

SOUTH AFRICA / JUDGMENT

L.B v W.B (5393/2019) [2020] ZAFSHC 90 (7 April 2020)

[2020] ZAFSHC 90

COURT

Free State High Court, Bloemfontein

BEFORE

I Van Rhyn

CASE / FILE NUMBER

5393/2019

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

CASE

NUMBER: 5393/2019

In

the matter between:

L
B
applicant
and
W
B
respondent

CORAM:

VAN RHYN AJ
HEARD
ON: 30 JANUARY 2020

JUDGMENT

BY: I VAN RHYN, AJ

DELIVERED: 7 APRIL 2020

INTRODUCTION:

- [1] This is an application for authorization to be granted to Dr. Stephen Walker, a registered psychologist (“Dr Walker”) to carry out an investigation/evaluation regarding what care, contact and primary residency arrangements will be in the best interest of the parties’ minor daughter, L (“the minor child”). Dr Walker is to compile a report subsequent to his interviews and assessments with all relevant parties, family members and caretakers and to make his report available to Advocate Dorette van Zyl (“Advocate van Zyl”), who is to be appointed as a mediator in the ongoing conflict between the applicant and respondent.
- [2] The application for the authorization of Dr Walker to investigate the interests of the minor child and to make recommendations regarding any issues concerning the welfare of the minor child and for Advocate van Zyl to conduct a mediation and conflict resolution process, is opposed by the respondent. The respondent opposes the appointment of an independent psychologist on the basis that it is unnecessary because the investigation and subsequent report compiled by the Family Advocate’s Office is sufficient. It is furthermore contended that the appointment of Dr Walker will result in a “review” of the Family Advocate’s report.

BACKGROUND.

- [3] The applicant, a flower agriculturist and the respondent, a florist from Kimberley in the Northern Cape, who had known each other for eight (8) years through their businesses, became romantically involved during January 2017. From their relationship the minor child was born on 10 May 2018. Subsequent to the birth of the minor child, the applicant moved in with the respondent and on 30 March 2019 the parties got married. Within three (3) months, on 12 June 2019, the applicant decided to leave the communal home in Kimberley and return to her father’s farm near Bloemfontein. At the time of the separation the applicant left the minor child, then 13-months old, in the care of the respondent. The applicant also has a five (5) year old daughter, (“G”) from a previous marriage. The applicant was informed by the respondent that he will not consent to the removal of the minor child from the communal home.
- [4] Applicant was allowed to pick up the minor child from their home in Kimberley on Sunday, 16 June 2019 for a period of three
- (3) days until Wednesday, 19 June 2019, when the respondent again picked up the minor child in Bloemfontein. On 18 June 2019 the applicant issued summons under case number 2712/2019 claiming a Decree of Divorce and related relief including an order in terms whereof the

primary care of the minor child is to be awarded to the applicant. On 20 June 2019 an urgent Rule 43 application was issued by the applicant praying for, inter alia an order whereby the primary care and residency of the minor child be awarded to her. The application was opposed by the respondent. On 5 July 2019 Mathebula J, made an order allowing for the residency and care of the minor child to be shared between the parties on the basis that the minor child shall reside with the applicant from 16H00 on a Saturday until 9H00 on a Wednesday when the minor child will return to Kimberley to reside with the respondent until the following Saturday at 16H00.

- [5] The Office of the Family Advocate was ordered to commence with the investigation regarding the primary care and residency of the minor child and to file a report by 30 September 2019. The Family Advocate's report was filed on 23 October 2019 and included a report compiled by a Family Counsellor.
- [6] In the meantime the parties adhered to the order dated 5 July 2019. The applicant contends that she initially considered the relationship between herself and the respondent to be a warm and caring one, however she later became aware of certain personality deficiencies exhibited by the respondent. She describes him as "... a manipulative, controlling person who would run me down and humiliate me in front of friends and family". According to her observations the respondent has a split personality and can change from being a friendly, warm person to being harsh and indifferent. While contemplating the breaking-up of their relationship, the applicant realised that she was pregnant with their child. Since the birth of the minor child applicant had been commuting between Kimberley and her responsibilities on the farm near Bloemfontein by traveling to Bloemfontein on a Wednesday and leaving for Kimberley on the Thursday. On Fridays she would return to the farm to prepare the flowers for sale at the Langenhovenpark market ("Boeremark") on the Saturday and would then return to Kimberley during the Saturday afternoon.
- [7] The applicant avers that she was not keen on entering into a spousal relationship with the respondent and contends that the living conditions in Kimberley did not contribute to a stable relationship. She indicates that the parties lived in close proximity of respondent's parents as well as a third tenant, who resides in a house in between the parties and the applicant's in-laws. It appears as if three separate houses are located on one property, though in close proximity of each other. The parties decided to consult their pastor in Kimberley due to the never-ending acrimony that existed in their relationship which was, according to the applicant, furthermore fuelled by the respondent's mother's constant involvement. On advice from their Pastor that them getting married will have a positive outcome on their relationship, they got married on 30 March 2019. According to the Family Counsellor, who telephonically interviewed the said Pastor, Dr Ben Vorster (a pastoral counsellor) he however denies "forcing" the parties into a marriage.
- [8] Applicant contends that the relationship deteriorated even further after they got married. She avers that she was not allowed to leave the communal home in Kimberley with the minor child, not even to take her to the park or to accompany her to Bloemfontein when she

visited her parents on the farm for a few days. Respondent in his opposing affidavit to the urgent Rule 43 application, denies applicant's allegation that she had misgivings concerning their marriage and replies that these allegations are far from the truth. He contends that the applicant was excited to get married and to "... commence with their exciting future together as a family". Respondent furthermore denies that their living circumstances had a detrimental effect on their marriage. The respondent contends that the applicant was happy with the living conditions in Kimberley and avers that the applicant was quite content to leave the minor child as well as her sibling, G with him and his parents when she travelled to Bloemfontein. He, as a matter of fact, actually encouraged her to take both children with her, but she refused and indicated that her parents' home are unclean and her mother has Alzheimers leaving her unable to care for the children. Respondent contends that his mother managed her business in such a way that she stayed home to care for both children and he therefore fails to see how his mother's involvement in their relationship affects the well-being of the minor child.

- [9] Applicant became concerned about respondent's deteriorating relationship with G, as he initially took great interest in her but since the birth of their minor child, G became less important to him. Respondent's loving attitude towards and interest in G, initially pleased the applicant, since G's father had immigrated to New Zealand and she therefore lacked a father figure. Applicant assumed that her marriage with the respondent would also be beneficial to G. Respondent became more controlling and domineering, and with his mother's input, the situation became unbearable which caused her to leave the communal home during June 2019.
- [10] Respondent, on the other hand, denies that he became less interested in G and avers that the applicant left G with him when she travelled to Bloemfontein. He, with the assistance of his mother cared for both children during applicant's absence. He avers that applicant was back at work a mere week after the birth of their minor child which necessitated him to care for both girls permanently up until the applicant moved out. Respondent contends that he employed more staff at the flower shop to enable him to be at home more often to care for the minor child. He furthermore contends that he basically raised the minor child and that the applicant "... essentially only affected contact rights" relating to their minor child during their marriage.
- [11] Respondent raised concerns with the Family Counsellor regarding applicant's place of residence and the safe upbringing of the minor child under the prevailing circumstances on the farm. He alleges that:
- (a) chemicals used on the farm are kept in close proximity and in reach of the children;
 - (b) a ferocious dog on the premises has aggressively snapped at the minor child in the past;
 - (c) there is a lack of security on the farm;

- (d) there are open electrical sockets and wires on the farm while the general hygiene in the house is insufficient;
 - (e) numerous insects and dangerous spiders in and around the house makes the farm unsafe for the minor child's upbringing.
- [12] The respondent contends that it is in the best interest of the minor child for her to stay with him where she will be in his, his mother's and a nanny's care. According to the respondent, applicant is not affectionate towards the minor child and "... doesn't really care about her as much as I do". In his opposing affidavit in the urgent Rule 43 application the respondent contended that the applicant's contention that she acquired the assistance of a nanny, is false as the lady is merely a general household assistant and not in any way qualified to take care of and/or assist with minor children.

PURPOSE OF THE APPLICATION:

- [13] Applicant is of the opinion that the investigation and report compiled by the Office of the Family Advocate suffers from several

shortcomings and that the recommendations are not in the best interest of the minor child. An investigation and evaluation by the proposed independent psychologist, Dr Walker regarding the care, contact and primary residence arrangements regarding the minor child will therefore assist the court in adjudicating upon the question regarding the primary residency of the minor child. Secondly, the applicant contends that, due to the constant conflict between the parties and respondent's unwillingness to cooperate to resolve the conflict, a mediator, Advocate van Zyl should be appointed even prior to the divorce to conduct a mediation and/or conflict resolution process between the parties.

- [14] Respondent opposes the application on the basis that the court is obliged to reject the Family Advocate's report and

recommendations before appointing and authorising an independent psychologist to carry out an investigation regarding the care,

contact and primary residency arrangements of the parties' minor child. Furthermore it is contended that the applicant

failed to indicate any irregularities in the Family Advocate's report or any bias. Therefore the appointment of an expert "... usually appointed by the attorneys acting on behalf of the applicant" in similar cases "...who is then elected and paid for by the applicant" is unnecessary and should not be granted. Suffice to say that I find the unsubstantiated allegation and insinuations by the respondent concerning attorneys and expert witnesses inappropriate.

APPLICABLE LEGAL PRINCIPLES:

- [15] The best interests of the minor child are paramount in the adjudication of this application.

[1] Section 7(1)(a) of the Children's Act provides as follows:

“7(1) Whenever a provision of this act requires the best interests of the child’s standard to be applied, the following factors must be taken into consideration where relevant, namely:

- (a) The nature of the relationship between –
- (i) The child and the parents, or any specific parent; and
- (ii) The child and any other caregiver relevant in those circumstances ...”

[16] The factors set out in Section 7 of the Children’s Act constitute a non-exhaustive checklist of criteria which serve as guides when deciding upon what the best interest of a minor child are. In the matter of *Girdwood v Girdwood*[2] it was held that “...as upper guardian of all dependent and minor children this Court has an inalienable right and authority to establish what is in the best interests of children and to make corresponding orders to ensure that such interests are effectively served and safeguarded”.

[17] The Family Advocate is not appointed as a representative of any party in this application. The Family Advocate acts as an advisor to the court and is therefore required to be neutral in his/her approach to enable the parties’ wishes, desires, the true facts and the circumstances to be placed before court. The Family Advocate should make a balanced recommendation, subsequent to an investigation regarding the best interest of the minor child with specific reference to her primary residence, care and contact.[3] It is affirmed in several court decisions that a mother’s role as primary caregiver has diminished and the relevant facts, opinions and circumstances regarding the care of the minor child and the child’s parents must be assessed in a balanced fashion. The standard is to be applied in a flexible manner. [4]

THE FAMILY ADVOCATE’S REPORT:

[18] On behalf of respondent it was argued by Mr Lubbe that the content of the Family Advocate’s report and in this case more specifically the Family Counsellor’s recommendations, will always be a debatable issue from the perspective of a party, such as the applicant, where the recommendations do not satisfy such a party. The applicant, represented by Me Wright, contended that the extent of shortcomings in the investigation done by the Family Counsellor is disconcerting and, as the court is to be led by the report filed by the Family Advocate, it is essential that another, more thorough, evaluation should be done in order to supplement the shortcomings of the said report and to properly assist the court in making orders relating to the care and primary residency of the minor child. To substantiate this point the following shortcomings were highlighted:

- (a) The report does not indicate that any attempt has been made to mediate between the parties or to assist in mitigating the various issues of conflict through discussion and/or counselling;
- (b) The Family Counsellor did not conduct individual interviews with the applicant and respondent and she failed to address and/or deal with the respondent’s hostile, disrespectful and degrading attitude towards the applicant;

- (c) The Family Counsellor failed to appreciate or be concerned with the respondent's manipulative and controlling tendencies.
 - (d) The Family Counsellor did not conduct personal interviews with the applicant's domestic worker Sarah and the applicant's parents. The respondent's mother was present during the interview at the Office of the Family Advocate. The Family Counsellor however failed to take advantage of the opportunity to interview the paternal grandmother and only afterwards interviewed her telephonically.
 - (e) The Family Counsellor failed to appreciate or be concerned about the respondent's attitude towards the applicant and the possibility that the respondent's attitude may negatively affect the minor child.
 - (f) The Family Counsellor appeared overly focused on one issue, namely the alleged emotional attachment of the minor child to the respondent.
 - (g) The Family Counsellor had ample opportunities to interact with G, but failed to interview and/or interact with her.
 - (h) The Family Counsellor confirmed the intentions and existing conflict between the parties but fails to recommend mediation or conflict resolution prior to the divorce.
 - (i) The Family Counsellor apparently did not attempt to assist the parties with the drafting of a parenting plan.
- [20] The Family Counsellor conducted an interview with the applicant and respondent on the 27th August 2019. A structured observation of the interaction between the minor child and both her parents was conducted. The interaction between the siblings was observed on the same day as well as on 3 September 2019 at the applicant's place of residence on the farm, when the Family Counsellor visited the farm. The visit to the farm was conducted due to the respondent's allegations and concerns regarding the hygiene and safety of the minor child when she is in the care of the applicant. The Family Counsellor observed that the applicant lives in a 2-bedroom house with the two minor children while the maternal grandparents live in the main house. In a third house on the same farm an uncle and his family reside while the fourth house on the farm is hired out.
- [21] The Family Counsellor refers to the applicant's parents as the "paternal grandparents" in the report while it is clear that reference is made to the maternal grandparents and uncle. The Family Counsellor gave a description of the applicant's house and surrounding area and found applicant's house to be neatly painted, clean and even though a German Shephard dog was "roaming outside" the three dogs belonging to the maternal grandfather were "friendly" and were found not to pose any threat to the Family Counsellor. No burglar proofing at the windows were present but an alarm system, with beams that detect unwanted movement or persons on the outside, was installed. The Family Counsellor observed an enclosed and locked swimming pool in the maternal uncle's yard which was covered with a plastic pool cover. The Family Counsellor furthermore found that the chemicals used for the farming

purposes were stored in an enclosed shed which neither of the minor children would be capable of opening by themselves. An uncovered pit in the ground, some distance from the applicant's house was observed, which could pose a danger for a child. However, the applicant indicated that the minor children will not be left alone outside her yard and undertook to cover the open pit.

- [22] The Family Counsellor stated that the applicant works on a Wednesday from 14H00 until 17H00, on a Friday during the same hours and on a Saturday from 07H00 until 13H00. The respondent, a florist and owner of the House of Flowers in Kimberley works from Monday to Friday during the normal business hours, 08H00 until 17H00. On Wednesdays he travels to Bloemfontein to collect the minor child and on certain Thursdays he does not work during the afternoon. Regarding the applicant's allegation that respondent and the paternal grandmother both have controlling personalities and were constantly criticizing her parenting abilities which made her feel degraded and humiliated, the Family Counsellor stated that the respondent denied these allegations. It was however noted by the Family Counsellor that the respondent criticized the applicant's parenting at the time of the interview and he furthermore indicated that he is a better parent than the applicant because he "practically raised" both the minor girls. The respondent furthermore indicated to the Family Counsellor that he was the only parent involved with the care of both children as the applicant was absent and stated that during a period of 365 days the applicant was absent for more than 200 days. The respondent furthermore criticized the applicant's relationship with G as well as the emotional well-being of G while she is in the care of the applicant.
- [26] The Family Counsellor conducted a telephonic interview with G's father who is presently residing in New Zealand. G's father, the former husband of the applicant subsequently also provided information per e-mail to the Family Counsellor. The applicant and her former husband were married for a period of ten
- (10) years. When they separated G was sixteen (16) months old. Since their separation the applicant resided at the maternal grandparents' farm with G. According to the applicant's former husband, G has always been taken care of physically and emotionally and he assured the Family Counsellor that the applicant would never neglect to care for a sick child as alleged by the respondent. According to the applicant's former husband the respondent endeavoured to limit his contact with G whereafter the applicant had to, under false pretences, leave the communal home to some public place in order to facilitate telephonic contact between G and her father. According to G's father the respondent "would pick fights with G about what and how much she eats and he would punish her on a daily basis" which infuriated him. The respondent initially was very accommodating and caring towards G but ever since the applicant's

former husband denied permission to have his surname hyphenated to G's surname, respondent's attitude towards G deteriorated. The applicant's former husband opined that G is a much happier child ever since the applicant and G moved from Kimberley to the farm in Bloemfontein, which change resulted in a much better relationship and contact rights between him and G. He opined that G had a complete about-turn and is happy ever since she lost contact with the respondent.

- [27] The respondent indicated that, according to him, G and the minor child does not have a positive relationship. According to the respondent, G assaulted the minor child during which the minor child sustained injuries to her back, legs and arms which left blue marks. He accused the applicant of being careless and rather passive about the incident. According to the respondent, G has a tendency to be jealous towards the minor child even though they do sometimes play. This information was followed up with the paternal grandmother who on 20 September 2019 indicated that G tends to bully the minor child as she is jealous of the minor child.
- [28] Following the accusations regarding jealousy and the incident between the siblings, the Family Counsellor interviewed Mrs Strydom, the neighbour of the respondent. Mrs Strydom explained that her house is situated in between that of the respondent and his parents. She confirmed that the respondent's parents are very involved with the minor child's care. Mrs Strydom is of the opinion that the respondent has a short temper and according to her observations, the respondent appeared to be very strict with G. When G forgot to take her schoolbag containing snacks to the car one morning on their way to school, Mrs Strydom observed that the respondent did not allow G to fetch her schoolbag but took her to the school without her snacks and schoolbag. Mrs Strydom indicated that when the minor child is in the respondent's care she often sleeps over at the paternal grandparents' house. According to Mrs Strydom the minor child cries at night.
- [29] Mr J J Corbitt, the maternal uncle indicated to the Family Counsellor that from his observations, the applicant is a good caretaker of and mother to both minor children. He furthermore informed the Family Counsellor that "... the children are mostly with the mother and they follow her around the farm wherever she is". From the information gathered from Mrs Greeff, who is acquainted with the applicant since 2015 when she brought G to her day-care centre, it is evident that the applicant is an involved and dedicated mother. Mrs Greeff observed G to be well cared for, lively, happy and well groomed. She informed the Family Counsellor that the applicant provided assistance at the day-care centre during functions and confirmed that there existed a well-balanced, caring and good bond between G and the applicant. Mrs Greeff has had the opportunity to observe the relationship between the siblings and noted a fond relationship between G and the minor child. The Family Counsellor noted that the shared residency of the minor child at present will not be sustainable on the long run due to the fact that the minor child will, in a few years' time, have to attend a crèche, pre-school and later school. However, both the applicant and the respondent love the minor child and understandingly neither can reconcile themselves with

the idea of not being actively involved in their daughter's daily life. The respondent made several allegations pertaining to inadequate care and supervision of both the minor children whilst in the care of the applicant. One such instance was when G fell into a swimming pool and was rescued by the respondent and a second incident during the winter of 2019 when both children suffered from fever and not feeling well. A further accusation levelled against the applicant by the respondent concerns an incident when the minor child was admitted to hospital in Kimberley during September 2019.

- [30] On the other hand the applicant states that the respondent is a good father and that the minor child is well cared for while she is in his and/or his parents' care and that she is not concerned about the minor child's safety. The applicant however alleges that the respondent and the paternal grandmother are over-involved with the minor child, smothering her with affection and constantly criticizing her parenting skills and involvement, or rather the lack thereof, with the children. She is concerned that the respondent wants to minimize her involvement in the minor child's life. The Family Counsellor did not regard the applicant's ability and suitability as a caregiver to be contentious and found, subsequent to an inspection she conducted at the applicant's residence (and at the insistence of the respondent) it to be void of any danger or unhygienic.
- [31] The Family Counsellor found that both parties have a good bond and relationship with the minor child and that both parties have the capacity to provide for their child's care and needs. The respondent indicated that he travels to Bloemfontein to fetch flowers for his business on a Wednesday and that the present arrangement, that they continue shared residency of the minor child can successfully continue until the minor child reaches pre-school going age. He however feels that it will be in her best interest if the minor child stays with him for four (4) days and with the applicant for three (3) days during a week until such time. The respondent informed the Family Counsellor that the minor child should actually stay with him for five (5) days during the week and visit the applicant during weekends to which the applicant responded that she works on a Saturday morning, selling flowers at the Boeremark and that this arrangement will be detrimental to the minor child. She raised concerns during the interview with the Family Counsellor as well as in the founding- and replying papers that the minor child is unsettled due to the shared residency arrangement. The applicant indicated that the minor child wakes up crying at night and she is furthermore of the opinion that the siblings should not be separated as it seems obvious to her that the siblings long for each other when separated.
- [32] The Family Counsellor, with reference to studies done regarding the separation of siblings, opined that the decision to separate siblings should be made with great care. Due to their difference in age, approximately 3 years, the presence of sibling rivalry and jealousy from G's side are to be expected. During the observations by the Family Counsellor she requested the parties to interact with the minor child and to play with colourful building blocks. The applicant interacted actively with the minor child, imitating animal sounds while playing with a dinosaur and complimenting the minor child during the session. The applicant

motivated the minor child to build a structure with the building blocks and both clearly enjoyed the task. The respondent was given the same request and task to interact with the minor child but ignored the request and took time kissing and hugging the minor child focusing his affection on her rather than on the task. The Family Counsellor noted that the minor child clearly enjoyed the hugging and attention but that she "... experienced that the hugging and kissing went on a bit long and a bit much as it was awkward that the father did not concentrate on the task, but rather wanted to display his affection for ..." the minor child. The Family Counsellor further noted that when the respondent had the opportunity he told the minor child to repeat the following words "Oupa, Ouma", the minor child's name and "Pappa". He clearly excluded the applicant and G entirely. He furthermore repeated numerous times that "Pappa kom" and requested the minor child to repeat the words after him, which she did. It was further noted that eventhough the applicant gave the minor child the opportunity to explore her surroundings, the respondent held her in his arms continuously displaying his affection towards her.

- [33] During a test, used to assess attachment between the minor child and her parents, the parent was requested to leave the room to enable the Family Counsellor to observe the minor child's reaction. The minor child's response to separation from the applicant was that she continued playing after the applicant indicated to her that she is quickly going to the bathroom and that she will be back soon. The Family Counsellor noted that the minor child did not show fear or anxiety in the presence of the Family Counsellor but that the minor child was obviously very happy and excited when the applicant returned to the room. During the same test and when the father left the assessment room, the minor child looked up, stood up and walked to the door where her father left and called for her father which actions she did not perform when her mother left the room. The respondent immediately reacted and entered the room whereafter she displayed her gratitude in seeing him. The Family Counsellor observed that "the father's hugging and kissing of the minor child was observed to be exaggerated" however, the minor child pulled away her head now and then as part of the play. The respondent was observed to be more vocal, physical and exaggerating in his interaction with the minor child than the applicant.
- [34] In her observation of the siblings the Family Counsellor noted that on the day of the interview both G and the minor child played on a slide and they interacted positively. On the day of the home visit to the farm the Family Counsellor observed the children playing with each other peacefully on a trampoline while the applicant and a nanny observed them. The children were not observed to have any conflict while the Family Counsellor was present. Even though G ignored the minor child for a period of time they later on did engage with play on the trampoline.
- [35] The Family Counsellor furthermore telephonically interviewed the nanny of the minor child, Me Ramakat, who has been in respondent's

employment since January 2019. Me Ramakat takes care of the minor child during the day at the paternal grandparents' home. The paternal grandmother has a funeral business and has to work at times. The paternal grandmother indicated that she works from home and that the minor child sleeps at their premises one night during the stay with the respondent and the other nights with the respondent. The respondent however also sleeps over at the paternal grandparents during the minor child's visit. The paternal grandmother indicated that she is not the primary caregiver when the minor child is living with the father. The Family Counsellor stated that the paternal grandparents participate in the minor child's care and they are a strong support system for the respondent together with the aid of the nanny. The applicant avers that the paternal grandparents in essence care for the minor child which allegation is denied by the respondent.

[36] The Family Counsellor found that it would be in the minor child's best interest to live with the respondent and to have regular contact with the applicant and G. Due to the fact that the applicant has to work on a Saturday morning the Family Counsellor proposed that the applicant should travel to Kimberley on a Friday to fetch the minor child, arrange care for the Saturday morning and then the respondent should collect the minor child on a Sunday afternoon in Bloemfontein. The Family Counsellor however acknowledged that it would also be important for the respondent to spend one weekend a month with the minor child to do things with her for which there is no time during the week. It was found that the respondent's support system is much better than the applicant's and the minor child's attachment to the respondent is stronger as assessed during the exercise referred to above. It was found that the respondent is more reactive towards the minor child's physical and emotional needs and that his parenting style will have more positive outcomes for the minor child. The Family Counsellor however indicated that the respondent "should caution against helicopter parenting and putting the applicant's capacity into question most of the time as it would ultimately lead to parental alienation".

[37] It was further advised that the parties attend parenting programmes at FAMSA to assist them with parental conflict. The Family Counsellor referred to the phenomenon that a lack of continuity of care can negatively affect a young child's attachment patterns and that shared residency for children under the age of 4-years is not advisable due to the fact that babies and toddlers require stability and therefore a discontinuous experience might be harmful. Shared residency, according to the applicant has negatively affected the minor child and the Family Counsellor acknowledges that the applicant's concerns in this regard has merits.

[38] Due to the respondent's proposal that shared residency should continue until the minor child reaches school going age, which is evidently detrimental to the minor child, I am of the view that the respondent fails to perceive the consequences of the continuous change in the minor child's life as harmful. A further aspect of concern is the fact that the applicant indicated that the minor child cries at night and she attributes this tendency to the minor child's inability to cope with the current situation. Collateral information collected by the Family Counsellor confirms the fact that the minor child wakes up crying at night. The

respondent and the paternal grandmother failed to divulge this information during the Family Counsellor's interview. The Family Counsellor evidently accepted the version proffered by the applicant as being truthful and opined that she (the Family Counsellor) is concerned about the fact that the minor child's sleepovers at the paternal grandparents, at the respondent's residence and at the applicant's place of residency on the farm, negatively impacts on the minor child's well-being. The Family Counsellor recommended as follows: "There are too many sleeping arrangements. There should only be two."

[39] The respondent does not provide any reason why it is at all necessary for the minor child to regularly sleep over at the paternal

grandparents' residence. During the interviews, the respondent indicated to the Family Counsellor that he cares for the minor child 90% of the time and that he is the primary caregiver of the minor child. It seems as if the applicant's contention that the paternal grandparents mostly care for the minor child are more probable even though it is denied by the respondent and his mother. Why the Family Counsellor recommended that the minor child should reside with the respondent from Sunday afternoon until Thursdays is puzzling. Clearly the respondent has a business to run and works from 08H00 until 17H00, even though he, at short notice will be available to attend to the minor child's needs, if necessary. It is obvious that the minor child is mostly cared for by the paternal grandparents and Me Ramakat while the respondent is at work. Taking into consideration the fact that the applicant works on the farm and is available throughout the day and at night, the recommendation that the care of the paternal grandparents during the day, and clearly also several nights, is to be preferred is unclear and questionable. There is no indication what the age and physical condition of the paternal grandparents are. Clearly these are aspects to be considered and of importance when adjudicating upon the question of the best interest of the minor child in as far as primary residence is concerned.

[40] Me Ramakat, the "nanny" who cares for the minor child whilst in the care of the paternal grandparents are being portrayed as better equipped than Sarah who cares for the children whilst in the care of the applicant on the farm. According to the Family Counsellor the applicant's support system consists of a domestic worker in contrast with the paternal grandparents and a "nanny" acting as the support system on behalf of the respondent. The applicant's averment that the minor child is not primarily

cared for by the respondent while she is in his care is disconcerting and compelling. It is obvious that the respondent's

parenting role is, for the most part delegated and extended to his support system. Although the grandparents' role in the minor child's life is beneficial, that role should not supersede the role of the applicant who clearly cares for and loves the minor child and wishes to be involved in her daily life. It seems as if the close bond between the minor child and the respondent was achieved through unfairly limiting the applicant's role as a parent and it is therefore necessary to investigate and evaluate the accusations levelled against the applicant regarding her lack in parenting skills as well as the allegation that the respondent and the paternal grandmother

constantly made her aware of her parental inadequacies and inabilities. These constant reminders could have contributed to her reluctance in demanding contact with the minor child by, for instance not taking both children to the park or when travelling to Bloemfontein while the parties were still living together.

[41] The Family Counsellor referred to research done regarding different styles of parenting and quoted the following from an article

published by the American Psychological Association:

“The study published in the journal, Development Psychology found that over controlling parenting can negatively affect a child’s ability to manage his/her emotions and behaviour. Our research showed that children with helicopter parents may be less able to deal with the challenging demands of growing up, especially with navigating the complex school environment. Children who cannot regulate their emotions and behaviour effectively are more likely to act out in classroom, to have a harder time making friends and to struggle at school. Children rely on caregivers for guidance and understanding of their emotions. They need parents who are sensitive to their needs, who recognize when they are capable of managing a situation and who will guide them when emotional situations become too challenging. This helps children develop the ability to handle challenging situations on their own as they grow up, and leads to better mental and physical health, healthier social relationships and academic success. Managing emotions and behaviour of fundamental skills that all children need to learn and over controlling parenting can limit those opportunities.” The Family Counsellor then opines as follows:

“The father should caution not to hover over L and control all aspects of her movements. Keeping her safe is one thing, but overly protectiveness is another thing. The father should just caution himself.”

[42] A further unsettling aspect is the contention on behalf of the applicant that parental conflict impacts detrimentally on her ability to discuss issues with the respondent regarding the minor child. The Family Counsellor confirms that the parental conflict should be addressed by attending parenting programs at FAMSA. The applicant’s contention that she is concerned that the current conflict between the parties negatively affects the psychological functioning and general welfare of the minor child, is denied by the respondent. I am mindful of the fact that fathers are good child minders, but it is unsettling that the respondent denies the negative impact that parental conflict may have on the parties’ minor child. The purpose of the Family Advocate’s report is not so much to please the parties as it is to place information before the Court in order to guide it to make a finding on the best interest of the minor child involved.

[43] If the Court is not satisfied with the content of the Family Advocate’s report an alternative method to obtain further

information is necessary. For the purposes of establishing the best interest of the minor child it is therefore necessary that an independent and external psychologist be appointed to investigate the issues as set out in the applicant’s Notice of Motion. An expert witness is there to assist the Court. To be helpful the expert witness must be neutral as the evidence of such witness is of little value where he/she is partisan and consistently asserts the cause of the party who calls him/her.

[5] During argument the respondent however indicated that in the event of the court granting the orders prayed for in the Notice of Motion, he requests that Me Heidi Joubert, a forensic social worker practising in Bloemfontein, also be appointed by the court to collaborate with Dr Walker and file a report. Subsequent to the report or reports by Dr Walker and Me Heidi Joubert being made available same must be filed with the Office of the Family Advocate for comment or a supplementary report.

[44] The applicant prays for costs on the basis that the respondent was unwilling to concede to the appointment of a psychologist to proceed with an investigation as contemplated and therefore necessitating the present application. The respondent's contention that it is presently premature to appoint a mediator as he is already attending a programme presented by FAMSA is a further troubling aspect. Undoubtedly it is necessary for both parties to participate in and facilitate co-parenting training and conflict resolution sessions. However it is patently clear that, even though the respondent opposed the application, he ultimately acknowledged the need for mediation and does not object to the appointment of Adv Van Zyl in this regard. The applicant does not object to the appointment of Me Heidi Joubert to collaborate with Dr Walker in an endeavour to investigate and evaluate what care, contact and primary residence arrangements are in the best interests of the parties' minor child.

[45] I, therefore make the following orders:

1. Dr Stephen Walker, a registered psychologist and Me Heidi Joubert, a forensic social worker are authorized to carry out an

investigation/evaluation forthwith regarding the following aspects:

1.1 what care, contact and primary residence arrangements are in the best interest of the parties' minor child;

1.2 the minor child's psychological functioning and general welfare;

2. Dr Stephen Walker and Me Heidi Joubert are to compile a combined report or separate reports if they deem it appropriate, setting out their findings and recommendations regarding the aspects listed in paragraph 1 above and they are to make such report(s) available to the mediator, Advocate Dorette van Zyl.

3. Dr Stephen Walker and Me Heidi Joubert are authorized to take the following steps to carry out their investigations/evaluations and to compile a report(s), namely:

3.1 To conduct interviews, psychological assessments and clinical observations of the minor child on reasonable notice and for reasonable periods;

3.2 To conduct interviews with the applicant and the respondent for reasonable periods and on reasonable notice;

- 3.3 To conduct interviews with family members of the applicant and the respondent, including the applicant's minor daughter, G;
- 3.4 To observe the minor child interacting in the home environment of both the applicant and the respondent;
- 3.5 To conduct interviews with relevant collateral sources on reasonable notice and for reasonable periods;
- 3.6 To make recommendations in respect of any issue concerning the welfare and/or affecting the best interest of the minor child.
4. Advocate Dorette van Zyl is authorized to conduct a mediation and/or conflict resolution process between the applicant and the respondent in respect of issues concerning the welfare of, and/or affecting the best interests of the minor child.
5. Advocate Dorette van Zyl is authorized to take the following steps to carry out the mediation and/or conflict resolution process:
- 5.1 To conduct interviews with the applicant and respondent on reasonable notice and for reasonable periods;
- 5.2 To conduct interviews and observations of the minor child on reasonable notice and for reasonable periods;
- 5.3 To have insight into any report(s) prepared by Dr Stephen Walker and me Heidi Joubert in terms of this order and to conduct interviews with them regarding the aspects mentioned in their report(s) and recommendations made by them;
- 5.4 To assist the applicant and the respondent in reaching agreements and making arrangements relating to the care and contact of the minor child;
- 5.5 To assist the applicant and the respondent in preparing a parenting plan regarding the care, contact and primary residency of the minor child, should such a plan be deemed appropriate and/or necessary;
- 5.6 To make recommendations in respect of any issue concerning the welfare and/or affecting the best interest of the minor child;
6. The applicant and respondent shall participate in and facilitate the evaluations/ investigations of both Dr Stephen Walker and Me Heidi Joubert and mediation of Advocate Dorette van Zyl for reasonable periods and on reasonable notice.
7. The applicant and the respondent are each directed to pay 50% of the fees and expenses of Dr Stephen Walker, Me Heidi Joubert and Advocate Dorette van Zyl.
8. The report(s) referred to in paragraph 2 of this order is to be served upon the Office of the Family Advocate, Bloemfontein for comment or a supplementary report.

9. Pending the finalization of the report(s) referred to in paragraph 2 of this order and the adjudication thereof, the parental responsibilities, custody and residency of the minor child will be shared as per the court order of Mathebula J under case number 2763/ 2019, dated 5 July 2019.
10. The respondent is ordered to pay the costs of the application to date of this order.

I VAN RHYN, AJ

On behalf of the Applicant: Adv. G J M Wright

Instructed by: HONEY ATTORNEYS (Mr. R J Britz email: Britz@honeyinc.co.za
Ivoigt@honeyinc.co.za)

On behalf of the Respondent: Adv. E Lubbe

Instructed by: MCINTYRE VAN DER POST ATTORNEYS

(Mr G Bradshaw email:zandra@mcintyre.co.za)

- [1] Section 9 of the Children's Act, Act 38 of 2005; Jackson v Jackson 2002 (2) SA 303 (SCA) at 307 I- 308 A.
- [2] 1995 (4) SA 698 (C) at 708 J-709 A.
- [3] Soller N.O. v G and Another 2003 (5) SA 430 (W)
- [4] Minister of Welfare and Population Development v Fitzpatrick [2000] ZACC 6; 2000 (3) SA 422 (CC) at 429 (A)
- [5] Stock v Stock 1981 (3) SA 1280 (A) at 1296 E - F

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2020/90.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/lb-v-wb-unknown-topic-afshc-2020>

Prepared on 10 October 2026 · Esheria