

## TOWNSEND-TURNER AND ANOTHER v MORROW 2004 (2) SA 32 (C)

### Headnote : Kopnota

There were two applications before Court. In the first the applicants sought an order that they be granted defined access to the first applicant's minor grandson, G. In the second they sought an order declaring the same respondent to be in contempt of a Court order which had been granted during the conduct of the first application, in terms of which they were granted interim access to G. The second applicant was a former husband of the first applicant, who currently lived with the first applicant. G had been born to the respondent and the first applicant's daughter, T, who had since died. Before T's death the applicants had enjoyed access to G. After her death, the respondent had formed a relationship with another woman, one V, and the latter, the respondent and G began living together as a family unit. Thereafter the relationship between the respondent and the first applicant deteriorated, and the respondent began limiting, and sometimes refusing, the first applicant's access to G. Pending finalisation of the first application the first applicant was by agreement granted supervised interim access to G. The first applicant alleged that the respondent had willfully failed to comply with the provisions of that interim order. Both the family advocate and an independent clinical psychologist reported to the Court on the advisability of the access sought. The family advocate and the respondent submitted that access should not be granted.

*Held*, that there was nothing in the common law to indicate that anyone had a right of access to a minor child other than the parents of a child born of the marriage between them. (At 41C/D.)

*Held*, further, that the powers of the Supreme Court, as upper guardian of minor children, were not unlimited: it was not entitled to interfere with a decision made by the guardian of the child merely because it disagreed with that decision. Our Courts have always been reluctant to interfere with the parental authority save in special circumstances, and decisions as to who a child should have contact with were in the hands of the person or persons vested with parental authority. (At 42H - H/I and I/J - J.)

The dictum in *S v L* 1992 (3) SA 713 (E) at 721A - J applied.

*Held*, further, that it was clear that any judicial intervention in a family (such as the granting of grandparental access to a minor child) might have unsettling effects on the dynamics of that family, which might in turn affect the welfare and interests of the child. Accordingly, the Court had to exercise circumspection before intervening. (At 43A - 43B/C.)

*Held*, further, that the current common-law position was that any third party was entitled to approach the Court to have rights of access granted to him or her provided that such right was in the best interests of the child. (At 44A/B - B/C.)

*Held*, further, that it could not, in the light of the conflict within the family and the difficult relationships at present, be in G's best interests to allow the applicants access to him and so place him in the middle of a situation which would confuse him and lead him to feel guilt and divided loyalties. The abnormality of judicially-sanctioned, enforced visitation was not desirable in the present matter. Any relationship between G and the applicants had to be allowed to develop spontaneously and in an atmosphere of accord between the parties. The first applicant had to refrain from pushing the issue and the respondent and V had to be encouraged to allow such spontaneous contact, but only when the relations between the adults had been mended to the extent that contact might take place in a manner that would benefit G. (At 48G/H - J.)

*Held*, accordingly, that the first application had to be dismissed. (At 48J.)

*Held*, further, that an applicant for committal for contempt of court had to show that (a) an order had been granted against the respondent; (b) the respondent had been served with the order or had been informed of the grounds of the order and could have no reasonable grounds for disbelieving the information; and (c) the respondent had either disobeyed or neglected to comply with such order. Once these requirements were met, the additional requirements of wilfulness and mala fides would be inferred and the onus was then on the respondent to rebut those inferences on a balance of probabilities. (At 49A/B - E.)

*Held*, further, that the respondent had been aware of the existence and terms of the interim order but had failed to comply with some of them. It was, however, clear that the respondent had acted bona fide throughout in attempting to clarify the position, and that his opinion that it required clarification had not been unreasonable. (At 51C/D - F.)

*Held*, accordingly, that the respondent was not in contempt of the Court order in that, even if he had been in default thereof, he had not been acting willfully or mala fides. Accordingly the second application also had to be dismissed. (At G 52H - H/I.)