

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 076276/2024

DATE: 19-03-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 03 April 2025

SIGNATURE

In the matter between:

ARC

Applicant

and

AMM

Respondent

J U D G M E N T

YACOOB, J: The applicant, Mr C, has approached this Court for relief dealing with his right of contact to a minor child who is now aged seven who was born out of a relationship between himself and the first respondent, Ms M, who are not and never have been married. Ms M also has an older child who is not the child of the applicant and not the subject of this application.

The application was instituted in July 2024 and was met with a proposal for a settlement from Ms M, as is appropriate in a family law matter. However, no agreement was reached between the parties for various reasons. Mr C then filed a supplementary affidavit in November setting out various developments, together with an application for leave

to do so.

Ms M still did not file an answering affidavit until the Thursday before the week of the hearing, and in the answering affidavit did not deal with the allegations in the supplementary affidavit. It was submitted for Ms M today at the hearing that she did not have an opportunity to deal with those allegations; however, that is not the case. There was no opposition to the application for condonation; the supplementary affidavit was filed at a point where the answering affidavit was way overdue, and, in any event, it is appropriate for the Court to be updated on developments where the best interests of the child are concerned. Even in ordinary applications, if there are factual developments, it is appropriate to inform the Court of those developments.

I therefore allowed the supplementary affidavit to be admitted, and also found that Ms M's decision not to deal with the allegations in that affidavit in her answering affidavit, which was filed some two and a half months later, is something that she has to bear the consequences of.

Mr C then also filed a replying affidavit and sought leave, which was not opposed, to hand up further evidence of email correspondence which came into Mr C's attorney's possession the day before the hearing. The upshot of all of this is that the version of Mr C is, essentially, not properly disputed since the answering affidavit contains only bald

allegations unsupported by any documentary evidence.

Ms M says she does not want Mr C to be reflected on the child's birth certificate. However, it is properly conceded in argument that the law entitles him and the child to have him on her birth certificate.

The only real dispute at this point is whether the child's name should be amended to reflect Mr C's surname on her birth certificate as part of her surname. The answering affidavit also raises concerning issues. Ms M states that she intends to leave the country on the 1 May with the children, relocating because she has a good job offer in Papua New Guinea. She contends that if Mr C is reflected on the child's birth certificate, she will have difficulty in leaving. However, no evidence is annexed in support of the allegation that there is a job offer and a plan to leave on that date, and it was submitted from the bar that the date of her leaving is not yet finalised.

On my expressing my concern that Ms M has obtained a passport for the child and has in her possession a birth certificate without Mr C's name on it, and therefore would be able to leave the country without Mr C's consent, even if he was successful in this application, a tender was made, which was accepted, that the child's passport would be surrendered to an independent attorney, and that that attorney may not relinquish the passport without written

consent from both parties, alternatively an order of Court.

This then deals with the concern that the first respondent would leave the country with the child without the applicant's knowledge. Ms M states in her answering affidavit that there is a substantial dispute of fact which cannot be resolved on the papers regarding whether it is in the best interest of the child to have her father's surname appended to hers; however, it was conceded in argument that there is no real dispute of fact. Having considered the reasons enumerated in the answering affidavit, these are all either relevant only to Ms M's own convenience or highly speculative.

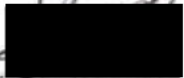
There is therefore no real reason on the law to deny Mr C the relief that he seeks. The question of contact at the moment is also not disputed. Ms M tries to avoid the Court making an order for the contact by saying that Mr C has already got contact, but it is clear that Mr C had to bring this application because he was told by Ms M's attorney that he would not get contact without a court order. It would also be in the interest of the child for there to be an order to avoid any change being made unilaterally.

Mr C also seeks in his amended notice of motion, which was amended without any opposition, that an order be made changing the parenting coordinator who was appointed by agreement between the parties because he has lost faith

in her. He sets out in the supplementary affidavit which, as I have already said, stands without a response, his reasons for this. It is true that if he has lost faith in the parenting coordinator, he should not be forced to continue with her. However, one wants to also avoid a situation in which a party can be obstructive and say, well, I am not interested in this parenting coordinator anymore because I have lost faith without any reason.

For that reason, it is my view that it is in the best interest of the child and of both the parties that Ms M be permitted to respond to the supplementary affidavit before any order is granted regarding the parenting coordinator. That being said, it is still necessary and appropriate for this Court to make an order regarding contact. Obviously, all of that will change if and when Ms M relocates, because she will then have to either seek Mr C's consent or get an order of Court if that consent is unreasonably withheld.

For these reasons I make an order in terms of the draft order.


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YACOUB, J

JUDGE OF THE HIGH COURT

DATE: 03/04/2025