

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

Case No: 15759/2015

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

28 November 2022

In the matter between:

J[....] O[....]

Applicant

and

J[....] O[....]

First Respondent

STEFANUS (STEVEN) FOUKARIDIS

Second Respondent

JUDGMENT

HF JACOBS, AJ:

[1] This is the sequel to litigation that commenced during 2015. It involves the applicant, the maternal grandmother of 8 year old A[....] O[....] his biological mother (the first respondent) and his father (the second respondent). On 9 February 2021 Mokose J granted an order in the following terms:

“1. That the applicant is declared to be an interested party to the minor child A[....] O[....] born on 8 February 2014 (“the minor child”);

2. That the applicant is awarded:-

2.1. Full parental responsibilities and rights with regard to the care of the minor child, as contemplated in Section 18(2) of the Children’s Act 38 of 2005 (“the Children’s Act”);

2.2. Full parental responsibilities and rights of guardianship of the minor child, as contemplated in Section 18 (2) (c) and Section 18 (3) – (5) of the Children’s Act.

3. That the primary residence of the minor child be awarded to the applicant, subject to the rights of contact by the first and second respondent as set out herein below;

4. That the first respondent’s:-

4.1. full and specific parental responsibilities and rights of care in terms of Section 18 (2) (a), as well as guardianship in terms of Section 18 (2) (c), 18 (3) – (5) of the Children’s Act be suspended / deferred in terms of Section 28 of the Children’s Act;

4.2. Specific parental responsibilities and rights of contact, as contemplated in Section 18 (2) (b) of the Children’s Act, be restricted to contact being under the supervision of the applicant, which contact will be exercised as set out herein below;

5. That the first Respondent shall have contact with the minor child as contemplated in Section 18 (2) (b) of the Children’s Act as follows:

FROM DATE OF THIS ORDER TO SCHOOL GOING AGE:

5.1. Every alternative Wednesday contact for 2 hours as arranged with the Applicant which contact shall be under the supervision of the applicant;

5.2. Every third weekend contact on a Saturday only, under the supervision of the applicant, which contact shall be exercised while the second Respondent is not present;

FROM AGE 7 OR FORMAL SCHOOL GOING AGE:

5.3. Every third weekend contact on a Saturday, only, under the supervision of the applicant, which contact shall be exercised while the second Respondent is not present;

6. That the second respondent be awarded full parental responsibilities and rights in terms of Section 21, of the Children's Act with regard to the care of the minor child, as contemplated in section 18 (2)(a) of the Children's Act;

7. That the second respondent be awarded full parental responsibilities and rights of guardianship, as contemplated in Section 18 (2) (c) and Section (3) – (5) of the Children's Act;

8. That the second Respondent shall have contact with the minor child as contemplated in Section 18 (2) (b) of the Children's Act as follows:

FROM DATE OF THIS ORDER TO SCHOOL GOING AGE:

8.1. The right to remove the minor child every alternative Wednesday for contact for a period of 2 hours as arranged with the Applicant;

8.2. The right to remove the minor child every third weekend, on both the Saturday and the Sunday, for a period of 8 hours. This contact

shall be exercised on a Saturday and a Sunday when the second Respondent is not present.

FROM AGE 7 OR FORMAL SCHOOL GOING AGE:

8.3. The right to remove the minor child every third weekend, on both the Saturday and the Sunday, for a period of 8 hours. This contact shall be exercised on a Saturday and a Sunday when the second Respondent is not present.

9. In addition to the aforementioned right of contact:

9.1. The first Respondent is entitled to have contact with the minor child on the child's birthday for a period of 2 hours under the supervision of the applicant;

9.2. The second Respondent is entitled to remove the minor child on the child's birthday for a period of 2 hours;

9.3. The Applicant is entitled to have the minor child with her on her birthday;

9.4. The first Respondent is entitled to have contact with the minor child on her birthday for a period of 2 hours under the supervision of the applicant;

9.5. The second Respondent is entitled to remove the minor child for a period of 3 hours on his birthday;

9.6. The first Respondent shall have access to the minor child on Mother's Day for a period of 2 hours under the supervision of the Applicant;

9.7. The second Respondent is entitled to remove the minor child for a period of 8 hours on Father's Day.

10. *That the minor child shall continue with his counselling by Ms Natasha Botha, and all the parties shall give their co-operation with Ms Botha during the counselling process;*

11. *Ms Botha shall review the contact as set out in paragraphs 5.3 and 8.3 herein above as soon as the minor child reaches the age of 7 or formal school going age, whichever occurs first, and shall make the necessary recommendations in respect of the extension of any contact either respondent have and/or sleepover contact with the second Respondent;*

12. *The first and second Respondents are to complete a parental guidance course by Ms Botha.”*

[2] On 3 March 2022 Tolmay J granted an order in the urgent court in the following terms:

*“2. A rule nisi is granted, by agreement, whereby the 2nd Respondent is directed to on the **11th of May 2022** show cause why the orders set out herein in paragraphs 2.1 to 2.6.2 should not be made final:-*

2.1. Prayers 8.3, 9.2, 9.5 and 9.7 of the order dated 9th of February 2021 is hereby suspended.

2.2. In terms of Section 55 of the Children’s Act 38 of 2005, a legal representative on behalf on the minor child is appointed.

2.3. The 2nd Respondent is compelled to undergo hair follicle drug tests. The 2nd Respondent is liable for the cost in relation to same.

2.4. A social worker is appointed to conduct a full investigation in relation to the best interest of the minor child, more specifically the contact arrangement(s) between the 2nd Respondent and the minor child. The 2nd Respondent be liable for the costs in relation to same, if any.

2.5. A social worker is appointed to conduct a full investigation in relation to circumstances and/or living conditions the minor child is subjected to when having contact with the 2nd Respondent. The 2nd Respondent be liable for the costs in relation to same, if any.

2.6. Pending the aforesaid investigation(s), it is ordered that the 2nd Respondent be entitled to contact with the minor child as follows:

2.6.1. Contact under supervision, every third weekend for a period of 3 (THREE) hours;

2.6.2. The aforesaid contact is to be exercised under the supervision of a social worker, the Respondent is liable for the cost in relation to the appointment of the social worker alternatively such social worker is to be appointed by the Legal Representative acting on behalf of the minor child.

3. The 2nd Respondent is ordered to serve and file his opposing affidavit within 15 days from the date of this order.

4. The Applicant is ordered to serve and file her response to the 2nd Respondent's opposing affidavit within 10 days of receipt of the 2nd Respondent's opposing affidavit.

5. Either party may re-enroll the application on the relevant court roll.

6. The cost of this application is reserved."

[3] On 11 May 2022 at the instance of the applicant Tlhapi J granted an order in the following terms:

"1. The rule nisi, granted on the 3rd of March 2022 and set out herein in paragraphs 2.1 – 2.6.2, is extended to 1 June 2022 whereby the 2nd

Respondent is directed to show cause why the orders set out in paragraphs 2.1 – 2.6.2 of the order of 3 May 2022 (and which is repeated in the paragraphs below) should not be made final:-

2.

2.1. Prayers 8.3, 9.2 and 9.7 of the order dated the 9th February 2021 is hereby suspended.

2.2. In terms of Section 55 of the Children's Act 38 of 2005, a legal representative on behalf of the minor child is appointed.

2.3. The 2nd Respondent is compelled to undergo hair follicle drug test. The 2nd Respondent is liable for the cost in relation to same.

2.4. A social worker is appointed to conduct a full investigation in relation to the best interest of the minor child, more specifically the contact arrangement(s) between the 2nd Respondent and the minor child. The 2nd Respondent be liable for the costs in relation to same, if any.

2.5. A social worker is appointed to conduct a full investigation in relation to circumstances and/or living conditions the minor child is subjected to when having contact with the 2nd Respondent. The 2nd Respondent be liable for the costs in relation to same, if any.

2.6. Pending the aforesaid investigation(s), it is ordered that the 2nd Respondent is entitled to contact with the minor child as follows:

2.6.1. Contact under supervision, every third weekend for a period of 3 (THREE) hours;

2.6.2. The aforesaid contact is to be exercised under the supervision of a social worker, the Respondent is liable for the cost in relation to the appointment of the social worker

alternatively such social worker is to be appointed by the Legal Representative acting on behalf of the minor child.

3. *The 2nd Respondent shall file his answering affidavit on or before 17 May 2022 after which the Applicant shall file her replying affidavit.*
4. *Either party shall be entitled to enrol the matter on the relevant court roll subsequent to all papers having been filed.*
5. *The 2nd Respondent be liable for the cost of the extension of the rule nisi on an opposed scale, which shall include counsel fees on an opposed scale.”*

[4] When the matter was called I was informed by counsel for the applicant that the interim order should be extended as it had lapsed due to administrative difficulties imposed during lockdown. By agreement between the parties I ordered the revival of the rule nisi that existed at the time and ordered that the costs attendant to the revival of the order would be costs in the application. Since the application was instituted Adv Niewoudt was appointed to represent A[....] in these proceedings. Adv Niewoudt did not appear at the hearing but furnished a written report. Shortly before the hearing the Family Advocate supplied a written report to which I have been referred by counsel. The first respondent was not represented at the hearing.

[5] The issue between the applicant and second respondent can be distilled from the papers as the following: The applicant, who exercises parental responsibilities and rights of guardianship over A[....] recognises the right of the second respondent to have contact with A[....] but insists that such contact takes place under supervision. Her view is based on a history of substance abuse on the part of the second respondent and his indiscretion to expose A[....] to media which is described in the papers before me as inappropriate at A[....]’s age (“ouderdomsontoeapaslik”) and interaction with A[....] that is not appropriate having regard to his tender age. I will refer to these aspects in some detail below. Attached to the Family Advocates report is the report of Ms AA Botha to whom reference is made in the order of

Mokose J. I found the report of the Family Advocate, Ms Eberlanz, and Ms AA Botha, and both counsel's participation in the proceedings helpful and express my appreciation for their contributions.

[6] The record shows incidents caused by the conduct of the second respondent that resulted in interdictory relief aimed at restraining uncouth and violent behaviour on his part. It will serve no purpose to record that evidence here. Fact is, the second respondent exhibited behaviour unbecoming a father and a thirty eight year old man. The second respondent denies his use of methamphetamine. He was called upon to undergo biological testing to determine whether he still uses cannabis and methamphetamine. He attempted to foil tests but the results of the tests done on hair follicle samples taken from him shows that he has used methamphetamine not more than 135 days before 25th October 2022 (the date the hair follicle samples were taken). The second respondent explains the finding by the laboratory concerned as a false positive result and stands by his version that he has not used methamphetamine as the results tend to show. The test results confirmed that the second respondent has not used cannabis.

[7] I reject the second respondent's contention in this connection and I find that he has used methamphetamine as the rest results show.

[8] One is then, considering the evidence in totality, driven to agree with the view of the applicant that the second respondent's paternal acumen should be doubted as long as he uses drugs. The reports of the Family Advocate and the social worker support that view.

[9] The results of the investigation this litigation triggered reveal and accentuate the expressed desire of A[...] to have contact with his father. I agree with counsel for the applicant that the evidence compels the finding that all access of the second respondent to A[...] must take place under supervision and I frame the order accordingly until the second respondent can show that he has overcome his use of drugs.

[10] Counsel for the applicant urged me to grant a cost order against the second respondent in these proceedings. I am tempted to do so but refrain. I do so in the hope that the second respondent would rid himself of his habit to use drugs for the benefit of his child and that he would appreciate that the involvement of the applicant in these proceedings is for the benefit of A[....] and that her dedication can only be admired.

[11] Under the circumstances I make the following order:

1. Paragraphs 8.3, 9.2, 9.5 and 9.7 of the order dated the 9th of February 2021 is hereby suspended.
2. In terms of section 55 of the Children's Act, 38 of 2005, a legal representative is appointed for the minor child.
3. A social worker is appointed to conduct a full investigation into the best interest of the minor child, more specifically the contact arrangement(s) between the 2nd Respondent and the minor child. The 2nd Respondent shall be liable for the costs in relation to same, if any.
4. A social worker is appointed to conduct a full investigation in relation to circumstances and/or living conditions the minor child is subjected to when having contact with the 2nd Respondent. The 2nd Respondent be liable for the costs in relation to same, if any.
5. Pending the aforesaid investigation(s), it is ordered that the 2nd Respondent be entitled to contact with the minor child as follows:
 - 5.1. Contact under supervision, every third weekend for a period of 3 (THREE) hours;
 - 5.2. The aforesaid contact shall be exercised under the supervision of a social worker and the second respondent shall be liable for the cost in relation to the appointment of the social worker alternatively such social worker is to be appointed by the Legal Representative acting on behalf of the minor child and the second respondent shall be liable for the cost of the social worker.
6. There will be no cost order as to costs.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on 29 November 2022.

APPERANCES

Applicants' counsel:	Adv S Stadler
Applicants' attorneys:	VZLR Inc
Respondent's counsel:	Adv A Koekemoer
Respondent's attorneys:	Radley Attorneys Inc