

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

21/8/2012

CASE NUMBER: 5211/2012

In the matter between:

SINDY – LEE LOUW

AND

GIDEON ROUSSEAUW (JNR)

ADRI ROUSSEAU

GIDEON ROUSSEAU (SNR)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
☒ REVISED. APPLICANT	
21/8/2012	
	SIGNATURE

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

JUDGMENT

TLHAPI J

[1] This is an application for the following order:

- "1. That the applicant and first respondent have parental rights and responsibilities in respect of the minor child MIENKIE ROUSSEAU born on the 30 October 2010;

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2. That the parental rights and responsibilities of care and primary residence be awarded to the applicant;
3. That the first respondent be entitled to rights of contact to the minor child;
4. That the second and the third respondent be ordered to forthwith hand the minor child to the applicant.”

The first respondent opposed this application and launched a counter application that temporary custody and the right of permanent residence be awarded to him subject to applicant's right to reasonable contact and that the matter be referred to the Family Advocate for a full investigation.

For convenience the minor child shall be referred to as Mienkie..

At the hearing the first respondent indicated that access and visitation rights would be allowed and that the applicant could reside at the home of the respondents during such visits. Furthermore that a consultation had been arranged with the family advocate for the 29 August 2012.

- [2] The applicant and the first respondent were involved in a relationship and after the birth of the Mienkie lived together in Krugersdorp at the residence of the second and third respondent, who are also the parents of the first respondent. Mienkie was born on the 30 October 2010.
- [3] During May 2011 the second and third respondent relocated to Skukuza in Mpumalanga. According to the applicant the Mienkie went to live with the second and third respondent with her consent. after they had offered to assist the applicant and first respondent financially. At the time the first respondent was an apprentice and she was looking for employment.

- [4] The applicant averred that the second respondent and Mienkie developed a good relationship close with each other. However she began to experience problems in the manner in which the second respondent exercised control and access to Mienkie and this extended to her relatives, in particular her mother. Her complaints were not heeded. Things came to a head during December 2011 after the second and third respondent failed to release the minor child to spend the Xmas holidays with applicant and her family. As a result she had to travel to Skukuza for a few days with the first respondent over the New Year period.
- [5] The second and third respondent refused to hand over Mienkie after her stay and this resulted in tension and quarrels between the applicant and the respondents and the police and a magistrate were involved in trying to resolve the problem. The applicant averred that she was intimidated and threatened that incidents of her neglect of the child would be revealed and that she would only see her child when she was twenty one. The applicants parents travelled to Skukuza to fetch her. This application was launched shortly thereafter.
- [6] The first respondent averred that he no longer lived in Krugersdorp, he also relocated to Skukuza during 2012. He now resides with the second and third respondent and was of the view that it was in the best interests of Mienkie that she not be removed from his home. He denied that there were problems with access to Mienkie. When he resided in Krugersdorp with the applicant his parents frequently visited in order for Mienkie to bond and to be with her parents. He further denied that the address given by the applicant was her mother's house. He mentioned that presently there were nine individuals resident in that house.
- [7] According to the him the second respondent took over the responsibility of care for

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Mienkie. His relationship with the applicant was fraught with problems. They quarrelled a lot and they were not financially stable. There was an agreement that the second respondent take over the responsibility for Mienkie because she was unemployed and in a better position to attend to her daily needs. The first respondent averred that after applicant left with her parents she had never been to see Mienkie or made contact with her. In support of his contention that it was in the best interests of Mienkie that she remain with the second respondent he annexed to his answering papers affidavits obtained from his sisters, the police and a social worker and requested the court to give an order on the recommendations of the latter.

[8] In her replying affidavit the applicant averred that first respondent had not discussed his relocation to Skukuza with her. She believed that there was a conspiracy to deprive her permanently of Mienkie. She never agreed to hand over Mienkie permanently to the second respondent, it was a temporary arrangement to assist first respondent and herself because they were financially dependant upon them and she had to find employment.

[9] In dealing with this matter I have taken into consideration submissions made on behalf of both parties. I do not deem it necessary to deal with the complaints levelled against each other in detail. I am also mindful of the fact when dealing with such matters an environment should be created in order to allow and encourage the minor child to develop a relationship and to bond with both parents. I further take into consideration that the applicant and first respondent's relationship has been problematic.

9.1 When the second respondent took over the responsibility to take care of Mienkie, it was to assist both her son (first respondent) and applicant

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because they quarrelled a lot; they were not financially stable and applicant had to find employment; Whatever agreement was entered into was not enforceable in terms of the law and could not be used to deprive applicant the opportunity, now that she was in a position to do so, to live with Mienkie permanently.

Applicant is no longer living with the first respondent. She has a place to stay, is employed and is in a position to put Mienkie into a crèche nearby while at work.

- 9.2 There was no history of serious neglect of Mienkie by the applicant that required intervention to determine primary residence of Mienkie. An investigation by the Family Advocate is in my view premature. While the applicant acknowledges that there is a good relationship between the second respondent and Mienkie, it was in the best interests of Mienkie that she developed a stable relationship her mother. It is only where this has failed and for good reasons and after proper investigations that the minor child shall be placed with someone else.
- 9.3 The annexures to the answering affidavit from the first respondent's sisters, the social worker and police officer are of no assistance in determining the best interests the child. The applicant must be given an opportunity to prove herself and assisted before drastic steps are taken to remove the child from her.
- 9.4 After the January incident and the tensions that developed between the applicant and the first respondent's family, it is in my view improbable that the

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applicant would be comfortable in the residence of respondents. In as much as first respondent mentions that the applicant has made no contact with the child since that time, he had a responsibility also to make it possible for applicant to see Mienkie by visiting the applicant to ensure that despite the tensions applicant kept contact with Mienkie. In my view, the offer to allow access and visitation rights to the applicant within the environment of the respondents home was impractical (as stated in the replying affidavit), because there was no guarantee that the situation that prevailed in January would not repeat itself and there was a great risk of further alienating the applicant. Furthermore the arrangement entailed unnecessary expense for the applicant.

[10] The order that follows takes into consideration that the applicant intends putting Mienkie into crèche while at work. Should this order interfere with her attendance or should the crèche not approve of Mienkie's absence for a week, the parties may engage in an alternative arrangement approved by the Family Advocate and such agreement must be approved by the court on the existing papers.

[11] **In the result I make the following order:**

- (1) That the applicant and first respondent have joint parental rights and responsibilities in respect of the minor child Mienkie Rousseau;
- (2) That parental rights and responsibilities of care and primary residence of the minor child be awarded to the applicant and that the respondents are ordered to release Mienkie into the care of the applicant at Skukuza on the 25 August 2012;

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(3) That the first respondent be entitled to rights of contact with the minor child to be exercised as follows:

3.1 That the first respondent is entitled to remove the minor child and to take her to Skukuza once every two months on a Friday in order to spend a week with her and that the minor child be returned to the applicant on the Sunday of the following week. This removal shall commence at the end of September 2012 and shall not include the Xmas week of 2012.



TLHAPI V V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	13 AUGUST 2012
JUDGMENT RESERVED ON	:	14 AUGUST 2012
ATTORNEYS FOR THE APPLICANTS	:	SCHOLTZ ATTORNEYS
ATTORNEYS FOR THE RESPONDENTS	:	PJ LOURENS ATT.