicants, pending a report by the second respondent, seek immediate care and residency of Tiaan Du Plessis ('Tiaan'), the five year old minor son of the first applicant and first respondent. The second and third applicants are

his paternal grandparents. The applicants are presently resident in Richards Bay, Kwa-Zulu Natal Province and the first respondent resides with Tiaan in Krugerspark, Gauteng Province. In Part B of the application the first applicant seeks full parental responsibility and primary care and residence and that the first respondent's visitation rights be restricted to two hours under supervision and reasonable telephone contact. During November 2015 the first applicant instituted divorce proceedings against the first respondent in the Regional Court at Empangeni, Kwa-Zulu Natal Province and the matter is still pending.

[3] In chambers I communicated to counsel for both the parties that I would not remove the minor child from the jurisdiction of the above court until such time that a court is properly availed of the necessary reports. This view was confirmed in court. Due to the dispute of facts arising in the affidavits I shall not deal with all the facts herein except but to mention a few and having read the papers it is my view that the reasons for the launch of this application and the opposition thereto in as far as the minor child was concerned should be revisited as and when all reports by the family advocate and experts are made available to the court.

[4] The first applicant contends that the first respondent hated him; that she was of unstable character; that she displayed different personalities; that she was suicidal; that she abused drugs; that she was violent ; that she refused him contact rights. He averred that the first respondent's psychological problems had reached crisis stage and that she was a danger to Tiaan. He also admits to having used drugs but avers that he has stopped using them since 2014.

[5] The first respondent contended that the application was not urgent and that in order to avoid unnecessary costs she was agreeable to having prayers 2, 3 4 and 6 of the application being made an order of court. Except for the first respondent admitting that she had used drugs and had undergone rehabilitation she denied that the other allegations were

true. She alleged that she had been introduced to drugs by the first applicant. The 30 day rehabilitation programme took place as a result of a plea bargain after her arrest for possession. She had been diagnosed with depression and anxiety in June 2015 and was taking medication. This condition was brought about as a result of the physical and verbal assaults by the first applicant. She further denied refusing him visitation rights and that this had been communicated to the first applicant in writing, except that she disapproved of the first applicant taking Tiaan away without proper arrangements and without knowing where he was taken to. Her mother and her mother's part and her domestic helper also deposed to affidavits.

[6] After hearing submissions and arguments I requested counsel for the first respondent to approach the first respondent's mother to give her input on the proposal from the first applicant, that Tiaan be placed with her pending consideration of Part B of the application. It was not necessary for her to file a further affidavit. A letter from the first respondent's attorney was sent to my office and also copied to the first applicant's attorney. I shall take this response into account even though I did not ask for the filing of further affidavits to confirm the contents thereof. This being so because I viewed the proposal for her involvement as being impromptu. It was further proposed by the first applicant that Ms Corne Lindique from the Legal aid Board of South Africa be appointed with specified powers as legal representative and curator *ad litem* for Tiaan. Furthermore, that a certain Mr Visser who was a qualified psychologist was to conduct an urgent forensic evaluation on the first applicant, the first respondent and Tiaan.

[7] I have considered the suggestions that Ms Lindique and Mr Visser be appointed. In my view it is not necessary for Ms Lindique to be appointed unless the second respondents recommends such appointment and that proper motivation is advanced why the first applicant has to resort to the appointment via Legal Aid when the second respondent was available to conduct the necessary investigation. The first respondent agrees to the

appointment of an independent Psychologist. The second respondent in consultation with the parties and their representatives should agree on a suitable Psychologist to be appointed.

In as far as costs and urgency were concerned it is my view that if it were not for the fact that the first applicant was contemplating moving Tiaan out of the Gauteng Province at such short notice to the first respondent this application should not have been brought to the urgent court and it was a matter that could have been dealt with in a Rule 43 application.

[8] In the result the following order is given:

1. The second respondent is ordered to urgently report on the best interests of the minor child Tiaan, especially on the aspects of primary care, primary residence and contact and that such report be availed no later than the 31 August 2016;
2. Tiaan is to continue with play therapy offered by Mariska Van Der Walt, who will administer trauma counselling and therapy with Tiaan;
3. An independent Psychologist, recommended by the second respondent or appointed by agreement between the parties shall conduct an urgent forensic evaluation on the first applicant, first respondent and Tiaan, in respect of primary care, primary residency and contact of Tiaan;
4. Both parties shall submit themselves to random drug and alcohol tests when requested to do so by the second respondent or the appointed Psychologist;
5. The applicants and first respondent are ordered to provide their full co-operation

with the Psychologist and second respondent with regard to the investigations that are to be conducted;

6. Pending the second respondent's and Psychologist's urgent investigation and their report to the court:

1. Full parental responsibilities and rights in respect of Tiaan, as set out in section 18(2) of the Children's Act 38 of 2005 are awarded to the First Applicant and First Respondent;

2. Primary residency is awarded to the First Respondent subject to the First Applicant's rights of contact set out below:

2.1 that when the First Applicant is in the country he is entitled to collect Tiaan from his maternal grandmother's residence, take him to school and to return him to his maternal grandmother's at a suitable time to be arranged with her or to return Tiaan to his maternal grandmother at 16h30, except on Fridays. The First Applicant shall also be responsible during these days to take Tiaan for his extramural activities.

2.2 when the First Applicant is in the country, the right to have contact with Tiaan every weekend from Friday after school until 17h00 on a Saturday. The First Applicant will drop off Tiaan at his maternal grandmother's residence;

- 2.3 the right to spend a portion of the June/July holidays with the First Applicant from after school on Friday 24 June 2016 and to return Tiaan to his maternal grandmother on 29 June 2016;
- 2.4 the right to reasonable telephone contact;
- 2.5 while the First Applicant is out of the country every alternate month for approximately 28 days, the right to telephone/skype/ face time everyday between 17h30 and 18h30 and the First Applicant is to ensure that the First Respondent has the facilities to enable such contact;
3. The parties are ordered to arrange the above visitations and contact in Writing, via email or whatsapp messaging at least 48 hours before the scheduled contact and the place and visitations will be set out with sufficient detail to enable the parties to plan accordingly;
4. The First Applicant shall pay for the costs occasioned by any evaluation and process contemplated in this order;
5. The parties may supplement their papers and approach the court if necessary;
6. Part B of the notice of motion be postponed *sine die*;
7. The First Applicant is to pay costs of this application.



TLHAPI VV

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON : 25 MAY 2016

JUDGMENT RESERVED ON : 25 MAY 2016

ATTORNEYS FOR THE APPLICANTS : DUVENAGE ATTORNEYS
C/O WALDICK JANSEN VAN
RENSBURG INC

ATTORNEYS FOR THE RESPONDENTS : ALAN JOSE INC
C/O DJV INCORPATED