

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

CASE NO: 21601/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 21 July 2023

E van der Schyff

In the matter between:

C[...] F[...] B[...]

APPLICANT

and

D[...] A[...] B[...]

RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] In this Rule 43(6) application, the court is not finally determining the post-divorce residency and contact regime. The best interests of the minor child remain of paramount importance.
- [2] The divorce proceedings between the parties are protracted. The applicant seeks clarity regarding his contact right for the period up to December 2024. Since the expert's report that is being awaited will only become available in September 2023, and since the parties are unable to agree regarding the extent of contact and need

a court to stipulate not only applicable principles but to determine the exact start and end dates of the applicant's contact with the minor child, the court must make an order in this regard.

- [3] The factual context within which this application is to be determined is that the applicant relocated to Canada. The applicant frequently commutes between Canada and South Africa, and despite his relocation, he has, at least from 24 November 2022 to June 2023, been in the country for 9 out of 11 weeks. The respondent contends that the applicant visits South Africa every two months and stays between 3 and four weeks. The applicant's counsel submits that this only represents a particular defined period, or 'slice of time'. However, the applicant did not request the opportunity to file further papers to inform the court about his proposed schedule for the remainder of 2023 and 2024. On the papers, as it stands, it is evident that the applicant's relocation does not mean that he only visits South Africa once or twice a year.
- [4] The available reports by the Family Advocate and Dr. Van Zyl indicate that it is in the minor's best interest that a stable and predictable routine is established when an interim residency and contact regime is developed. Although it is indeed correct that one parent's relocation to another country, and I must state even another province, poses unique challenges to the frequency of contact between parents and their children, a child's need for a predictable and stable routine to be established remains unchanged. This need must be carefully balanced with children's innate need to have frequent contact with both their parents and to have both parents intricately involved in their lives.
- [5] As in most Rule 43 applications, the relationship between the parties is acrimonious. They both revert to what I regard as petty issues in an attempt to sway the court's sympathy to their case. It is, however, not the parents' needs that dictate the outcome of Rule 43 applications but the child's best interests. Where relationships have broken down, parents have different, even opposing, parenting styles, and a child is prone to find its way through a battlefield that is not of its making, the need for predictability and stability in an established contact regime

becomes even more important. A court should always endeavour to craft a residency and contact regime that is context specific.

[6] The applicant seeks to be awarded sleepover contact with the minor child for at least 50% of the time that he is in South Africa. The respondent wants the *status quo*, which affords the applicant sleepover contact one night midweek and every alternative weekend, to continue.

[7] As for holiday contact, the parties seek the following:

Applicant	Respondent
8 August 2023 -14 August 2023 in SA	<i>Not disputed</i>
22 September 2023 – 8 October 2023 in Canada	22 September 2023 – 3 October 2023
6 December 2023 – 23 December 2023 in Canada	<i>Not disputed</i>
March/April 2024 in Canada	<i>Disputed</i>
June/July 2024 in Canada	<i>Not disputed</i>
	<i>‘Tenders’ 70% of the September/October 2024 holiday</i>
Not less than weeks in the December 2024/ January 2025 holiday	

[8] The minor child in question is in a private school. I have been informed that the March/April and June/July holidays are longer, with a short recess in September/October and a long December holiday.

[9] An order that the applicant shall have sleepover contact with the child for at least 50% of the available time while he is in South Africa during the school term, without any indication of when he will be in South Africa, will create uncertainty and would not foster predictability and stability. The contact regime will adapt according to his travel arrangements and work schedule without the child being able to

predict beforehand what the residency arrangements will be in a particular school term.

- [10] This is, however, not the only reason for not granting the relief sought in this regard. In light of the existing animosity, acrimony, and the parties' different parenting styles, it is not in the minor child's best interests to change the *status quo*. The schedule should, however, be adapted according to the applicant's routine. When he visits South Africa, he is entitled to the midweek sleepover on his arrival, with the first following weekend as his contact weekend. However, unless the parties agree, the applicant will not have back-to-back weekend sleepover contact for more than two consecutive weekends. Where the applicant's stay outside of a school holiday coincides with a public holiday, the public holiday is to be included in his contact, with the child having sleepover contact on the evening preceding the public holiday until he is dropped off at school on the first following school day. Where the frequency of the applicant's visits to South Africa causes him to be in the country for more than two consecutive public holidays, the respondent is allowed contact on the following public holiday, i.e. public holidays that fall outside of a school holiday are to alternate between the parties if the duration of the applicant's stay justifies it.
- [11] The fact that the applicant is not in South Africa for uninterrupted periods does not mean that the child should be deprived of the opportunity to spend quality holiday time with the respondent. While it is true that the applicant will not necessarily spend every alternate public holiday with the minor child, the child is entitled to spend time with the respondent when she, too, will be more relaxed as one usually is during holiday periods. As for the respondent's request that the applicant returns the child to South Africa with ample time for the minor to overcome jetlag, this is not an unreasonable request, and it is in the child's best interest to settle before the school term commences. Five days before school commences is, however, excessive.
- [12] The child is entitled to spend both parties' birthdays with them if it is practically possible. However, in circumstances of parents living on different continents, it is

not unreasonable to require that parents must arrange to celebrate their birthdays with their children on an alternative weekend or day if that birthday coincides with a period that the child or children are entitled to be with the other parent and is out of the country.

[13] As for costs, both parties seek that the other party bears the costs of this application. Both parties' stubborn attitudes necessitated the application. Each party is to carry its own costs.

[14] As for the striking-out application, the irrelevant information contained in both parties' affidavits was, and it might seem paradoxical, of assistance as it indicates the level of immaturity with which these parties deal with each other. I am thus not inclined to grant the respondent's striking out application.

ORDER

In the result, the following order is granted:

The order marked 'X' dated and signed by me is made an order of court.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. A de Wet SC
Instructed by:	Jarvis Jacobs Raubenheimer Inc.
For the respondent:	Adv. I Vermaak-Hay
Instructed by:	VFV Attorneys
Date of the hearing:	18 July 2023
Date of judgment:	21 July 2023