

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

Case No 1928/22

REPORTABLE: **NO**
OF INTEREST TO OTHER JUDGES: **NO**

REVISED:

Date: 25/03/2022

In the matter between

D[....] T[....]

Applicant

and

S[....] E T[....] (born K[....])

Respondent

JUDGMENT

MAHOMED, AJ

INTRODUCTION

1. The parties seek an order pendente lite in respect of the care and contact of their minor daughter. The parties together appointed a psychologist Mr Townsend to investigate and make recommendations for the care and contact in respect of their daughter who is 4 years old.

2. Mr Townsend conducted investigations and obtained collateral information through interviews with the various people the minor child is likely to interact with and those with whom she has daily contact.

3. I am satisfied that Mr Townsend is duly qualified to serve as an expert to assist this court. He has furnished his report and made recommendations which have been accepted by both parties.

THE EVIDENCE

4. De Wet SC, (Ms) appeared for the applicant and informed the court that her client and the minor child are entitled to finalisation of this matter and the very ethos of these proceedings is about efficient and cost-effective justice for parties and their minor children.

4.1. Ms De Wet submitted that the division of time and contact arrangements were fair as per the recommendations and practical for both parties.

4.2. The recommendations on primary residence were suitable to both parties and the minor child's primary residence would be with her father.

4.3. Counsel also informed the court that a parenting coordinator will be appointed to facilitate and assist the parties on execution of the arrangements in the event of a dispute between the parties. In that regard I was referred to a document which sets out the mandate of a parenting coordinator.

5. Advocate Adams appeared for the respondent and submitted that her client seeks an order,

5.1. referring the matter for further investigations to be conducted by Mr Townsend and for him to compile a supplementary report, if necessary. The respondent will pay for the cost of that report.

5.1.1. The respondent requires Townsend to contact:

5.1.1.1 the Family Advocate Ms Dames Smith,

5.1.1.2 the Family advocate Mrs Naidoo, and

5.2. To interview Mr Colin Bruwer regarding the collateral effect on the minor child's, step brother Jet.

5.3. Counsel for the respondent further submitted that her client has requested access for an extra day in a month. On the court's inquiry as to the reasons thereto, counsel submitted it was "only a mother wanting to spend more time with her child."

5.4. The costs of the application were in dispute.

6. In reply, De Wet SC, argued that the respondent was simply delaying implementation of the arrangements, which can only impact negatively on the minor child. Counsel submitted that the minor child requires structure and routine in her life and that the changes are really for the respondent's interests.

7. Counsel reminded the court that the minor child's best interests is paramount and that the extra day simply disrupts that routine which she requires at her tender age.

8. Counsel further submitted that there was no basis laid for a referral for further investigations, the respondent does not even give any valid reasons for this request.

9. Ms De Wet argued that the request for consultation with a Mr Bruwer relating to the collateral effect on the minor child's step brother is not relevant to these proceedings and that these proceedings pertain to the parties little daughter. Counsel for the respondent abandoned this request.

JUDGMENT

10. I read the recommendations by Mr Townsend and noted that each of the parties agree with the recommendations.

11. The report is quite extensive and appears to canvass all pertinent issues relating to the minor child's general growth and development, her maturity and she is found to be a happy well adjusted little girl, who loves both her parents and is comfortable with them both. She reported that her parents "were friends."

12. Mr Townsend has also interviewed various persons whom the minor child interacts with and is likely to spend more time with in the future.

13. I do not think it of any value to refer this matter for any further investigations, particularly in that the respondent's counsel was unable to identify any specific reasons for doing so, except to "put her mind at ease." I do not think it fair to delay this matter any further for that reason. I agree the parties must now move on and get on with their lives.

14. The extra day sought is again having to place the interests of the respondent above those of the minor child. As it often happens, the arrangements for care and contact, tend to evolve over time and these are arrangements pendente lite. I am of the view the minor child's routine is more important at this stage. I have also has sight of the arrangements annexed to the applicant's papers and I am of the view that the recommendations are fair in the circumstances.

15. Mr Townsend's recommendations, as accepted by the parties who were both duly represented at the time, must be implemented.

16. The respondent raised points for clarity and practicality in the mandate for the parenting coordinator. The parties agreed to discuss those and settle between them.

16.1. I noted that the powers of the parenting coordinator include the power to make rulings that are necessary to implement the court order,

16.2. The parties have agreed on the daily video and photo contact between the parent and child.

COSTS

17. I noted that the respondent's disputes arise from or relate to the report furnished by Mr Townsend.

18. The evidence is that the report was accepted by both parties.

19. Furthermore, both parties agreed to his appointment and both attended consultations with Mr Townsend.

20. I noted that both parties were duly represented at the time. The respondent accepted the recommendations unconditionally. She could have expressed her dissatisfaction on receipt and perusal of the report.

21. It was unnecessary to draw the applicant into further arguments and legal costs.

22. I am of the view it is fair that the respondent pay the costs of this application.

Accordingly, I make the following order.

1. The order marked X incorporating the powers of a parenting coordinator marked, X1, is made an order of court.

2. The respondent is to pay the party party costs of this application.

S MAHOMED

ACTING JUDGE OF THE HIGH COURT

This judgment was prepared and authored by Acting Judge Mahomed. It is handed down electronically by circulation to the parties or their legal representatives by email

and by uploading it to the electronic file of this matter on Case lines. The date for hand-down is deemed to be 25 March 2022.

Date of hearing: 22 March 2022

Date of Judgment: 25 March 2022

Appearances:

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