

SOUTH AFRICA / JUDGMENT

Oosthuizen v Dixon (38675/2020) [2020] ZAGPPHC 507 (11 September 2020)

[2020] ZAGPPHC 507

COURT

North Gauteng High Court, Pretoria

BEFORE

Van der Westhuizen

CASE / FILE NUMBER

38675/2020

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES : YES / NO

(3) REVISED

CASE NO: 38675/2020

DATE: 2020.09.04

In the matter between

G J OOSTHUIZEN

Applicant

and

R DIXON

Respondent

J U D G M E N T

VAN DER WESTHUIZEN, J:

[1] I shall proceed now to deliver an ex tempore judgment in matter 38675/2020, that is the matter of Gerhardus Johannes Oosthuizen and Ronel Dixon.

- [2] The applicant approached this Court by way of urgency for relief set out in part A and part B of the notice of motion dated 12 August 2020.
- [3] Part of the relief sought under part A, is the appointment of a curatrix ad litem. A whole host of other relief is also sought. The relief that is sought in part B relates to the recommendation by the curatrix ad litem in respect of the parental responsibilities and rights that the parties respectively have.
- [4] The respondent had submitted an answering affidavit and provided other documentation.
- [5] When this matter was called before me on 1 September 2020, and after having considered the application, the founding affidavit and the annexures thereto, and the answering affidavit and other documents provided by the respondent, I was of the view that a vast dispute is apparent from all the allegations raised in the respective papers. It would not be possible to give a proper consideration to all the facts of this matter in the absence of at least a report by a curatrix ad litem.
- [6] In that regard the applicant had nominated in his notice of motion that a particular advocate, a member of the Pretoria Bar, be appointed as curatrix ad litem.
- [7] In view of the unhappy history between the parties in this matter, the respondent was hesitant and fearful that a partisan curatrix would be appointed.
- [8] I explained to the respondent that a curatrix ad litem appointed by the Court is an officer of the Court and is obliged to be impartial and act in her own stead. I afforded the respondent the opportunity of identifying and nominating a possible curatrix ad litem.
- [9] The matter then stood down until today to enable the parties to approach the chairlady of the Pretoria Bar to nominate an appropriate counsel to act as curatrix ad litem for the minor child.
- [10] The respondent was concerned as to the tenor of the letter addressed to the chairlady, and through my registrar an attempt was made to alleviate her concerns in that regard.
- [11] Parents of minor children who are involved in conflict with each other have, as in the present instance, concerns as to what is in the best interest of the minor child. They have their respective views in that regard and more than often, those cannot be mediated. Whereas it is, in my experience at least, that parents in their

endeavour and zeal to act on behalf of their minor children and to pursue those concerns, lose sight of the real interests of the child which is then pushed to the side-line to further their own particular interests. I have already dealt with this issue in a previous judgment that I delivered, where parents were at loggerheads as to what the best interest of the minor child is.

[12] It is for that reason that I proposed to the parties that an independent curatrix ad litem be nominated by the Bar Council of the Pretoria Bar to investigate the matter and to report to the Court on the issues as to what would be in the best interest of the minor child. Once that report has been made known, a Court would be in the better position to adjudicate upon the disputes raised by the parties in this matter.

[13] The applicant provided me with a draft order in respect of the appointment of a curatrix ad litem, and the powers that are suggested to be afforded the curatrix ad litem in considering and investigating this matter. A copy of that draft order was made available by the applicant to the respondent. The respondent provided her draft as to the terms and powers that the curatrix should be afforded.

[14] The parties were agreed in respect of the curatrix ad litem as nominated by the chairlady of the Pretoria Bar.

[15] An issue that, to an extent, complicate the issues in this matter is an investigation that is at present being conducted by the SAPD in respect of allegations of improper acts committed upon the minor

child by the applicant. In that regard, the respondent is concerned that any investigation and referral of the minor child to experts could prejudice those investigations.

[16] When the matter was called today, both parties were again provided the opportunity to address oral submissions. And I afforded the respondent, who is Afrikaans-speaking, to address me in her mother

tongue. She raised her concerns to an extent that the issues which were debated with the respondent and her fears in that regard were attempted to be allayed.

[17] I understand the respondent's concern that no other person should "interfere" with the investigation. My concern in that regard, which to an extent is contrary to that of the South African Police Services, is that the minor child, being of a very sensitive age, may be subjected to psychological or other fears,

misapprehensions and damage, if those are not allayed.

[18] Where the minor child has no assistance, as in the present instance, the purpose of the appointment of a curatrix ad litem is to be the voice of the minor child who cannot otherwise speak on her or his behalf. Hence, the curatrix steps into the shoes of the minor child for this specific purpose.

[19] For that reason I do not intend to incorporate into the order that I intend granting, a limitation as to the period within which the minor child should, as considered by the curatrix ad litem, to undergo any evaluation or treatment to assist her in understanding what is transpiring during that investigation.

- [20] I have no doubt that the curatrix ad litem would be extremely sensitive to that situation and would not willy-nilly expose the minor child to unnecessary or interfering assessment or treatment.
- [21] The investigation will proceed as it should. However, the curatrix ad litem ought to be an integral part of that investigation.
- [22] I do not intend to limit the powers that the curatrix ad litem should be granted in that regard. The intended curatrix ad litem is an experienced counsel, is of the same sex as the minor child, and would of necessity be acutely aware of problems that may arise in that regard. It is for all the foregoing that I intend granting the order that I shall make.
- [23] There is the concern that undue pressure would be forced upon the respondent at very short notice to react to certain issues. In that regard, her concern is that she will be given a very limited period to respond to court processes. Once the report is completed and it is made available to the Court and the parties, the

matter will be taken from there.

- [24] It appears from the papers that an order has already been issued by this Court in respect of the various rights that the parties have. The intention of my order is not to amend or change that relief, as that would form part of the main application that would eventually be decided upon by the Court, once the report of the curatrix ad litem has been made available and the parties had the opportunity to deliver their input in that regard.

- [25] It stands to be recorded that the applicant, as part of his relief in

the notice of motion, had sought specific rights to be afforded him. I do not intend, as I have already recorded, to deal with the merits of the application. The application and the parties are to await the report and recommendations of the curatrix ad litem.

- [26] I intend to grant an order as set out in the document marked "XYZ".

The difference contained therein in respect of the draft order prepared by the applicant and that of the respondent, is addressed in what I have said already. I have already indicated that there is not a great difference between the parties as to what the powers should be.

ACCORDINGLY I GRANT THE FOLLOWING ORDER

- [27] I make an order in terms of the document marked "XYZ".

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VAN DER WESTHUIZEN, J

JUDGE OF THE HIGH COURT

DATE: 11 September 2020

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Prepared on 9 October 2026 · Esheria