

SOUTH AFRICA / JUDGMENT

Duncan v Coetzee (3888/11) [2012] ZAECPEHC 71 (25 September 2012)

[2012] ZAECPEHC 71

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

E Revelas

CASE / FILE NUMBER

3888/11

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE – PORT ELIZABETH

Case No: 3888/11

21/09/2012

25/09/2012

In the matter between

ANGELA MARY DUNCANPlaintiff

and

JOHN CLAUDE COETZEERespondent

JUDGMENT

REVELAS J

- [1] The applicant and the respondent are respectively the mother and father of S M C, (“S”) who is ten years old. The parties divorced each other in 2003 when S was three months old. The applicant had always been the primary caregiver of S and the respondent had “the right of reasonable access to the child at all reasonable times” in terms of the deed of settlement which was incorporated into their decree of divorce. The applicant approached this court in urgent proceedings seeking to vary and restructure this unrestricted access. Despite their recent differences about the respondent’s contact with S, they are in agreement that the applicant should remain the primary caregiver. S lives with the applicant in Port Elizabeth and attends Collegiate School.

- [2] S's contact with her father developed age appropriately over time and she has a good relationship with her father and his family, particularly her paternal grandparents, who live in Port Elizabeth, where the respondent also resided until he relocated to Gauteng in 2010. He currently lives in Edenvale, sharing a house with four housemates (two males and two females in their twenties). The arrangement regarding contact with S was that the respondent would effectively see her once a month in Port Elizabeth. When the respondent started his own business as an information technology consultant in Johannesburg, the arrangements pertaining to contact and visits with the respondent naturally changed. In December 2010, S spent her first week with the respondent in Gauteng. The applicant had accompanied her on her first flight to Johannesburg after the respondent's relocation. Thereafter she flew to Johannesburg on three further occasions to visit her father.
- [3] During one of S's visits to him in October 2011 (her last one as it turned out), the respondent sent the applicant a message on her cellular phone telling her that he had tried to commit suicide the month before and that he (now in another attempt) had taken sixty sleeping tablets. The respondent was rushed to hospital and spent four days there. The respondent was at that stage living with a woman with two children and one of them was sleeping in his bed when he attempted suicide. It was at this point that the applicant decided that the respondent's visits with S required variation. She did not want S with the respondent, unsupervised, while he was capable of attempting suicide with children in his care.
- [4] According to the applicant, he also tried to commit suicide on two previous occasions in about 2002 and was admitted to Hunter's Craig Psychiatric Hospital.
- [5] It is not in dispute that the respondent has a history of psychological instability which manifested itself in self-mutilation, his Bi-Polar Mood Disorder, and heavy drinking. The respondent also used cocaine but according to him he never had a drug problem as such, and had stopped using cocaine a few months ago.
- [6] Several reports regarding the respondent's mental health were placed before me. The respondent had been treated by Dr Williams (a psychiatrist), Dr Modlin (a physiologist) and Ms Slater (a clinical psychologist). The respondent terminated the services of the latter. The aforesaid persons approved of unrestricted access, but Ms Slater and Dr Williams later retracted their opinions. The family advocate also procured reports from a registered social worker (Ms Duckitt) who is also a qualified family counsellor. Ms Slater and Dr Williams also provided the family advocate with their reports.
- [7] Based on the information about the respondent's mental health in these reports, and her own investigations which included S's views and wishes, the family advocate reported a definite deterioration in the respondent's emotional functioning and suggested that the cause was, inter alia, drug abuse. The respondent is apparently prone to breakdowns whenever a woman he was romantically involved with, ended the relationship. These deep feelings of rejection he experiences in these situations emanate from the fact that he was adopted.

- [8] The respondent is also on medication which consists of various drugs prescribed by Dr Williams for treatment of his mental condition. The respondent, who appeared in person, assured me that he was making progress and has improved with the treatment.
- [9] The family advocate's report supported and recommended structured contact between S and the respondent. Ms Eliane Botha of the Family Advocate's offices in Port Elizabeth, addressed me at some length in court with regard to S's best interests. She advised strongly against the continuation of the present arrangement regarding unsupervised care.
- [10] Having listened to everyone, it appears that there is an effort on the respondent's part to improve his psychological health, although I am not entirely persuaded, based on the reports which suggest the contrary, that his cocaine use is a thing of the past. Psychological recuperation is a slow process beset by hardships and setbacks. Ms Botha also pointed out that the geographical distance between the applicant and the respondent presented several added complications to the present problems. The point made in this regard is, with respect, a very valid one. Should the respondent digress from his road of progress while S is in his care, which is a possibility which cannot be excluded at this stage, the distance from the applicant is for very obvious reasons, undesirable.
- [11] In considering what the outcome of this application should be, the principal and obligatory question I must answer, is what would be in the best interests of the child under consideration. Fortunately, S is much loved by her parents and extended family. Her parents have not thus far used her as a pawn to spite each other, as is so often the case, and in the nine years following their divorce, they have displayed a mature approach to S's contact visits.
- [12] However, facts have been placed before me which cannot be ignored. Circumstances pertaining to the respondent's mental well-being have changed, hopefully only temporarily. For S's sake I am duty bound to take the expert opinions in the reports before me very seriously. Plainly, the majority opinion contained therein militates against unsupervised contact visits with the respondent for a while, and until he sorts himself out.
- [13] The respondent would hopefully not perceive the variation of the current visiting arrangement as punishment. It would not be a permanent state of affairs because it will be revisited in six months' time. More importantly, the respondent, to a large extent has control over what will happen after six months. He should use the opportunity to improve his mental health to a point where he can be regarded as a more responsible caregiver.
- [14] The view that I take of the matter is therefore, that the terms of draft order proposed by Mr Nepgen, for the applicant, are imminently reasonable and appropriate in the circumstances.
- [15] In the result I make the following order:

Clauses 2 and 3 of the Agreement of the Settlement annexed to the Founding Affidavit marked "AD1" are varied as follows:

Clauses 2 and 3 are deleted and replaced with the following:

“2. CONTACT AND CARE OF MINOR CHILD

2.1 The Plaintiff is declared the primary carer of the minor child, S, who is to reside mainly with the Plaintiff.

2.2 The parties are confirmed as co-holders of parental rights and responsibilities of the minor child, S, in terms of Sections 18 and 19 of the Children’s Act 38 of 2005;

2.3 The Defendant is allowed the following contact with the minor child:

2.3.1 Regular telephonic contact;

2.3.2 A weekend sleepover contact in Port Elizabeth commencing at 17:00 on Friday and ending at 17:00 on Sunday, at least once a month, at the home and under the supervision of Claude and Priscilla Coetzee, or at a mutually agreed place or with a mutually agreed upon person;

2.3.3 During school holiday periods, for a reasonable agreed period longer than a weekend, under the same conditions that apply to weekend contact.

2.4 That the aforementioned supervised contact arrangements remain in place for at least 6 months from 21 September 2012, and that the parties are directed to revisit such arrangements after the expiration of such period.

2.5 That the Respondent be ordered to pay the costs of this application”.

E REVELAS

Judge of the High Court

Counsel for the Plaintiff: Adv J Nepgen

Port Elizabeth

Instructed by: Joyzel L Obbes

For the Respondent: Mr J Coetzee in person

Johannesburg

Date Heard: 21 September 2012

Date Delivered: 25 September 2012

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Prepared on 10 October 2026 · Esheria