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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 23060/2016

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

Date:

WHG VAN DER LINDE

In the matter between:

KOEKEMOER, JUAN

Applicant

And

DU PLESSIS, JEANICE

Respondent

Judgment

Van der Linde, J:

[1] This is an urgent application for the interim control and custody of a two year old girl who was born to the applicant father and the respondent mother on 25 February 2014 while they

were barely beyond their teens. The applicant was about 24 and the respondent 20 years old. The order sought is interim, pending an investigation and report by the family advocate.

- [2] The respondent as biological mother has full parental responsibilities and rights in terms of s.19(1) of the Children's Act 38 of 2005 ("the Act"). The applicant as biological father has full parental responsibilities and rights in terms of s.21(1)(b) of the Act.
- [3] What has brought on the urgency, is that the respondent surreptitiously contrived to remove the child from the custody and control of the applicant and his mother in the second week of June 2016, after the child had been with her father and paternal grandmother uninterruptedly since the end of last year with the knowledge and consent of the respondent and her mother.
- [4] What had brought about the change in attitude on the part of the respondent, is that she considered that her own hitherto unstable circumstances had stabilised, and so it was better that the child now stay with her, rather than with the applicant.
- [5] During the first two years of the child's existence, both parents were young people, attempting to find their way in life through relationships and jobs. Their relationship with each other was already at its end when their unexpected future parenthood was discovered. That did not bode well for the minor child.
- [6] Initially the young parents stayed together but that did not last. Their relationship broke up and they went their separate ways. The brunt of the child's welfare was borne by the grandmothers on both sides, albeit that there is some issue about the precise extent to which the respondent's mother contributed.
- [7] The urgency precludes an exposition and discussion, let alone resolution of the many factual disputes between the parties. Suffice it to say that even on the respondent's version, the little girl has had a period of stability since the end of last year. The applicant's proposed relief seeks to protect that stability pending the family advocate's report.

[8] The respondent's attitude is twofold. Although she agrees with the notion that the family advocate should investigate and report, she argues that the girl should stay with her pending the investigation. She submits in this regard that, as of this moment, she and her life is stable and so the best interests of the child, obviously the paramount consideration, is to stay with her.

[9] But secondly, she asks for a postponement to obtain legal assistance, again on the basis that in the meantime the child stays with her.

[10] My difficulty with these two positions is as follows. Accepting that as of this moment the arrangements made by the respondent are good for the girl, the difficulty is that the respondent's track record is one of considerable instability.

[11] At times she has gone to live with her father, who lives in Krugersdorp and is divorced from her mother who has remarried. At times she has moved in with another young man with whom she formed an intimate relationship and by whom she fell pregnant but lost the child. And although it is possible that the respondent has changed, such a change has not yet had the opportunity of standing the test of time.

[12] As to obtaining legal assistance, the difficulty I have with the respondent's proposal is the following. When she filed her papers, she made no mention of obtaining legal assistance. She does not explain what made her change her mind. She says that she has no lawyer now, but wants to get one as soon as she has the financial wherewithal. She does not have the financial wherewithal now, but thinks she can get it within week. She does not disclose what the source of her financial support is expected to be.

[13] The applicant submitted that the respondent was merely using the issue of legal assistance as a pretext to keep the girl under her control and, at a prima facie level that is the impression left with the court.

[14] These factors are all relevant, but what ultimately weighs with the court is that the circumstances of stability to which the child has become accustomed during the past six

months ought to be restored as soon as possible. At the same time, provision should be made to afford the respondent the opportunity to take in legal assistance, and to approach the court again if so advised.

[15]Doing the best one can in these circumstances, the following order issues:

- (a) The family advocate is requested forthwith to investigate the circumstances surrounding the minor child J born to the applicant and the respondent, and to report to this court on the best arrangement that can be made concerning the control and custody of and access to the minor child.
- (b) Pending the report of the family advocate aforesaid, and pending any rehearing as anticipated below, as an interim order with immediate effect, the control and custody of the minor child will vest in the applicant, subject to the reasonable access of the respondent.
- (c) The reasonable access of the respondent will include that the minor child will spend every weekend with the respondent from 08h00 on Saturdays to 18h00 on Sundays.
- (d) Pending the report of the family advocate, the respondent is granted leave to set this matter down again, on supplemented papers duly served on the applicant, for a rehearing to revisit this order if deemed necessary, after she will have had an opportunity to obtain legal assistance.
- (e) No order as to costs issues.

WHG van der Linde
Judge, High Court
Johannesburg

For the applicant: Adv Cowley
Instructed by Beukes & Sonja Nel Attorneys
011-7440477

Respondent: in person

Date heard: 12 July 2016

Date judgement: 13 July 2016