

SOUTH AFRICA / JUDGMENT

RV v YV (20/39012) [2020] ZAGPJHC 406 (10 December 2020) [2020] ZAGPJHC 406

COURT

South Gauteng High Court, Johannesburg

BEFORE

KS McLean

CASE / FILE NUMBER

20/39012

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

LOCAL DIVISION, JOHANNESBURG)

CASE

NO: 20/39012

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

RV

Applicant

and

YV

Respondent

JUDGMENT

McLEAN AJ:

Introduction

1. There is an urgent application in terms of Rule 43(1)(d) of the Uniform Rules, in which the Applicant seeks interim contact with his minor daughter pending the finalisation of a divorce action between the Applicant and the Respondent.
2. This application concerns a little girl who is presently three and a half years old ("IV"). The Applicant is the father of IV and the Respondent is the mother. The Respondent alleges that, at the age of two, IV was sexually assaulted by the Applicant and that this was disclosed to her by IV, first, on 8 March 2020, and in the following weeks and months. The Respondent left the family house the following day with IV, and the Applicant has not seen his daughter since then.
3. The Applicant denies ever assaulting IV.
4. The Parties agreed to undergo a forensic psycho-social-sexual investigation by Prof Robinson. This investigation took approximately six months and was completed on 3 November 2020 when Prof Robinson handed down her Summary Report ("the Robinson Report").
5. The Robinson Report found that:
 - 5.1. IV did not disclose that the Applicant sexually abused her. The sexual abuse narrative came from the Respondent;
 - 5.2. the Applicant is not a sexual predator and did not sexually abuse IV;
 - 5.3. the assessment results and investigation relating to IV showed that no sexual abuse took place;
 - 5.4. no further assessment is required in this matter and it would constitute a further abuse to carry out a second investigation into child who has not been sexually abused; and
 - 5.5. restoration needs to take place over time between the Applicant and IV as IV presented with a closely attached relationship with the Applicant.
6. In short, the Robinson Report found that the Applicant is not guilty of any wrong-doing; that IV was in fact not sexually assaulted at all; and that the Respondent has projected her fears onto IV thereby creating a "false narrative" in terms of which she constructed "a narrative that sexual harm and victimisation by men unfolds in most relationships and has triggered a paranoid attachment to such thought processes that led her to think that [IV] is harmed sexually by [the Applicant]."

7. Following the finalisation of the Roberson Report, the Applicant

sought contact with IV. The Respondent refused on the basis that she rejected the findings in the Robinson Report, and requests that a new investigation be undertaken.

8. The Applicant consequently launched the present application in terms of Rule 43(1)(d) of the Uniform Rules, in which he seeks interim contact pending the finalisation of the divorce action (“the Main Application”). The Respondent in turn seeks an order directing the Parties to undergo a further investigation (“the Counter-Application”).

9. I deal with the Counter-Application first.

The Counter Application

10. The Counter-Application requires me to discount the findings in the Robinson Report on the basis that it is biased, subjective and not based on facts.

11. One of Respondent’s primary criticisms of the Robinson Report is that Prof Robinson fails to set out the basis on which she reaches certain conclusions. In particular, the Respondent avers that

the Robinson Report failed to deal with the detailed revelations of abuse which the Respondent claims IV disclosed to her in subsequent

months, and which are set in a letter sent to Prof Robinson on 12 May 2020.

12. Without making any findings on the correctness or bona fides of the Robinson Report, I accept the criticism of the Respondent that the report does not always fully substantiate the findings which it makes. In particular, the handing of the “J88” report, which sets out prima facie evidence of an “assault or interference” of IV’s vagina and anus, was not fully reasoned.

13. As the representative for the Applicant pointed out, however, the Robinson Report is a summary report and Prof Robinson is able to provide a fuller report. The Applicant further asserts that, despite the fact that the relief sought in the Counter-Application is set out in the Respondent’s Answering Affidavit, and responded to him

in his Replying Affidavit, the Applicant requires a further opportunity to respond fully to the relief sought in the Counter-Application, which would include requesting a fuller response from Prof Robinson, which, I was advised, would take four to six weeks.

14. Counsel for the Respondent similarly indicated that the Respondent would request an opportunity to supplement her Answering Affidavit in respect of the relief sought in the Counter-Application, given the urgency in which the Main Application was brought and the limited time afforded to the Respondent to file her Answering Affidavit.

15. In the circumstances, it is in my view that it is in the best interest of IV, and in the interests of justice, to postpone the Counter-Application sine die, and provide the Applicant with an opportunity to obtain a fuller report from Prof Robinson, and the for the Parties to be given an opportunity to supplement their papers in respect of the Counter-Application, in the event that the Respondent elects to proceed with the Counter-Application.

The Main Application

16. Which brings me to the relief sought in the Main Application.
17. In the course of the hearing, counsel for the Respondent indicated that the Respondent was amenable to interim supervised contact. The Applicant has similary tendered to have supervised contact, although

in the first instance, the Applicant seeks unsupervised contact with IV. The Parties differed on the terms in which such supervised

contact should be allowed and I requested that the Parties should, overnight seek to achieve consensus on the appropriate terms of the supervised contact.

18. The Parties were, however, unable to agree, and both submitted their proposed draft orders to me. Having considered those draft orders and debated some of the details with the Parties' representatives,

I make the following order:

Order

19. The following order is made:

19.1. The matter under case number 2020/39012 is enrolled as an urgent application in terms of Uniform Rule 6(12) and any non-compliance with the Uniform Rules of Court in relation to forms, time periods and service is condoned.

19.2. Pending the outcome of the divorce proceedings between the Parties under Case No.: 2020/9860 in this Court or any Order of this Court varying the Applicant's rights of contact with IV ("the minor child"), the Applicant shall exercise contact with the minor child as follows:

19.2.1. every Tuesday, for two hours, from 15h00 to 17h00; and

19.2.2. every Thursday, for two hours, from 15h00 to 17h00; and

19.2.3. every alternate Saturday, for two hours, from 10h00 to 12h00, commencing Saturday 19 December 2020; and

19.2.4. every alternate Sunday, for two hours, from 10h00 to 12h00, commencing Sunday 27 December 2020; and

19.2.5. for two hours on Father's Day, the minor child's birthday and the Applicant's birthday, from 17h00 to 19h00; and

19.2.6. for two hours on Easter Sunday and Christmas day, from 16h00 to 18h00, or as the Parties may agree.

19.3. The Applicant shall be entitled to reasonable telephonic or video contact with the minor child on a daily basis during the hours of 18h00 to 19h00, for 10 minutes, by arrangement between the Applicant and the Respondent.

19.4. The Respondent is ordered to take all reasonable steps necessary to facilitate contact between the Applicant and the minor child for the contact period set out in paragraphs 19.2.1 to 19.2.6 and the contact set out in paragraph 19.3.

19.5. The contact between the Applicant and minor child shall be supervised by a social worker who shall be appointed by the Clinical Director of the Teddy Bear Clinic, Dr Shaheda Omar, or as the Parties otherwise agree. The social worker shall keep a brief written log of his or her observations of all contact sessions between the Applicant and the minor child.

19.6. In the event that any contact period set out in paragraphs 19.2.1 to 19.2.6 falls on a public holiday and the social worker referred to in paragraph 19.5 above is for this, or for any other reason unable to supervise any particular contact session, then the contact sessions may be supervised by one or both of the Applicant's parents, or the Applicant's sister.

19.7. The Parties shall be equally liable for the costs of the social worker supervising the Applicant's contact period set out in paragraphs 19.2.1 to 19.2.6, subject to the proviso that the divorce court shall have the right to make a final determination as to the costs of the social worker and may vary the costs of the social worker as it deems fit. Should there be any additional costs incurred as a result of the contact being over a weekend or public holiday, these will be borne by the Applicant.

19.8. The Respondent's Counter-Application under the same case number ("the Counter-Application") is postponed sine die.

19.9. With regards to the Counter Application, the following is ordered:

19.9.1. The Applicant is to file a further report by Prof Robinson by no later than 29 January 2021;

19.9.2. In the event that the Respondent elects to proceed with the Counter-Application having considered the further report by Prof Robinson, the Respondent is granted leave to supplement her papers in the Counter-Application within 15 days of receipt of the further report;

19.9.3. In the event of any opposition to the Counter Application, the Applicant may deliver his notice of intention to oppose within five days, and deliver his Answering Affidavit within ten days thereafter;

19.9.4. Within ten days thereafter, the Respondent may deliver her Replying Affidavit to the Counter-Application.

19.10. The Family Advocate is hereby requested to undertake an evaluation

and report to the Court on the best interest of the minor child, with specific reference to interim rights of contact that should be granted to the Applicant.

19.11. Subsequent to the outcome any further reports, including a report by the Family Advocate, any one of the Parties shall be entitled to approach the Court for a variation of the Applicant's interim rights of contact (as contained in this order).

19.12. The costs of this application are reserved for determination at the divorce action.

KS MCLEAN, AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION JOHANNESBURG

Date Argued: 10 and 11 December 2020

Date of Judgment: 10 December 2020

For the Applicants: Mr Bollo

Attorneys: Biccari Bollo Mariano Inc

For the Respondent: Adv I Vermaak-Hay

Attorneys: Keeny Boonzaier Attorneys

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Prepared on 9 October 2026 · Esheria