

SOUTH AFRICA / JUDGMENT

Burger v Strydom and Another (54112/2015) [2016] ZAGPPHC 471 (19 May 2016) [2016] ZAGPPHC 471

COURT

North Gauteng High Court, Pretoria

BEFORE

H Kooverjie

CASE / FILE NUMBER

54112/2015

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IN THE HIGH COURT
OF SOUTH AFRICA
(GAUTENG
DIVISION,
PRETORIA)
CASE NO: 54112/2015

DATE:

27 MAY 2016
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
REVISED
In the matter
between:-
BURGER,
EMILEAPPLICANT
And
STRYDOM, PAULA
1st
RESPONDENT
BURGER, IRENE
2nd
RESPONDENT

JUDGMENT**A. APPLICATION**

1. The applicant seeks an order on the following basis:

- terminating the mandate of the first respondent, Ms. Strydom;
- interdicting her from having contact with the minor children, Tertius and Karien;
- directing Ms. Strydom to desist from all involvement in respect of the assessments and investigation concerning the minor children;
- compelling Ms. Strydom to make all records available to an expert Dr. Robyn Fasser in relation to the aforesaid investigation.

B.

BACKGROUND

2. On 12 December 2013, the applicant and the second respondent had divorced. Due to the acrimonious divorce and the break up between the parties, the issue of parental access allocation and responsibilities had to be investigated.
- 3.The issue emanated particularly on the applicant's part as he felt that the minor children were being alienated from him. Dr.Duchen was appointed to make recommendations on this aspect and her appointment was recorded in the settlement agreement.
4. As part of the case management, Dr. Duchen recommended the appointment of a clinical psychologist and a therapist. Marilyn Davis Shulman (Davis Shulman) was appointed as case manager and Karin Meyer (Meyer) was encouraged to conduct psychotherapy with the children.
- 5.In December 2013, Davis Shulman and Meyer approached the applicant that accusations were levelled against him concerning his inappropriate behaviour of a "sexual nature" towards his daughter.
6. When his daughter complained shortly thereafter of having "female issues" and not feeling well, the applicant arranged for a gynaecologist to examine her. No indications of any sexual interference were detected by the doctor.
7. In January 2014 the applicant was again informed of a further complaint of sexual interference on his part. The nature of this complaint was that the applicant had pulled his daughter out of the bed at night and kicked her in her private parts and such incident had occurred in November 2013. The applicant denied these allegations.

8. Quite perturbed by these allegations he suggested that a forensic investigation be conducted into this aspect of abuse.
9. Davis Shulman recommended two professionals who in her opinion were capable of conducting the forensic investigation into this sensitive matter.
10. Ms. Strydom was selected by the second respondent. The applicant confirmed her appointment, particularly in light of her qualifications as set out on LinkedIn. Her master's degree in the field of sexual abuse is what convinced him that she be appointed.
11. On 24 April 2014, Ms. Strydom informed the applicant that his conduct with both children would be suspended and that he was not able to have supervised contact with them either.
12. The applicant was unsettled with this recommendation, particularly in light of the way forward suggested by Dr. Duchon and Davis Schulman; that alienation from any parent should not be encouraged and moreover there should at least be supervised contact.
13. Ms. Strydom had failed to furnish her report timeously and indicated that she takes instructions from her "supervisor: and this was causing a delay due to her supervisor being ill. This response made the applicant suspicious.
14. Hence with the assistance of the applicant's attorney an investigation was conducted on Ms. Strydom's qualifications. It was established that the applicant was misled into believing that she had a Master's degree. Ms. Strydom had not acquired this qualification despite advertising it on LinkedIn.
15. The applicant's attorney thus advised in correspondence that her mandate is terminated. In a series of correspondence between the parties, Ms. Strydom was requested to inter alia:
 - (1) refrain from having contact with the children; and
 - (2) make available all the documents relating to the investigation.

C.) APPLICANT'S VERSION

16. Counsel for the applicant emphasised that the first respondent has to date offered no firm undertaking to make available her documents in respect of the investigation, neither has she undertaken in writing to refrain from any involvement in this investigation, either with the minor children, the applicant or the second respondent.
17. Moreover the admissions she made in this application was contrary to her attitude in the correspondence where she indicated inter alia that:
 - 17.1 she was willing and prepared to make available copies of the file contents pertaining to this matter to anyone this Honourable Court may direct and
 - 17.2 she accepted the termination of her mandate.

18. In the aforesaid correspondence 1n 2014, the applicant's attorney had informed her, on numerous occasions that the court will be approached for relief if she persists in her conduct. The applicant had no option but to approach this court.

THE RESPONDENT'S CASE 19. Essentially the respondent's argument was that the applicant had no reason to seek relief from this court when the first respondent had abided to the requests of the applicant.

20. Counsel for the respondent proffered inter alia the following argument that:

21.1 her mandate had been terminated on 22 June 2014. She never disputed or denied this. Neither had she acted or attempted to act in terms of the mandate;

21.2 the interdictory relief cannot be sustained. The relief sought was to restrain her from having contact with the minor children. This was "superfluous" since she had no contact with the children after the said termination of 22 June

2014. Despite being no threat to the children, the applicant persisted in launching this application on 13 July 2015 but had it served only in September 2015. Consequently the applicant has neither shown a clear right deserving of protection, nor an infringement of such right by Ms. Strydom. 21.3 Insofar as decision from any involvement in relation to the minor children, it was submitted that Ms. Strydom was obliged to report her findings and disclosures made in respect of the minor child to the SAPS or other relevant authorities whereby she could be requested to testify in future proceedings. This would require her involvement once again.

21.4 In respect of handing over the relevant documentation, it was submitted that she has prepared to furnish Dr. Fasser with a copy of her report. She further undertook to consult with a further expert pertaining to her findings. This court was requested to take cognisance of the fact that she could not be expected to part with all her materials, since she would require same in order to testify in future proceedings.

21.5 Insofar as the alleged misrepresentation of her qualifications was concerned, she had no intention of misleading the applicant. In order to succeed on this point of misrepresentation, the requirements of misrepresentation must be met namely that:

- the misrepresentation was made knowingly and made with the intent to mislead the applicant, and
- that the applicant was moved by the misrepresentation, acted upon it, which was to his prejudice.

21.6 all communication between Ms. Strydom, the other experts and the applicant was through her standard letterhead. This letterhead contains no misrepresentations in respect of her qualification. Her qualifications thereon appear as BA (MW). Nowhere on these letterheads was any mention made of a Master's degree.

F.) ANALYSIS AND FINDINGS

21. At the hearing, this court expressed its concern as to the manner in which such a sensitive matter regarding the minor children was dealt with. It was emphasised that this matter should have been dealt with in the best interest of the minor children. This

was certainly not done. The parties could have resolved the issues as far back as mid-2014.

22. Cognisance is taken of the fact that the minor children had been subjected to trauma and undue stress not only during the marriage, the break up between the parties and events subsequent thereto.

23. Particularly due to the hostility between the parents, they had to undergo therapy with various professionals so that a managed system could be put in place in respect of access to their parents and the parents' responsibilities to their children. 24. This court notes that the divorce order of the court dated 12 December 2013 remains unfulfilled specifically refer to prayers 2 and 3 thereof which states:

"(2) Dr. Ronel Duchen is appointed by agreement between the parties to conduct an urgent investigation and assessment and to render a report in relation to the allocation of parental responsibilities and rights...

(3) Both parties shall take all such steps and do all such things as are reasonably and necessary and tender their full co-operation to enable Dr. Ronel Duchen to conduct her investigation and compile her report on an urgent basis."

25. It must be emphasised since July 2014, the sexual abuse investigation has been halted. Dr. Fasser has not been able to resume the investigations. The minor children have not had an opportunity to be with their father and the issues regarding parental access and responsibilities have not been resolved.

26. It would not be fair to speculate what the second respondent's position in this matter is. It is of concern that she has not at least filed an affidavit in this matter. This very issue of parental access was paramount and motivated by the experts working with the minor children. At the hearing counsel for the respondent indicated that she abide to the decision of the court.

27. The Clinical Psychologist, Davis Shulman had firmly from the onset of her involvement with the minor children recommended that reconnection and reunification is crucial between the father and the minor children.

She specifically stated at Clause 5.2.

"From a case management perspective, both parents love their children and there are indications that each parent believes their contribution to the children is the current one. At this juncture

there are major concerns with regard to how to ameliorate and constructively restore what is clearly a damaged family dynamic that

is a function of the joint cumulative history of the relationship between Mr. Burger and Mrs. Burger".

28. Davis Shulman in paragraph 6.5 expressed her disapproval in respect of Ms. Strydom's conduct. She stated: "It is most unfortunate that the forensic investigator, although she was acting in accordance with her instructions and adhering to her protocol, saw fit to overrule, undermine and at times marginalise the case manager". (my emphasis)

29. In paragraph 6.7 she states: "The ongoing and as yet unresolved forensic process, the parental conflict stemming from separation related litigation as well as the existence of a disorganised attachment between the minor children and their father and an obvious attachment with their father and mother, necessitates urgent intervention and psycho-education ...".

30. On 2 May 2015, before Davis Shulman issued her report, she, in an email, particularly expressed her dissatisfaction of the way in which Ms. Strydom handled the matter.

31. In this email she states: "Whilst I am cognisant of the fact that you have no obligation to follow protocol in different matters such as this one, and that your decision to stop contact with immediate effect with the biological

father is part of that protocol, I have very real concerns with regard to the ramifications of this given the difficulty in establishing clear evidence in this matter ..."

"Contact with the biological father has been severed since February of this week with no visits (even supervised) or telephonic contact happening at all. The past few weeks have seen an escalation of emotion in the children and from both parents, with some severe consequences."

32. Counsel for the first respondent submitted that this application was not necessary since the first respondent had not only abided to the termination, the restriction to access of the minor children as well as agreed to make copies of the documents relating to the investigation available to the applicant.

33. I cannot agree with this argument. Up until July 2015, just before this application was launched, Ms. Strydom in her letter dated 7 July 2015, stated:

"2. Hierdie kantoor respekteer u klient se reg om nie voort te gaan met die kollaterale inhoud 3. Hierdie kantoor maak dit verder duidelik dat die mandaat wat deur die ondersoekbeampte van die SAPD getermineer kan word en/of hofbevel waar beide ouers toestemming verleen.

4. Hierdie kantoor gaan steeds voort met die ondersoekproses."

In this letter, on the one hand, Ms. Strydom agrees that she will not proceed in investigating the collateral issues but in the following breath she states that her mandate can only be terminated by the SAPS or a court order. This is further contrary to her attitude in this application. In the opposing papers she proffers a version that her mandate has been terminated and she has had no access to the minor children.

34. This court finds that there has been no bona fide on her part, specifically in failing to take heed of the criticism levelled against her as a professional, particularly from Davis

Shulman and Ms. Meyer.

35. Furthermore the issue here does not solely revolve on the disclosures regarding her professional qualifications. In considering this matter in its

context and the circumstances Ms. Strydom was in no uncertain terms informed of the termination of her mandate. Although the termination was sparked off in respect of her professional qualifications, a further crucial reason was the manner in which she worked on the matter, which was in conflict with Dr. D. Duchene's recommendations.

36. As a professional, having the best interests of the children in mind, she should have accepted the termination without contesting it. Moreover it was necessary to furnish the documents regarding investigation. Dr. Fasser should have been furnished with same to resume the investigation.

37. A further point which must be highlighted is the fact that at the hearing, counsel for the respondent conceded that copies of same could be made available. However, in the correspondence and the papers, the court notes that she was only willing to make the report available.

38. This was despite Davis Shulman as the case manager requested all the documentation. In Davis Shulman's report, she states at paragraph 7.2:

"7.2 It is recommended that Paula Strydom hand over her material and documents (from the Burger matter investigation) to Dr. Robyn Fasser, who is a clinical psychologist with extensive expertise in complex cases of this nature..."

39. Since 7 July 2015, and upon filing her affidavit in October 2015, by Ms. Strydom failed to demonstrate any bona fide on her part, particularly in ensuring that Dr. Fasser be furnished with at least copies of documents pertaining to the investigation.

F.)

CONCLUSION:

On the conspectus of the evidence before me, this court finds that the application was necessary. Moreover the relief sought was justified on the basis set out above.

G.) ORDER:

40. In the premises the following order is made:

- (1) The termination of the mandate of the first respondent is confirmed.
- (2) The first respondent is directed to desist from all further involvement, investigation and/or assessments in relation to the minor children, whether directly or indirectly, except as may be required by the case manager, Marilyn Davis Shulman.

The first respondent is compelled to make available copies of all books, notes, recordings, materials and documentation to Dr. Robyn Fasser within 7 days of the granting of this order. Such copies should be made available for collection by courier, which

services will be arranged via the applicant's attorney. (4) Dr. Robyn Fasser is directed to commence with the investigation in issue upon receipt of the aforesaid documents. (5) Costs of suit against the first respondent. H KOOVERJIE

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 19 MAY 2016

DATE OF JUDGMENT: 27 MAY 2016

Attorney for the applicant: Martson & Taljaard Attorneys

Counsel for the applicant: Adv. L Segal

Attorney for the first respondent: Jay Inc. Attorneys

Counsel for the first respondent: Adv. J J Greef

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