

SOUTH AFRICA / JUDGMENT

D.P v B and Another (2024/080548) [2024] ZAGPJHC 722 (5 August 2024)

[2024] ZAGPJHC 722

COURT

South Gauteng High Court, Johannesburg

BEFORE

Liebenberg AJ

CASE / FILE NUMBER

2024/080548

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2024-080548

1.

REPORTABLE: YES / NO

2.

OF INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED.

5

August 2024

In

the matter between: D[...]
P[...]: M[...] T[...]
Applicant
And
B[...]:
J[...]
First
respondent
THE
PRESIDING OFFICER OF THE CHILDREN'S COURT: BRAKPAN
Second
respondent

JUDGMENT

CORAM: LIEBENBERG AJ:

- [1] This matter came before me in the urgent Family Court on 1 August 2024 when I dismissed the application with costs, with counsel's fees to be taxed on scale A. I intimated that my reasons for the order will follow. These are my reasons.
- [2] The applicant and first respondent, who were never married, are the biological parents of a boy, L, who was born on 12 July 2016 and is now 8 years old. The parties have been engaged in litigation in the Brakpan Children's Court since June 2019, when the first respondent approached the lower court seeking the restoration and regulation of his contact with L. These proceedings which remain pending, have continued before the same presiding officer since inception.
- [3] By all accounts, the lower court appointed numerous mental health practitioners, with differing mandates, to enable it to establish L's best interests. These mental health practitioners included persons appointed to investigate allegations that the first respondent abused illegal substances and that the first respondent subjected L to acts of sexual molestation. In each instance, the allegations were found wanting. Others were mandated to supervise contact between L and the first respondent.
- [4] In this Court, the applicant sought the urgent review and setting aside of an interim order granted by the lower court on 9 July 2024 extending the interim removal of L from the applicant's care and him being placed in the first respondent's care. She also sought orders for the appointment of the office of the Family Advocate and a child psychologist to investigate and report on L's best interests. Additionally she sought an order that L commence psychotherapy to safeguard his wellbeing.
- [5] It is evident from the papers before me that the evidence of at least two mental health practitioners have been heard by the lower court in the last four months:

[5.1] On 4 April 2024 Mr Schreiber, a social worker designated to supervise contact between L and the first respondent, testified;[1] and

[5.2] On 13 June 2024, Ms Kriel, a social worker appointed to facilitate bonding therapy between L and the first respondent, testified. Copies of two of Ms Kriel's reports were placed before me, but not a transcript of her evidence led.

[6] Pursuant to the hearing on 13 June 2024, the lower court granted an interim order whereby L was placed in the first respondent's

care, and the applicant was awarded contact on date and times as determined by Ms Kriel. The matter was postponed to 9 July 2024 for further evidence.

[7] There is no record of the proceedings on 13 June 2024 annexed to the affidavits before me.

[8] It is evident that the applicant is grievously insulted by the insinuation that she is guilty of parental alienation, and that L's removal from her care, initially for period of the winter school vacation, came as a great shock to her. In the absence of a record of proceedings, including a transcript of Ms Kriel's evidence on 13 June 2024, this Court cannot determine what informed the lower court's order granted on that day. That said, the applicant did not take action to set aside the order of 13 June 2024, explaining that she did not have the financial means to do so.

[9] The parties are agreed that at the resumed hearing on 9 July 2024, the presiding officer:

[9.1] Considered a further report of Ms Kriel, wherein she commented on the absence of any signs of distress or anxiety in L whilst in his father's care, and on the positive progress in the restoration of the relationship of trust between father and son. Ms Kriel recommended that L should remain in his father's care for another month, and that the mother has unsupervised, sleepover contact on alternate weekends. On the face of it, Ms Kriel's recommendations were premised on the bonding therapy process she was mandated to perform and were not informed by her making any findings of parental alienation.

[9.2] Met with L in chambers in the absence of his parents.

[9.3] Met with the parties in chambers.

[9.4] Issued an order that L remain in the first respondent's care until the next date for hearing, being 8 August 2024, and that L shall spend alternate weekends with the applicant from Friday after school until Monday morning.

[10] Ex facie a copy the order of 9 July 2024 before me, the order was granted by agreement and consent between the applicant and the first respondent. The applicant denies that she consented to the order, whereas the first respondent states that he recalls the applicant expressing that she was "fine with the order". Again, absent a record of the proceedings on 9 July 2024, this Court is not in a position to adjudicate this material dispute of fact.

[11] Section 22 of the Superior Courts Act[2] lists the following grounds upon which proceedings in the Magistrate's Court may be brought under review before a High Court:

[11.1] The absence of jurisdiction.

[11.2] Interests in the cause, bias, malice of corruption on the part of the presiding judicial officer.

[11.3] Gross irregularity in the proceedings; and

[11.4] The admission of inadmissible or incompetent evidence of the rejection of admissible or competent evidence.

[12] It is widely accepted that "[w]hile a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the untruncated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained. . . . In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available." [3] [emphasis added]

[13] Absent the record of the proceedings before the lower court, I am unable to determine whether the proceedings and resultant orders

on 13 June and 9 July 2024 were tainted by gross irregularity, as the applicant contends for, or whether the presiding officer admitted inadmissible or incompetent evidence. I am also unable to determine whether these orders resulted in a grave injustice being perpetrated. It is however manifest that the applicant is dissatisfied with the orders which had the effect of curtailing her parental responsibilities and rights of care and contact with L and seeks to reverse the effect of those orders forthwith.

[14] Ultimately, both the orders of 13 June and 9 July 2024 were interim orders, and the proceedings are to resume in the lower court on 8 August 2024, when these orders will indubitably be reconsidered.

[15] For these reasons, I was not inclined to interfere in the proceedings before the second respondent.

[16] I was also not prepared to accede to the applicant's prayer for yet another forensic investigation. L has been prodded and

interviewed and questioned by numerous strangers in his short life. His relationship with each of his parents remains the subject to investigations and therapeutic processes.

[17] The prayer for yet another investigation appears to be informed by the insult the applicant suffered as a result of the references to parental alienation rather than by L's best interests. I was not satisfied that another investigation aimed at disproving the suggestions of parental alienation is reasonable or necessary in the circumstances. However, should the lower court deem it appropriate, it may direct a request to the Family Advocate to render assistance or make another appropriate order.

[18] The provisions of section 6(4) of the Children's Act[4] compels a court adjudicating matters regarding children "to adopt a value based method of appropriate dispute resolution and to order the proceedings... in a manner minimising adversarial

litigation and delay." [5] Adopting such a value based method, I was satisfied that yet another forensic investigation will result in more trauma and upheaval in L's life and will only serve to delay the finalisation of the proceedings in the lower court, and thus refused the order.

[19] The parties chose to have a child, and thereafter chose to terminate their romantic relationship. The being in the nature of humans, I have little doubt that both the applicant and the first respondent have acted less than honourable because of their own pains

and the wounds they each suffered.

[20] Albeit that they were uttered in the context of post-divorce litigation, the words of Van den Heever JJ[6] continue to ring true:

"In ideal circumstances a child is entitled as part of its security, to the affection of and to pride in both its parents. The parent who unnecessarily deprives a child of the opportunity to experience the affection of its other parent, and breaks down the image of that other parent in the eyes of the child, is a selfish parent; robbing the child of what should be its heritage in order to salve own wounds. And regrettably often parents wounded by the marital conflict lose their objectivity and use, as very effective clubs with which to beat the foe, the objects both profess to love more than life itself: their children, who suffer further trauma in the process."

[21] There comes a point in life and in litigation when parents must accept that the other co-parent is not the demon they believe the other to be, that their child has the right to a close and loving relationship with both parents and both sides of the family, that continued litigation is traumatic for a child and that it does not serve the best interests of their child, or themselves. I trust both the applicant and the first respondent come to this acceptance sooner rather than later, for the sake of L, and for themselves.

SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

Heard on 1 August 2024

Reasons

granted on 5 August 2024

For the applicant:

Adv (Mr) Le Roux (082 449 0865 / jhfleroux@clubadvocates.co.za)

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[1] A transcript of his evidence was annexed to the founding papers.

[2] Act 10 of 2013

[3] Wahlhaus and Others v Additional Magistrate, Johannesburg and Another 1959 (3) SA 113 (A) at 120A – B quoting the authors of Gardiner and Lansdown

[4] Act 38 of 2005

[5] Cunningham (born Ferreira) v Pretorius [2010] JOL 25638 (GNP) para [8]

[6] In Riches 1981 (1) PH B4(C)

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Prepared on 9 October 2026 · Esheria