

SOUTH AFRICA / JUDGMENT

S.H v S.A.R (3450/2017) [2018] ZAECPEHC 19 (8 May 2018)

[2018] ZAECPEHC 19**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

Lowe

CASE / FILE NUMBER

3450/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**SAFLII****Note: Certain**

**personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII**

Policy**IN****THE HIGH COURT OF SOUTH AFRICA****EASTERN****CAPE DIVISION, PORT ELIZABETH****CASE****NO: 3450/2017****Date**

heard: 24 April
2018
Date

delivered: 08 May
2018
In

the matter between: S.
H.
Applicant
and
S.
A. R.
Respondent

JUDGMENT

LOWE, J

[1]

1.1 As Applicant's Heads suggested: To say the least, this has been a 'Long and Winding Road'.

1.1.1 The parties met during 2010. They had a romantic relationship from April 2010 to April 2012 whereafter difficulties arose, they attempting various reconciliations, the relationship terminating finally in January 2013.

1.1.2 As a result of their relationship, a minor child T. T. H. was born, on [...] 2011, of whom Respondent was the primary caregiver, subsequent to their final separation.

1.1.3 During 2013, Applicant launched an application under case number 2125/2013, wherein he inter alia sought to restrain Respondent from relocating with the minor child to Potchefstroom. Applicant was unsuccessful, Respondent then relocating to Potchefstroom.

1.1.4 The attempted relocation was short lived, with Respondent and the minor returning to Port Elizabeth shortly thereafter.

1.1.5

Issues

arose as to Applicant's contact arrangements with Taylor after Respondent returned to Port Elizabeth during 2013. This resulted in the intervention of the Office of the Family Advocate, and although a formal parenting plan was not finalized, an arrangement was agreed to between the parties whereby the minor would reside primarily with Respondent, Applicant exercising contact every alternate weekend from Friday until a Monday morning and every second Tuesday and Thursday. This arrangement has continued (more or less) to date.

1.1.6 It is thus common cause that the history of this matter stretches over a period of time, dating back to 2013. On 25 September 2013 (Case Number 2125/2013) an order was granted by this Honourable Court in terms whereof the minor would remain in Respondent's primary care and Applicant would have reasonable contact with her. It is this order that Applicant seeks to have varied and replaced with the terms as more fully set out in the notice of motion to his founding affidavit.

1.1.7 During 2016 Applicant launched an application in the Children's Court under case number 14/1/4-124/2016, wherein he sought primary care and custody of the minor child. The Presiding Officer in this proceeding was of the view that the matter had to be determined by this Court, which led to the present proceedings.

1.1.8 At the hearing on 20 November 2017, the matter was postponed to 18 January 2018, with psychologist Wesley Kew directed to provide a psychological report and for the parties to finalize the exchange and filing of their pleadings.

1.1.9 The proceedings in January 2018 were postponed to enable Respondent to file an expert psychologist report.

1.2 On 20 March 2018, after further affidavits were filed during the course of the day and argument presented by everyone involved, the matter was eventually again postponed to Tuesday, 24 April 2018. This was done in order to allow Respondent an opportunity to file a report by clinical psychologist, Mr Stigant, and for the Family Advocate to investigate Respondent's dismissal from her work and the current status of her relationship with Mr Greyling (which she maintained still existed); it also included an order that Advocate Rossi be authorised to have contact with Taylor ("the minor") and also to inform her of the then position.

1.3 The limited report of Psychologist Mr Stigant was served on 18 April 2018 and the Family Advocate's further report on 19 April 2018.

The Law

[2] The following principles, as set out in the judgment of the Honourable Mr Justice Chetty in *HG v CG* 2010

(3) SA 352 (ECP) are also applicable in this matter.

3.1 The starting point in matters involving children is that the interests of the children are paramount. In terms of Section 28 of the Constitution 'a child's best interests are of paramount importance in every matter concerning a child'. The Children's Act (the Act) was promulgated to give effect to this constitutional imperative, Section 9 of which echoes the constitutional injunction. Section 6 of the Act, under the heading 'General principles', contains various guidelines and, inter alia, provides that:

"(2) All proceedings, actions or decisions in a matter concerning a child must-

(a) respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7 and the rights and principles set out in this Act, subject to any lawful limitation. . . ."

3.2 The best-interests-of-the-child standard is given content in Section 7 of the Act, which provides:

"7 Best interests of child standard

(1) Whenever a provision of this Act requires the best interests of the child standard to be

applied, the following factors must be taken into consideration where relevant, namely –

(a) the nature of the personal relationship between –

- (i) the child and the parents, or any specific parent; and
- (ii) the child and any other care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards –
 - (i) the child; and
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child,
including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from –
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child –
 - (i) to remain in the care of his or her parent, family and extended family; and
 - (ii) to maintain a connection with his or her family, extended family, culture or tradition;
- (g) the child's –
 - (i) age, maturity and stage of development;
 - (ii) gender;
 - (iii) background; and
 - (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
- (i) any disability that a child may have;
- (j) any chronic illness from which a child may suffer;

- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
 - (l) the need to protect the child from any physical or psychological harm that may be caused by
 -
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
 - (m) any family violence involving the child or a family member of the child; and
 - (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.
- (2) In this section parent includes any person who has parental responsibilities and rights in respect of a child.”

3.3 Section 10 of the Act explicitly recognises a child's inherent rights in any matter affecting him or her, and provides that:

“10 Child participation

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”

3.4 Hence my appointment of Advocate Rossi on 21 November 2017 to represent the child's interests. To whom I express my gratitude for her always careful, responsible and helpful input.

3.5 Similarly, Section 31 of the Act provides as follows in major decisions involving a child:

“31 Major decisions involving child

(1)(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving

the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.

(b) A decision referred to in paragraph (a) is any decision -

(i) in connection with a matter listed in section 18(3)(c);

(ii) affecting contact between the child and a co-holder of parental responsibilities and rights;

(iii) regarding the assignment of guardianship or care in respect of the child to another person in terms of section 27; or

(iv) which is likely to significantly change, or to have an adverse effect on the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being.

(2)(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b), that person must give due consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child.

(b) A decision referred to in paragraph (a) is any decision which is likely to change significantly, or to have a significant

adverse effect on, the co-holder's exercise of parental responsibilities and rights in respect of the child.”

3.6 The relief sought by Applicant triggers the operation of the aforesaid section.

3.7 Applicant having regard to the above appointed clinical psychologist, Mr Kew, to report to this Honourable Court, which he duly did, and at a later stage Respondent appointed clinical psychologist, Mr Stigant. More of this below.

[3] A summary of recommendations as the matter unfolded were set out accurately by Applicant's Counsel as follows:

3.1. In the Family Advocate's report of 5 April 2017 it was recommended that primary care of the minor be awarded to Applicant.

3.2. According to the Family Advocate's follow-up report, dated 14 November 2017, it was recommended however that the minor remain in the primary care of Respondent.

3.2.1. According to this report the reasons advanced for this change in recommendation were that Respondent's circumstances appeared to have stabilized and improved with resultant benefit to the minor, and the fact that the minor continued to show good progress at school.

3.3. Advocate Rossi's first report, dated 24 November 2017 set out that she was not satisfied that the drastic change of stance by the Family Advocate in a 6-month period was sufficiently motivated or acceptable in the circumstances; and that the Family Advocate seemed to place too much weight on the fact that the minor was doing well in school and that Respondent has made positive roads to provide more stability and had taken the previous concerns raised in the Family Advocate's report to heart. Advocate Rossi also reported that she was not provided with any information to suggest that Respondent had positively addressed her admitted, albeit former, drug use.

3.4. According to clinical psychologist, Mr Kew's report dated 18 December 2017, he recommended that the minor should reside primarily with Applicant.

3.5. The Family Advocate filed a further report, dated 9 January 2018, in which she mainly dealt with Respondent's reply to Mr Kew's report, and concluded that the minor should remain in the primary care of Respondent.

3.6. In Advocate Rossi's supplementary report of 15 January 2018, she reported that she did not believe that it was in the minor's best interests to remain in the primary care of Respondent, and that having performed a qualitative assessment she was of the belief that Applicant was and remains better equipped to provide stability and welfare to the minor on a short-term, medium-term and long-term

basis.

3.7. In Mr Kew's supplementary report, dated 18 March 2018 he reported that he remained of the opinion that Applicant had adequately provided for the minor's attachment needs, by creating a secure and sustainable home; and that the evidence suggested that Respondent may have influenced the thinking of the minor adversely in respect of Applicant. (At various stages of the proceedings I addressed the parties warning against either of them in any way influencing the child one against the other and bringing her into the litigation inappropriately.)

[4] The matter was postponed on 20 March 2018. Subsequent to the postponement the Family Advocate (report dated 18 April 2018, but served 19 April

2018) as well as clinical psychologist, Mr Stigant (undated, but served on 18 April 2018), filed reports.

[5] According to the Family Advocate's further and final report, dated 18 April 2018:

5.1. The recommendation in the previous report of November 2017 had been that the minor reside primarily with Respondent. It is clear from the contents of that report that the recommendation was made on the basis that Respondent's formerly unstable circumstances had normalized and that she was in a secure relationship (with Mr Greyling) and had maintained stability in her living circumstances. In addition to these factors, the degree of emotional attachment between the minor and Respondent was considered an important factor.

5.2. The Family Advocate changing the earlier view recommended that the minor primarily reside with Applicant and be given structured contact with Respondent.

5.3. The drastic change from the previous recommendation was informed by, inter alia, the following new information (as set out in the Family Counsellor's report):

5.3.1. The stability and security which Respondent and the minor enjoyed as a result of Respondent's relationship with Mr Greyling had come to an end, as the relationship had terminated.

5.3.2. The financial security which Respondent enjoyed during the duration of her relationship with Mr Greyling could no longer be relied upon.

5.3.3. Respondent currently did not have stable or certain employment or predictable means of earning an income.

5.3.4. There was marked uncertainty regarding the future of housing circumstances of Respondent, she initially stating she had taken over the Greyling lease, but as appears later that she would in fact have to move home.

5.3.5. At this stage, Applicant was in a better position to provide for the minor's developmental needs for security, routine and stability.

- [6] Mr Stigant reported that the purpose of his assessment was twofold in nature; firstly that the nature of the bond between the mother and daughter be determined, and secondly whether a diminishment or a disruption of the primary caregiver or maternal bond would have an adverse effect on the minor's mental state and/or personality development.
- [7] It is evident from Mr Stigant's limited report that he had little regard to the history of the matter, did not interview the Applicant, apparently failed to have regard to (or did not mention) the Family Advocate's latest report, or any of the previous reports of the Family Advocate, and also the reports of Advocate Rossi.
- [8] Mr Stigant concluded that it is clear from the assessment of the minor that she is primarily bonded to her mother, Respondent.
- [9] Applicant submitted in argument that the likely effect on the child of any change in the child's circumstances, including the likely effect on her of any separation from both or either of the parents (Section 7(1)(d)(i) of the Act), is but one of the factors to be considered when applying the best interests of the child's standard as set out in Section 7 of the Act.
- [10] Advocate Rossi, in her report of 15 January 2018, remarked that "[I]t is logical that the minor would want to remain with the Respondent, with whom she has lived her whole life. They are close and love each other; coupled with this is the fact that the Respondent speaks ill of Applicant in the minor's presence (the so-called 'team mommy v team daddy') and the minor is caught in the middle of this horrendous struggle."
- [11] Mr Stigant stated that "it may be said that perhaps the bond with the mother is overly strong and enmeshed, so that the child is prone to separation anxiety symptoms when the bond between them temporarily is disrupted". He concluded that it will be detrimental to her emotional well-being, mental state and developmental needs if she were to be removed from the Respondent given the separation anxiety symptoms that had been observed.
- [12] Mr Kew in his supplementary report, dated 18 March 2018, states that "[P]arents include the child in their own dramas – and respond with overwhelming closeness, over anxious protectiveness and a tendency to lose control in frustration, anger and distress – foster

disorganized attachments. Ms Roberts parenting is suggestive of this type of behaviour and interaction style. It has also been shown that this group of children are likely to have enduring problems into adolescence, including a greater tendency to react to stress by disassociation, which is a defence mechanism in which the individual distances themselves (sic) by denying any connection or involvement with somebody or something else". Further, "our experiences of primary relationships become our 'inner working model'. Highlighting the value of consistency, feeling secure and safe whilst in the care of our primary guardians".

[13] The following further factors, are also relevant:

13.1. Respondent was dismissed from her latest place of employment, Sorbet, Walmer Park, although she says that she will continue with her Mobile Beauty Salon and has found temporary employment at Solaris Beauty Spa (2 – 5 days per week).

13.2. Respondent's relationship with Mr Greyling ended (though she ingenuously denied this at the initial April 2018 hearing).

13.3. Respondent, whilst initially intending to remain in the existing home and take over the rent from Mr Greyling, now anticipated a further move of residence.

13.4. The Respondent's mother, Mrs Johnson, told the Family Counsellor that she is concerned for her daughter and granddaughter once it becomes her daughter's responsibility at the end of April 2018 to pay rent for her home and to provide the minor's physical needs. She also reported that she was no longer in a position to provide for Respondent and the minor's financial needs because her finances had been depleted.

13.5. She said that Respondent and the minor could move into the "Wendy House" on her property because it was not suitable for the child to live in such circumstances.

13.6. Respondent allegedly told her mother, Mrs Johnson, that if this Court were to order that the minor primarily reside with Applicant she would relocate to Dubai to find employment there; Respondent confirmed this to the Family Advocate but said she would not leave the minor behind in South Africa and she knows Applicant would not allow for the minor to relocate to Dubai.

13.7. Respondent does not have a vehicle, uses Uber and she and the minor enjoy walking to and from school.

[14] The Respondent argued in the Heads that:

"3. THE APPLICANT'S CASE

3.1 It is evident from the children's court proceedings and the present proceedings before this Honourable Court, that the Applicant's case is somewhat elementary to the extent that this issue against the Respondent relates to her capacity to adequately and consistently provide for the minor child's primary physical and emotional needs.

3.2 The Applicant's submissions manifest themselves in his accusation against the Respondent that she continues to utilize drugs and that her propensity to get involved in indeterminable relationships has led her to provide inconsistent care giving towards the minor child. I pause to mention that it is common cause that both the Applicant and Respondent confirm their previous drug use together, yet it is only the Respondent who has had to attend numerous drug testing sessions, to prove that she is not utilizing any drugs. The same cannot be said of the Applicant.

3.3 It is trite that the collateral sources the Applicant utilizes to support his arguments are past boyfriends, friends and an employer of the Respondent. The veracity of the allegations made by these person must be scrutinized having regard to the fact that most of these relationships, between these individuals and the Respondent ended in circumstances of acrimony.

4. THE RESPONDENT'S CASE

4.1 The Respondent opposes the relief sought by the Applicant to the relief sought by the Applicant to the extent that he seeks primary care and custody of Taylor.

4.2 The Respondent submits that whilst she has utilized drugs in the past with the Applicant, she has since the year 2012 not utilized narcotics and has attended to numerous and intermittent drug screening tests which have all been overseen by the Family Advocate's appointed social worker, Mrs Madelein Van Vuuren, and which tests have proven that she has not utilized drugs.

4.3 The Respondent furthermore vehemently denies the submissions made by the Applicant and his collateral sources. It quite evident that the collateral sources utilized by the Applicant have all the proverbial "axe to grind" with the Respondent, and as such it is respectfully submitted that not much weight can be attached to their submissions.

...

5.5 It must be stressed that there is absolutely no evidence to substantiate the Applicant's allegations that the Respondent is utilizing drugs. Furthermore the submission that her lifestyle of allegedly constantly moving homes has been gainsaid by the fact that she has for more than a year been in a healthy and stable relationship with Mr Louis Greyling, who also shares a strong bond with Taylor.

6. THE REPORT OF WESLEY KEW

6.1 Pursuant to a directive of this Honourable Court, Mr Wesley Kew, a psychologist was entreated to prepare a psychological report pertaining to this matter. His report was filed on the 18th December 2017.

6.2 It is apposite that the conclusion reasoned by Mr Kew is adverse to the findings of the Family Advocate.

6.3 It is respectfully submitted that the above report is deeply flawed and clearly biased in favour of the Applicant for the following

reasons:

6.3.1 Mr Kew fails to report on any direct views or wishes of Taylor, nor does it appear that he has made any attempt to discover what her views and wishes are on the matter;

6.3.2 Mr Kew failed to traverse the most important issue of Taylor's primary attachment and primary source of emotional security, which the Family Advocate confirms is the Respondent, and what the effects thereof would be if the minor is removed from the primary care and emotional security of her mother;

6.3.3 Mr Kew in his report embarks on a repetition of the allegations of the Applicant relating to the Respondent's living and working circumstances, her romantic partners and drug use. He has failed to have any regard to the Respondent's

submissions

regarding the allegations and seems to accept the allegations of both the Applicant and collateral sources as fact, specifically when one has regard to points 5 and 6 of his report;

6.3.4 The Family Advocate has quite correctly pointed out that from Mr Kew's report, apart from his observations and clinical interviewing of the parties and Taylor, not much information regarding the Respondent's psychological functioning and its impact could be obtained from the psychological testing in the form of the MMPI-2;

6.3.5 Mr Kew provides no clinical judgment as to the assessment of the Respondent's parental capacity, and merely provides a diatribe of the allegations made against the Respondent and collateral sources and accepts same together with the Respondent's physical appearance at a single appearance as enough to make a 'clinical' determination that Taylor should primarily reside with the Applicant;

6.3.6 Mr Kew has also failed to set out his raw scores of his assessment of the parties so that same may be objectively assessed.

6.4 It is respectfully submitted that the above report, for the reasons as set out above, is deeply flawed and cannot be seen as providing this Honourable Court, with any meaningful insight into this matter."

[15] Respondent argued further that:

15.1 It was a fact that although Taylor enjoys a close and living relationship with both parties, she presently finds her stability and security in the care of her mother, the Respondent herein.

15.2 That neither party could hold themselves out to be the quintessential epitome of perfect individuals, with both having character flaws.

15.3 That Respondent has provided a home and her love to the minor child, since birth and that she is to be commended herefor.

[16] Respondent's Counsel pointed out that both the Family Advocate and Mr Kew confirm that Taylor comes across as "a bright and happy child that displays a degree of maturity beyond her years", and accordingly that Respondent as the primary carer of Taylor must have nurtured her in a positive manner for her to be described

accordingly.

[17] Respondent argued that whilst the Applicant has sought to portray the Respondent in a manner that would somehow suggest that she would not be suitable as the primary carer of Taylor, there is absolutely no evidence to suggest that the Respondent lacks these qualities to continue her role as primary carer of Taylor.

[18] Respondent argued that the Family Advocate has confirmed that Taylor finds her primary source of emotional security and stability with her mother, Respondent. It was also held that it is important to guard against unnecessarily disrupting Taylor's circumstances and more importantly the relationship she shares with her primary caregiver, which is the Respondent. Mr Kew, it is alleged, simply failed to have any regard to this important factor.

[19] And finally Respondent argues that:

"In the premises having regard to the above, it is respectfully submitted that the best interests Taylor, would best be served if she continued to enjoy the security and stability she enjoys with her mother the Respondent herein."

THE RESULT

[20] I have given careful thought to the issues and arguments set out above and have read and re-read the papers and reports filed by all experts and the Family Advocate. This is a desperately emotional matter for the parties whom, I accept unequivocally, each have a deep love for their child. Sadly this has deteriorated into lengthy expensive litigation, and a tug of war contrary to the child's best interests. The deep animosity between the parties appears to continue despite my having carefully and responsibly in open Court urged that they not only reach a non-litigious compromise, but find cause to put aside their differences in Taylor's best interests.

[21] I share Advocate Rossi's view that the Family Advocate's change of stance midway was based on grounds, which having regard to Respondent's past history and difficulties, were unlikely to be maintained. Sadly this proved to be the case as Respondent's romantic relationship ended, and she lost her employment in regrettably questionable circumstances. Whilst the relationship ending may have been due to no fault of hers it pulled the carpet from under the Family Advocate's feet compounded by her loss of employment. Most certainly this was due to her own fault even on her clearly sanitised versions of events. Once again home change, work and financial instability reigns, which inevitably even with the best will in the world negatively affects the child. Regrettably it seems that Respondent not only unjustifiably attempted to sanitise the loss of employment issue, to one extent or another alcohol related, but also initially concealed that her relationship with Mr Greyling had

ended. This sadly fails to engender confidence in Respondent as a parent and role model.

[22] I have carefully and repeatedly weighed the statutory and common law imperatives relevant in this matter and these against the facts in the papers and reports referred to above. In the light thereof there is no surprise that Mr Kew, Advocate Rossi and the Family Advocate argue with justification that it is all in all in the child's interests that her primary care be placed in the hands of Applicant, but with liberal access being given to Respondent. It is as I understand it not they do not accept that Respondent clearly loves her child, but rather that Applicant similarly does so, but is in a position currently better able to provide for her upbringing, education, housing, physiological development, financial stability, stable home environment and an undisturbed day to day existence. That is not to say that Respondent should in any way (other than not being her primary caregiver) be deprived of contact with and access to Taylor such as to enable her to continue to provide her child with a mother's love, care and influence.

[23] In summary:

23.1 The parties have been in dispute over their child since at least 2013.

23.2 This necessarily must be brought to an end in the child's best interests, and both parties need to heed my words in Court about putting aside their differences to co-operate in Taylor's best interests.

23.3 Taylors personal parental relationship with each parent must be maintained, save that Respondent must exercise her parental responsibilities against an increased background of stability and security for Taylor, this to be provided by Applicant, Respondent apparently presently failing to provide same in sufficient measure.

23.4 Applicant currently has a greater capacity than Respondent to provide for Taylor's needs, financial, physical, emotional, psychological and intellectual (this must also be seen against the background that Respondent, it seems at least in the past, attempted to influence Taylor to a greater or lesser extent against Applicant).

23.5 Though a change in primary caregiver will undoubtedly initially affect Taylor negatively this cannot in the circumstances on its own dictate against her being placed in Applicant's primary care, but as set out carefully in the order, she to be given the necessary psychological support herefor.

23.6 Her connection with both parents must be maintained as set out.

23.7 Taylor's age, maturity development, background and other characteristics in my view support the order given below.

23.8 Her physical, emotional and psychological security and social cultural development in the circumstances, are better served and supported by the order given than currently is the case.

23.9 The order will better serve to protect Taylor from harm, primarily psychological.

23.10 The order, maintaining liberal access to Respondent but giving better, more secure care from a primary caregiver, will hopefully minimise further dispute and legal proceedings.

[24] In this regard I am considerably moved by the views of Advocate Rossi, appointed by the Court to represent Taylor, whose selfless time given to the matter and responsible, thoughtful submissions weighed heavily in favour of the order I intend to give. She is further supported by Mr Kew and finally the Family Advocate.

[25] To the extent that Mr Stigant's report contradicts this, I disagree.

[26] I am of the view that his limited report (through no fault of his), which clearly points out the psychological trauma of a change in primary caregiver (no doubt correctly) gives however insufficient grounds to deviate from my proposed resolution.

ORDER

[27] The Order granted on 25 September 2013, under case number 2125/2013 is varied in its entirety and replaced with an Order in the following terms:

1. The parties shall retain full parental responsibilities and rights in respect of T. T. H. ("the minor") as provided for in Section 18 of the Children's Act 38 of 2005, subject to the following:

1.1 The minor shall primarily reside with Applicant;

1.2 The minor shall have structured contact with Respondent, which contact will include, but not be limited to:

1.2.1 daily telephonic contact between Respondent and the minor (where and when appropriate);

1.2.2 the minor shall be with Respondent every alternate weekend from a Friday after school to a Monday before school, Respondent to take the minor to school (save during Applicant's school holiday period);

1.2.3 the minor shall be with Respondent every Wednesday, from after school, being one night sleepover, Respondent to take the minor to school the following day (save during holiday periods);

1.2.4 the minor shall spend every alternate short school holiday with Respondent;

1.2.5 long school holidays shall be shared between Applicant and Respondent on the basis that the minor spends alternate weeks with each party, arranged in such a manner that Christmas and New Year's days be rotated between the parties.

1.3 A social worker, appointed by CMR Port Elizabeth or the Department of Social Development, is to continue to render preventative services to the minor and the parties and to encourage the parties to develop their parenting skills and provision of the minor's needs;

1.4 Each party is to inform the social worker immediately in writing and orally of any change in his/her social circumstances, change of address or any anticipated change in the minor's circumstances;

1.5 The social worker is to monitor the minor's care and contact with each parent and, should it any time appear that the minor may be at risk or her care compromised by either parent, the social worker has the obligation to intervene as set out in Section 151 of the Children's Act, No 38 of 2005; and

1.6 The social worker shall have the authority to request either party to undergo random testing for drug use in order to ensure that the minor is not exposed to any abuse of substances.

2. Advocate Rossi shall, and is authorised to, have personal contact with the minor forthwith, in order to fully explain to her the implications of this Order, in such manner as she deems fit, and her transfer to Applicant's primary care shall take place only subsequent hereto.
3. The Applicant shall immediately, and at his sole expense, make available to the minor, expert Psychological counselling and support, and in addition such support as may be suggested by Advocate Rossi, sufficient to assist the minor in dealing and coming to terms with her change in primary caregiver, this all for so long as this remains necessary.
4. Each party is liable to pay his or her own costs.

M.J. LOWE

JUDGE OF THE HIGH COURT

Obo the Applicant:

Adv T Zietsman

Instructed by:

Greyvensteins Attorneys, Port Elizabeth

Obo the Respondent: Mr V Naidu / Ms M Henderson

Instructed by: Legal Aid Port Elizabeth / Grahamstown

Obo the Family Advocate: Adv J Urban

Obo the Minor Child: Adv TJD Rossi

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECPHC/2018/19.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sh-v-sar-unknown-topic-aecphc-2018--6a3ea51d3b1caa9129813eb1>

Prepared on 10 October 2026 · Esheria