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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 034132/2022

(1) REPORTABLE: YES / **NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED: **YES** / NO

DATE: 16/5/25

SIGNATURE

In the matter between:

Y[...] T[...] B[...]

Applicant

ID NO: 8[...]

and

J[...] F[...] B[...]

Respondent

ID NO: 8[...]

JUDGMENT

VAN NIEKERK N, AJ:

Section 28 of the Children's Act, 38 of 2005 – Termination of Guardianship.

Introduction:

[1] The applicant served a notice of motion, dated 11 March 2025, on the respondent via the sheriff, on 29 March 2025, for an order in the following terms:

1.1 That the respondent's guardianship in terms of section 18(2)(c) of the Children's Act, 38 of 2005 be terminated, together with his rights as contained in section 18(3)(c) of the Act.

1.2 Costs of the application to be paid by the respondent, if opposed.

1.3 Further and/or alternative relief.

[2] No notice to oppose was served by the respondent.

[3] This application came before me, in the family court, as an unopposed application on Tuesday, the 13th of May 2025.

Facts:

[4] Applicant and respondent were married to each other on the 15th of March 2014.

[5] From the marriage one minor daughter was born, namely B, on the 28th of June 2018.

[6] The applicant and the respondent separated during February 2019 and again on 4 November 2020. The Applicant was at all relevant times, the primary caregiver of B.

[7] The applicant and the respondent were divorced by an order of court on the 11th of November 2021, and a settlement agreement was made an order of court.

- [8] The applicant alleges that she has struggled to obtain the cooperation of the respondent in respect of various issues concerning B. She proceeds to provide examples.
- [9] In August 2021, she requested the respondent's cooperation to apply for a passport for B. The respondent undertook to sign the passport documents provided to him and send it to the applicant via whatsapp. From the documents before court, it is not clear whether or not this was done or whether or not it would have been sufficient to apply for a passport.
- [10] The next request for the respondent to cooperate in respect of B's passport was on the 14th of July 2022, when the applicant secured an appointment at home affairs, Nelspruit, where the respondent resided. The respondent was going to attend the appointment, but the applicant cancelled the appointment due to unrest in Nelspruit.
- [11] On the 10th of October 2022, the applicant contacted the respondent to arrange an appointment for B's passport in Pretoria. The respondent reverted that he needed to shuffle his calendar in order to attend such an appointment. At that stage the respondent was residing in Nelspruit.
- [12] On the 3rd of November 2022, the applicant's attorney of record sent a letter of demand to the respondent indicating that he had to confirm his attendance at the department of home affairs, Akasia, Pretoria on either the 11th, 14th or 18th of November 2022. No response from the respondent was received.
- [13] On the 25th of November 2022, the applicant indicated to the respondent that she will have to open a Nedbank account in order to make an appointment at the home affairs at a Nedbank branch in Nelspruit.
- [14] On the 28th of December 2022 at 16h44, the applicant informed the respondent of the appointment at Nedbank, Nelspruit Crossing for the

following day at 09h00. At 01h30 on the 29th of December 2022, the respondent informed the applicant that he would not be able to attend the appointment that morning because he was not in Nelspruit.

[15] On the 17th of July 2023, the applicant again requested the respondent to sign the application forms for B's passport and the passport application was finalised on the 8th of August 2023.

[16] According to the applicant, it took her two years to convince the respondent to cooperate in this regard.

[17] The next example the applicant provides is that during March 2022, she deemed it necessary for B to attend play therapy, and the respondent had to co-sign the permission forms. She requested him on the 3rd of March 2022 to sign the permission form, and he signed the forms on the 11th of March 2022, 8 days after being requested to do so.

[18] The last example provided, is that the applicant requested the respondent on the 20th of July 2023 to sign a consent form for a forensic evaluation for B, which request he ignored. No further information is provided.

[19] After the reference to the forensic evaluation, as mentioned above, the applicant's affidavit abruptly ends.

Consideration of the facts:

[20] The last example provided by the applicant of any non-cooperation by the respondent in respect of his guardianship, is her request on the 20th of July 2023 for the forensic evaluation of B.

[21] Notwithstanding not providing any further examples to the court, the applicant proceeded to launch this application in March 2025, without explaining the delay of 20 months.

- [22] The founding affidavit does not contain a single allegation, why it is now suddenly necessary to terminate the respondent's guardianship in respect of the minor child B, when on her own version, there were no examples of any non-cooperation by the respondent for a period of twenty months, prior to launching the application.
- [23] Furthermore, what is glaringly absent from the affidavit of the applicant is any allegation that the relief sought by the applicant is in the best interests of B and/or why it would be in the best interests of B to terminate the Respondent's guardianship.
- [24] It needs to be mentioned that in my view, even if the examples mentioned by the applicant were more recent, they would not entitle the applicant to the relief sought.
- [25] In respect of the applicant's example pertaining to the respondent's non-cooperation to apply for a passport for B, it is evident that the distance between Pretoria and Nelspruit provided a logistical problem in the expedient conclusion of the request.
- [26] Upon her second request to the respondent to cooperate, arrangements were made, and an appointment was made at the Nelspruit home affairs office in respect of which appointment the respondent cooperated. It was the applicant who cancelled this appointment, on the day of the appointment.
- [27] Thereafter, when the applicant informed the respondent that she will be making an appointment at Akasia Home Affairs, to apply for B's passport, the respondent indicated that to enable him to travel to Pretoria for such an appointment, he will have to make arrangements at work. This response by the respondent, in my view, does not show any unreasonableness or uncooperativeness.

[28] The last appointment prior to obtaining the passport was made at a Nedbank branch in Nelspruit. The appointment was for the 29th of December 2022 at 09h00 and the respondent was informed of this appointment on the previous day at 16h44. This notification was in my view, not reasonable notice of the appointment which was to take place during the festive season. The fact that the respondent indicated that he was not in Nelspruit at the time cannot be considered unreasonable and/or uncooperative.

[29] The next example of the respondent's alleged uncooperativeness is in respect of the applicant's request that the respondent sign the admission forms for B's play therapy. In my view, this is also not an example of unreasonable and/or uncooperative conduct by the respondent, because on the applicant's own version the respondent signed the necessary documents, 8 days after receiving the request.

[30] In respect of the example of the forensic assessment no information is given by the applicant to this court why a forensic assessment would have been necessary and why it was even requested from the respondent. It seems that in this regard the Applicant made one request and never again brought up the subject of a forensic assessment. The respondent's conduct in this instance cannot be accepted as being uncooperative and/or unreasonable.

Legal principles:

[31] Section 28 of the Children's Act, 38 of 2005 provides that:

'28 Termination, extension, suspension or restriction of parental responsibilities and rights:

(1) A person referred to in sub-section (3) may apply to the high court, a divorce court in a divorce matter, or a children's court for an order

- (a) *Suspending for a period or terminating any or all of the parental responsibilities and rights which a specific person has in respect of a child or*
 - (b) *Extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.*
- (2) *An application in terms of sub-section (1) may be combined with an application in terms of section 23 for the assignment of contact and care in respect of the applicant in terms of that section.*
- (3) *An application for an order referred to in sub-section (1) may be brought –*
 - (a) *by a co-holder of parental responsibilities and rights in respect of the child;*
 - (b) *by any other person having the sufficient interest in the care protection well-being or development of the child;*
 - (c) *by the child acting with leave of the court;*
 - (d) *in the child's interests by any other person acting with leave of the court;*
 - (e) *by a family advocate or the representative of any interest organ of state.*
- (4) *When considering such application the court must take into account-*
 - (a) *the best interests of the child;*
 - (b) *the relationship between the child and the person whose parental responsibilities and rights are being challenged;*
 - (c) *the degree of commitment that the person has shown towards the child; and*
 - (d) *any other factor that should in the opinion of the court be taken into account.'*

[32] As stipulated above the applicant did not provide any grounds why the order sought will be in the best interests of the minor child and such a finding cannot be made by this court.

[33] The examples provided by the applicant is historic in nature and cannot be the only substantiation for such far-reaching relief.

[34] Even if these examples took place more recently, they do not show uncooperativeness and/or unreasonableness on the part of the Respondent, warranting the termination of his guardianship over his daughter.

[35] In the premises the applicant did not make out a case for the relief sought and the following order was made in open court on Tuesday, the 13th of May 2025:

35.1 The application is dismissed.

Judge **VAN NIEKERK N, AJ**
In The High Court of South Africa
Gauteng Division, Pretoria

Date of hearing: Tuesday, 13 May 2025
Order granted: Tuesday, 13 May 2025
Date of delivery of reasons: Friday, 16 May 2025

Appearance

Instructing Attorneys for the Applicant appearing on behalf of the Applicant:

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Instructing Attorneys for the Respondent: No appearance for Respondent.