

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

J.F. POTGIETER v I. POTGIETER (Case No 215/06)

The Supreme Court of Appeal today dismissed an appeal by the appellant father of two minor children against an order awarding custody of the children to the respondent mother, subject to the father's right of reasonable access.

An enquiry was conducted by the family advocate during the course of the divorce proceedings. A number of experts, including three clinical psychologists and a social worker, prepared written reports and testified at the trial. The psychologists diagnosed the mother to be suffering from a borderline personality disorder which manifested itself in, amongst other things, impulsivity, emotional instability and mood swings. All the experts recommended that custody of the children be awarded to the father, at least two of them premising this recommendation on their acceptance of the allegation that the parties' housekeeper had been the children's primary caregiver for a number of years preceding the trial. However, the High Court found that the mother had always been the children's primary caregiver and that her personality problems did not impact adversely on the children's welfare and development. The High Court was unimpressed with the expert witnesses, criticising their lack of objectivity and their failure to distinguish between matters of fact and matters of value. The Full Court and the SCA both agreed with this assessment of the expert evidence.

In dismissing the appeal, the SCA restated the fundamental principle applicable in custody disputes, namely that the best interests of the children involved are the paramount consideration in any particular case. The determination of a custody dispute involves the making of a value judgment, based on findings of fact made by the trial court relating to the parties' parental capacity and an appeal court will not easily second-guess those findings and conclusions.

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