

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**NOT REPORTABLE**

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA**

**REPUBLIC OF SOUTH AFRICA**

**CASE NO: 77910/10**

**DATE: 11/01/2011**

In the matter between:

**LOUIS LOURENS ERASMUS**

Applicant

and

**MOUNA EKSTEEN**

Respondent

## **JUDGMENT**

Tuchten J:

1. This application concerns the primary residence of J, the 16 year old son of the parties. The applicant moves urgently for interim relief, pending the final determination of the application after the Family Advocate has investigated and reported to the court. There was no appearance before me on behalf of the respondent.

2. The parties were divorced on 15 May 1998. J's custody was awarded to the respondent, his mother. Both parties have remarried. The parties are not on good terms

with each other.

3. The case for the applicant, uncontradicted by any evidence presented by the respondent, is that J is unhappy living in his mother's house. One of J's problems is, he says, that he has a bad relationship with Mr Eksteen, his stepfather. J wants to live with his father and his father, having considered the matter, is of the view that J's wish to live with him is not a whim.

4. In my view, the wishes of a 16 year old boy about where he would like primarily to reside ought to be given considerable weight. The applicant is in a position to take primary care of J. J's evidence is that he is unhappy living with the respondent and Mr Eksteen. There is, as I have mentioned, no opposition to the interim relief sought. I have decided to come to the relief of the applicant *pendente lite* in relation to his place of residence. J clearly loves both his parents and does not wish to break his bonds with his mother. There must accordingly be provision for contact between mother and son.

5. The applicant also seeks an order to create a mechanism for J to obtain his own legal representative at the expense of the Legal Aid Board. I do not think that it is necessary at this stage for J to have his own lawyer but I shall make provision in the order for this to be done at a later stage.

6. There is however one aspect with which I wish to deal specifically. One of the main concerns expressed by J relates to his relationship with his stepfather. J says he is afraid of his stepfather who, J says, has threatened him with physical violence. This is reinforced by the terms of an email dated 14 August 2006 sent by Mr Eksteen to the applicant in which Mr Eksteen says

Ek het baie duidelik aan [J] gestel dat die volgende keer wat hy weer huil as hy by ons aankom ek hom voor jou 'n behoorlike pak slaag gaan gee. Ek dink hy verstaan dit so. Ek dreig nooit en doen wat ek se. Daarom het ek nog net twee maal in 5 jaar nodig gehad om hom pak te gee.

Hy begin nou met puberteit en word reeds by die skool gespot oor sy maklike gehuil. Feit is dat ek hom gewis voor jou gaan voeter as hy weer huil-huil na 'n kuier by ons huis aankom.

7. I am shocked by the notion that a man *in loco parentis* might think that it is appropriate to punish a boy at all for displaying the fact that he is unhappy. I reserve final judgment on this question because I have not heard Mr Eksteen's version.

8. But Mr Eksteen and the respondent should take note of the following: it is in my view open to considerable doubt that Mr Eksteen has any right in law to use physical violence of any kind towards J in the process of disciplining J but it is beyond any doubt at all that Mr Eksteen has no right whatsoever to use physical violence towards J for the purpose of punishing J for displaying his feelings by crying. Mr Eksteen should be made aware that if he carries out the threats made in his email to the applicant dated 14 August 2006, he may well find himself in the criminal court on a charge of assault.

9. I make the following order:

1. The Family Advocate is requested to:

1.1 investigate whether it would be in the best interests of the minor child J J A E ("J") if his primary place of residence were transferred to that of his father, the applicant, and, if so, what provisions should be made for contact between J and his mother, the respondent;

1.2 provide a report on such investigations to the court.

2. Pending the final determination by this court of the questions posed in paragraph 1 of this order:

2.1 J's primary place of residence will be with the applicant;

2.2 the respondent will have the right to have contact with J every alternate weekend from Friday at 17h00 to Sunday at 17h00, every alternate short school holiday, half of each long school holiday and every alternate Christmas and also reasonable telephonic contact.

3. The applicant may approach the Legal Aid Board with the request that a legal representative be appointed to represent J in these proceedings.

4. The determination of the questions raised in paragraph 1 of this order is postponed sine die . Both parties are given leave to deliver further affidavits. The applicant's further such affidavit must be delivered no later than three weeks after the report of the Family Advocate has been filed. Thereafter further affidavits by the parties may be delivered within the time periods provided for answering and replying affidavits respectively.

5. The attorney for the applicant is directed to serve copies of this judgment on both the respondent and Mr Eksteen and draw their attention to what is said in paragraphs 6 to 8 of the judgment.

6 .The costs incurred to date are reserved for decision by the court which determines the questions raised in paragraph 1 of this order.

NB Tuchten

Judge of the High Court

11 January 2011