

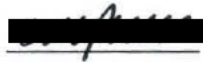


**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case 2024-114386

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes ☒

Date: 25 February 2025



In the matter between:

F

Applicant

And

F

Respondent

In re:

BI

And

Br

This judgment has been delivered by uploading it to the CaseLines digital data base of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 25 February 2025

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an application in terms of s 28(1)(a) of the Children's Act¹ (the Act) where the applicant seeks to terminate the respondent's parental responsibilities and rights of guardianship and care in respect of two minor children.

[2] The respondent appeared at court three months before this hearing, when the matter was set down on the unopposed family court roll. He was ordered to file an opposing affidavit before 2 December 2024. On 29 November 2024, he filed documents. The applicant states that this is not a properly commissioned affidavit.

Point in limine

[3] The applicant raises the point in limine that the respondent failed to comply with regulation 4(1) of the Justices of the Peace and Commissioners of Oaths Act² that provides

"4. (1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration."

[4] The applicant states that the document has no probative value and is not evidence before the court, and therefore the applicant seeks that the matter proceed on the basis of her affidavit alone. She persists that even if the non-compliance can be condoned, the respondent admitted the contents of the applicant's affidavit and failed to show this court why it would be in the best interest of the minor children that his parental responsibilities and rights be terminated.

¹ Act 39 of 2005.

² Act 16 of 1963.

[5] In the interest of having the voice of the respondent in the proceedings, I will condone the non-compliance. This, however, does not help the respondent much, as the overwhelming evidence indicates that the order sought by the applicant should be granted.

Factual background

[6] The parties were married on 12 December 2009. Two minor children were born from the marriage, the oldest in 2012 and the youngest in 2015. In 2016, on the first and fourth birthday party of the minor children, the respondent informed the applicant that he was leaving them. The respondent has not played an active role in the lives of the minor children since the separation. His relationship with the oldest in 2016 was distant, and there has been no relationship with the youngest. The respondent last had contact with the minor children on 17 August 2016, during an appointment at the office of the Family Advocate.

[7] Despite the recommendation for re-bonding therapy, the respondent did not attend any scheduled sessions, even after the applicant arranged and negotiated a reduced rate. The respondent subsequently cancelled all appointments, including a supervised contact session. Contrary to the family advocate's recommendations, he instead employed a social worker, but nothing came of those appointments. Since 2016, the respondent has made no further efforts to engage with the minor children. The last known attempt at telephonic contact was on 29 September 2016.

[8] The respondent has been inconsistent in fulfilling his maintenance obligations, paying only R500 per month per child, and is currently in arrears by R42,750. He has also failed to contribute towards the children's medical or educational expenses. He refused to sign documentation for the minor children to obtain passports, despite them being avid sportsmen with opportunities to travel overseas.

[9] A recent Voice of the Child report was compiled by social worker Karien Keeve. The report concludes that the minor children have no emotional attachment to the respondent and that granting the relief sought would be in their best interests. The minor children have explicitly stated that they do not wish to have any contact with the respondent. The oldest has refused to keep any photographs of the respondent, and the youngest has stated that he does not remember the respondent.

[10] Despite supervised bonding sessions and visits as recommended by the Family Advocate being organised, the respondent never showed up. The respondent has never requested updates, progress reports, or photographs of the minor children, even during court proceedings in 2016, 2017, and 2024. The applicant asserts that the respondent seeks to retain the rights of a father without fulfilling the responsibilities of a father and that his refusal to cooperate in matters concerning the children has been inconsistent and unreasonable.

The law

[11] Section 28 of the Constitution makes it clear that the best interest of the child is paramount in every matter concerning them. This provides the framework in which all the provisions of the Children's Act should be interpreted, and s 7 of the Children's Act sets out the list of factors that courts must consider when determining what is in the best interest of the child. This includes factors such as the nature of the child's relationship with the parent(s), the attitude of the parent(s) toward the child and their responsibilities; the capacity of the parent to provide for the child's physical, emotional and intellectual needs, the effect of any change on the child's circumstances and the need to protect the child from any harm.

[12] The courts have consistently held that parental responsibilities carry obligations as well as rights. A parent's active involvement and commitment to the child's upbringing are fundamental considerations.

[13] Section 28(1)(a) of the Act provides that a court may, on application, terminate or suspend any or all the parental responsibilities and rights that a parent has in respect of a child. In considering such an application, s 28(4) requires the court to assess the best interests of the child; the relationship between the child and the parent whose rights are being challenged; the degree of commitment shown by the parent towards the child; and any other factor relevant to the determination of the child's welfare.

[14] In this case, the Voice of the Child report compiled by social worker Karien Keeve establishes that the minor children do not wish to have a relationship with the respondent and that terminating his parental responsibilities and rights would be in

their best interests. The real-life situation of the children,³ as evidence from the Voice of the Child report, indicates that the children do not remember their father, have no emotional attachment to him, and reintroducing him to their lives would cause emotional distress and instability. They have been under the sole care of the applicant for eight years, with no contact with the respondent.

[15] For this the respondent has himself to blame. He has failed to maintain a personal relationship with the children, and he has also failed to show commitment to the children's wellbeing, and to provide financial and emotional support. He admitted to as much in his answering affidavit.

[16] The oldest, for instance, stated that he did not want any contact with his father, and that he believes that his father is not interested in him, as his father had many opportunities to reach out to him and his brother and never did. The youngest brother could not answer basic questions about his father and indicated that he has never spoken to his father, never received a gift or a birthday card from his father, and when asked if he wants a photo of his father asked why he would want a photo of a person he didn't know.

[17] Section 18 of the Act sets out the parental responsibilities and rights. Section 18 states that:

"(1) A person may have either full or specific parental responsibilities and rights in respect of a child.

(2) The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right—

- (a) to care for the child;
- (b) to maintain contact with the child;
- (c) to act as guardian of the child; and
- (d) to contribute to the maintenance of the child⁴."

[18] In *GM v KI*⁵ the court held that parental responsibilities and rights are, for the most part. In other words: the respondent cannot abandon his responsibilities (for close to eight years) and then insists on enforcing his rights. The court also clarified

³ *S v M (Centre for Child Law as Amicus Curiae)* [2007] ZACC 18.

⁴ At common law the duty to contribute to a child's maintenance stands as a separate obligation, independent of parental authority see A Skelton & M Carnelley (eds) *Family Law in South Africa* (2010) 243.

⁵ 2015 (3) SA 62 (GJ) par 14.

later in the judgment that where a parent refuses to comply with maintenance obligations, it may indicate abandonment of parental responsibilities, which is a relevant factor in termination applications. The respondent's failure to provide financial support reinforces his lack of commitment to his parental responsibilities.⁶ But in this matter it goes further. The respondent was a completely absent father and admits as much in his own affidavit and in his address to the court.

[19] His failure to consent for the minors to obtain passports further cements the fact that by restricting their future opportunities and facilitating their development (which includes, in this case, supporting their education and travel), cements the lack of support. During the hearing he undertook to sign all the necessary documents, but there is nothing on the records that indicates that such promises can be trusted. In short, his plea to give him a change to be a good father and play a positive roll in the lives of his children comes a little to late. His failure to attending bonding sessions, and his failure to pay very reasonable maintenance does not bolster the court's confidence that the respondent would keep his promises.

[20] Most importantly, the voice of the children is loud and clear that they do not have any bond with the respondent, and do not at this stage wish to form a bond. It is thus in their best interest to grant the order as set out below.

Conclusion

[21] This Court does not take the termination of parental responsibilities and rights lightly. The bond between a parent and child is deeply significant, and the law does not sever it without serious consideration of all the circumstances. However, the best interests of the children must take precedence. The evidence before this Court shows that they have thrived under the applicant's care, and that they have, through their own voices, expressed a clear and consistent desire to move forward in life without the uncertainty of a relationship that has not been nurtured.

[22] For the respondent, this order may be a painful one. It is not meant to erase the role he once had however limited, nor does it diminish the possibility of personal growth and change. It is simply a recognition that the children deserve stability, certainty, and caregivers who are present not just in name, but in action. The door to

⁶ 2015 (3) SA 62 (GJ) par 20.

meaningful reflection remains open to the respondent, and in time, should he choose to engage in a way that aligns with the children's well-being and their needs, there may be different conversations to have.

[23] At this moment, however, the law and the facts compel this court to act in the best interests of the minor children. They are entitled to a future free of unnecessary emotional distress, and to the security of knowing that those responsible for their upbringing are consistently there for them.

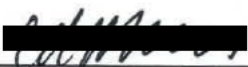
[24] The applicant asked for a cost order if this application is opposed, and I see no reason to deviate from the normal "cost follow the results" rule.

Order

[25] The following order is made:

1. The Respondent's parental responsibilities and rights of guardianship and care in respect of BI ("BI") with identity number . . . , and Br ("Br") with identity number . . . , is hereby terminated in terms of section 28(1)(a) of the Children's Act, 38 of 2005 ('the Act').
2. The Applicant is declared to be the:
 - 2.1. Sole holder of responsibilities and rights of guardianship in respect of BI and Br;
 - 2.2. Sole holder of responsibilities and rights of care in respect of BI and Br; and
 - 2.3. Sole holder of decision-making powers, including but not limited to all medical and educational decisions in respect of BI and Br.
3. Pursuant to the Applicant being vested with sole responsibilities and rights of guardianship in respect of BI and Br, the applicant is authorised to:
 - 3.1. Administer and safeguard BI and Br's property and property interests without the consent of the respondent thereto;
 - 3.2. Make all decisions in respect of BI and Br's medical and educational needs without out the consent of the first respondent and sign all documentation in relation thereto;

- 3.3. Make application, without the necessity of the respondent consenting thereto and / or the respondent's signature of any document/s, in respect of:
- 3.3.1. Any and all passport/s in respect of BI and Br and / or the renewal thereof from the Department of Home Affairs of South Africa;
 - 3.3.2. Any travel visa/s required in respect of BI and Br, from the relevant foreign authority / authorities;
 - 3.3.3. Remove and / or consent to the removal and / or departure of BI and Br from the Republic of South Africa without the consent of the respondent; and
 - 3.3.4. To make application for BI and Br's identity documents when they respectively turn 16 years old.
4. The applicant's parental responsibilities and rights of guardianship and care are extended in so far as may be necessary, in terms of Section 28(1)(b) of the Act in order to accommodate the relief sought in prayers 2 and 3 above.
5. The respondent is ordered to pay the costs of the application on a party and party scale with counsel's costs to be calculated on the relevant Scale A of Rule 67A of the Uniform Rules of Court.



WJ du Plessis
Judge of the High Court

Heard on: 24 February 2025

Judgment on: 25 February 2025

For the Applicants:

For the Respondents:

A Scott instructed by Philips Silver
Mathura Inc

In person