

SOUTH AFRICA / JUDGMENT

J.J.A v A.A (2022/021236) [2023]

ZAGPJHC 1045 (15 September 2023)

[2023] ZAGPJHC 1045

COURT

South Gauteng High Court, Johannesburg

BEFORE

Wright

CASE / FILE NUMBER

2022/021236

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

CASE

NO: 2022/021236

NOT REPORTABLE

NOT OF INTEREST TO

OTHER JUDGES

REVISED

15.09.23

In the matter between:

J.J.A

(Identity

Number:[...])

APPLICANT

And

A.A

(Identity

Number:[...])

RESPONDENT

JUDGMENT**WRIGHT J**

This case comes before me, as a matter of urgency, on Friday afternoon, 15 September 2023. The applicant man and the respondent woman are divorced but live 400 metres apart in different units in the same complex. They have two minor children, aged 15 and 9.

The applicant seeks urgently an order that the primary custody of the children be awarded to him on an interim basis and that the respondent be awarded access to the children on alternate weekends supervised by her parents. He seeks also an order now that the matter be investigated by an expert psychologist and reported on urgently.

The applicant alleges that the respondent has recently, and not for the first time, attempted suicide. He attaches a document in the form of a note by the respondent, in which she appears to threaten suicide. He fears that she will harm the children. He alleges that as late as 11 September 2023, 4 days ago, she again threatened suicide in a Whatsapp message. The message appears to confirm the allegation by the applicant.

Attached to the founding affidavit is a letter from the respondent's attorney dated 12 September 2023. The applicant is accused of physically assaulting the respondent and of other forms of abuse.

In her answering affidavit, the respondent says that the applicant is an alcoholic who has assaulted her and threatened to shoot her. On one occasion, she says, he was too drunk to drive back from a bar so he got their 15 years old son to drive.

The respondent had a nervous breakdown and she admitted herself to a psychiatric hospital for about 10 days.

The respondent denies suicidal tendencies but in my view the evidence points to threats of suicide.

Attached to her answering affidavit is a letter, dated 13 September 2023, two days after the last suicide threat, by her psychiatrist to the effect that she is stable and can look after her children. The psychiatrist last saw the respondent on about 15 August 2023.

The respondent attaches a photo of a broken door to illustrate the applicant's bad temper. She says that he broke the door in a fit of rage while she was trying to avoid him.

The respondent has launched a counter-application in which she seeks joint custody, as is the arrangement at present, and an order for joint parenting with the appointment of a Parenting Coordinator and the input of the Family Advocate.

In the applicant's reply he denies abuse. He says he broke the door so that he could stop her committing suicide.

In my view, the respondent is suicidal, notwithstanding her psychiatrist's outdated letter. Her messages are clear evidence of this.

There are huge disputes of fact which can't be decided on paper.

Apart from the suicide issue, there is nothing in the respondent's affidavit which is inherently implausible on paper. I can't send the matter to trial as the case is urgent.

This weekend, that is from this afternoon, the children, who live most of the time with the respondent, are scheduled to spend the weekend with the applicant and then go back to the respondent.

The respondent is clearly under immense pressure. The pressure may be caused just by her refusal to accept that the applicant no longer loves her, as the applicant says, or it may be caused by his violence and abuse, as she says. It may be a combination of both.

In my view, granting an order against the respondent may tip her over the edge. It would be a terrible irony if I granted an order, the intention of which is to safeguard the children but the effect were to be the opposite.

Both Ms Andrews, for the applicant and Ms Vergano for the respondent informed me that there is a long delay, perhaps 6 months to a year for the Family Advocate to produce a report. It appears also that experts, like psychologists may take months to consult and prepare reports.

It occurred to me that the respondent's psychiatrist could be asked to do an updated report but that would take time and fairness would then require that the respondent be assessed by an expert of the applicant's choice. Then the experts would need to meet and do a joint minute. All of this would take time. I need to decide the matter now.

In my view, the position at present must prevail, namely that the children remain mostly in the custody of the respondent, subject to the present weekend arrangement. I shall request the Family Advocate to do a report as soon as practically possible.

Costs should be reserved.

ORDER

X as amended. -

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 15 September 2023

DELIVERED : 15 September 2023

APPEARANCES :

APPLICANT

Adv Raquel Andrews

082 414 7455

randrews@olamide.co.za

Instructed by

TF Kruger Incorporated

011 766 1428/9

kruger@krugerattorney.co.za

debbie@krugerattorney.co.za

RESPONDENT

Adv Viviano Vergano

082 536 4969

advocatevergano@gmail.com

Casper Le Roux Incorporated

011 412 2820/ 010 549 1630

casper@cjlroux.co.za

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