

## MEYER v GERBER 1999 (3) SA 650 (O)

### Headnote : Kopnota

The applicant approached a Provincial Division for an order that the consent paper that had become part of the Court order at the parties' divorce be amended in order to award custody of the parties' 15-year-old son, B, to the applicant (the father) instead of to the respondent. The application had been made following B's decision that he wished to reside with the applicant instead of with the respondent, which decision had not met with the respondent's approval. The respondent argued that the Court could not in the circumstances of the matter and in the interests of the parties' two minor children grant the application merely upon B's immature decision.

Held, that B had made a decision and had persisted therein. He had addressed a letter about his decision to the respondent and he had also deposed to two affidavits which had been included in the papers. It could be accepted that the letter had been B's own brainchild and that he had neither been assisted nor influenced by the applicant to write it. (At 655B - B/C and 655C/D.)

*Held*, further, that two psychologists, a family counsellor and the Family Advocate had conducted interviews with B, during which he had persisted in his decision. The comprehensive and thoroughly reasoned reports prepared by the Family Advocate and the family counsellor had fully appreciated the gravity and problematic nature of the matter but had nevertheless recommended that the applicant be awarded custody of B. (At 655D/E - F.)

*Held*, further, that the Court was satisfied in the circumstances that B was endowed with enough intellectual and emotional maturity to have made a calculated and intelligent decision and that the Court should attach due weight to his stated preference and choice. B's position was clearly not something which had become established overnight. It was not an emotionally monocular and irrational expression of his frustrations or worries but bore the stamp of an important decision about which he had thought and contemplated for a long while and in which he had conducted himself as a mature and responsible young man. (At 655I - J, 656D, 656E/F and 656G.)

*Held*, accordingly, that the applicant had succeeded in showing on a balance of probabilities that it would be in B's best interests for the Court order to be amended in order to award his custody to the applicant. (At (6).) Application granted.