

SOUTH AFRICA / JUDGMENT

M.M v S.M.T and Another (89027/16) [2024] ZAGPPHC 1263 (3 December 2024)

[2024] ZAGPPHC 1263

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

89027/16

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO.:89027/16

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 3 December 2024

E van der Schyff

In

the matter between: M[...]
M[...]
Applicant
and
S[...]
M[...]
T[...]
First Respondent
Adv.
Lia van der
Westhuizen
Second Respondent

JUDGMENT

Van der Schyff J

Background

- [1] This matter illustrates why confusion and uncertainty are often created when parties involved in divorce proceedings approach different courts through the divorce process.
- [2] In 2021, the applicant approached the urgent court on the basis of extreme urgency, seeking an order suspending the respondent's parental rights and obligations concerning the care and guardianship of the parties' minor daughter. On 9 August 2021, I appointed a curatrix ad litem and ordered that the minor child's primary residence vests in the applicant pending the finalisation of the curatrix ad litem's investigation with the proviso that the minor child was not to be removed from her current school before the application was finalised. I retained the matter for case management.
- [3] The curatrix ad litem consulted with the minor child, but the parties broke contact with her. Unbeknown to the curatrix ad litem the parties obtained a final decree of divorce in the Regional Court for the Regional Division of North West held in Brits on 6 March
2023. I pause to note that in terms of the High Court order granted on 9 August 2021, the curatrix ad litem was directed and empowered to represent the minor child in any Children's Court proceedings since it was mentioned in the papers that such proceedings were instituted.
- [4] A settlement agreement concluded between the parties was made an order of court. A parenting plan, annexed to the settlement agreement, contained the primary residence and contact agreement. The parties, among others, agreed that primary care and residence of the minor child shall vest with her biological mother. In paragraph 3 of the parenting plan, it is agreed that the biological mother (the applicant) shall consult the biological father (the respondent) when decisions regarding the child are made. The parties expressly agreed that they (the parents) would jointly decide on specific aspects of the minor's life. Major decisions regarding the child's schooling are listed among these issues.

- [5] Paragraph 7 of the parenting plan likewise deals with the issue of the minor child's schooling and provides as follows:

'The parents agree that they will consult each other to decide on the schools that the minor child shall attend, which decision the parents will jointly make, ...'

.

- [6] The parenting plan provides for the appointment of a mediator where the parents can't reach a consensus regarding an aspect relating to their daughter's upbringing and care.

- [7] After the divorce proceedings were finalised, the applicant removed the child from her school and enrolled her in another school. The respondent instituted contempt of court proceedings based on the order handed down by me in August

2021. The applicant was, in her absence, found to be in contempt of court. On the advice of her legal practitioner, the ostensible contempt was purged by re-enrolling the minor child in the school she was removed from (the Broederstroom school).

The current application

- [8] The applicant now approaches the court for a declaratory order that the matter under case number 89027/16 is finalised and that the interim order granted by me on 9 August 2021 is not binding upon the parties.

- [9] The respondent acts in person. He filed an answering affidavit with annexures. The answering affidavit reveals several unresolved issues between the parties.

- [10] I do not intend to address any of the underlying issues that exist between the parties. As stated above, the parenting plan contains a mechanism to address disputes that may arise occasionally.

- [11] The order handed down by me on 9 August 2021 was an interim order. The final decree of divorce superseded the interim order, which incorporated the settlement agreement and parenting plan. The order of 9 August 2021 effectively lapsed when the Regional Court granted the decree of divorce and concomitant order on 6 March 2023.

Costs

- [12] The respondent takes issue with the minor child being moved to a new school. As indicated above, the parental plan indicates that the parties agreed that any decision regarding which school to enroll the child in should be made jointly by the parties. Where they cannot find each other, they should approach a mediator.

- [13] This court is, however, not stepping into the shoes of the mediator, where both parties agreed that issues pertaining to the minor child's well-being and care should be referred to mediation. This court is only concerned with issuing a declarator regarding the status of the interim order granted on 9 August 2021.

[14] The respondent opposed the application because he does not agree to the child being moved to another school in 2025. In the amended notice of motion, the applicant did not seek an order relating to the school the minor child must attend in 2025. However, in the draft order handed up, the applicant seeks relief in this regard. In light of the agreement that decisions regarding the child's schooling would be taken jointly and the provision made for mediation disputes, the first respondent's opposition

is not unreasonable.

Curatrix ad litem

[15] Although the curatrix ad litem was cited as a second respondent in this application, no grounds existed for citing her as such. The order of 9 August 2021 provides that the parties are liable in equal shares for the curatrix ad litem's costs. Since the litigation still concerns the child's best interest, the curatrix ad litem is entitled to her day fee for her court appearance.

[16] The curatrix ad litem stands to be relieved of her appointment as curatrix ad litem for the minor child.

ORDER

In the result, the following declarator is granted:

1. The order granted on 9 August 2021 by Van der Schyff J under case number 89027/16 is an interim order that lapsed with the granting of a decree of divorce incorporating a settlement agreement and parenting plan on 6 March 2023 in the Regional Court for the Regional Division of North West held in Brits under Case No. NW/BRT/RC71/21.

The following order is granted in addition to the abovementioned declarator:

1. The issue regarding the enrolment of the minor child in D[...] M[...] Primary School from 2025 onward, if it remains unresolved, is to be referred to mediation in terms of the agreement reached by the parties and captured in the parenting plan attached to the settlement agreement made an order of court with the granting of the decree of divorce;
2. The curatrix ad litem is relieved of her appointment as curatrix ad litem for the minor child, S[...] N[...] K[...] T[...];
3. The applicant and the respondent are jointly and severally, the one to pay the other to be absolved, liable for the curatrix ad litem's appearance fee for 2 December 2024;
4. With the exclusion of the curatrix ad litem's costs, each party must pay its own costs.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv. D De Kock Instructed by: Jaco Joubert Attorneys For the first respondent:
In person Date of the hearing: 2 December 2024 Date of judgment: 3 December 2024

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