

**NORTH GAUTENG HIGH COURT, PRETORIA  
REPUBLIC OF SOUTH AFRICA**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO.  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.  
(3) REVISED.

12/11/2012

DATE



SIGNATURE

Case No: 70441/2011

Date heard: 12 November 2012

Date of judgment: 12 November 2012

In the matter between:

**ANNA JACOBA DE BRUIN**

Applicant

and

**TJAART NICOLAAS JACOBUS VAN DER WALT**

Respondent

In Re:

**TJAART NICOLAAS JACOBUS VAN DER WALT**

Applicant

and

**ANNA JACOBA DE BRUIN**

Respondent

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**JUDGMENT**

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**PHATUDI J:**

[1] The applicant seeks committal to imprisonment of the respondent for a period of 30 days, which period is to be suspended for a period of 1 year for Contempt of Court order handed down on 28 February 2012.<sup>1</sup>

[2] On the 28 February 2012, Goodey AJ ordered:

‘1. DAT volle ouerlike verantwoordelikhede en regte in terme van Artikel 18(1) en 18(2) van die Kinder Wet 38 van 2005 aan beide die applikant en die respondent toegeken word, en dat die reg om primêre versorging van die minderjarige kind te verskaf aan die respondent toegeken sal word.

2. DAT spesifieke ouer verantwoordelikhede en regte soos uiteengesit in Artikel 18(2) van die Kinder Wet 38 van 2005 en meer spesifiek die reg om kontak met die minderjarige kind te behou, aan applikant toegeken word, onderhewig aan die Gesinsadvokaat se goedkeuring wat al insluit, maar nie beperk is tot:

2.1 die reg om die minderjarige kind elke alternatiewe naweek vanaf Vrydag 16:00 tot Sondag 17:00 te verwyder;

2.2 die reg om die minderjarige kind vir een helfte elke lang en kort skoolvakansie te verwyder, die spesifieke helftes van elke lang en kort skoolvakansie om te roteer;

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<sup>1</sup> Notice of Motion

- 2.3 dat die regte in 2.1 en 2.2 so aangepas word dat elke alternatiewe verjaarsdag van die minderjarige kind, elke alternatiewe kersdag asook elke Vadersdag by die applikant deurgebring word; en
- 2.4 telefoniese kontak te alle redelike tye.<sup>2</sup>

[3] The applicant alleges that the respondent refuses to adhere to the court order in that the respondent refuses to grant him contact with the minor child as ordered.

[4] The respondent places on record as Ms Van Niekerk submits that she did not oppose the application that brought about the order set out in paragraph [2] above. She alleges that the respondent laboured under the impression that the Family Advocate had to first investigate if the order will be in the interest of the minor child.

[5] Pursuant to the correspondence from the parties, the office of the Family Advocate indicates that 'in die geval van 'n finale Hofbevel, soos wat hier die geval is, word hierdie kantoor functus officio en bestaan daar geen jurisdiksie vir hierdie kantoor om voort te gaan met 'n ondersoek nie'<sup>3</sup>

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<sup>2</sup> Court Order. Annexure C page 16

<sup>3</sup> Annexure "G" page 29 first paragraph

[6] It is trite that an order of court stands until set aside. The respondent acknowledges that she received the application prior to the order being granted. She chose not to oppose. She received the order thereafter. The order was sent to her as early as 13 March 2012. The respondent's impression of Family Advocate's investigation was cleared by 12 April 2012.

[7] Notwithstanding the umpteenth correspondence from the applicant, the respondent refused to allow the applicant to contact or to have access to the minor child as ordered on the 28 February 2012. The respondent is indeed in contempt of the court order dated 28 February 2012.

[8] Countering the contempt application, the respondent applies for an amendment of the said court order, in particular paragraph 2, as indicated in her counter claim. She contends that the applicant's contact with the minor child be investigated in the best interest of the minor child. She further contends that curator ad litem be appointed in the best interest of the minor child. The reasons for such

contentions are set out in paragraph 4 of the respondent's opposing affidavit.

[9] On my perusal and consideration of the contentions set out by the respondent, I am not persuaded that the respondent makes out a case for an order she seeks as set out in paragraph 5 of the opposing affidavit. The counter application stands to be dismissed.

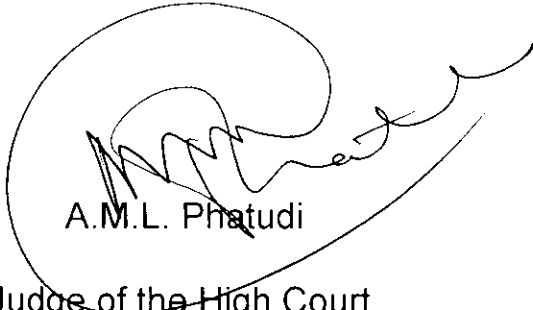
[10] Costs, as it being trite, follow the event. The applicant succeeds in both the main and the counter applications, resulting in him being entitled to costs of both applications.

I, in the result, make the following order:

1. The respondent is in contempt of court with the order given on 28 February 2012 under Case Number: 70441/2011.
2. The respondent is sentenced to imprisonment for a period of 30(thirty) days, which imprisonment is suspended for a period of 1(one) year on condition that the respondent

adheres to the court order that was given on 28 February 2012 within 14(fourteen) days of this order.

3. If the respondent fails to adhere to this court order, the applicant is authorised to come to this court for an order to imprison the respondent, on the same papers, as amended, where applicable.
4. The respondent is ordered to pay the costs of the main application and those of dismissal of counter claim.



A.M.L. Phatudi  
Judge of the High Court

On behalf of the applicant:

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