

IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA

Case Number: 75445/2014

5/2/2016

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

C B V T

Applicant

and

D F V T

Respondent

JUDGEMENT

JANSE VAN NIEUWENHUIZEN J

[1] This application concerns the respondent's right of contact to his two minor children, D and C, born on [...] 2008 out of the marriage relationship between the applicant and the respondent. The marriage relationship between the parties was dissolved by an order of this court dated 16 August 2011.

[2] The terms on which the parties separated were contained in a settlement agreement, which agreement was incorporated in the decree of divorce.

[3] In terms of the settlement agreement, the parties agreed that the respondent would have supervised contact to the children. The aforesaid agreement provided for the appointment of Professor Swanepoel in order to facilitate the extension of the respondent's rights of contact to the children.

[4] It appears that the intervention of professor Swanepoel yielded the desired result and on 10 December 2013, the parties amended the terms of the settlement agreement, to provide as follows:

"3.2.1 the right of the applicant (respondent herein) to remove the two minor children for every alternate weekend from FRIDAY, 17:00 to SUNDAY, 17:00;

3.2.2. the right of the applicant to remove the two minor children for every alternate short school holiday, with the specific understanding that the Easter holiday shall rotate between the parties;

3.2.3 the rights of the applicant to remove to two minor children for 50% of every long school holiday, with the specific understanding that the Christmas portion of the December school holiday shall rotate between the parties;

3.2.4. the right of the applicant to remove the two minor children for 50% of the available time on minor children's birthdays, for every birthday of the applicant and every Father's Day, with the specific understanding that the minor children shall spend 50% of the available time on their birthdays with the Respondent, every birthday of the Respondent and every Mother's Day with the Respondent

3.2.5. the right of the applicant to reasonable telephone contact to the said minor children at all reasonable times."

[5] The applicant became dissatisfied with the arrangements contained in the settlement agreement and issued this application during October 2014, less than a year after the agreement between the parties was made an order of court.

[6] Upon perusal of the founding affidavit it becomes clear that a certain Ms Dippenaar is the major contributor to the applicant's dissatisfaction. No less than thirty complaints in respect of the behaviour and conduct of Ms Dippenaar are contained in the founding affidavit. Ms Dippenaar entered the fray when she became involved in a relationship with the respondent.

[7] The applicant also relies on two reports she obtained from an Educational Psychologist, Annalise Mulder. In her initial report dated 3 July 2014, Ms Mulder discusses the problems experienced by the children as a result of the divorce and the relationship between the respondent and Ms Dippenaar. She did not recommend that the respondent's contact rights to the children be restricted.

[8] In a follow-up report dated 7 August 2014 and after the applicant has apparently unilaterally decided to restrict the respondent's right of contact to the children, she stated the following:

"Volgens mnr. V T is daar intussen bepaal dat hy die kinders net onder toesig mag sien. Dit was nie 'n aanbeveling in die verslag van 3 Julie 2014 nie. Die kinders is baie lief vir hut pa en wit graag kontak met hom behou. Die kinders se response rakende hut pa se verloofde sowel as hulle onsekerheid is met hom hanteer. Leiding is ook in die verband gedoen. "

[9] Notwithstanding the aforesaid clear guidelines provided by Ms Mulder, the applicant proceeded to launch the present application.

[10] In his answering affidavit the respondent paints another picture altogether. The respondent alleges that his relationship with the applicant was acrimonious even prior to their divorce. The situation however, worsened after he met Ms Dippenaar. The respondent states that he and Ms Dippenaar is constantly being harassed by the applicant. At some stage the harassment escalated to such an extent that they had to obtain a protection order against the applicant.

[11] The respondent states that the applicant has a personal vendetta against Ms Dippenaar and that she does not hesitate to fabricate false facts to put Ms Dippenaar in a bad light.

[12] Without dealing in detail with all the various allegations and accusations contained in the founding and answering papers, it is safe to state that the relationship between the applicant and respondent is extremely acrimonious. The situation is unfortunate and

definitely not in best interests of the minor children. It is, furthermore, disconcerting that the minor children are well aware of accusations levelled by the parties against each other.

FAMILY ADVOCATE REPORT

[13] Advocate Langeveld-Goosen, a family advocate, investigated the circumstances pertaining to the best interests of the children and compiled a report in this regard dated 23 June 2015.

[14] Advoacte Langeveld-Goosen states, *inter alia*, the following in her report:

"8.1 Dit blyk uit die ondersoek dat die Applikante nie die verhouding tussen die respondent en Me Dippenaar aanvaar baamie en derhalwe die betrokke kinders se verhouding met hul vader op die altaar plaas en offer om haar eie behoeftes te bevredig. Dit is nie aanvaarbaar nie en strek tot nadeel van die minderjarige kinders, wat uitgespoke is om meer kontak met hut vader te wit uitoefen. Dit is ookjammeer dat die Applikante vir C negatief beïnvloed teen Me Dippenaar en sodoende vir C deel maak van die konflik tussen die volwassenes. "

and

"8.2 Daar kon geen grondige redes in hierdie ondersoek gevind word wat 'n beperking van die kontak deur die Respondent regverdig nie. "

[15] In view of, *inter alia*, the aforesaid findings, the family advocate agrees that full contact rights should be awarded to the respondent as suggested by Mr Hattingh, a social worker that was appointed to assist the family advocate in her investigation.

[16] Having regard to the prevailing facts, the recommendation is well founded.

COSTS

[17] Mr Van Wyk, counsel for the respondent, urged me to award the costs of the application to the respondent. Mr Van Wyk acknowledged that the normal cost order in

applications pertaining to the best interest of minor children would be that each party pays his/her own costs. He, however, submitted that the conduct of the applicant in this matter justifies a departure from the normal cost orders awarded in matters of this nature.

[18] I agree with Mr Van Wyk. The applicant was not acting in the children's best interest by firstly, denying the children access to their father and secondly, by launching this application. It is clear that the applicant's intense dislike of Ms Dippenaar motivated her actions. As upper guardian of children, a court can simply not allow parents to use children as pawns in their battles.

[19] As a token of my displeasure with the conduct of the applicant, the applicant is ordered to pay the costs of the application.

ORDER

I grant the following order:

1. The court order dated 10 December 2013 under case number: 65545/2013 is amended by adding the following paragraphs:
"Die applikant se reg van kontak tot die minderjarige kinders sluit in kontak met verwyderingsregte op 'n Woensdag tussen 18h00 en 19h00.
Die telefoniese kontak tussen die applikant en die minderjarige kinders soos vervat in paragraaf 3.2.5 van die skikkings-ooreenkoms gemerk "XX1", word beperk tot telefoniese kontak twee maal per week."
2. The applicant is ordered to pay the costs of the application.

N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Applicant : Advocate Coetsee

Instructed by : Hendrik Haasbroek Attorneys

Counsel for the Respondent: Advocate Van Wyk

Instructed by: Chari Lochner Attorneys

Date Heard : 26 January 2016

Date of Judgment