

SOUTH AFRICA / JUDGMENT

C C v Z D (10029/2019) [2019] ZAGPJHC 130 (29 March 2019) [2019] ZAGPJHC 130

COURT

South Gauteng High Court, Johannesburg

BEFORE

L Modiba

CASE / FILE NUMBER

10029/2019

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION,

JOHANNESBURG

CASE NO: 10029/2019

In the matter

between:

C
C Applicant
and
Z
D Respondent

REASONS FOR JUDGMENT

MODIBA, J:

- [1] The applicant seeks leave on an urgent basis to temporarily remove the parties' minor child from the Republic of South Africa to travel with him to Disneyland, USA on vacation.
- [2] The respondent opposed the application.
- [3] Initially the respondent consented to the travel as far back as October 2018, but withdrew it recently when requested to record her consent in the form of a deposition. The applicant requested her to do so repeatedly on 12, 13 and 14 March 2019, failing which he would approach the court for relief.
- [4] The minor child's school holiday, commenced on 19 March 2019 and ends 2 April 2019. The applicant has made arrangements to travel to the USA on 21 March 2019, returning on 30 March 2019. These circumstances render the application urgent.
- [5] The respondent has given different reasons for withdrawing her consent. On 12 March 2019 the respondent indicated to the applicant's attorney that she is withdrawing her consent and will no longer provide the applicant with the necessary affidavit. On 14 March 2019, the respondent, per WhatsApp message, gave entirely different reasons from those set out in her opposing affidavit, that the applicant:
 - 5.1 owes her certain monies in respect of a motor vehicle. The applicant denies this;
 - 5.2 refuses to drop the minor child and let her spend just a weekend with her;
 - 5.3 made her lose her job. For this reason she has every reason to spite him.
- [6] In her answering affidavit she states that she recently received information that the applicant engages in immoral conduct in the form of a "SLUT/PROSTITUTE PARTY" which he convenes in his room when he travels abroad, with more than 15 girls in attendance during which they indulge in excessive alcohol and drugs. For that reason, she will only consent to the minor child's travel with the applicant in the presence of a reliable third party.
- [7] The parties were in a life-partnership for almost nine years, which terminated at the end of 2018. The minor child currently, 7 years old, is the only child born between the parties. The minor child has been primarily resident with the applicant since the parties terminated their relationship.

- [8] The court has been requested to determine whether or not the respondent's withdrawal of her consent, alternatively, refusal to grant consent, is reasonable. She contends that her tender for conditional consent as set out above is in the best interests of the minor child. The applicant contends that the respondent's withdrawal or refusal to consent is unreasonable and disregards the best interests of the minor child. In this regard, the court is guided by the minor child's best interest.
- [9] The respondent's allegations against the applicant are serious. Although they lack substance because they are based on hearsay and on a vague assertion, this court would be remiss in acting in the best interests of the child to ignore them. On the other hand, should the court accord weight to the allegations, by restricting the applicant's rights in respect of the minor child, the jeopardy he and the minor child would suffer should the allegations turn out to be unfounded, would be immense. These allegations are normally tested through intense forensic assessment and psychotherapy which is not feasible given the urgency of the application.
- [10] The court considered it appropriate in these circumstances to interview the child, who was promptly brought to court for this purpose. The interview took place in the judge chambers with no other party present. It did not take the judge long to discern the highly probable strong bond the minor child has with the applicant, the child's affection for her father who she referred to as 'the best father in the world' and the improbability of the child being sexually exposed by the applicant. It is for that reason that the court accorded no weight to the respondent's allegations and considered it in the child's best interests to grant the applicant unrestricted leave as sought in the notice of motion.
- [11] The applicant resides with the minor child and has on numerous occasions travelled with the applicant abroad, without any objection from the respondent. The respondent has not taken any steps since she gained knowledge of the applicant's alleged conduct to protect the minor child's interests. This, together with the improbability of these allegations gleaned from the applicant's version and the interview with the minor child, the court finds that it is highly improbable that the applicant exposes the child to inappropriate behaviour.
- [12] As mentioned above, plans are in place for the applicant to travel with the minor child, made as far back as October 2018. The minor child anticipates the trip with a lot of excitement.
- [11] In these circumstances, the respondent has not established the right to have the applicant's travel with the child restricted.

Order

1. The order granted on 19 March 2019 is confirmed.

L MODIBA

JUDGE OF THE HIGH COURT

Counsel for the Applicant: Adv K Pretorius

Instructed by: Mcmenamin Van Huyssteen & Botes Attorneys

Counsel for Defendant: In person

Date of hearing: 19 March 2019

Date of judgment: 29 March 2019

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Prepared on 14 October 2026 · Esheria