

SOUTH AFRICA / JUDGMENT

K.A.N. v Member Of The Executive Council For Social Development, Eastern Cape and Others (424) [2014] ZAECBHC 5 (8 April 2014)

[2014] ZAECBHC 5

COURT

Eastern Cape High Court, Bhisho

BEFORE

J.E Smith

CASE / FILE NUMBER

424

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION – BHISHO

Case no: 424

Date Heard:27/03/14

Date Delivered:08/04/2014

In the matter between:

K.A.N. APPLICANT And THE MEMBER OF THE EXECUTIVE COUNCIL 1ST RESPONDENT FOR SOCIAL DEVELOPMENT, EASTERN CAPE DIRECTOR GENERAL OF THE DEPARTMENT 2ND RESPONDENT OF SOCIAL DEVELOPMENT, EASTERN CAPE THE DESIGNATED SOCIAL WORKER, 3rd RESPONDENT DEPARTMENT OF SOCIAL DEVELOPMENT

ORDER

SMITH J:

- [1] The applicant seeks an order calling upon the respondents (the Member of the Executive Council for Social Development; The Director General of the Department; and the Designated Social Worker) to show cause why they should not be compelled to investigate whether a minor child in her care is in need of care and protection, and lodge the said report with the Children's Court.

- [2] She is the maternal grandmother and caregiver of a [...] year-old boy whose mother had died during [.....]. She does not know who the child's biological father is, and has not been able to trace him. While it is common cause that she applied for a foster child grant during April 2009, the respondents have averred that she withdrew the said application during 2013.
- [3] The matter was argued together with two other matters where similar relief was sought from the same respondents. In those matters (as is the case here) fundamental disputes of fact had arisen. Counsel conceded that it would not have been in the best interests of the minor children to refer those disputes for viva voce evidence, and had instead reached agreement on the substance and form of the orders that will issue in those matters. Mr Hobbs, who appeared for the applicant, and Mr Crisp, for the respondents, eventually agreed on the substance of the order that should issue in this matter also, but could, however, not reach agreement on the question of costs.
- [4] Central to the issue of costs are the circumstances under which the applicant had allegedly withdrawn her application. According to her, she was fetched from her home and intimidated by the police and a social worker, and thus forced to withdraw her application. The respondents have denied coercing the applicant into withdrawing the application, and averred that she did so voluntarily. Be that as it may, I am not convinced (even on their own version) that the respondents have acted in a responsible manner, and in accordance with their constitutional and statutory obligations.
- [5] Instead of assisting the applicant to process the application, they conveniently chose to rely on a purported withdrawal only after the court papers had been served on them. The alleged withdrawal was apparently after the designated social worker had confronted the applicant about why she had instituted legal proceedings when she had not yet supplied them with the required information. The conduct of the latter functionary was, in my view, highly undesirable and (whether intended or not) could only have served to intimidate the applicant. Under these circumstances I am of the view that the respondents should pay the applicant's costs.
- [6] In the result the following order issues:
1. The applicant is directed to file her application for a foster child grant in terms of section 8 of the Social Assistance Act, 13 of 2004, in respect of the minor child, P.H.N., at the Service Centre of the Department of Social Development at Sterkspruit, within two weeks from the date of this order.
 2. The designated social worker is ordered to investigate the matter, compile a report in the prescribed manner on whether the said child is in need of care and protection, and submit the report to the Children's Court having jurisdiction, within 90 days from the date of the lodging of the application for a foster child grant.
 3. The respondents are ordered to pay the applicant's costs on the party and party scale, jointly and severally, the one paying the other to be absolved.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant: Advocate Hobbs Attorney for the Applicant: Z.Y.M Ndzabela 9 Avalon Court Cnr of Taylor and Fuller Street Butterworth Counsel for the Respondent : Advocate Crisp Attorney for the Respondent: State Attorney 17 Fleet Street East London ReJ Mr Mgujulwa

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