

IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA

Case No: 7168/09

R A L

APPLICANT

and

C A D L

RESPONDENT

JUDGMENT

Govindasamy AJ:

The Applicant seeks an order varying an order of this court dated 16 October 2008.

The variation relates to the time and duration of the contact between the Applicant and the minor child "C" "L".

The application is motivated substantially by a report provided by psychologist Rose Maurer. The Respondent does not object to contact between the Applicant and "C". She nevertheless claims that the Applicant and members of his family behaved inappropriately towards her in "C"'s presence, that the Applicant is ill tempered and that he has not attended joint counselling. She further claims that the recommendations made by Rose Maurer are biased. On these grounds she is of the view that the Applicant should not be granted overnight access.

There was also considerable dispute as to the meaning of paragraph 4 of the order and whether there has been compliance therewith. For the purposes of this judgment I do not intend dealing with the merits of the submissions in relation to paragraph 4 of the order.

The Respondent agrees in principle that the Applicant can have contact every alternate weekend with "C". The sole issue therefore is whether that contact should be overnight or whether it should be interrupted in the manner set out in the Respondent's tender. The Applicant has urged me to grant him overnight access so that he may take the child to his home at Underberg. I am not satisfied that at this tender age "C" should travel such long distances. On the other hand it is clearly in "C"'s interests that the bond between herself and the Applicant should be fostered and nurtured. Accordingly I hold the view that the Applicant should be afforded the opportunity to exercise overnight contact with "C" with the proviso that such contact should be exercised in Durban.

The second matter relates to the extent of the contact during weekdays. The Applicant seeks contact on two week days each week while the Respondent tenders contact between 13h00 to 16h00 one day per week.

I can find no compelling reason why the extended contact would be harmful to "C". On the other hand it is important that "C" should maintain as much contact with her natural father as is reasonably possible. Accordingly I make the following order:

1. Paragraph 2.2 of the order dated 16th October 2008 is varied to read as follows:

“That the Respondent shall be entitled to have contact with the minor child in Durban every alternate weekend commencing at 15h00 on a Saturday until 16h00 on Sunday.”

2. Paragraph 3 of the order is varied to read as follows:

“The Respondent, alternatively his sister, be entitled to collect and return the child from and to the Applicant’s residence at the times stipulated in paragraph 2 of this order.”

3. The costs of this application are reserved for determination at the hearing of the trial.

M GOVINDASAMY AJ

Date of Hearing : 17th September 2009
Date of Judgement : 21st September 2009

Counsel for Applicant : Advocate A. Stokes SC
Instructed by : Tomlinson Mnguni James

Counsel for Respondent : Advocate ES. Law
Instructed by : Garlicke & Bousfield Inc.
c/o Venn Nemeth & Hart