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

CASE NO: 43606/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

.....

SIGNATURE

.....

DATE

In the matter between:

NEIL FRANCOIS BRENKMAN

Applicant

(I.D NO: [...])

And

E'ZELLE PHILLIPPINA BOUWER

Respondent

(I.D NO: [...])

JUDGMENT

BALOYI-MERE AJ

1. This application was brought on an urgent basis whereby the Applicant sought an order declaring the Respondent to be in contempt of the court order handed down by Madam Justice Tolmay on the 17th August 2021. The order was granted by agreement between the parties. The terms of the order in summary are, among others, as follows:

1.1 *“The Respondent’s contact rights will remain in accordance with the Children’s Court Order under case number 14/1/4/110/2020 with the temporary provision that the Respondent shall exercise his contact rights in presence of an independent third party pending the outcome of the test referred to in paragraph 2 supra”.*

1.2 The Applicant further sought relief that the Respondent be committed to prison for a period of thirty (30) days which committal should be suspended for a period of one (1) year on condition that the Respondent complied with the order granted on the 17th August 2021. The Respondent was further to be ordered to allow the Applicant contact with the minor child as per the court order in the presence of an independent third party, which third party should include any family member of the Applicant and such an order to commence on the weekend directly following the grant of this order.

1.3 The Applicant further sought an order that should the Respondent fail to comply with this order, the Applicant should be allowed to approach the court for an order for the Respondent’s committal to prison on the same papers, supplemented as necessary.

1.4 In the alternative, the Applicant sought an order that paragraph 4 of the order granted by the Honourable Madam Justice Tolmay be amended by inserting the words “to include any family member of the Respondent directly after the words “independent third party””.

1.5 Lastly, the Applicant sought relief that the Respondent should be ordered to pay the costs of this application.

2. From the onset, I indicated to the parties that I am not inclined to grant the order of contempt. For the sake of the minor child and to facilitate the application of the order granted on the 17th August 2021 by Madam Justice Tolmay, I stood the matter down for the parties to go and negotiate with the aim of settling the matter. The reason for my request for the parties to settle the matter was that both parties had a different interpretation of “independent third parties” as contained in the order.

3. The Applicant was adamant that the term third parties included his wife and his mother. I need to pause here and refer to the position of both the Applicant’s wife and his mother. Amongst the reasons why the application was brought before the Honourable Justice Tolmay on the 17th August 2021, was the fact that the Applicant’s wife had told the Respondent that the Applicant had a problem of substance abuse.

4. The Respondent then approached the court seeking relief that the Applicant should have contact with the minor child under supervision of a third party. The Applicant’s wife has since filed an affidavit retracting her statement citing the fact that she only made those utterances that the Applicant has a problem

of substance abuse because she and the Applicant had a fight and she wanted to spite him.

5. I am therefore not convinced that the Applicant's wife would satisfy the category of an independent third party and the Applicant's Counsel correctly conceded that the Applicant's wife cannot be included as an independent third party.
6. I now come to the position with regards to the Applicant's mother. Although there are no adverse allegations made against the Applicant's mother, I am not satisfied that she will act as an independent third party. That is part of the reasons why I stood the matter down and gave the two parties a chance to negotiate and come up with a list of three names of individuals who would act as independent third parties during the Applicant's supervised visits. This arrangement should subsist while the parties are still waiting for the hair follicle test.
7. It needs to be noted that should the hair follicle test come back negative, then the Applicant will have unsupervised contact with the minor child as contained in their parenting plan. On the other hand, should the results come back positive, then the Respondent will approach the Children's Court and seek further guidance on how contact between the Applicant and the minor child should be exercised going forward. That is part of the agreement of the parties in the parenting plan.
8. It need to be noted that the fact that the order by Madam Justice Tolmay on the 17th August 2021 was given on an urgent basis, does not, in itself make

any other order that is sought and related to this cause of action to be done so in the urgent court. The fact that the order was granted on an urgent is not a ground of urgency in subsequent matters. Having said that, I do not intend to disregard that this matter involves the best interest of a minor child but I am just cautioning that the parties should adhere to the requirements of rule 6(12) and the practice directives of this division when bringing matters on an urgent basis.

9. As already indicated, I am not inclined to grant the order on contempt of court against the Respondent. I am however, inclined to assist the members to have a clearer interpretation of the “independent third parties” so that there are no longer ambiguities that would call for an application in the urgent court in the near future.
10. I have requested the two parties to give me three names of individuals that they regard as independent third parties and the two parties failed or could not come to an agreement. I have also requested the two parties to upload on Caselines their different draft orders as they could not reach an agreement. I have not received those two draft orders and thus I am going to use my discretion and make an order on who should be the independent parties to supervise the contact between the Applicant and the minor child.
11. The Respondent have also mentioned, during argument, that they are prepared to tender the costs of any social worker that may be used as an independent third party during the contact sessions between the Applicant and the minor child.

12. In the premises I make the following order:

1. That the matter is enrolled on the urgent roll;
2. That prayers 2,3 and 4 of the Applicant's notice of motion are dismissed;
3. That the Applicant shall exercise his contact rights in the presence of independent third party, and those independent third to include the following:
 - 3.1 A social worker who will be paid by the Applicant as per their tender;
 - 3.2 Should the first choice of the social worker not be available, the Respondent should provide a second option of the social worker, whose services shall also be procured at the expense of the Respondent;
 - 3.3 Miss Roselina Masilala should also be recognised and allowed to act as an independent third party during the minor child's contact visits with the Applicant.
4. Each party to pay its own costs.

EM BALOYI-MERE AJ

This judgment is handed down electronically due to the current pandemic. It will be circulated to the parties by way of electronic mail and by uploading it to the electronic files of this matter on Caselines.

Matter heard on the 09th September 2021

Judgment granted on the 13th September 2021

Appearances

Counsel for the Applicant: Adv AJ Swanepoel

Counsel for the Respondent: Adv Danelo De Kock