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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023-054537

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

17/10/23

In the matter between:

J P P

Applicant

and

M G

Respondent

J U D G M E N T

CORAM: LIEBENBERG AJ:

- [1] The parties, who were never married, are the biological parents of a girl, K[...], who recently turn nine years old. By all accounts, despite the parties having separated in about May 2018, they have managed to navigate their co-parenting responsibilities. To this end, they annually agreed to schedules dictating the periods K spends with the applicant. The applicant's had contact with K from a very young age, spending alternate weekends and alternate Thursday nights with him. Half of every school vacation were spent with the applicant.
- [2] During 2020, the applicant entered into a relationship with Ms P[...] W[...]. According to the respondent sometime during 2020, Ms PW subjected K to inappropriate behaviour, including putting glue in K's hair, cutting K's hair without the respondent's knowledge or consent, pulling a blanket over K's face and smothering her, picking K up and dropping her on purpose, and locking K in a cupboard under the stairs in the applicant's home.
- [3] Despite the applicant's denial of this incidents, the respondent prevented contact between the applicant and K. After the relationship between him and Ms PW terminated in July 2020, contact resumed as agreed. Again, the parties agreed to schedules and K spent regular overnight contact with the applicant.

- [4] The trigger to the present litigation stems from the applicant's failure to immediately inform the respondent when he and Ms PW rekindled their relationship in December 2022. In fact, he only advised the respondent of the renewed relationship in early May 2023. The respondent's reaction was swift and punitive: she insisted that the applicant may only have contact with K under her supervision and only for a few hours at a time.
- [5] It is not the respondent's case that the applicant himself is a threat to K's wellbeing. She also does not allege that Ms PW subjected K to any mishandling or abuse during the period of the rekindled relationship with the applicant. The respondent contends that while the applicant is involved with Ms PW, his contact with K must be limited under supervision as she "cannot expose [K] to any form [of] abuse and lies of the Applicant about [Ms PW]".
- [6] The applicant is emphatic that his rekindled relationship with Ms PW has once again terminated, which the respondent does not and cannot gainsay. That being so, there is no reason for the applicant's contact rights to be curtailed.
- [7] I cannot, on the affidavits before me, find that Ms PW is guilty of the acts she is accused of having committed. Whether the accusations are the products of an active imagination of a little girl or of a misunderstood story, do not concern me. What does concern me is the well-being of a young child who is entitled to a close, loving and supporting relationship with each of her parents.
- [8] On a conspectus of the evidence, I do not believe a full forensic investigation of the parties and K will serve any purpose. By all accounts, the parties have been able to fulfil their respective parental roles, rights and responsibilities admirably. Rather than an intrusive investigation, the parties should engage in

mediation to resolve any outstanding or new issues that may arise in the years ahead. A consensus-based resolution of disputes is far more conducive to the interests of the parties and K.

[9] During argument, I enquired from counsel for both parties how the impasse can and should be addressed. I am most grateful for their assistance and their wise counsel to their respective clients. The order I grant must not be taken to constitute a finding that Ms PW had in fact perpetrated any abuse or inappropriate behaviour towards K. The order seeks to pave the way for the resumption of a peaceful co-parenting relationship between the parties, with K's best interests being front of mind.

[10] In the result, I make an order in the following terms:

[10.1] The applicant and the respondent shall remain co-holders of full parental responsibilities and rights in respect of K[...] P. , as set out in section 18 of the Children's Act 38 of 2005 ("the Act").

[10.2] K's primary residence shall vest with the respondent, subject to the applicant's parental responsibilities and rights of contact which shall be subject to K's reasonable scholastic, religious, extra mural and social activities, and shall include but not be limited to:

[10.2.1] During school term':

[10.2.1.1] The applicant shall be entitled to have K within on alternate weekends from Friday afternoon to Monday morning.

[10.2.1.2] Every alternate Thursdays.

[10.2.2] Half of every long and short school holidays.

[10.2.3] In addition, the applicant shall be entitled to reasonable daily telephonic contact, which include contact via FaceTime, WhatsApp, and voice notes.

[10.2.4] If K has school, extra mural, religious or social activities falling during the applicant's periods of contact, he shall ensure that K attends these activities.

[10.2.5] The applicant shall take all necessary steps to ensure that, whilst in his care, K does not have contact with P[...] W[...].

[10.3] The Office of the Family Advocate is requested to mediate a parenting plan between the parties, and in the event that mediation fails, to conduct an investigation into the best interests of K and furnish a report and recommendations to the parties and the Court.

[10.4] There shall be no order as to costs.

SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Heard on: 11 October 2023

Delivered on: 17 October 2023

For the applicant: Adv E Dreyer, instructed by MJ Hood & Associates

For the respondent: Adv T Khaba, instructed by Chris Janeke Attorneys