

SOUTH AFRICA / JUDGMENT

Redelinghuys v Redelinghuys (2075/08)

[2010] ZAECPEHC 68 (22 October 2010)

[2010] ZAECPEHC 68**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

J.M. Roberson

CASE / FILE NUMBER

2075/08

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IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH- EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH)

CASE NO. 2075/08

DATE HEARD: 08/10/2010

DATE DELIVERED: 22/10/2010

In the matter between

IZAK FRIEDERICH REDELINGHUYSAPPLICANT

and

LORRAINE REDELINGHUYSRESPONDENT

JUDGMENT

ROBERSON J:-

- [1] The parties in this application were previously married, and one child, R, a boy, was born of the marriage. He is now twelve years old. The parties were divorced on 19 May 2008, and a settlement agreement was made an order of court. In terms of the agreement, the respondent was awarded custody of R, subject to the applicant's right of access. The applicant's access was set out in some detail in the agreement and included telephone calls and visits at reasonable times, birthday and father's day contact, and having R for alternate weekends and one short and one long school holiday per year. Unfortunately this access did not

materialise, and the applicant brought this application, for an order interdicting the respondent from “preventing or influencing”

the access defined in the court order, and ordering the respondent to facilitate such access. The applicant also sought an order that the Family Advocate conduct an investigation and that a clinical psychologist be appointed to assess R.

[2] The applicant alleged that the respondent had prevented his access to R and had alienated R from him, from as early as 2005, when the respondent moved from Gauteng to Port Elizabeth, taking R with her. During the years 2005 to 2008 he had contact with R only eight times. The thrust of the respondent’s response was that the applicant had caused the alienation, she was not preventing contact, R did not want to have contact with the applicant and she was not prepared to force him to do so.

[3] The respective affidavits and e-mails between the parties which were annexed to the applicant’s affidavit, revealed an ongoing bitter and destructive relationship. The alienation between the applicant and R was however not in dispute and was confirmed in various reports annexed to the applicant’s affidavit, from the Family Advocate in Pretoria, compiled in 2006, and from a clinical psychologist, Dr. E. de Witt, also compiled in

2006. Even at that stage, both reports recommended phased in or structured contact between the applicant and R. In her report, Dr. de Witt mentioned R’s mixed feelings towards the applicant, in that he accused the applicant of being a bad father because he stole the respondent’s money and did not visit him, yet was strongly

attached to the applicant. She also mentioned that R appeared to be confused with regard to loyalty to both parents.

[4] After a long history, the application eventually resolved into a decision regarding the terms of the applicant’s access to R. It is necessary to set out the history of the application, in order to give context to the order I make.

[5] The matter came before court on 4 December 2008, when an order by agreement was made, in terms of which, inter alia, the Family Advocate was requested to investigate the applicant’s contact with the child and mediate such contact, and the applicant was to attend counseling sessions with a psychologist, first with the respondent, then with R. The counseling sessions produced no positive results. The matter was postponed from time to time pending the Family Advocate’s report. The Family Advocate requested a psychological assessment from a clinical psychologist Mr. Gerard Goosen. The Family Advocate’s report and Goosen’s report were eventually available and the matter was heard on 26 November

2009. The Family Advocate reported that R had conflicting feelings towards the applicant, that R had been exposed to the conflict between his parents, particularly concerning finances¹, and that he had been negatively affected by being used as a “speelbal” between his parents. Phased in contact was

recommended. Goosen, who interviewed R, the applicant, and the respondent, was of the opinion that serious and total parental alienation had taken place and that R had very negative feelings towards the applicant. He noted that R recounted the same negative

incidents involving the applicant as the respondent had, and repeated the language that the respondent had used when describing these incidents. He also noted that R felt responsible for the respondent's emotional welfare and had told him that the respondent was "op breekpunt". In Goosen's opinion it was in R's best interests to have contact with the applicant and he too recommended structured contact.

[6] In the meantime the applicant's attorneys of record had withdrawn and he did not appear on 26 November 2009. The matter was nevertheless argued, Ms Crouse for the respondent recommending a particular order and Ms Botha on behalf of the Family Advocate recommending a different order. I thereafter called for a further report from the Family Advocate, as I was concerned about the practicalities of the recommended order. Further reports were submitted by the Family Advocate, culminating in one during April 2010, the contents of which prompted me to appoint separate legal representation for R. I do not consider it necessary for the purposes of this judgment to go into the details of the report, suffice it to say that it contained a report from the Port Elizabeth Mental Health Society, to whom the respondent had earlier been referred, in which it was alleged that the respondent was withholding R from school and concern was expressed about his emotional and psychological development. Advocate A. Moorhouse was appointed to represent R in this application and I again express my appreciation to him and his instructing attorneys for acting in this matter. The application was enrolled for hearing on 7 May 2010 and on that day the applicant appeared in person, having been notified of the date. An order was made by agreement between all the parties and the Family Advocate, in terms of which the applicant was to have specified telephonic contact with R and specified access to R, including access to be arranged with Mr. Moorhouse. This seemed to be a positive development and the matter was postponed provisionally to 5 October 2010. Unfortunately what transpired in the intervening months was not all positive, but nevertheless at least there had been some contact between the applicant and R, which was a great step forward. Mr. Moorhouse, in a very thorough, careful, and helpful report, said that R had told him he was glad to have the applicant "back in his life" and had enjoyed the contact which had taken place. Mr. Moorehouse attached reports from both the applicant and the respondent containing their views on the contact.

[7] The applicant reported that the first day of contact between him and R had gone well, except for R's objection to the presence of the applicant's partner, whom he said had caused the divorce. The next day when he went to collect R, R accused him of forcing him to go with him the previous day, and ran back to the respondent. Thereafter the applicant received an e-mail

from R's attorney setting out certain conditions for contact, which according to the respondent were R's "instructions".

These "instructions" included the dates for the next contact, that plans for the weekend should first be discussed with R, that R should have access to a telephone at all times, and that R would not allow any contact if the applicant's partner or "any other female companion" was present. The next attempt at contact ended badly, with the child accusing the applicant of physical abuse when he was three years old and, on hearing that the applicant's partner had accompanied the applicant, had accused her of causing the divorce, and then telephoned the respondent to fetch him. The planned contact the next day did not materialise. Two days of contact at a later stage were successful, but on the second day when R asked the applicant to sign consent for him to obtain a passport to enable him to travel to France with the respondent to visit his half sister, the applicant told him to tell the respondent that he would sign the forms if the respondent lifted the attachment on his property (he still owed her money in terms of the divorce order). Later that day he received a cellphone sms from R telling the applicant that he hated him, that the respondent had said she would go to France without him, and that the applicant should not telephone

him or visit him again. The applicant sent an sms in reply, saying that the respondent persisted in poisoning R against him. R sent a further sms telling the applicant that he was no longer his son and that he should "buzz off", and that the respondent said he should grow up.

- [8] In her report, the respondent blamed the applicant for R's emotional state caused by the applicant's refusal to sign the passport forms and generally accused him of emotional immaturity and emotionally erratic behaviour, and "engaging in a battle of wills" with R during the times of contact. She said that R had complained to her that the applicant had probed him for information about her personal life. She had told R that the applicant was emotionally immature in not signing the passport forms.
- [9] In spite of the negative aspects of events since May, when the matter resumed there was no dispute that I should make an order regulating the applicant's access to R. In the meantime the applicant had again obtained legal representation. Mr. Moorhouse prepared a detailed proposal for an access order, with which the parties were in substantial agreement, save for some minor changes. The order I intend making effectively varies the terms of access contained in the divorce order but it was never in dispute that access needed to be revisited, bearing in mind the breakdown of the applicant's relationship with R, and the need to rebuild it.
- [10] I have already referred to the acrimony between the applicant and the respondent. Latest reports show that nothing has changed. It will not serve any purpose to analyse the evidence and reports of experts and make a finding on why the applicant and R became alienated from one another. It is clear from the expert reports and recent events that R has been emotionally and psychologically negatively affected and that he has conflicted feelings towards the applicant. The future must be looked to and R's emotional and psychological

stability must be secured. I can only urge the applicant and the respondent to acknowledge that the strife between them has caused R damage and if they continue to behave as they have in the past, they will cause him further damage. He should

not be used as a weapon or a go-between and he is still too young to be used as a confidante. Neither parent should try to turn him against the other. If they do, R is the one who suffers the most. He is entitled to a healthy relationship with both his parents. The applicant and the respondent must put aside their selfish motives and consider what is best for R. His life is not their life. I consider it most unfortunate that even though Mr. Moorehouse said in his report that R was, subject to two conditions, in agreement with the order he proposed, the respondent still sought to place on record at the hearing that R was not in agreement. If this is so, it means the respondent tried to change R's mind. R's "instructions" referred to in paragraph [7] above are also in my view consistent with another person speaking through him. I can only hope that such conduct will not be repeated and that R is allowed to speak for himself, and is not used to voice his parents' feelings.

[11] The order proposed by Mr. Moorehouse was a structured one, with a preliminary period of six months of defined access, after which further defined and broadened access would be implemented. The disagreement about the terms of the proposed order concerned times when R should be collected from and returned to the respondent; whether or not Fridays should be included in the preliminary weekend access; whether or not R's Sunday school and dancing activities should be interrupted during access; whether or not the first six months should include weekend sleepovers; the length of time during school holidays that R should spend with the applicant; whether or not provision should be made for therapy for R; and whether or not the terms of access should eventually revert to the original court order. The conditions that R proposed were that contact should not begin until the applicant had signed the passport forms, and that the applicant's partner should not be present during contact periods. These two conditions are not, in my view, in his best interests. The condition of signing the passport forms is a symptom of how he has been used in the

conflict between his parents and he should play no part in that conflict. There is no evidence that the applicant's partner has caused him any harm and he will have to accept that his parents have moved on after their divorce. I believe that the order I make, seen against the background of this case, is in all the circumstances in R's best interests. There will be a preliminary six month period, which takes into account the need for phased in access, followed by a broader access order. I do not consider it appropriate to add a third phase which reverts to the original divorce order. Given the history, the broader order in my view provides adequate access in the long term. If the applicant and the respondent are ever able to communicate in a mature and responsible manner in relation to R, I hope that, in R's best interests, the access arrangements will become more flexible, and the need for court intervention will fall away.

[12] The following order is made:

[12.1] For the period November 2010 up to and including April 2011:

[12.1.1] The applicant shall have contact with R on the last weekend of every month. “Weekend” means from 08h30 to 18h00 on Saturdays and 08h30 to 18h00 on Sundays.

[12.1.2] The applicant shall collect and return R at the respective times at a pre-determined place.

[12.1.3] Such contact shall occur in Port Elizabeth and surrounding areas which areas will not extend further than 130 kilometres outside of Port Elizabeth.

[12.1.4] Such contact shall not interfere with R’s Sunday school attendance from 09h00 to 11h30 on Sundays, or dancing lessons on Saturdays at 16h00.

[12.1.5] The applicant shall have reasonable telephonic contact with R at all times, which shall be not less than two telephonic conversations of reasonable length per week.

[12.2] For the period May 2011 and thereafter:

[12.2.1] The applicant shall have contact with R on the last weekend of every month. “Weekend” means from 17h00 on Fridays until 18h00 on Sundays. Should a public holiday fall on a Friday preceding such weekend, then “weekend” means from 17h00 on the Thursday preceding the Friday until 18h00 on the Sunday. Should a public holiday fall on the Monday following such weekend, then “weekend” means 17h00 on Friday until 18h00 on Monday.

[12.2.2] The applicant shall collect and return R at the respective times at a pre-determined place.

[12.2.3] The applicant shall have contact with R for one short and half of one long Government defined school holiday per year, provided that the applicant shall only have such contact every second Christmas holiday.

[12.2.4] The contact referred to in paragraphs above shall not unreasonably interfere with R’s Sunday school attendance or dancing lessons, referred to in paragraph [12.1.4] of this order.

[12.2.5] The applicant shall be entitled to have contact with R on R’s birthday and on Father’s Day.

[12.2.6] The applicant shall have reasonable telephonic contact with R at all times, which shall be not less than two telephonic conversations of reasonable length per week.

J.M. ROBERSON

JUDGE OF THE HIGH COURT

Appearances:

Applicant: Ms T Bannister, Kaplan Blumberg Attorneys, Port Elizabeth

For the Respondent: Adv L Crouse instructed by Legal Aid Board, Port Elizabeth

For the minor child: Adv Moorhouse instructed by Oosthuizen Hazell & Wilmot Inc, Port Elizabeth

Family Advocate: Adv Urban Family Advocate

1For example he told the family counselor appointed by the Family Advocate that “Ek sal weer by hom gaan kuier as hy my ma se geld vir haar gee” and “My ma sê ons gaan uitgeskop word uit ons huis en ons gaan ‘trash’ uit die dromme eet.”

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