

SOUTH AFRICA / JUDGMENT

D.B v A.B (4345/14) [2014]

ZAECPEHC 91 (19 December 2014)

[2014] ZAECPEHC 91

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

Revelas

CASE / FILE NUMBER

4345/14

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH

Case No: 4345/14

In the matter between:

D[...] B[...]Applicant

and

A[...] B[...]Respondent

REASONS**FOR JUDGMENT**

REVELAS J

- [1] The applicant is the father of two minor children, a boy and a girl, respectively aged nine and six years. The applicant seeks to have access to them in the form of three separate stay over visits of three, four and five days each, over the period starting on 17 December 2014 to 12 January 2015. The applicant has taken leave from work from 12 December 2014 to January

2015. He wishes his children to visit him for three stay-over visits from (1) 17 December to 20 December, (2) from 26 December to 31 December 2014, (3) and from 7 January 2015. The respondent, the mother of the children, opposes the application.
- [2] The applicant and the respondent were married to each other in 2001. Both were members of a religious cult called the Brethren, who enjoins its members to live separately from the community at large. Its objection to its member's integration with society is based on moral grounds. One of the most important rules of the Brethren, is that its members and their children should not socialize with persons outside the cult. Children are schooled at home and visits to the cinema and watching film etc are outlawed.
- [3] The applicant became disenchanted with certain aspects the Brethren and left them. From the perspective of the Brethren, that meant not only a breach with them, but also with his family, as I understand the position the respondent at first left their common home with the children to live with her brother. When the applicant moved into a flat in Summerstrand, the respondent and the children moved back to the common home, where they presently reside.
- [4] Since then, the applicant has seen very little of his children. Short visits were permitted and, according to the applicant, the visits were supervised. Neither of the parties hereto accused each other of being unfit parents. On the contrary, they are portrayed as good parents.
- [5] The respondent's opposition to the proposed holiday visits to the applicant, is based on the fact that a proper parenting plan, in terms of section 3 of the Children's Act, No 38 of 2005, has not yet been concluded. The office of the Family Advocate is unable to provide one of their qualified staff members to conduct an enquiry into, what would be in the best interest of the children, before 15 January 2015. The respondent is of the view that the questions of access and a parenting plan would have to stand over until then.
- [6] The respondent alleges that the children are too deeply traumatized to have a holiday visit to the applicant. She gave as an example that her daughter hid in a cupboard, crying. The respondent also alleged that the applicant would not be able to cope with their son's eating problems when the children visited him. The respondent's opposition to the application also seems to be strongly motivated by the applicant's excommunication from the Brethren and the fear that the children may become exposed to influences from which they are presently protected.
- [7] Counsel for the Family Advocate, Ms Botha was present in court in an assisting capacity. She was not in favour of my interviewing the children to find out whether they wanted to visit their father, as suggested by Mr Beyleveld, counsel for the respondent. I was assured by both aforesaid counsel that this was a matter which should be treated with the utmost sensitivity.

[8] My view of the matter is that there is no reason why the applicant should be deprived from seeing his children and that it would not be in their best interests to be away from him until the Family Advocate has made a decision.

[9] On the probabilities, the applicant can hardly be blamed for the trauma which the children, according to the respondent, are now experiencing. They are hardly permitted to see the applicant, but when they do, they are happy. The applicant is

self-employed and the respondent is a housewife. The applicant has especially arranged to take leave from his work for the period 17 December 2014 to January 2015. The children are also on holiday during this period. The applicant is not requesting that the children be with him for the entire thirty day period of his holiday.

[10] He requested twelve days with his children, interspersed with longer time periods spent with their mother and the Brethren. These periods include Christmas and New Year.

[11] It was not disputed that the applicant is of sober habits and an upstanding citizen. He has always been a good provider. I was informed from the bar, that he does not even own a television and would not take the children to the cinema. I was further informed from the bar that the children are permitted to sleep over at family members or persons who are members of in the Brethren. The respondent was not in court to dispute these assertions because she was in Cape Town with the children, which in itself suggests that the children do not always sleep at home.

[12] The children will have to experience sooner or later, that their father is no longer part of their separate and exclusive community,

but that still loves them and will always be their father. By the time the Family Advocate is to conduct its enquiry, the

respondent's leave will be over, and so would the children's holiday. By not granting the relief sought by the applicant, the children will miss out on this opportunity to be with their father during holiday time. If they do miss out on this opportunity, there is the real risk that the children might become estranged from their father, given the facts of the matter. In my view, it would be in the best interests of the children if they could visit their father when they are on holiday and in circumstances where he has made special time for them during that period.

[13] For all the aforesaid reasons, I granted the relief proposed in the draft order prepared by Ms Potgieter, plaintiff counsel on Friday 19 December 2014.

E REVELAS

Judge of the High Court

Counsel for the applicant, Adv Potgieter, instructed by Anthony Inc.

Council for the respondent, Adv Beyleveld, instructed by Jankelowitz & Scharges Attorneys.

Date heard: 18 December 2014

Date Delivered: 19 December 2014

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