

SOUTH AFRICA / JUDGMENT

L M v R T (28133/2009) [2018] ZAGPJHC 676 (16 November 2018)

[2018] ZAGPJHC 676

COURT

South Gauteng High Court, Johannesburg

BEFORE

M M MABESELE

CASE / FILE NUMBER

28133/2009

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 28133/2009

In the matter between:

L M Applicant

and

R T Respondent

J U D G M E N T

MABESELE, J:

[1] This is an opposed application in terms of which an order is sought in the following terms:

(i) the respondent be held in contempt of the court order dated 5 November 2015;

alternatively, it should be declared that the respondent has failed to comply with the court order dated 5 November 2015;

(ii) the respondent comply with clause 3.1.3 of the settlement agreement incorporated in the divorce order dated 5 November 2015;

- (iii) the respondent make all necessary arrangements and to facilitate contact between applicant and the parties' children, immediately after completion of the reconstructive therapy;
 - (iv) the proceeds of the sale of property registered in both parties' names form part of the applicant's estate for purpose of determining the accrual;
 - (v) the respondent provide the liquidator with the information and/or documents she requires within 30 (thirty) days of this order and continue to comply with the liquidator's further requests within 7 (seven) days after such requests have been made to her by the liquidator;
 - (vi) the respondent to pay costs of this application on a scale as between attorney and own client;
 - (vii) further and/or alternative relief.
- [2] By agreement between the parties a draft order was prepared to form part of the order to be granted in this judgment in respect of outstanding prayers (iv) and (vi) which the parties did not agree on after they were given last opportunity in court to attempt to resolve them.
- [3] It is common cause that the parties were married to each other out of community of property. Although the property known as [...], Meyersdal Nature Estate, Extension 11 township, was registered in both parties' names, same was bought by the applicant.
- [4] The applicant contends that although the property was owned by both of them, the proceeds of the sale of that property should form part of his estate because the respondent did not make any financial contribution when it was bought.
- [5] The respondent, in her answering affidavit states that: during or about 2010 when she and the applicant were separated, they attempted reconciliation. Part of such reconciliation involved applicant agreeing with her that he would pay for all costs associated with the said property and that each would own 50% of the property. The property was purchased with the intention that it would be their matrimonial home. It was thus agreed that the property would be registered in both their names in terms of which they would become registered co-owners in equal undivided shares thereof, it being understood that in the event of the property being sold, they would each receive 50% of the net proceeds of the sale. Registration took place as agreed and they became such registered co-owners of the property in equal undivided shares.
- [6] It seems to be common cause that after the registration of the property had taken place both parties became registered co-owners of the property in equal undivided shares. The question is whether the applicant is entitled to 100% of the proceeds from the sale of the property in view of the fact that he bought the property alone.
- [7] The general rule is that one who owns or co-owns the property legally, is entitled to the proceeds of the sale of such property. The respondent is by law, co-owner of the property in question. According to the respondent, both parties intended to benefit from the said property when it gets sold. I agree. If that was not the intention of the parties, the property would have been registered in the name of the applicant only. In addition, the applicant

failed to substantiate his argument that he is entitled to 100% of the proceeds of the sale of the property even though the respondent is co-owner. For this reason, prayer (iv) of the applicant's amended notice of motion cannot be acceded to. This means that not all the proceeds of the sale of the property will form part of the applicant's estate for the purpose of determining accrual. The applicant is entitled to 50% of the proceeds.

[8] With regard to the issue of costs, it is beyond dispute that the respondent did not comply with the order of this court, dated 5 November 2015, in its entirety. Therefore the applicant was justified to launch this application. The result is that the applicant is entitled to costs.

[9] Therefore I make the following order:

9.1 The respondent is ordered to transport the minor child T M, to the reconstruction therapy sessions with the therapist Karen Meyer or any other therapist recommended by her between 10 and 14 December 2018. The therapist is at liberty to determine whether further reconstruction therapy sessions and/or further assessment is necessary and if so, to advise the parties accordingly within 30 days after such determination.

9.2 In the event that Karin Meyer is no longer available and cannot recommend another therapist to continue with the sessions the parties agree that applicant should appoint Kirsten Randall at his own costs to continue with and complete the reconstruction therapy sessions as per Leonie Henig's recommendations on the dates referred to in prayer 9.1 above.

9.3 Kirsten Randall will also be at liberty to determine whether further reconstruction therapy sessions and/or further assessment is necessary and if so, to advise the parties accordingly within 30 days after such determination.

9.4 In the event that the respondent is not available to transport the minor child to the therapy on the above dates, she should make alternative arrangements to have the child transported to the therapy.

9.5 Both parties are ordered to furnish each other and the appointed liquidator with proof of value of their assets and liabilities listed in their respective inventories on or before 07th December 2018 and their comments to the inventories of the other party on or before 25 January 2019.

9.6 The applicant is ordered to sign all documentation and take all necessary steps to renew T M's passport, including attending the Department of Home Affairs at Alberton on the 06th of December 2018 between 09h00 to 12h00 failing which the Department of Home Affairs is authorized and directed to renew the passport without the applicant's written consent.

9.7 Half of the proceeds (50%) of the sale of the property registered in both parties' names should form part of the applicant's estate for purpose of determining the accrual.

9.8 The respondent to pay costs of this application.

M M MABESELE

JUDGE OF THE HIGH COURT

Date of hearing: 13 November 2018

Date of judgment: 16 November 2018

For the appellant: Adv. R.B Mphela

Instructed by: M H P Malesa Attorneys

For the respondent: Adv. C.Gordon

Instructed by: Craig Baillie Attorneys

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