

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-126880

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

Date: 22 December 2023

In the matter between:

WLB

FIRST APPLICANT

SMM

SECOND APPLICANT

and

BSB

RESPONDENT

JUDGMENT

DE VOS AJ

[1] The applicants urgently seek to place two minor children in the care of the second applicant, with immediately effect, pending a full investigation by the Family Advocate.

- [2] The first applicant is the biological father of the applicant. The second applicant is the paternal grandmother of the children. The respondent is the mother of the children. The applicants request the Court to declare that the primary residence of the children be with the second applicant. The request to live with their grandmother is because the first applicant does not currently have a residence in South Africa. The applicant works, seasonally on farms in the United States. When he returns to South Africa he stays with the second applicant.
- [3] The children have lived with the respondent their entire lives. The relief sought by the applicants would change their primary care of the children, pending an investigation by the Family Advocate. The first respondent opposes the relief and filed papers and attended at Court in person.
- [4] The applicants contend that the matter is urgent, as it is not in the best interest of the children to stay with the respondent any longer. The allegations are that the minor children are caught in a situation that is not conducive to their wellbeing, that the minor children are living under the “roof of strangers while their mother goes on drinking sprees”, the minor children are living in a separate house from the mother and her partner, with the partner’s older children. The applicants contend that it seems that the situation the minor children finds themselves in is violent. The catalyst of this urgent application is that the minor daughter, explained that she has accepted the fact that she grows up in violence. Premised on these allegations, the applicants contend that the matter is inherently urgent and in the best interest of the minor children to be placed into the care of their paternal grandmother, where they will be placed in a safe environment and cared for properly.
- [5] The Court accepts these allegations for purposes of urgency. On the assumption they are correct, and the all-present concern with the best interest of the children, the Court permits the matter to be heard on an urgent basis.
- [6] The respondent disputes the allegations in her papers filed with the Court. The respondent accepts that there was an incident of violence between her partner and his children. She denies the manner in which the applicant has described this incident, but generally does not deny it occurred. However, she denies that her children were exposed to the incident. She further denies all the allegations of drinking

and refers to medical test she undertook to prove absence of alcohol and drug abuse. The applicants presented nothing to contradict these findings.

- [7] The respondent also contends that she subjected herself to interviews with both the family advocate and a psychologist both of who held that she was suitable to provide for her children.
- [8] As for the housing arrangement, the respondent contends that she and her children live under the same roof, with her and her partner in the apartment and the children in the main house. Whilst these have separate entrances, they are all connected. In particular each child has their own room, with bed, dressers and cupboards. The respondent denies the children live with strangers. The children live with her, her partner and his children. They have all known each other for years. The children, according to the respondent get along well, and spend a lot of time together, playing and swimming. The respondent set out the family routine, in relation to cooking and eating. As for allegations from the children, the respondent pleaded that she spoke to her daughter who denies ever having said that she has accepted she lives in violence.
- [9] The respondent not only denies the basis on which the applicants seek to remove the children from her care, but also denies that it would be appropriate for them to live with the second applicant. The second applicant does not have enough rooms for the children, meaning that a 15-year old girl would have to live in a room with adult couple. In addition, she provided proof that the first applicant suffers from a mental illness for which, as far as the respondent is aware, he receives no treatment.
- [10] The Court is placed in the position where the allegations presented by the applicants are all disputed by the respondent. The allegations from the applicant are also either hearsay, subjective or denied. To make the matter murkier, the respondent denies that the children would be in good care with the applicants due to the first applicant's health and the living conditions.
- [11] The children have been in the primary care of the respondent all their lives. It weighs with the Court that it is being asked, on disputed evidence, without the benefit of the Family Advocate to change the primary care of the children. The Court is not persuaded that sufficient facts have been proven that would assure a Court it is justified to move the children from their home and from their primary caregiver. In

particular, where Court is slow to move the children, absent a proper investigation by the Family Advocate. It also weighs with the Court that a Family Advocate has attended the property and found the living conditions suitable, on a previous occasion.

[12] The Court further is aware of the impact of changing the lives of children materially. The relief sought would uproot the children from their homes. The Court is being asked to do so, blindly, with no information as to the impact of the move or any definitive assistance on what would be the impact on the children. Case law, bolstered by expert evidence, has recognised the importance of consistency in children's lives.¹ Children's existing environment should not readily be disturbed, and any unnecessary moves should be discouraged and avoided on the grounds of security and stability.² A stable routine is universally determined to be in the interests of children, especially those of a young age.³ Were I to grant the relief sought by the applicants, they would be uprooted, from their primary care-giver – the only one they've known as a primary care-giver for their whole lives. This is particularly concerning as the Court has not been told what the impact of such a move would be on the children. I hesitate to do so without knowing what the impact on the children would be.

[13] The Court has spent some thought on the seriousness of the allegations made. To resolve this is to order the Family Advocate to investigate the complaints.

Order

[14] As a result, the following order is granted:

- a) The matter is declared urgent in terms of uniform Rule 6(12).
- b) Part A of the application is dismissed.
- c) The Family Advocate is instructed to provide a full investigation into the primary residency, care and contact of the minor children for purposes of Part B.

¹ AS v CHPS 2022 JDR 0623 (GJ)

² Mekgwe v Letlatsa 2018 JDR 1959 (FB) at page 30

³ JO v AO 2017 JDR 1691 (GJ)



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	Adv HC Van Zyl
Instructed by:	ATS Attorneys Inc
For the first respondent:	Self-represented
Date of the hearing:	14 December 2023
Date of judgment:	22 December 2023