

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
DATE	SIGNATURE
9/12/2024	

CASE NO: 2024/129392

In the matter between:-

SM

Applicant

and

DL

Respondent

JUDGMENT

- [1] SM and DL lived together for a while. During the course of their relationship DL on 12 April 2023 gave birth to a son (G). It is common cause that SM is the biological father of the child.
- [2] A dispute has arisen between the parties in relation to the primary residence of G and the nature of the care and contact which ought to be exercised in relation to him.
- [3] This led to the institution by SM of proceedings under Uniform Rule of Court 43. The nature of the relief sought by SM on those proceedings is to be gathered from the draft order which his counsel submitted to me for consideration during the course of the hearing. It reads as follows:-

- "1. The non-compliance with the rules of the above honourable court in with regard to service and time limits is hereby condoned and this application is declared urgent in terms of the provisions of Rule 6(12).*
- 2. SARIE NEL is hereby appointed in order the investigate the best interests of G a minor child born on the 12th of April 2023 with specific reference to the primary residency, care and contact pertaining to the minor child.*
 - 2.1 The Applicant and Respondent are ordered to sign all documentation in order to give effect to SARIE NEL is appointment with in 5 (five days) of the granting of this order.*
 - 2.2 The Applicant and Respondent are directed to make themselves, as well as G, available for all appointments and attend all appointments as requested by the duly appointed social worker.*
- 3. The costs of SARIE NEL shall be shared between the parties.*
- 4. Pending the outcome of the report by the social worker ... supra, the Applicant shall be entitled to contact, as follows:*
 - 4.1 Daily telephonic video call contact with the minor child (G) between the hours of 17h15 and 17h30 to be facilitated by the respondent or a person nominated by her;*
 - 4.2 Unsupervised in-person contact in the following terms:*
 - 4.2.1 Monday, Wednesday and Fridays for a minimum time period of 2 (two) hours in the afternoon between 15h00 and 17h00;*
 - 4.2.2 Alternative weekend sleepover contact commencing on a Saturday morning at 09h00 to Sunday morning 09h00;*

- 4.2.3 *The minor child will spend Christmas Eve with the applicant from 10h00 until 16h00;*
- 4.2.4 *The minor child shall spend Christmas day with the applicant from 10h00 until 17h00;*
- 4.2.5 *The minor child shall spend new years eve (31 December 2024) with the applicant from 10h00 until 17h00;*
- 4.2.6 *The minor child shall spend New years Day with the applicant from 10h00 until 17h00;*
- 4.2.7 *During each of the contact periods the applicants shall collect and drop the minor child at the current residential address of the respondent.*
- 5. *Upon receipt of the report by the duly appointed social worker the applicant and respondent are granted leave to supplement their papers.*
- 6. *The respondent is ordered to pay the cost of this application."*

[4] There is no dispute in relation to the appointment of Ms Sarie Nel. The substance of the dispute which I am required to determine relates to the nature of the interim contact which ought properly to be accorded to SM. In this regard DL asserts that all contact needs to be supervised, which, if granted, will exclude the sleepover contact referred to in paragraph 4.2.2 of the draft.

[5] I have carefully considered the grounds upon which DL relies in support of her contention that the contact which is sought needs to be supervised. In my judgment these grounds, whether singularly or cumulatively, do not justify the stricture. I am in this regard mindful of DL's concerns should contact not be supervised. In my judgment there is no objective warrant to accede thereto.

[6] I am accordingly prepared to grant SM unsupervised contact to G as set out in paragraphs 4.1, 4.2.1, 4.2.3, 4.2.4, 4.2.5, 4.2.6 and 4.2.7. of the draft. I have too little information to responsibly consider whether the sleepover contact foreshadowed in paragraph 4.2.2 of the draft should be granted at this stage. G is one and half years of age and the ability of SM to provide him with overnight care has as yet not been satisfactorily established. I am however of the view that SM should have unsupervised contact with G on the Saturday of every alternative weekend for a period of 5 hours. The commencement of that period is to be

agreed upon by the parties. Should they not be able to so agree, the decision will be that of Ms Nel.

[7] SM has substantially succeeded in the matter. I, however, do not believe that costs should follow the event. I have little doubt that both parties have in relation to the matters which arise in this application endeavoured to act in the best interests of G.

[8] In the result the orders which now follow will issue.

- A. SARIE NEL is hereby appointed in order to investigate the best interests of G, a minor child born on the 12th of April 2023, with specific reference his primary residency, care and contact.
- B. The Applicant and the Respondent are ordered to sign all documentation necessary to give effect to SARIE NEL's appointment within 5 (five days) of the granting of this order.
- C. The Applicant and Respondent are directed to make themselves (as well as G) available for all appointments. They are moreover required to attend all appointments set by Ms Nel.
- D. The costs of SARIE NEL shall be shared by the parties.
- E. The outcome of the report by Ms Nel, the applicant shall be entitled to contact with G, as follows:
 1. Daily telephonic video call contact with him between the hours of 15h00 and 18h00 to be facilitated by the respondent or by a person nominated by her;
 2. Unsupervised in-person contact in the following terms:
 - 2.1 Monday, Wednesday and Fridays for a period of 2 (two) hours in the afternoon between 15h00 and 17h00;
 - 2.2 Alternative weekend contact on a Saturday for a continuous period of 5 hours commencing at a time to be agreed upon by the parties, alternatively determined by Ms Sarie Nel;
 - 2.3 G will spend the day preceding Christmas with the applicant from 10h00 until 16h00;
 - 2.4 G will spend Christmas day with the applicant from 10h00 until 17h00;
 - 2.5 G will spend 31 December 2024 with the applicant from 10h00 until 17h00;

- 2.6 G will spend New Year's day with the applicant from 10h00 until 17h00;
- 2.7 During each of the contact periods the applicant shall collect and drop G at the current residential address of the respondent.
- F. Upon receipt of the report of Ms Nel the applicant and the respondent are granted leave to supplement their papers.
- G. There will be no order as to costs.


G. FARBER

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

**FOR APPLICANT:
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