

SOUTH AFRICA / JUDGMENT

S.B v S.S (D4934/2019) [2022]

ZAKZDHC 39 (8 September 2022)

[2022] ZAKZDHC 39

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Ploos Van Amstel

CASE / FILE NUMBER

D4934/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

Case

No: D4934/2019

In

the matter between:

S[...]

B[...] Applicant

and

S[...]2

S[...]3 Respondent

ORDER

(a)

The applicant and the respondent are declared to be co-holders of full parental responsibilities and rights in respect of the minor child A[...] B[...], a girl born on 27 October 2016.

(b)

The minor child shall reside primarily with the respondent.

(c)

The parties are directed to present themselves together with the minor child for reunification therapy with Dr Naseema Dawood.

(d)

The parties shall attend on such dates and times as directed by Dr Dawood, who shall be entitled to determine who should be present during each session.

(e)

Unless this court orders

otherwise:

(i)

The therapy shall endure until 30 November 2022. The frequency of the sessions will be as directed by Dr Dawood. At the conclusion of the therapy Dr Dawood shall deliver a report to both parties.

(ii)

Should the respondent for any reason be unable or unwilling to attend any of the therapy sessions the applicant shall be entitled to collect the minor child from the respondent's home or school, as the case may be, attend at the therapy session, and deliver her back to the respondent's home after the session. The respondent's non- attendance shall not delay the time periods provided for in this order.

(iii)

The applicant shall continue to have contact as set out in the order of Mnguni J of 9 October 2019.

(f)

The parties are directed to make arrangements for the minor child to be evaluated by a psychologist as soon as the reunification therapy has ended. The psychologist will be a person nominated jointly by Dr EA Chohan and Mr Clive Willows, and will be required to make recommendations regarding the applicant's contact with the minor child and what steps, if any, are necessary for her mental or psychological well-being.

(g)

Both parties are directed to cooperate fully with the psychologist and

attend
all such consultations as the psychologist may require.

(h)

In the
event of
the
respondent
not
co-operating
with regard to
the said arrangements the applicant is
authorised to make the arrangements with
the psychologist without
her.

(i)

The applicant will be responsible to pay
the fees of the psychologists involved in the said therapy.

(j)

It is directed that notwithstanding any
instruction by the respondent the applicant is entitled to all
information pertaining to
the minor child, including but not limited
to school reports and medical reports from the respective
professionals or institutions.

(k)

Neither party shall remove the minor
child from KwaZulu-Natal without the prior consent of the other
party, which consent shall
not be unreasonably withheld.

(l)

The contempt
application
by the
applicant
and the
counter- application by the
respondent are both adjourned sine die, with no order as to
costs.

(m)

The application for the determination of the applicant's rights of
contact with the minor child is adjourned sine
die, with costs
reserved.

(n)

The parties are given leave, once the reports by Dr Dawood and the
psychologist are available, to approach
the senior judge for the
matter to be heard by way of preference.

JUDGMENT

Ploos Van Amstel J

- [1] The parties in this matter are the parents of A[....] B[....], a girl, who was born on 27 October 2016. They were previously married to each other by way of Islamic rites, but separated in 2018 and were divorced in accordance with Islamic law. The application before me concerns the applicant's rights of access to A[....]. He is her father.
- [2] The application was launched on 20 June
2019. It came before Mnguni J on 9 October 2019, who made an order, by consent, requesting the Family Advocate to conduct an investigation and make recommendations with regard to the child's best interests. He also made an order that pending the finalisation of the application the applicant was entitled to supervised contact with the child every alternate weekend, within specified hours, at a neutral public venue.
- [3] The applicant's contact with A[....] has since then been supervised by the respondent, and the main issue before me was whether it should be ordered that his contact with her be unsupervised.
- [4] The applicant is an optometrist, and he resides in P[....] with his parents. The respondent is not employed. She lives with her parents in P[....]2, and for part of the month in P[....].
- [5] The respondent is not willing to allow unsupervised contact, and said in her answering affidavit that this 'will culminate in her being sexually abused by the applicant'. This statement seems to me to be malicious and unsupported by the reports of the two psychologists. I think this is demonstrated by the electronic messages that the respondent sent to the applicant, in which she suggested that
- he could get unsupervised access if he gave her a credit card. In some of the messages she stated that A[....] was always sad when the applicant left and wanted him to be there permanently, and she berated him for not wanting to return to her so that they could be a family again.
- [6] A number of reports form part of the papers before me. They are from the Family Advocate and two psychologists. There is considerable concern about the mental and psychological well-being of the child. There is plainly an urgent need for her to be assessed and given therapy by a psychologist. She needs help with regard to establishing a relationship with her father and her paternal grandparents, who have not been allowed to see her since her first birthday. My view on the evidence before me is that the applicant should be allowed unsupervised access to his daughter, and that it is important for her to establish a relationship with her grandparents. However, the child appears to be emotionally vulnerable and the process needs to be managed properly.

- [7] It has been suggested that the child should attend reunification therapy sessions with Dr Naseema Dawood, who, I was informed from the bar, was recommended by Dr Chohan. It was also stressed in the reports that there is an urgent need for the child to receive help from a psychologist.
- [8] The impression that I have of the respondent's behaviour is not favourable. She appears to ignore court orders and professional advice, and to use A[...] as a bargaining chip. She needs to understand that everything she does to frustrate the applicant's rights of access, or to alienate A[...] from him, will increase the prospect of an order that her primary place of residence will be with her father.
- [9] The draft order provided by the applicant's counsel provides for unsupervised contact from 1 December, and thereafter. I agree with counsel for the respondent that it is not advisable to make such an order until the reports from the psychologists, mentioned in the order that I propose to make, are available.
- [10] The order that I propose to make seeks to pave the way for an arrangement that is in the child's best interests, and not those of her parents. Not all the terms of the order were discussed in court, and if anything in it is considered unworkable or otherwise problematic the parties should approach the court for directions. This is however not an invitation to re-argue the matter.
- [11] The order that I make is as follows:
- (a) The applicant and the respondent are declared to be co-holders of full parental responsibilities and rights in respect of the minor child A[...] B[...], a girl born on 27 October 2016.
 - (b) The minor child shall reside primarily with the respondent.
 - (d) The parties shall attend on such dates and times as directed by Dr Dawood, who shall be entitled to determine who should be present during each session.
 - (e) Unless this court orders otherwise:
 - (iv) The therapy shall endure until 30 November 2022. The frequency of the sessions will be as directed by Dr Dawood. At the conclusion of the therapy Dr Dawood shall deliver a report to both parties.
 - (v) Should the respondent for any reason be unable or unwilling to attend any of the therapy sessions the applicant shall be entitled to collect the minor child from the respondent's home or school, as the case may be, attend at the therapy session, and deliver her back to the respondent's home after the session. The respondent's non- attendance shall not delay the time periods provided for in this order.
 - (vi) The applicant shall continue to have contact as set out in the order of Mnguni J of 9 October 2019.

- (f) The parties are directed to make arrangements for the minor child to be evaluated by a psychologist as soon as the reunification therapy has ended. The psychologist will be a person nominated jointly by Dr EA Chohan and Mr Clive Willows, and will be required to make recommendations regarding the applicant's contact with the minor child and what steps, if any, are necessary for her mental or psychological well-being.
 - (g) Both parties are directed to cooperate fully with the psychologist and attend all such consultations as the psychologist may require.
 - (h) In the event of the respondent not co-operating with regard to the said arrangements the applicant is authorised to make the arrangements with the psychologist without her.
 - (k) Neither party shall remove the minor child from KwaZulu-Natal without the prior consent of the other party, which consent shall not be unreasonably withheld.
- (I) The contempt application by the applicant and the counter- application by the respondent are both adjourned sine die, with no order as to costs.
- (m) The application for the

determination

of the applicant's rights of contact with the minor child is adjourned sine die, with costs reserved.

PLOOS VAN AMSTEL J

CASE INFORMATION

Date Judgment Reserved:

2 September 2022

Date

Judgement

Delivered: 8 September 2022

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