

VAN DER LINDE v VAN DER LINDE 1996 (3) SA 509 (O)

Headnote : Kopnota

The question whether children should be separated in applications for custody comprises two enquiries: (a) is it desirable that children should be separated from each other; and (b) is the quality of a parental role determined by gender? (At 514A-B.)

With regard to (a), all being equal, siblings should not be unnecessarily separated from each other. The reason being that siblings experiencing the trauma of a divorce tend to form a bond with each other. A bond which to a great extent gives them a feeling of security against the 'onslaught from outside'. On the other hand, however, it will be necessary for children to be separated from each other if one child with the custodian parent is not properly cared for or is neglected. Also if the change will be a substantial improvement. (At 514B/C, read with 514E.)

As to (b), for decades it has been accepted that the quality of a parental role is determined by gender. It has been accepted that mothering was a component of a woman's being only. At the present juncture it is to be doubted whether that acceptance can by itself serve as a universally prevailing axiom. These days mothering is also part of a man's being. The concept 'mothering' is indicative of a function rather than a persona and this function is not necessarily situated in the biological mother. It includes the sensitive attachment which flows from the attention devoted from day to day to the child's needs of love, physical care, nutrition, comfort, peace, security, encouragement and support. Only the parent who can satisfy this need will succeed in forging a psychological bond with the child and it is in this parent's care the child can experience his existence still having meaning, and which will be sheltered and protected with affection. Mothering assumes the showing of unconditional love without necessarily expecting anything in return. Mothering is not just a component of the woman but also part of the man's being. In the past society expected men to suppress that part of their personality because it did not fit the image of a man. Today the man has the freedom to reveal and to live out his mothering feeling. A father can be just as good a 'mother' as the biological mother and naturally a mother can be just as good a 'father' as the biological father. The quality of a parental role is not simply determined by gender. (At 514H, read with 515B-E, 515F and 515H/I-I.)

In terms of a deed of settlement entered into between the parties during a divorce action the respondent obtained custody of the two minor children, a daughter of nine years and a son of fourteen years old. The applicant applied in a Provincial Division for a variation of the deed of settlement so that custody of the two children be awarded to her, alternatively that the custody of the daughter be awarded to her. During argument it was conceded on behalf of the applicant that it would be in the best interest of the son if the status quo was maintained and he remain in the custody of the respondent. The only issue was therefore to which parent custody of the daughter should be awarded.

Held, that, although the applicant had a number of good qualities as mother, the daughter was not being neglected and a change of her custody would not be a substantial improvement. (At 515I/J-516A/B.)

Held, further, that the family advocate's request that custody of the daughter be awarded to the applicant subject to the case being evaluated again after three months could not be entertained: the Court was not prepared to substitute certainty with uncertainty and to sacrifice the daughter as a guinea-pig for a period of three months on the proverbial experimental altar. (At 516B.)

Held, accordingly, that the application had to be refused. (At 516D.)