

**GOVERNING BODY, GENE LOUW PRIMARY SCHOOL v ROODTMAN
2004 (1) SA 45 (C)**

Headnote : Kopnota

In an action decided on a stated case a magistrate's court disagreed with the appellant (plaintiff) that s 102A(1) of the Education Affairs Act (House of Assembly) 70 of 1988 rendered the divorced, non-custodian parent of a minor child liable for the payment of his minor child's outstanding State-aided school fees where he had not bound himself contractually for the payment of such fees and where there had been no express provision in the order of divorce that he be so liable. The question arose for reconsideration on appeal to the High Court. Section 102A(1) obliged the 'parent' of a child admitted to a State-aided school to pay the child's school fees and s 1 defined 'parent' as 'the parent . . . or person in whose custody the child has lawfully been placed'. The appellant's contention on appeal was that 'parent' should be interpreted so as to include the non-custodian parent of the child and the respondent's contention was the converse.

Held, that at common law the custodian parent was vested with the decision-making power concerning questions relating to the secular education of the child. (At 52C/D - D.)

Held, further, that it was clear from the provisions of the Matrimonial Property Act 88 of 1984 that where the parents of a child were divorced, a third party who provided goods or services for the support of the child had a contractual claim only against the parent or other person to whom custody of the child had been awarded and with whom the third party had contracted. (At 53J - 54A/B.)

Held, further, that the presumption that a statutory provision did not alter the existing law more than was necessary required that s 102A(1) be interpreted against that common-law and statutory background. Moreover, where the same word was used in different sections of the same statute, it might reasonably be supposed that the Legislature had intended that word to be understood in the same sense throughout the statute, unless clear indication to the contrary was given. (At 54D - F.)

Held, further, that the other sections of the Act regulating the position of a 'parent' of a child in respect of that child's education all conferred rights, powers and duties upon the 'parent of a child', and related to matters which under the common law fell within the exclusive competence of the parent or person having custody of the child in question. The non-custodian parent had no common-law right to interfere in these matters. (At 54G and 55C - D.)

Held, further, that the interpretation of the word 'parent' in those sections as including a non-custodian parent would therefore amount to a radical departure from the common law. It could, therefore, certainly not be said that either the language or the import of those provisions supported the conclusion that the intention of the Legislature had been to alter the common law in that

manner, the word 'parent' as used in those sections had to be interpreted to mean the parent or other person who had custody of a child, whether by operation of law or by order of a competent court. (At 55D/E - F.)

Held, further, that there was no indication that the word 'parent' as utilised in s 102A(1) had to be interpreted to have a different meaning to the same word when used in the other sections which regulated the position of a 'parent' of a child as regards the education of that child. (At 56D.)

Held, further, that the appellant's interpretation of the word 'parent' in s 102A(1) would, in addition, give rise to inequitable and, in many cases, absurd or anomalous consequences. (At 56F.)

Held, accordingly, that the word 'parent' in s 102A(1), read together with the definition of 'parent' in s 1, had to be interpreted so as to encompass only a parent who had custody of the pupil in question by operation of law, as also the parent or other person in whose custody the pupil had been placed by order of a competent court. If more than one person had custody of a particular pupil, then any of such persons could be held liable by the school, in terms of s 102A(1), for that pupil's school fees. Accordingly, married parents who, in the absence of a Court order to the contrary, shared the custody of their minor child, were both liable vis-à-vis the school for payment of school fees, irrespective of which parent had enrolled the child in the school. (At 57B - G.)

Held, further, that interpretation of s 102A(1) did, therefore, to a certain extent alter the common-law principles regulating the liability of parents vis-à-vis third parties who provided goods or services for the support of a child. In such situations, however, each of the parents having custody of the child had an equal voice in matters relating to the child's daily life, including educational matters, so that that 'extension' of the common law appeared to be justified. (At 57E - F.)

Held, accordingly, that the provisions of s 102A(1) did not render the respondent, as the non-custodian parent, liable vis-à-vis the appellant for the payment of the outstanding school fees in respect of his minor child. (At 57G - G/H.) Appeal dismissed.