

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No. 2003/20813
2007/9126

In the matter between:

MR. S

Applicant

and

MRS. V

First Respondent

B

Second Respondent

M

Third Respondent

MEYER, J

[1] This is an application in terms of Rule 33(4) of the Uniform Rules of Court.

[2] The applicant, Mr. S, and the first respondent, Mrs V, were formerly married. B, who is the second respondent, and M, who is the third respondent,

were born from the former marriage relationship between Mrs V and Mr S. Mrs V is now married to Mr V, who is also a party to the proceedings forming the subject-matter of this interlocutory application.

[3] Mr and Mrs V have been desirous of emigrating to New Zealand with B and M for the past few years. Mr S refused to consent to the minor children emigrating with their mother, and Mrs V accordingly launched an application under case number 2003/20813 in which she seeks leave to remove B and M from the Republic of South Africa for the purpose of emigrating to New Zealand ('the relocation application'). This application is not finalised and is opposed by Mr S, who, in turn, launched a conditional counter application wherein he seeks the interim custody of B and M while Mr and Mrs V 'investigated the environment in New Zealand'.

[4] Another dispute that arose between Mr S and Mrs V is Mr S's access to or contact with the two minor children. This dispute culminated in Mr S launching an application under case number 2007/9126 wherein he seeks the restoration of his access to B and M ("the access application"). This application is also not finalised and is opposed by Mrs V.

[5] On 19 June 2007, Victor AJ made an order referring the disputed issues in the access application for the hearing of oral evidence and consolidating the

relocation application with the oral evidence to be given. Paragraph 1 of the order is presently relevant. It reads:

- ‘1. That the matter is referred for the hearing of oral evidence on the following issue:
 - 1.1 What access the Applicant should continue to exercise to the minor children born of the marriage between the Applicant and Respondent and which is in the best interests of the minor children;
 - 1.2 Whether there has been parental alienation of the children by the Respondent and her husband, V;
 - 1.3 Whether the Applicant has sexually and/or physically and/or psychologically and/or emotionally abused the minor children;
 - 1.4 The Application issued in the above Honourable Court under case number 2003/20813 for the relocation of the Respondent and the minor children to New Zealand, which is currently pending, is to be consolidated with the oral evidence to be given in the present matter, it being recorded that the issue of access before the court in this application, has a direct and material bearing on the outcome of the relocation application in regard to the issue of access upon relocation.’

[6] The relief presently claimed by Mr. S in terms of the notice of motion is the following:

- ‘1. That in terms of Uniform Rule 33(4), the issue set out in paragraph 1.1 of the Order of Her Ladyship, the Honourable Ms Justice Victor dated 20 June 2007 being Annexure “A” to this Notice of Motion, namely what access the Applicant should continue to exercise to the First and Second Respondents which is in the best interests of the First and Second Respondents, be decided first and separately and in such manner as this Honourable Court may deem appropriate, from any other questions and/or the issues set out in paragraphs 1.2 to 1.4 of Annexure “A” (“the remaining issues”).

2. That the remaining issues be postponed *sine die*.
3. Costs only in the event of opposition on the scale as between attorney and client, *alternatively* on such basis and/or scale as the Honourable Court deems appropriate.
4. Further and/or alternative relief.'

[7] The issues of parental alienation and abuse are part of the access or contact question and cannot, in my view, be separated for later decision. The determination of contact will obviously require an evaluation of *inter alia* the issues of parental alienation and abuse. It will simply be inappropriate to grant the relief in the form in which it is prayed for in the notice of motion and I need not dwell on this any further.

[8] I nevertheless consider whether the relocation question should be separated from the access or contact question and be postponed for later adjudication. The separation of the contact and relocation questions and the postponement of the relocation question until the final determination of the contact question will shorten the trial about contact to a certain measure. A consideration of the overall convenience, however, involves factors other than the actual duration of the hearing. The litigation between Mr. S and Mrs. V concerning their minor children has gone on for many years. The best interests of the minor children demand that the litigation be brought to finality. A separation is likely to cause considerable delay in the reaching of a final decision on the remaining issue. Considering the manner in which the litigation has proceeded over the past number of years, it seems to me unlikely that the

determination of contact will result in finality and the curtailment of future litigation. Also, a separation will result in a duplication of evidence since some of the same witnesses will probably be called to testify on each of the issues. The questions of relocation affect the question of contact and *vice versa*. The questions are inextricably linked. Both may be awarded and the contact designed to fit the relocation, or only one or none may be awarded by the trial court determining the issues referred to in the order of Victor, J.

[9] In all the circumstances I am not satisfied that the question of contact and other issues may conveniently be decided before and separately from the question of relocation. The expeditious disposal of the litigation will, in my judgment, be best served by ventilating all the issues at one hearing. See: *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA), para 3.

[10] I need not make any costs order since the first respondent and Mr. V represent themselves in person and I was informed that The Centre for Child Law does not seek a costs order against the applicant in this application.

[11] In the result the following order is made:

The application is dismissed.

P.A. MEYER
JUDGE OF THE HIGH COURT

11 December 2009