

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

**CASE NO: 46716/08
14/05/2009**

UNREPORTABLE

In the matter between:

L G V Z

Applicant

and

V V V Z

Respondent

JUDGMENT

MURPHY J

1. The applicant and the respondent are married and have been since 1998.
The applicant is the mother and primary care-giver of the children who form the subject of the application.
2. The substantive dispute between the parties related to the custody of the children. The purpose of the application was to restore the status quo

ante urgently in respect of the children. The matter was eventually settled by means of an order by consent in which the applicant's position as the primary custodian was recognised and restored subject to reasonable contact and access rights being granted to the respondent pending a final report of the Family Advocate dealing with the issues in dispute. Ancillary orders were made regarding the parties and the children submitting themselves to therapy and evaluation.

3. The only remaining issue between the parties was the question of costs in respect of which I reserved judgment.
4. I do not propose to canvass the evidence in any detail because I see no need to do so. The immediate circumstances giving rise to the application were that the respondent, the father of the children, removed the children from the care of the applicant because, so he alleged, the applicant's psychological condition made it in the best interests of the children that they be removed.
5. From the papers it appears that both parties are experiencing psychological stress that has contributed to and is evidently exacerbated by the breakdown of their marriage. Their behaviour, understandably, has been less than exemplary. The applicant has used medication to curb her anxiety and by his own admission the respondent has abused alcohol and

is receiving counselling in that regard. One particular piece of evidence, Annexure J to the replying affidavit, (an email from the applicant to the respondent's sister) is damning of the applicant in that it reveals that on one occasion after taking medication the applicant had a total lapse of memory about whether she had taken her children out of the bath after bathing them. In the email the applicant expresses concern about her own mental state and its effect on the children.

6. Counsel for the applicant has submitted that the respondent should pay the costs of the application because he allegedly manipulated the situation and was using the children to assert control over the applicant in an unacceptable fashion. There is probably an element of such behaviour present. However, having regard to the common cause facts and the disputed allegations making up the respondent's version, despite the order restoring custody to the applicant, I am unable to conclude, in the light of Annexure J, that the respondent acted entirely out of malice, or manipulatively, when he refused to return the children after they spent a weekend with him. At best he was genuinely concerned about the welfare of the children alternatively he may have been motivated by the lesser consideration of bringing home a message to the applicant that she ought to be more mindful of her mental state while the children were in her care. At worst he was being manipulative in what was manifestly a deeply fraught and traumatic situation for all concerned.

7. In matrimonial and custodial disputes of this order, where there is an element of fault and unreasonable conduct on both sides, and where the settlement ultimately produces a result which regulates the further conduct of relationships in a desirable fashion, as is this case, there will be justification in making no order as to costs with the result that each party will pay his or her own costs. Such an order is appropriate in this case. Both parties are also employed.
8. In the result, there is no order as to costs.

JR MURPHY
JUDGE OF THE HIGH COURT

Date Heard: 4 December 2008
For the Applicant: Adv L Haupt, Pretoria
Instructed By: Griesel & Breytenbach, Pretoria
For the Respondent: Adv C Bezuidenhout, Pretoria
Instructed By: Chris Fourie, Alberton