

ALLSOP v McCANN 2001 (2) SA 706 (C)

Headnote : Kopnota

The parent of minor children to whom custody has been awarded is entitled and required to direct the daily lives of the children. Education, religious and secular, would fall within that duty. (At 713C/D - D.)

In terms of s 28(1)(b) of the Constitution of the Republic of South Africa Act 108 of 1996 the non-custodian parent has a duty to provide parental care to the children and the children have a right to receive such care. Neither parent may dictate what religion, if any, their children eventually adopt, but each parent is entitled to provide religious instruction. (At 713F/G - H/I.) To restrict the rights and duties of the non-custodian parent in the field of education to the secular would significantly erode that parent's rights of access. (At 713A/B - B.)

The applicant and respondent had been divorced in 1995. Custody of their two minor children was awarded by consent to the applicant. The applicant had been baptised in the Anglican Church; the respondent was and remained Roman Catholic. The parties had been married, and the children baptised, in the Roman Catholic Church. Since their divorce the applicant had rejected the formal teachings and dogma of 'organised religion' and had adopted 'a more holistic approach to religion'. The applicant sought an interdict to prevent the children from attending the Roman Catholic Church while they spent weekends with the respondent and to prevent their receiving any education in the Roman Catholic religion. She alleged that on the weekends during which the respondent exercised his rights of access he compelled the children to attend a Roman Catholic church service and that this not only undermined her religious instruction of the children but also caused the younger child, aged seven, considerable distress. The respondent denied the applicant's allegations, saying that the children did not attend formal church services but attended Sunday school, that they were always given a choice about whether they wished to attend the Sunday school on any particular occasion and that on those occasions when they decided against attending he did not force them to do so. He also denied that he would ever compel them to undergo any form of Roman Catholic religious education. He pointed to the applicant's failure to mention that the older child had been attending Roman Catholic church services with her paternal grandmother for the past five years.

The relief originally sought was amended to (1) limiting the children's attendance at any Roman Catholic Church or Sunday school to weddings, funerals, baptisms and/or christenings and (2) preventing the children's participation in or attendance at the Roman Catholic practices of catechism, lent, mass (apart from those mentioned in (1)), confession and holy communion.

Held, that the applicant's first prayer was unreasonable. The limited exposure to Roman Catholic doctrine and dogma occasioned by the children's attending Sunday school did not interfere with the applicant's right to raise the children

in whichever religious faith she chose for them, while preventing them from attending Sunday school when they wished to do so, bearing in mind that they had been baptised in the Roman Catholic Church and that the older child had been attending the Roman Catholic Church with her grandmother for the past five years, amounted to a serious erosion of the rights of the non-custodian parent. (At 714C/D - F/G.)

Held, further, as to the second prayer, that exposure to Roman Catholic practices as well as to their mother's more informal view of religion would place the children in an eminently good position to decide eventually on the religion they wished to follow. (At 715C - D.)

Held, further, that there was no need to make any order preventing the children's participation in the practices listed as there was no evidence that the respondent would involve them in those practices. Insofar as the applicant might have some right to prevent formal religious education of the kind in issue on the basis of its being at variance with other religious education decided upon by her, and resulting in harmful confusion to the children, the application was premature. (At 715E/F - F.) The application was accordingly dismissed.