

**REPORTABLE
IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – EAST LONDON CIRCUIT**

**CASE NO: EL 410/2009
ECD 201/2009**

Dates Heard: 18 & 19 October 2011
Date Delivered: 6 December 2011

In the matter between:

WILLEM JACOBUS ODENDAAL

APPLICANT

and

**GRACE BATTISS in her capacity as parent of
minor child P B O**

RESPONDENT

JUDGMENT

MAGEZA AJ:

- 1] Applicant approached this Court in May 2009 for a declaratory order the terms of which were set out as follows:

- “1. Declaring that the Applicant is the holder of full parental rights and responsibilities in respect of the minor child, namely P B O [“the minor child”] as envisaged in sections 18[1] and 18[2] of the Children’s Act, 38 of 2005;
2. That the Respondent be ordered to immediately restore the *status quo*

ante in respect of the Applicant's rights of contact with the minor child such that the Applicant may exercise contact as follows:-

- 2.1 One full weekend per month commencing immediately from Friday at 17h00 until Sunday at 17h00; and
- 2.2 Telephonic contact at all reasonable times;
- 3. In addition to the relief sought in paragraph 2 above the Applicant be entitled to exercise contact with the minor child as follows:
 - 3.1 Half of every school holiday;
 - 3.2 Every alternate short school holiday;
 - 3.3 On Father's day;
 - 3.4 On the minor child's birthday;
 - 3.5 On the Applicant's birthday;
 - 3.6 Every alternate public holiday.
- 4. ...
- 5. ..."

2] The matter came before Revelas J on the 24 November 2009 on which date, based on an agreement between the parties that there existed in the matter material disputes of fact, the matter was referred to trial for the hearing of oral evidence.

3] On 18 October 2011, for reasons more fully set out herein, Applicant brought a fresh application by way of an amended Notice of Motion seeking the following relief, namely:

- "1. declaring that the Applicant is the holder of full parental rights and responsibilities in respect of minor child P B O ("P ") as envisaged in

sections 18[1] and 18[2] of the Children's Act 38 of 2005;

2. directing the Respondent, with immediate effect, to submit herself and P to the integrative therapy recommended by counselling psychologist Lynda Graetz ("Graetz") in her report dated 28 June 2011;
3. as against the issue of a report from Graetz that the undermentioned access is in the best interests of P , directing that the Applicant shall be entitled to exercise rights of reasonable access to P , including, but not limited to the following, namely:
 - a. one full weekend per month commencing from 17h00 on a Friday to 17h00 on a Sunday;
 - b. telephonic contact at all reasonable times;
 - c. half of every long school holiday per annum; Christmas and the July holiday to alternate between the parties;
 - d. one long school holiday per annum;
 - e. on the Applicant's birthday and on Father's day, in the event that the Applicant is not ordinarily having contact with P ;
 - f. P 's birthday to be shared between the parties.
4. ...
5. ..."

This is the application before me.

Background

- 4] Applicant is the father of the minor child P , born to him and the Respondent out of wedlock on 21 June 2003. At the time of the child's birth, the parties resided together in Cape Town where the Respondent had full-time employment whilst Applicant was employed on part-time basis. Some 7 (seven) months after the birth of the child and in January

2004, according to Applicant, Respondent expressed a desire to return to Johannesburg as she felt she needed the support of her family and friends. The parties moved to Johannesburg and, presented with financial constraints occasioned by the Applicant's being unemployed, they took up residence in the Respondent's father's converted double garage in Melville.

- 5] In June 2004, the financial difficulties not abating, Respondent elected to terminate their romantic relationship but for some reason, moved (together with Applicant) out of her father's property to live in another property which they shared sleeping in separate bedrooms.
- 6] The couple finally parted in July 2005, and the Applicant states that he subsequently continued to enjoy normal and regular access to the child two or three times a week and each weekend, for the entire weekend when the child would be with him. During this period Applicant asserts that no conflict existed between him and Respondent and that they continued to enjoy a friendly relationship with a routine that availed Applicant regular and unrestricted access throughout the years 2005 to mid-2008. Each of the parties found new love and settled into new relationships.
- 7] At the commencement of 2008 the child, having attained the age of 5, was by agreement enrolled at Grayston Primary School in Sandton, Johannesburg and the Respondent was responsible for transporting him to and from school. He says he generally spent afternoons with the child until Respondent returned from work. At all times associated with this period the contact arrangements were flexible, relaxed and without incident. Their relations, according to him, were most cordial and civil.
- 8] It is also common cause that in June 2008, the Respondent informed Applicant that she had found new love and intended to relocate to East London in order to pursue this new romantic relationship. Although Applicant says this was an unwelcome surprise, this led to a draft agreement aimed at regulating access (contact) and associated matters

pertaining to the child's welfare being discussed and prepared.

- 9] In July 2008 on Applicant's birthday, he arranged a small party at his home with family and friends and the child was present. In the course of the evening he found the child engaged in an act of oral sex with another boy of the same age in a shed in his garden. He advised the Respondent of the incident that very evening.
- 10] This incident set off a chain of events which ultimately led to the Respondent denying Applicant access and contact with the child. Immediately after the shed incident Respondent, no doubt out of grave concern for P , arranged for the child to be assessed by a child psychologist, one Dr Deborah Bernhardt, whilst still in Johannesburg. Dr Bernhardt consulted once with Applicant, Respondent and the child with a view to providing a preliminary assessment and report. Her report is dated 13 August 2008. Some of her pertinent observations were that:

"P 's disclosures indicate that P has been exposed to sexual information inappropriate for his age. This in itself can be an indication of sexual molestation. P did not identify a perpetrator, beyond naming particular boys at his school who he claims to have introduced him to these sexual games."

It furthermore emerged in the interview that there had been other similar incidents at his school and that:

"most of the sexual acts occurred at school on the jungle gym and that they had also occurred in his father's tool shed... P 's disclosures do not seem to indicate that he was intimidated or forced into these sexual encounters with the other boys but that he did so willingly..."

Dr Bernhardt recommended that P should undergo evaluative therapy for approximately 6 months and that he remain in the primary care of Respondent with access by other parties supervised by Respondent.

- 11] The report was followed five days later by a letter dated 18 August 2008 from Respondent's Johannesburg legal representatives wherein they intimated that Respondent was no longer prepared to sign any agreement regulating access as Applicant's rights were set and regulated by statute in sections contained in the Children's Act; that their client had never denied Applicant access to the minor child; that Applicant is an extremely aggressive individual who is a drug addict continuing to use unlawful drugs; that Appellant is,

"...unstable and has demonstrated himself to be sexually deviant towards our client and demonstrated further that he had sexually deviant thoughts with regards to minor children in particular, which is obviously disturbing in the circumstances."

and;

"Our client and the psychologist who evaluated your client advise that your client has an aggressive attitude; one way in which this is displayed is by your client's violent conduct towards his dogs. The minor child role models his father's conduct and your client is influencing the child negatively"

In addition that;

"Your client's attitude towards sex and the minor child's behaviour was disturbing. Our client is aware of certain comments that the minor child has disclosed to her about your client 'touching' the minor child in a way that the minor child is unhappy with. Your client has informed the minor that the 'bum game' he plays is acceptable to be played with children of the female sex but not the male sex..."

furthermore;

"We deny that our client is acting in any way that is contrary to the object of the Children's Act as we repeat that our client is not denying your client

access to the minor child.”

lastly;

“... In the circumstances, your client can exercise supervised access to the minor child as follows:

Every alternate weekend where your client can attend at our client’s residence in East London on a Saturday from 12h00 to 14h00... and on the Sunday of such weekend ... at a child friendly venue at 09h30 to 11h00”

- 12] Once resettled in East London, Respondent through her East London attorneys, revised her proposal and made the determination that contact with the child be only by means of one telephone call conducted over a speakerphone or alternatively recorded to ensure that the conversations are appropriate and, supervised contact by a social worker at unspecified mutually agreed times.
- 13] In February 2009, the Respondent applied for and successfully obtained an order in terms of section 4(1) of The Domestic Violence Act 116 of 1998 prohibiting Applicant from having any contact with the minor child. A perusal of the said Application contains at paragraph 5 the following reasons and information provided by Respondent to the authorities:

“A case is pending with the Child Protection Unit, with Inspector Rudi van Dyk. It has been disclosed by the minor that his father performed sexual activities in front of and with the child. Namely masturbating and watching pornography; as well as masturbating and rubbing the child. These actions appear to be sexual grooming. It has taken over 7 months for this child to disclose as the father threatened the child.”

Respondent’s answer.

- 14] Respondent’s opposing papers were filed on 22 July 2009 and therein she

makes the following averments, that:

- 14.1 the Applicant's contact with the minor child has been suspended pending further investigation into the alleged sexual abuse by the Applicant of P ;
- 14.2 taking into account the reports of various independent experts and evidence that has since become available, she believes it is not in the child's best interests that contact with Applicant should be reinstated;
- 14.3 a South African Police Services investigation is being conducted together with various law enforcement agencies co-ordinated by the 'Family Child Centre'.
- 14.4 the minor child's East London therapist and the police investigator had disclosed to her that the child revealed during consultations that Applicant watched pornographic material and masturbated and ejaculated in front of the minor child.
- 14.5 she believes Applicant has launched the application for access so as to gain access to the minor child in order to continue his sexual abuse of the child.

Respondent goes on to say:

"P to this day does not speak to me of the events. He only discusses this with the therapist/investigator and I believe the Applicant has made some sort of threats to P should he ever disclose this to me. I believe the Applicant has some sort of hold over P , be it threats or whatever, and that he possibly wants to reinforce this hold before the criminal case comes to Court."

- 15] Respondent also takes issue with a number of the Applicant's assertions relating to the background to their relationship prior, and subsequent to, the birth of P . She however acknowledges that following on the

consultations with, and report of Dr Deborah Bernhardt, she was quite comfortable affording the Applicant supervised access as per her communication dated 4th August 2008. For purposes of my finding, it is not necessary for me to dwell into all the secondary background, save to say Respondent denies that they had a good relationship throughout the period after P 's birth and their move to Johannesburg, nor whilst living together, both at her father's home in Melville and later in Midrand. She denies that Applicant had the degree and extent of access that he paints in his founding papers.

- 16] She avers that although P loves his father, he was not happy staying overnight at his house. She states that Applicant has been aggressive towards her and that he is a regular drug user. She admits that she herself underwent psychometric testing with a clinical psychologist, Ms Pat Hill in East London on her relocation thereto. The report furnished by Ms Hill states, *inter alia*, that:

“The profiles suggest that Grace (Respondent) has a very low self-esteem and tends to be submissive, doubting her own adequacy as a woman. She tends to be anxious and tense, highly-strung and jumpy. She is vulnerable to real and imagined threat. She will tend to anticipate problems before they occur and may over react to minor stress. Depression is evident, although these symptoms and those of anxiety, are probably less evident since Grace has been on the prescribed medication.”

- 17] Respondent emphasises that Applicant has, as a matter of fact, sexually abused the minor child and cites as an example another incident during which she had availed Applicant unsupervised access whilst Applicant was visiting in Cintsa, East London. She says the child returned sunburnt and complaining of an itchy penis.
- 18] Respondent concludes by stating that the minor child was continuing a therapy program with Ms Lize Basson to help him recover and to become a mentally and emotionally healthy, happy individual that can interact

socially with his peers. Finally, she says investigations by the Police Services are ongoing and it is her stated view that:

“criminal proceedings must take their course and whilst I personally would like to see the Applicant facing the consequences of his actions in a Criminal Court, my primary concern is with P . I do not want my child to be subjected to further sexual abuse or any form of mental or emotional trauma”.

19] A confirmatory affidavit deposed to by psychological therapist, Lize Basson (engaged by the Family Advocate) dated 20 July 2009 discloses that following an interview with P , she contacted the Child Protection Unit Division of the South African Police Services as a result of what she terms were:

“...certain disclosures to me which made it apparent that P has had inappropriate sexual interaction with the Applicant.”

and

“P has developed a relationship of trust with me and he has managed to make significant progress in his therapy. I believe that it is in P ’s interests that I do not breach his trust at this stage by disclosing the full nature and extent of what has been told to me by P .”

20] Ms Lize Basson’s report is of importance and is the first formal expert report which sought to directly point a finger at the Applicant and it detailed the content on which Respondent placed much store. It is also the report which precipitated the criminal investigations against the Applicant. It is appropriate that I highlight at least two important paragraphs.

Paragraph 4 is headed ‘The nature of P ’s disclosure’ and reads:

“As I have explained before, P disclosed that there had allegedly been inappropriate sexual behaviour between his father and himself. I was under

legal obligation to disclose the nature of P 's disclosure to the South African Police and as you are aware, I have met this obligation. As such there is a police investigation under way which will likely lead to a court case. P 's disclosure will possibly be important evidence in this court case. As such, I do not believe it is in my client's best interests to jeopardise the evidence by disclosing prematurely. I believe that jeopardising this evidence could be construed as defeating the ends of justice. I do endeavour to disclose the nature of P 's disclosure in an appropriate legal setting."

Paragraph 5 is headed 'Mr Odendaal's request for contact with P ' and reads;

"Initially, after P 's disclosure, I felt that it may be good for P to see his father under strictly supervised access. My rationale for this was that despite the alleged sexual contact between P and his father, P clearly loved his dad and at that stage wanted to see him. I felt that the supervised access would protect P from any possible abuse in future (at this stage, I had to assume, in the interest of my client, that P 's disclosure is not fictional). Inspector Van Dyk, however informed me that, in his opinion, contact between a child and an alleged perpetrator is not in the interest of the child and that until the SAP investigations are finished, he would prefer no contact between P and his father. Ms Battiss followed the advice of Inspector Van Dyk and a protection order to protect P from any contact with his father was obtained." (my underlining)

21] Applicant's reply dated 9th September 2009 states at paragraph 3 thereof that:

"Numerous of the Respondent's allegations in her Affidavit are vague and superficial, and she draws conclusions from unsubstantiated statements. She has made the most serious allegations against me of sexual abuse of my own son, P ("P "), yet she has steadfastly declined to make a full and proper disclosure of any details to substantiate same. She has employed subterfuge and 'cloak and dagger' secrecy to ensure that any form of relevant detail remains obscure to me, which I expand on hereafter."

Applicant proceeds further at paragraph 4 to say:

“I am advised by my legal representatives that there are too many material disputes of fact to warrant this matter being argued and determined on these papers, and that the matter should be referred to trial. I am advised that, at the hearing of this Application, an appropriate order for such a referral will be sought from this Honourable Court. The Respondent shares this sentiment.”

22] I also do not regard it as necessary to traverse the balance of the contents of the reply save to restate that Applicant throughout emphasises the paucity of detail and full disclosure in the answering papers as regards how he is alleged to have sexually abused the child.

23] As aforesaid on 24 November 2009, the matter came before Madam Justice Revelas who, there being consensus between the parties, made an Order that the matter be referred to trial for the hearing of oral evidence, with Applicant’s right to apply for an interim Order of access to the child pending trial (should he deem fit) reserved. The further terms of the Order dealt with the future conduct of the matter governing the exchange of pleadings. The declaration and plea were filed and as at January 2010 the pleadings closed. Nothing further was done by any of the parties.

24] On the 23 March 2011, the National Prosecuting Authority informed the Applicants legal representatives by letter that a decision had been taken by that office not to pursue criminal charges against Applicant as:

“...there is not sufficient information available to indicate that Mr Odendaal acted intentionally in a sexually inappropriate manner towards his son, P .”

25] It would furthermore appear that the decision of the National Prosecuting Authority was informed by a report prepared by one Mrs Nellie Prinsloo, a Clinical Psychologist engaged by the State. Her report is quite voluminous

and extensive in its analysis. She interviewed a wide spectrum of role players including not only the child and parents but also Mr Matison (Respondents partner) and Mrs Odendaal, (Applicant's mother). It contains *inter alia* the following findings at paragraph 30:

- “30.1 P has disclosed different things at different times that do not correlate with a memory of a child who has been molested at age 4 - 4 and-a-half years. It is my opinion that he could have been exposed to sexual behaviour and or molestation at any place, be it at school as he initially indicated, in his mother's bedroom or with another adult or when Mr Odendaal washed his penis in the bathroom. The therapeutic process that involved him was not investigative or forensic and that is a pity since a lot of information was lost in the process and not further investigated.
- 30.2 Although Mr Odendaal has an unhealthy personality, no indication of aggression directed towards others (especially children) or sexual preoccupation or conflicts were noted.
- 30.3 Ms Battiss has a very frail personality make-up of someone that could have instigated the disclosures and or misinterpreted certain disclosures. She certainly focused therapy in a certain direction. She also encouraged parental alienation.
- 30.4 In my opinion there is not enough evidence to prosecute anyone at this stage for the alleged sexual molestation since the identification of Mr Odendaal as perpetrator is highly suspicious.
- 30.5 I further recommend that an integration process is started between P and Mr Odendaal in a therapeutic environment.”

Applicant says the decision not to prosecute vindicates him and it is this decision that led to the fresh application now before me.

The pertinent legal position.

26] It is trite that this Court as upper guardian of all minor children within its jurisdiction, has extremely wide powers and a wide discretion as to what is in the best interests of minor children. See **Terblanche v Terblanche** 1992 (1) SA 501 (W).

[27] The best interests of the child principle was articulated as long ago as 1948 by the Appellate Division in **Fletcher v Fletcher** 1948 (1) SA 130 (A) and has since found application in numerous judgements.

Section 6 of the Children's Act No. 38 of 2005 provides –

- “(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.”

[28] Section 7(1) of the Children's Act 38 of 2005, (parts of which entered into force on 1 July 2007 and which Act replaces the Child Care Act 74 of 1983 and Children's Act 33 of 1960), sets out a lengthy list of factors for Courts to consider when determining a child's best interests under the Act and under the Constitution.

[29] The Act furthermore details that children with the requisite level of maturity and intelligence must be heard in all matters affecting them. Section 31 thereof states that due consideration must be given to the views and wishes expressed by the child, taking into account maturity and stage of development.

[30] A Court hearing an application for access by one parent has to always remain mindful that:

“Although access rights are often spoken of as the rights of the child, it is

artificial to treat them as being exclusive to parents' rights ... the right which a child has to have access to its parents is contemplated by the right of the parents to have access to the child. It is essential that a proper two-way process occurs so that the child may fully benefit from its relationship with each parent in future. Access is therefore not a unilateral exercise of a right by a child, but part of a continuing relationship between parent and child. The more extensive that relationship with both parents, the greater the benefit to children it is likely to be." See **V v V 1998 (4) SA 169 (C) at 189**.

Dispute of fact.

[31] As regards referral to oral evidence on the basis of perceived disputes of fact in matters of this nature involving children and governed by the new framework set out in the Act, the view of the Courts is that disputes in proceedings before them must ideally be concluded expeditiously in a manner avoiding delays. This new framework, arising from the reformulation of the entire body of law affecting children obligates courts adjudicating disputes concerning children to engage in a value based method of appropriate dispute resolution and to order the proceedings before them in a manner minimizing adversarial litigation and delays.

"The intention of the legislature to encourage courts to deploy appropriate expeditious and cost-efficient methods could not be more clearly stated. As a consequence, earlier judicial pronouncements regarding the applicable principles of evidence and procedure in such cases may lose some of their force and should be relied upon with circumspection... A robust common sense approach is called for and any recourse to oral evidence should be a reluctant choice to be exercised sparingly and only when essential. Furthermore, the points of contention that inevitably arise in applications of this kind tend in the main to concern the inferences which might legitimately be drawn from undisputed facts or are merely disagreements about the construction or interpretation to be placed upon undisputed facts. Differences of opinion do not necessarily involve disputes of fact requiring oral evidence to resolve them." – See **Godbeer v Godbeer 2000 (3) SA 976 (W) at 977F**.

[32] I mention the foregoing in light of the earlier Order for referral to oral evidence made by agreement between the parties. The Respondent having laid criminal charges against Applicant and the position being complicated by a restraint Order in terms of the Domestic Violence Act, it is understandable why the agreement would have been made pending the investigations. That is not the position with regards the present Application before me. There is no prospect of the Applicant being charged. Moreover, nothing appears in my view to have necessitated Respondent applying for a restraint Order. The only remaining disputes are peripheral and concern individual opinions having very little, if any, bearing on the central issue defined in the Act as the child's best interests.

Brief overview.

[33] It bears repeating that the proper approach for all parents pitted against one another in matters having a bearing on a child's right to contact and access by one parent, should be to adopt a less belligerent and rigid stance and to explore as far as is feasible, alternative means of resolving disputes and difficulties involving children.

Most ordinary parents are not acquainted with the inclusive and inquisitorial nature of the provisions of the current Children's Act and legal practitioners advocating an adversarial attitude in dealing with cases of access and contact foster views, among well-meaning parents, at odds with the concept of the child's best interest as contemplated in the Act. The starting point will always be that these interests will be primarily served where children grow up with easy access to both the parents. It will needless to say, be only in extreme cases posing clear physical and/or psychological dangers to a child that a parent will be denied contact or, at the very least, have same restrictively managed.

[34] The report of Mrs Prinsloo contradicts much of what the Respondent has accused Applicant. Whilst I must not be understood to say the Applicant is a model father, I do not find support for the Respondent's contentions that Applicant is a drug addict, an individual with a propensity for wanton violence and of having sexually groomed his child. Very little support for these contentions is made out in her papers.

[35] An overview of the detail in the matter proceeds in my view as follows:

- 35.1 The Applicant was the person who reported the 'shed' incident to Respondent and this incident took place very shortly before her relocation with the child, a matter that the Applicant had reconciled himself with. If the Applicant was indeed the source of the child's deviant conduct, it appears most unlikely that he would have reported the incident to the mother.
- 35.2 Respondent dutifully arranged for the child to have an initial interview and assessment by Dr Bernhardt who presented a report providing no evidence of Applicant's involvement in the child's deviant sexual knowledge. The interview uncovered the school 'jungle gym' incidents between various children as learners. This evoked a degree of panic in the Respondent but this was an instinctive reaction perhaps understandable in a mother.
- 35.3 Despite the fact the report was neutral in so far as Applicant's complicity in sexually grooming the child, Respondent engaged legal advisors who inflamed an already tenuous situation by accusing the Applicant of all sorts of criminal conduct as alluded to above. The letter of 18 August 2008 clearly demonstrated a complete lack of understanding of what was at stake, that is, the child's best interests. Fortified no doubt by the hostile attitude of the legal advisors, Respondent closed her mind to the other reported possibilities linking the child's relationships with other learners and related close family male role models. Respondent focused all her energies at a father she began more and more to view as deviant by pointing out to what can only be best defined from the papers as a mild use of dagga and violence associated with kicking and shoving of Applicant's dogs.
- 35.4 The next clinical psychologist appointed by Respondent at her own instance and request is Ms Pat Hill. I have already cited the findings

she made with regards to her personal make up and I need not repeat reference to the same.

[36] I have dealt with the various expert reports and indicated where these were either of general import or were never conclusive in bringing Applicant squarely into the realm of the conduct complained of. The report which, for the first time, contained inculpatory and damaging findings against Applicant is that of Ms Lize Basson. From this report the following can be gleaned:

36.1 It is apparent *ex facie* the report that Ms Basson treated Respondent as her client. From the Applicant's papers it is also stated that she declined to interview Applicant and settled the report without having done so. Ms Basson was happy to interview only the Respondent and the child. She, in her own words, reported the matter to the law enforcement agencies without seeing and interviewing Applicant.

36.2 The full report shows very clearly that the overall considerations informing the conclusion and recommendations were those pertaining to the anticipated criminal trial. She found what the child had told her sufficiently and completely credible and saw no necessity to forensically test it as against what Applicant had to venture. It is in all probability this that Mrs Prinsloo laments when she makes the comment in her report that;

“The therapeutic process that involved him was not investigative or forensic and that is a pity since a lot of information was lost in the process and not investigated further.”

36.3 Ms Basson also appears to have been swayed in her thinking by the views of the investigator Inspector Van Dyk. She recommended that Applicant should have no contact with the child. This despite her stated personal view that it would be good for P to see his father under strictly supervised circumstances as the child expressed a desire to see his

father.

As will become clear, the investigation of Inspector Van Dyk petered out and the anticipated criminal trial has since not materialised.

[37] I am more persuaded by and believe this Court ought to take guidance from the report of Mrs Prinsloo for a number of reasons. Aside from the indisputable fact that she is the only expert to have approached her investigation with a commendable degree of professional diligence, she cast her forensic search for answers sufficiently widely.

In addition I am of the view that:

- a) She is demonstrably highly experienced and her academic and intellectual background and case studies in which she has been involved are detailed in her report for all to see. This is not the case with any of the other experts. She studied and dealt with all the other reports, interviewed all the parties and came to the conclusion that there was indeed no merit in the allegations made by Respondent. The tenor of her report is in fact wholly aligned with the preliminary findings of the first child psychologist, Dr Deborah Bernhardt who pointed out the child could have acquired this knowledge and tendencies from other learners.
- b) None of the reports have on their own conclusively advocated that Applicant should, without more, have no contact with his son and instead, even Ms Lize Basson who assisted Respondent in reporting the matter to the authorities, was in fact of the view that he should, save that the investigator van Dyk appeared to think not, at least up until the then anticipation of Appellant being charged.

- c) She is an independent expert employed by the State to evaluate whether evidence existed on the basis of which any person could be charged for what Respondent in the Domestic Violence restraint Order referred to as 'sexual grooming'. In other words, she was employed to investigate Respondent's own complaint.
- d) P , Ms Battiss and Mr Odendaal were all interviewed by Mrs Prinsloo and extensive reports prepared on all of them using 5 (five) psychosometric testing methods inclusive of the:
 - i) Rorschach Inkblot Test;
 - ii) Thematic Apperception Test;
 - iii) Millon Clinical Multi axial Inventory III etc.

From these tests, the most troubling findings relate to the Respondent. She has, from what the report tells us, been diagnosed with a Bipolar Disorder and is described therein as "highly strung and emotionally very fragile". She firmly believes Applicant has sexually molested P . "She shows many characteristics commonly observed in people who subsequently commit suicide". "Her faulty reality testing may detract from her ability to exercise good judgment as a parent. In particular, she may be prone to forming mistaken impressions of what children's behaviours signify and to making ill-advised childcare decisions without appreciating the consequences of these decisions".

[38] Mrs Prinsloo interviewed Applicant and states that he is currently employed as a consultant with the Enterprise Architecture team at Transnet. Whilst still living in Cape Town with Respondent and at a time when he was unemployed, he smoked marijuana with a friend with whom he regularly played chess. He also gave a history of smoking marijuana and using ecstasy whilst in his late twenties. When Respondent arrived at home one day, she found him watching pornography of women masturbating on a French site. He admitted to having done this out of boredom at home. He said he had pulled his life together after the birth of the child. Applicant confirmed to Mrs Prinsloo that he lived with Respondent in Johannesburg

at her father's house. He told her that Respondent's father is gay and he often invited gay friends over to his house when Applicant lived there with the child. He admitted to having bathed with the child at times but denied the child ever saw him naked. He showed the child how to pull his foreskin when he was small for him to clean his penis. Mrs Prinsloo found that Applicant:

"... approaches experience in a reasonably open manner without showing indications of a narrow frame of reference..."

"He appears to be a flexible person who is able to view people and events from multiple perspectives and is willing to consider modifying his opinions and beliefs."

"Mr Odendaal appears to be currently in a state of mild but chronic stimulus overload resulting from persistent difficulty in mustering adequate psychological resources to cope with the demands being imposed on him by internal and external events in his life. Consequently, he is at risk for recurrent episodes of over anxiety, tension, nervousness and irritability. People with this pattern of stimulus overload tend to have limited tolerance for frustration and a less than average ability to persevere in the face of obstacles. They may consequently show a tendency toward impulsive outbursts of unwarranted affect and/or ill-advised actions. However, the likelihood of his showing such adjustment problems appears limited to ambiguous and complex situations, whereas in fairly structured situations, in which he knows what is expected of him, he may function in a reasonably adaptive and untroubled fashion that seldom attracts the attention of others."

[39] Despite the extensive clinical assessment done by a highly qualified expert, Respondent continues to oppose the current Application before me on the basis that she is still unsatisfied and believes the Applicant to be a danger to the child.

[40] The most acute difficulty I am presented with is how to achieve the balance necessary to assure a well-meaning but probably misguided parent with the looming prospect of having to embrace a reintegration process by which the child is rightfully

re-familiarised with a biological father. It is imperative that all father and child relationships be nurtured and promoted as this can only lead to and be of critical benefit to the development of the child's overall character and personality. The bond between a father and son is inextricably linked to the child's psychological, physical, material and social upbringing and transition from growing up as a child into manhood. This provides the child with a defined identity and contributes to the self-confidence so necessary for all individuals to navigate life's challenges. It is a natural bond incapable of severance and alienation can only lead to negative effects in the later life of a child. All children, boys in particular benefit immensely from a close relationship with a father and these benefits ultimately enure to the benefit of society as a whole. Indeed an effort by a misguided and self-serving parent to promote alienation must be discouraged at all costs. Whilst the child in this case has some father figure in Respondent's partner, the relationship with the child's natural father remains sacrosanct.

[41] In this case there never was a cogent reason for the course of action the Respondent embarked upon. It may well be that it arose out of concern. It also may well have been founded on the Respondent's world view and psychological disposition alluded to by Ms Hill and Mrs Prinsloo. The interruption of the contact and access between father and son has however to be restored albeit with attendant sensitivity. I am hopeful that the objective will be achieved. I have come to the conclusion that Ms Linda Graetz will have to assist this Court and the parties and to guide them in the future arrangement of normalisation of access, a matter that must ideally be done by agreement between the parties themselves without permanent interventions by the Courts and other State Institutions.

[42] If the parties are in future still unable to regulate their affairs then the matter will revert to this Court. If that does happen, the Order that the Court can make can only at best be informed by a future report from Ms Graetz detailing how the reintegration process will have unfolded from the date this Order comes into effect.

[43] I have come to the conclusion that the following Order is the only appropriate Order in the circumstances:

- 43.1 Applicant is the holder of full parental rights and responsibilities in respect of minor child P B O as envisaged in sections 18[1] and 18[2] of the Children's Act 38 of 2005.
- 43.2 The Court herewith appoints Ms Lynda Graetz, a Professional Counselling Psychologist to oversee the process of the re-integration of the minor child "P " with Applicant as father, in a manner that will entail supervised contact for an initial period of 9 (nine) months commencing 16 December 2011 (one introduction day) or such day in December as may be agreed to by the parties through Ms Graetz.
- 43.3 Thereafter the Applicant shall have access for one weekend each month commencing January 2012, each Saturday from 09h00 to 17h00 and Sunday 09h00 to 17h00.
- 43.4 Ms Lynda Graetz will for these purposes determine, in consultation with Ms Battiss and Mr Odendaal, the specific days of the month and the most appropriate manner in which the supervised contact is to be exercised.
- 43.5 Ms Lynda Graetz is to file a report with this Court by no later than 30 September 2012, which report must detail her initial findings regarding the re-integration.
- 43.6 Applicant shall have reasonable access to the minor child including:
- 43.6.1 telephonic contact at reasonable times once each week.
- 43.6.2 On Father's day and on Applicant's birthday.
- 43.7 The parties are ordered each to pay its own costs herein.

PT MAGEZA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

FOR APPLICANT: Ms PV Ternent, instructed by Tanya Brenner Attorneys
c/o Gravett Schoeman Van Rensburg & Moodley Inc.

FOR RESPONDENT: Mr DH de la Harpe, instructed by Drake Flemmer &
Orsmond.