

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:070320-2023

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 27 November 2023 E van der Schvff

In the matter between:

M[...] A[...] M[...]

APPLICANT

and

M[...] S[...] M[...]

RESPONDENT

JUDGMENT

Van der Schyff J

- [1] The applicant seeks an order that the sole guardianship of the parties' minor child be awarded to her in terms of s 18(2)(c) and 18(3) of the Children's Act, that the

parties' divorce settlement agreement be accordingly varied, that she be the only parent authorised to apply for a passport and that her consent is sufficient to allow the child to travel internationally.

- [2] The only rationale for instituting this application that can be gleaned from the founding affidavit, is the respondent's refusal to grant consent for the minor child to travel to Lesotho during July 2023. The applicant did not approach the court for relief at that stage.
- [3] The respondent opposes the application. I must state that the respondent raised several frivolous and overly technical points in the answering affidavit. As far as his refusal to grant permission for the minor child to Lesotho is concerned, the respondent states that he was never informed of the reason for travelling to Lesotho, and he merely sought more information regarding the details of the trip, which details were not provided.
- [4] It is evident from the answering affidavit that the parties have unresolved issues. To seek an order terminating a father's guardianship over his biological child because he refuses to grant consent for the child to travel beyond the borders of the country is, however, to kill a fly with a sledgehammer. No case was made out for awarding sole guardianship of the parties' minor child to the applicant.
- [5] A father cannot be faulted for wanting to obtain detailed information about proposed trips that might take his child outside the country's borders. When a father unreasonably refuses, the High Court, as the minor child's upper guardian, can be approached. But even then, detailed information needs to be disclosed. When will the child travel, for what purpose, in whose company, and for how long? These are some of the questions that come to mind. I am thus also not inclined to award the applicant the sole right to consent to the child travelling internationally.

[6] I am, however, concerned by the parties' inability to communicate and parent their child without conflict. As the upper guardian of all minor children, I deem it in this child's best interest if a parent coordinator is appointed. I discussed this with counsel. Since the application will have a positive outcome for the minor child, in that the appointment of a parent coordinator might defuse some of the discord between his parents as far as parenting is concerned, I am of the view that it is just for each party to pay their own costs.

ORDER

In the result, the following order is granted:

1. The application is dismissed; each party must pay their own costs.
2. Dr. Louisa Stoker of *Confident 2 Thrive* is appointed as parent coordinator. Dr. Stoker can be contacted at 081 271 3108.
3. The parent coordinator is authorised to:
 - 3.1. Facilitate joint decisions in respect of the minor child;
 - 3.2. Facilitate the drafting of a parenting plan if she deems it in the interest of the minor child;
 - 3.3. Mediate any dispute relevant to parenting the minor child.
4. The parties are to grant their full cooperation and to contact Dr. Stoker within 5 (five) days of this order being granted. Each party shall be liable for the costs of the parent co-ordinator insofar as it relates to his/her interaction with the parent co-ordinator.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant : MR K.P Seabi
Instructed by : K.P. Seabi & Associates
For the respondent : Adv P A Mabilo
Instructed by: : P.H. Nkosi Attorneys
Date of the hearing :20 November 2023
Date of judgment : 27 November 2023