

SOUTH AFRICA / JUDGMENT

J.C v T.S.C (born B) (EL292/15) [2017] ZAECELLC 1 (17 January 2017)

[2017] ZAECELLC 1

COURT

Eastern Cape High Court, East London Local Court

BEFORE

J.E Smith

CASE / FILE NUMBER

EL292/15

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION – EAST LONDON

Case

no:EL292/15

ECD:

592/15

Date

Heard: 06/12/16

Date

Delivered: 17/01/17

In

the matter between:

J.

C.

APPLICANT

And

T.

S. C. (born B.)

RESPONDENT

JUDGMENT**SMITH J:**

- [1] The applicant seeks an order amending a Rule 43 order granted by Hartle J on 12 May 2015. In terms of that order, inter alia: the primary care and residence of the minor children vested with the respondent; the applicant was ordered to pay maintenance pendente lite in the sum of R1300 per child per month; and to contribute the sum of R2000 to the respondent's legal costs.
- [2] The applicant contends that there has been a substantial change in his circumstances since the order was granted, and he now seeks an order: reducing the maintenance to R650 per child per month; that the respondent contribute the sum of R5000 to his legal costs; and that the minor children's primary care and residency be shared between him and the respondent on an alternate weekly basis, from Sunday 16h00 to the following Saturday at 16h00.
- [3] The applicant avers that his circumstances have changed in the following respects:
- (a) In respect of the maintenance and contribution to legal costs: at the time the order was granted he was earning approximately R15 000
- per month. His salary included a car allowance and use of a petrol card. However, during October 2015 he lost his employment and only found another job during February 2016, where he earns approximately R5000 per month less.
- (b) In respect of the prayer for shared care and residency: on the recommendation of a psychologist, one Sandi Raath, the parties agreed
- to share primary care and residency since March 2016. The minor children were then living with him and the respondent on an alternate
- weekly basis. This arrangement continued until July 2016, when the respondent, being of the view that the applicant's new job schedule would compromise his ability to care for the children, gave notice that she wanted to revert to the terms of the court order.
- [4] The respondent opposed the application on the grounds that the applicant has not been forthcoming regarding his monthly expenses and that it would not be in the best interests of the minor children if primary care and residency were shared between the parties. While conceding that the applicant's income has reduced, the respondent avers that despite the reduction his disposable income has nevertheless not decreased. In this regard she points to the fact that he had used his pension funds to settle some of his debts, thus alleviating his monthly expenses.
- [4] I am of the view that since Hartle J determined the amount of maintenance on the basis that the applicant was earning R15 000,

it would be unfair to expect him to continue paying the sum of R1300 despite the substantial reduction in his income. In my view

maintenance in the sum of R1 000 per child per month would be fair and reasonable. I am nevertheless not convinced that the

applicant has been forthcoming regarding his monthly expenses and do not believe that there is any basis on which I can interfere

with his other financial commitments towards the respondent and the minor children ordered by Hartle J.

[5] Regarding the issue of shared care and residency pendente lite, I am not convinced that it would be in the best interests of the minor children to implement such a complex arrangement without the benefit of a thorough investigation by the Family Advocate. Although the parties have proffered different explanations for the termination of the agreement to share the children's care and residency, the fact of the matter is that things did not work out as expected. And it is not surprising that that interim arrangement was not sustainable. The arrangement clearly presented numerous logistical and emotional challenges - for the parties as well as for the children. While it is conceivable that in certain circumstances a well-considered parental plan for shared care and residency may well be workable and in the best interests of minor children, to implement such a plan pendente lite and without the benefit of the impartial report of the Family Advocate would be, in my considered view, to court disaster.

[6] In the result the following order issues:

(a) The order granted by Hartle J on 12 May 2015 is amended in the following respect only:

(i) The maintenance payable by the applicant in terms of paragraph 2.1 of the order is reduced to R1 000 per month per child, with effect from 1 January 2017;

(b) Costs shall be in the main action.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Appearance for the Plaintiff : Adv Watt

Counsel for the Plaintiff

: Difford Underwood Inc

Suite 2, Sinclair Ave

Bonnie Doone

East London

Appearance for the Defendant : Adv Mostert

Attorney for the Defendant : Gray Burmeister

21 Tecoma Street

Date Heard

: 6 December 2016

Date Delivered

: 17 January 2017

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