

REPUBLIC OF NAMIBIA

CASE NO. I 268/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

WD

APPLICANT

and

IV

RESPONDENT

CORAM: VAN NIEKERK, J

Heard: 2, 9 September 2010; 30 November 2010; 9 December 2010

Delivered: 14 January 2011

JUDGMENT

VAN NIEKERK, J: [1] The parties are the parents of A, a girl aged 10 years and a boy (W), aged 11 years. On 2 September 2010, the applicant, who is the father, brought an urgent application for a rule *nisi* calling on the respondent to show cause why the final order of divorce granted by this Court on 12 May 2008 should not be varied by placing A in the custody of the applicant subject to the respondent's rights of reasonable access and certain other relief. A short postponement was granted for the filing of answering and replying papers.

[2] On 9 September 2010 the applicant was heard after which the matter was postponed for further hearing to 30 November 2010, pending the preparation of a report by a psychologist jointly appointed by the parties. In the interim the applicant was granted custody of A. Respondent was granted reasonable telephonic access by cellular phone and the right to visit A or to receive A at her home at such reasonable times as A may request or as recommended by the appointed psychologist.

[3] The following is a summary of the material averments contained in the affidavits of the parties. The applicant works on a farm in the Otjiwarongo district as a manager. The respondent is a receptionist. The parties were previously married, but divorced on 12 May 2008. The Court gave effect to a settlement

agreement between them by ordering that the defendant shall have custody of the two children subject to the applicant's rights of reasonable access. Applicant was ordered to pay maintenance for the children, which at the time of the urgent application stood at N\$2500 per month per child.

[4] A suffers from cystic fibrosis, a life limiting generic disorder characterized by abnormalities of certain glands and which requires constant medication and a special diet. Without proper medical care a sufferer may very well have a low life expectancy of around 15 years, but with proper care could survive until about 40 years of age. While a sufferer of this disease is still a small child, certain daily medical procedures must be followed to ensure the clearing of the airways from excessive mucous. As the person becomes older, she may be taught to attend to these procedures herself.

[5] The events which led to the launching of the urgent application were, according to the applicant, as follows: On 12 August 2010, respondent sent applicant an sms indicating that A was no longer welcome at her home and that he should immediately come to fetch her. Applicant telephoned respondent to find out what was going on. Respondent was very aggressive and shouted that he should immediately come to fetch "the child" otherwise she would leave A in the streets with all her belongings. Applicant tried to calm her down, explaining that he would only be able to come after working hours as his only transport at the time was a motor cycle. This was unacceptable to respondent, who later arrived at applicant's workplace with A and her belongings in tow. Applicant describes "A" in his affidavit as extremely frightened and in a state of shock. She had clearly been crying and was shaking uncontrollably. She remained with applicant the rest of the afternoon and did not utter one word. Both A and W were supposed to visit applicant for the school holiday starting on 27 August 2010 and to also visit the paternal grandparents on their farm near Otjiwarongo. Applicant therefore arranged that his parents fetch A already on 13 August 2010. A remained generally uncommunicative for some time. Her medical condition did not seem to be in order. Applicant noticed medication in A's luggage that did not seem to have been prescribed by a doctor. Dr During at Otjiwarongo established the pills to be an anti-depressant. In his opinion A did not suffer from any condition requiring such treatment, which he stopped immediately.

[6] A informed applicant that she was not happy at school or at home. A alleged that she constantly argued with respondent and complained about certain behaviour by respondent's partner who lives with them. She appeared afraid of the respondent and not keen to talk to her by telephone.

[7] About a week later on 20 August 2010 respondent indicated that A and W must be returned to her by no later than 8 September 2010. This was done by way of a letter delivered to applicant's lawyers and addressed to the applicant's parents where the two children were staying for the school holiday. They were threatened with legal action should they fail to comply. The reason why respondent regarded it necessary to have such a letter written has not been explained.

[8] Meanwhile the applicant had arranged with Dr Petro Kimberg, a clinical social worker in private practice, to evaluate A's emotional wellbeing. She conducted clinical interviews with the applicant, his parents and the two children. She established that there was a notable difference between the emotional status of the two children. Whereas W appeared to be well, A seemed anxious about her visit to Windhoek and afraid of respondent and the maternal grandmother's reactions. She related incidents of alleged physical abuse by them and respondent's partner, Mr G. In the case of the former, this appeared to be related to her refusal to attend school on certain occasions. She reported not being happy at the Waldorf School to which she had shortly before been moved from the Delta School where she used to go. A picture of W being the favourite child emerged. A reacted negatively and anxiously to alleged threats by respondent to remove her from the care of her paternal grandparents and her father and to return her to respondent's home. Dr Kimberg concluded that A was emotionally, physically, psychologically and medically deprived in respondent's care and that she was at risk of serious harm in the respondent's care. In her view A suffered intense emotional trauma during the week 12-20 August when she was first rejected by respondent and later threatened to be taken back. Dr Kimberg further concluded that A has an emotionally stable and sound relationship with her father and his parents and recommended that A be placed in their custody.

[9] In her opposing affidavit respondent avers that the burden of raising the children was largely left to her as the custodial parent and that applicant did not take much interest in them. He did not always make use of the generous access rights granted by the divorce order, but applicant in reply in my view provides reasonable explanations for his conduct. She raises some factual disputes about the payment of maintenance. I shall not deal with these in detail.

[10] As to the events of 12 August 2010, respondent's version is that A is a difficult child who sometimes

simply refuses to go to school. On the particular day A refused to get out of the car when she and her brother were being dropped off. Respondent had to return home with her. Respondent then telephoned applicant's parents to discuss the matter and to ask what they think she should do. According to her she was advised to take A to applicant. Applicant's mother, Mrs D, denies this allegation, stating that during the discussion she merely said that respondent as the mother must decide what to do. Respondent admits that she was very upset with the situation and because A was refusing to abide by her instructions. She however denies that she said that A would be left on the street with her belongings should applicant not come to fetch her. According to respondent, the parties agreed that she would drop A off with him at work, which he indicated would be no problem. She did not pack A's belongings - this A did herself. She admits that A may have been upset because of the argument regarding A's refusal to go to school.

[11] After respondent delivered A to applicant, he asked whether they could meet in the evening. Respondent later agreed and a meeting took place where they discussed A's future. According to her they agreed that A should stay in

Windhoek, but that it might be better for her to be placed in a hostel to learn some discipline. Based on this agreement, respondent made arrangements to place A in the German Private School (DHPS) in Windhoek as A was unhappy at the Waldorf School. It is regrettable that the applicant did not disclose this meeting in his founding affidavit. In reply he admits that it took place, but gives no explanation for failing to mention it. According to him, they did discuss the issue of A attending DHPS, but did not agree on it. Instead he suggested that A attends the Otjiwarongo in school and that she stays with his parents on the farm to be taken to school daily, or that she stays with his aunt, who is a teacher and known to respondent. He undertook to make sure that A attends school and passes her grade. However, no conclusion was reached at this meeting. Nevertheless, he enrolled A in the German Private School at Otjiwarongo for the third school term.

[12] As to the medication for depression, respondent explained that this was prescribed by Dr Vorster, a psychiatrist in South Africa, who was consulted by respondent's mother in regard to A. Respondent also mentions certain alleged incidents which cast applicant in a negative light, the details of which emerged when Dr Vorster was treating A. These are in turn denied by applicant. There are some indications that A may have been manipulated by other maternal family members to allege such details.

[13] Respondent further denies that A refused to have contact with her during August and states that they had contact by cellular phone. On 20 August when applicant's father, Mr D, fetched W from her home for the school holiday, A also came along and collected some of her things. A cried when she saw her mother and alleged that Mrs D had *inter alia* informed her that she may not have contact with respondent and that she must go to school in Otjiwarongo. I assume that this conversation gave rise to the lawyer's letter of 20 August.

[14] It is clear that Dr Kimberg's report is not favourable to the respondent at all. Much of its contents is placed in dispute. Unfortunately Dr Kimberg did not include the respondent in her initial evaluation, which led thereto that respondent took the point that the report is one sided. An attempt to rectify this came to nothing, as respondent was never available to make an appointment with Dr Kimberg. Respondent cited long working hours as the reason. Dr Kimberg drew up a second report attached in reply, in which she largely persists with her initial findings and recommendations. In addition she recommended that contact between A and her mother be guided and monitored until A feels comfortable to visit her mother again; that A should have contact with W and that A undergoes a therapeutic program to assist her to develop a positive self image and to address her relationship with respondent.

[15] Mr Vaatz on behalf of respondent suggested during argument that it would be better to obtain the report of an independent psychologist, in other words, a psychologist not appointed by one of the parties only. The Court was of the same view and applicant had no objection. As a result, the Court ordered, as stated before, that a report be prepared by a psychologist appointed jointly by the parties. As it was also clear to me that the incident of 12 August was not to be taken lightly; that it impacted severely and negatively on A and that it appeared to be in A's interests to remain in the applicant's interim custody, I made the order already referred to at the beginning of this judgment.

[16] Dr J Hoffmann, an educational psychologist was duly appointed. His detailed, nuanced and well prepared report was handed in by agreement on 30 November 2010. He consulted with all relevant persons and conducted certain tests. As W was uncomfortable to consult with yet another expert, it was decided not to include him. I shall mention some of Dr Hoffmann's observations and opinions expressed.

[17] In respect of respondent he states that she has shown restraint in comments to other persons involved

in the matter and indicated that she has no problems to communicate matter with the applicant. She came across as a mature and dignified person with balanced opinions. Telephonic contact with A has been kept up since A moved to Otjiwarongo. She provided documentary proof of 124 cell phone contacts with A during that period. The contact was reciprocal and also included an sms enquiry from A to obtain contact details of Mr G. In his view respondent does not show any concerning elements or deviations that would disqualify her from having custody and control of A, provided that some of her educational and domestic management tools are upgraded.

[18] In respect of Mr G he states that the latter was very aware of the complexity of the position he finds himself as partner to a woman with children from a previous marriage. He was very aware of the necessity to balance the interest of all the other parties involved and to stay in the background, but also to engage in actions when the situation requires it. There were no negative comments or any criticism towards the respondent. He came across as a person who can add stability and balance to any situation. Mr G does not show any concerning elements or deviations that would disqualify him to be around A.

[19] In Dr Hoffmann's view the applicant displayed honest concern about his daughter and tried to do for her what he thought was best at the time. He indicated that he was not worried about his son W as to his mind respondent takes well care of him. He also expressed no animosity towards Mr G. He acknowledged that children need to behave themselves and have to learn manners and if Mr G takes up the role of an educator for this purpose he has no problems with this. In applicant's view Mr G always acted within reason when fulfilling this role. Applicant also pointed out that one should be careful what children convey as it would be important to know the whole background before judging. He provided documentary proof that 100 contacts have been via cell phone made with A during the time she stayed in Otjiwarongo. Applicant does not show any concerning elements or deviations that would disqualify him from having custody and control of A. A draw-back is that his present job requires him to work out of town and to rely on an extended support system to take care of Anita.

[20] Applicant's aunt Mrs ID, with whom A stayed for some time during the interim period, is self-reliant and realistic with a no-nonsense attitude towards life, which enables her to install structure and discipline in a natural way, without having to use many words or actions. She has a natural authority that is easily

accepted and children easily abide by this. In Dr Hoffmann's view this was a major reason why A could settle into a routine fast and could not get away with attempts to stay out of school. Mrs ID in a letter to Dr Hoffmann shared her observations around the child. She did so in a balanced way indicated that A still seeks contact with her mother and Mr G in a similar way she seeks contact with grandparents and her father. It was also mentioned that she displays certain animosity towards her mother and some intervention is called for to put the comments in perspective. A seems to be very fond of her brother and she always looks forward to meeting with him. Mrs ID pointed out that the overall condition of A has improved since she takes the medication prescribed by Dr Doring in collaboration with Dr Pieper. She also seemed to have settled nicely onto a school routine although she does not seem to have friends in the school at the present. Respondent contacted her around mid July 2010 and enquired about possibilities to enrol A in Privatschule Otjiwarongo as a possibility to continue A's education. Respondent sounded at her wits' end as she experienced A as manipulative and actively avoiding school.

[21] Dr Hoffmann regards Mrs ID as a major resource that had a true positive impact on A. She has, however, her own challenges that absorb a lot of energy. Utilization of Mrs ID as a resource for A needs to be limited to her expert knowledge in addressing learning backlogs and learning disabilities and to facilitate assistance in times of emotional trouble. It would not be fair to Mrs ID to expect from her to keep fulfilling the role of providing lodging to A as she did at the time.

[22] The paternal grandfather, Mr D, together with his wife, played a large role in stabilizing A. He is very fond of her and made everything in his power available to give her stability and facilitate medical care and supervision which by the account of Dr Doring and Dr Pieper was lacking before. Due to the treatment program, A is now certified as someone with good health. Mr D expressed a lot of animosity against respondent and related several incidents where she did not measure up. A lot of pent-up frustration was observed and he accused her amongst others for the financial demise of his son, the applicant.

[23] Dr Hoffmann described the paternal grandmother, Mrs D, as a very important significant other to A and that she goes out of her way to meet the needs of the child. She will do everything and will spare no costs or effort to assist A. Due to her involvement A stabilized physically to a prominent degree. She has daily contact with A via the telephone. Like Mr D, Mrs D also expressed a lot of animosity towards

respondent and related several incidents where she did not measure up. She was very adamant that respondent had only affinity for A's brother W and that as a result A was neglected.

[24] Dr Hoffmann mentions that he documented no positive comments expressed by Mr and Mrs D about respondent during the interview. In his opinion they both show some concerning elements that agree with Lowenstein's concept of "parental alienation". This orientation on their part, while well intended, can have a serious psychological impact on a child in the long term. With reference to the work of the expert Lowenstein, Dr Hoffmann gave details of the immense destructive impact that may be the result of actions which destroy the capacity of one parent to encourage good contact between the child and the other parent. He mentioned that any behaviour should be geared towards praise rather than deprecation of the absent parent. In this way children will feel a close attachment towards the absent parent despite the separation and will allow children to feel that they are loved and cared for by both parents equally. As both Mr and Mrs D were very negative towards respondent, they also expressed views indicating that they were against respondent having access to A. In his view, this would have devastating consequences for A. The grandparents could, in summary, cause or contribute to, a situation where A is alienated from her mother, which must obviously be avoided.

[25] As far as A herself is concerned, Dr Hoffmann is very concerned about her scholastic progress, which in the past was bleak. It is common cause that she has experienced problems at all schools she attended and was described as a disruptive influence in the class. She also does not measure up to the standards required at the DHPS. However, since she has been in the Private School at Otjiwarongo, she has fared much better under the guidance of Mrs ID and she will pass her grade. Dr Hoffmann states that A has certain manipulative tendencies and a good ability to identify the necessary steps to use this element to her full advantage. She displays a tendency to bargain for herself the best position and to make use of selective information dissemination to obtain same if necessary. She does not make friends easily. She needs to improve her social skills. Dr Hoffmann is keen that the good progress A has shown at the current school be built upon, rather than moving A again and perhaps setting her up for failure.

[26] A acted naturally in the presence of her grandparents and obviously has a close bond with them. The same can be said of her interaction with her father, of whom she clearly is fond. Interaction with

respondent was spontaneous and without hesitation. She sat on respondent's lap and conversed for some time. From tests conducted Dr Hoffmann is able to conclude that A clearly identifies with respondent as the mother figure and that she wishes for a situation where her parents are not divorced and a time where all family members are re-united. She has not come to terms with the divorce yet, which calls for continued psychological assistance. She shows a definite ambivalence towards her mother, which needs to be addressed.

[27] Dr Hoffmann discusses several factors which need to be considered when reviewing the interim custody order. I shall mention them in shortened form.

(a) Present medication improved the health condition of the child according to the health care professionals that assisted A in this domain. This impetus needs to be continued and same practitioners should form the core of assisting the child.

(b) Reasonable access should be granted to respondent to rekindle the relationship with A, which was seriously affected during the school avoidance period. It is advised that respondent attends a parental guidance course to equip her with the necessary skills to handle the more complex personality of a child like A. This also requires development of a more routine based life style. She is prone to be unstructured and disorganised which can create adverse reactions in children who require order, structure and discipline. There are no specific disqualifiers that rule out that she should remain the custodian parent. She would also need to play a greater active role that W has more access and contact with his father. The same needs to be said for A who has, on a balance of probabilities, a bigger affinity for her father.

(c) Mr G seems to be less a problem than what has been said about him. He is a mature and balanced person who can play an important role in maintaining routine and stability in the home. While he remains a figure on the periphery as the friend of the mother, he might benefit from attending a similar parental guidance course to facilitate his understanding of children at the given age.

(d) Applicant is regarded as a competent parent. It seems though that he has relinquished his role to his parents at the moment. It is important to note that he is the parent and has to take

responsibility for his children. He is seen in equal terms to respondent as far as his overall psychological make-up as proper parent is concerned. Should he be awarded custody he needs to see that A is awarded the opportunity to make proper contact with the respondent. Presently the impression is created that custody has been transferred from respondent to Mr and Mrs D. The notion is that as long as parents are capable to perform their parental duties they should do so and not any other party.

(e) Mr and Mrs D played a big role in stabilizing the child during the interim period. They seemed to have taken charge of the whole situation and are not in the position to see that a child needs access to both parents. The impression is gained that they deliberately tried to cut respondent out of the equation. The specific approach showed on the projective techniques and suggest the possibility of parental alienation. This is devastating for the developing child. Both Mr and Mrs D have a significant role to play in the life of their grandchild as grandparents - who keep themselves distanced from any comments against the child's mother. Continuing to do so will not only erode the child's self-confidence but ruins the relationship with their grandchild once her level of abstract and independent thinking increases. Should the Court decide to delegate a prominent role to the grandparents it would be important to have the Minnesota Multiphasic Personality Inventory, Version 2 (MMPI-2) done on Mrs D as the 16 Personality Factor Questionnaire indicated some concerning elements which need to be investigated more thoroughly than what available time permitted. Some assistance to Mr and Mrs D to deal with their feelings towards respondent and how to work through them is strongly advised.

(f) Mrs ID probably played the most important role to stabilise A. She is not only competent in her field but has a balanced approach that she actively employed to help restore the confidence of the child in her mother. Thanks to her the child was re-oriented towards school and developed a routine. She did not try to be popular but focused on what is essential to bring the child back into contact with general expectations. Mrs ID's personality profile indicated that she is presently fairly worn out with all her tasks and obligations. It is not possible to rely

on her to fulfil the same role she played so far, i.e. providing lodging for A. She requires more space to deal with the demands of life in order to recuperate from a demanding job than what was possible with the additional responsibility of a child that can be demanding at times.

(g) In terms of further schooling it is seen imperative that A stays with her present school in Otjiwarongo. This affords her the best opportunity to eliminate all the scholastic backlogs. With the support of Mrs ID the possibility to enrol A within the hostel needs to be considered. This comes down to a previous consideration of the respondent with the added advantage that Anita already settled in the school. It remains imperative that Anita fully stabilises and is sufficiently empowered to meet the criteria of other academic schools before a school change is considered.

(h) Being in the hostel will still hold open the possibility to visit father, farm and grandparents. It is important that A is awarded the additional opportunity to visit her mother and brother as well and future arrangements should take this additional factor into consideration. Visitation rights to the grandparents would be subject to a drastic change in approach towards the mother of the child, even if all the reservations of the grandparents are valid in their own perception.

(I) Possibility of additional psychological interventions to work through the divorce of the parents and possible feelings of rejection by the mother following the incident that led to the interim order needs to be considered for A.

[28] At this stage I wish to mention some applicable legal principles. It is trite that the interests of the child are the yardstick by which the Court must resolve the matter before it. In *McCall v McCall* 1994 (3) SA 201 (CPD) at 203F KING J reminded the parties that "...the Court is determining what is in the best interest of their child. The Court is not adjudicating a dispute between antagonists with conflicting interest in order to resolve their discordance. The Court's concern is for the child."

[29] Regarding the question of *onus* in an application for the variation of a custody order the Court in *McCall* stated at 204I:

"INSOFAR AS THE INTERESTS OF THE CHILD PROVIDE THE CRITERION BY WHICH THE COURT'S DECISION IS TO BE MADE, THE ONUS IS PERHAPS LESS A DECISIVE FACTOR THAN IS ORDINARILY THE CASE, BUT IN MY VIEW THAT ONUS RESTS ON THE NON-CUSTODIAN PARENT, HERE THE APPLICANT, TO SHOW THAT THE PRESENT SITUATION IS DETRIMENTAL TO THE CHILD'S INTEREST AND THAT A VARIATION OF THE CUSTODY ARRANGEMENT WOULD BE TO THE CHILD'S ADVANTAGE."

The Court continued to state (at 204J-205F):

"In determining what is in the best interests of the child, the Court must decide which of the parents is better able to promote and ensure his physical, moral, emotional and spiritual welfare. This can be assessed by reference to certain factors or criteria which are set out hereunder, not in order of importance, and also bearing in mind that there is a measure of unavoidable overlapping and that some of the listed criteria may differ only as to nuance. The criteria are the following:

- (a) the love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child;
- (b) the capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires;
- (c) the ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings;
- (d) the capacity and disposition of the parent to give the child the guidance which he requires;
- (e) the ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs - generally speaking, the provision of economic security;
- (f) the ability of the parent to provide for the educational well-being and security of the child, both religious and secular;
- (g) the ability of the parent to provide for the child's emotional, psychological, cultural and environmental development;
- (h) THE MENTAL AND PHYSICAL HEALTH AND MORAL FITNESS OF THE PARENT;
- (i) the stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*;
- (j) the desirability or otherwise of keeping siblings together;
- (k) the child's preference, if the Court is satisfied that in the particular circumstances the child's preferences

should be taken into consideration;

(l) the desirability or otherwise of applying the doctrine of same sex matching.....; and

(m) any other factor which is relevant to the particular case with which the Court is concerned."

[30] Bearing in mind these criteria in coming to an ultimate decision, I rely heavily on Dr Hoffmann's report and recommendations, which have the general support of both parties. Although the Court cannot ignore Dr Kimberg's report, it is cast in overly strong terms and its tenor leaves the impression of being adversarial. These criticisms tend to detract from its value. However, I do bear in mind that she consulted with A at an earlier stage than Dr Hoffmann when the impact of the strained relationship between A and respondent must have been greater and before A, the parties and Mr and Mrs D had had opportunity to settle down after the initial changes in A's custody. She also did not have the benefit of consulting with respondent. In this regard it is important to note that Dr Hoffmann considers both parties to be suitable custodian parents. I mention this in particular for the benefit of the respondent, who is, understandably, somewhat on the defensive. I also accept that both parties love A very much and that she loves them in return. However, as was stated above, the issue here is the question of what would be in the best interests of

A. THIS IS NOT AN EASY MATTER TO DECIDE. I THINK I SHOULD MENTION THAT I INTEND HAVING THIS MATTER POSTPONED TO A FUTURE DATE ON WHICH THE ORDER I MAKE IS AGAIN REVIEWED IN THE LIGHT OF A FRESH REPORT, IF POSSIBLE, BY DR HOFFMANN.

[31] What bears much weight with me is the fact that A seems to have stabilized in her current circumstances with the applicant and that there is a marked improvement in her medical wellbeing as well as her scholastic performance. While it may be said that the applicant himself is not the author of all these achievements, it seems to me that the environment provided by his circumstances and the decisions he has made in regard to her medical treatment and education have borne fruit. He does not need to undergo any parental guidance course, whereas Dr Hoffmann recommends that respondent does so to improve her

parenting skills in order to cope with A's complex personality. I bear in mind that, as she has been the primary caretaker of A since birth, it may be easier for A to use manipulation to drive respondent to distraction, as appears to have happened on several occasions. I have decided not to make a specific order that respondent should complete such a course, but I am urging the respondent to do so, as the willingness to do so and improved parenting skills are bound to play a role in any future decision about the custody of A. It would, in any event, be to both her and A's benefit. If Mr G is to remain a significant person in their lives, it may also benefit him and the children to complete a similar course.

[32] In my view the recommendation of both Dr Hoffmann and Dr Kimberg that A continues to receive psychological interventions is an aspect on which the parties should co-operate to make it possible, as it clearly is in her best interests.

[33] It also seems to me that A should remain in the German Private School in Otjiwarongo as she is doing well there and can still receive guidance and assistance from Mrs ID after hours. A letter handed in during the hearing of the case on behalf of applicant without objection by the respondent indicates that the school and its hostel are able and willing to accommodate A there and that the special requirements for her medical care and diet can and will be met. This aspect was throughout a matter of major concern for the respondent and it seems to me that her fears in this regard may be laid to rest. This is more so in view of the general improvement in A's health since her move to Otjiwarongo.

[34] I have given consideration to the fact that A can be put in respondent's custody again and still go to school and hostel in Otjiwarongo. However, for the reasons already mentioned above, it seems to me that the circumstances and suitability of the applicant tend to favour an order that he continues to have at least interim custody of A.

[35] This brings me to a most important aspect and that is the concerns mentioned by Dr Hoffmann regarding the role played by the paternal grandparents and the issue of parental alienation. The concerns are grave and this Court shares them. However, Ms Campbell who appeared on behalf of the applicant, made it clear from the bar that the report was an eye opener to all concerned and assurances were given that the grandparents and applicant will do what must be done to ensure that the issue of the perceived alienation of respondent from A does not continue. I did not understand respondent to dispute these

intentions. Dr Hoffmann recommends that Mr and Mrs D be given assistance to work through their feelings towards respondent and that Mrs D undergoes further testing. My impression of the grandparents is that they are keen to do whatever is necessary and possible within their means to do the best for A. I urge them to also comply with the recommendations of Dr Hoffmann in this regard. This would mean that the applicant must play his role as father as required and not shift this responsibility to his parents. This is vital and should there be no improvement as regards this situation, this aspect will impact on his suitability as the custodian of A. This does not mean that he may not call on their support and assistance from time to time or that A may not visit them or stay with them, but the primary task should remain with the applicant. The grandparents must also realise that, should future psychiatric reports show that the necessary changes have not taken place to the best interests of A, a suitable variation in the order of this Court may be required. As the grandparents are not parties to this matter, I have decided not to order them to commit to any interventions, but rather to appeal to them as I have done.

[36] I HAVE NOTED THAT THE ISSUES OF THE SEPARATION OF THE SIBLINGS AND THAT A WILL BE IN THE CUSTODY OF A PARENT OF DIFFERENT SEX WERE NOT SPECIFICALLY ADDRESSED BY DR HOFFMANN. I AM CONCERNED ABOUT BOTH THESE MATTERS. AS REGARDS THE FIRST, IT SEEMS TO ME THAT EVEN IF A REMAINS IN APPLICANT'S CUSTODY THERE WILL STILL BE REGULAR CONTACT BETWEEN A AND W AND THAT THE ADVANTAGES OF HER BEING IN A HOSTEL WITH A MORE STRUCTURED ROUTINE OUTWEIGHS THE NEGATIVE ASPECTS OF THE SEPARATION. IT WOULD ALSO APPEAR THAT RESPONDENT WAS AT AN EARLIER STAGE ALSO INTERESTED IN PLACING A IN THAT HOSTEL, WHICH WOULD INEVITABLE HAVE MEANT THAT SOME SEPARATION TAKES PLACE. IN ANY EVENT, WHATEVER DECISION REGARDING CUSTODY IS MADE, IT WOULD SEEM THAT RESPONDENT'S PLANS TO PLACE A IN THE DPHS HOSTEL AND TO KEEP W IN THE WALDORF SCHOOL WOULD ALSO LEAD TO SOME SEPARATION. IN MY VIEW THE ISSUE OF THE SIBLINGS BEING SEPARATED MAY BE ADDRESSED BY THE PARTIES TAKING SPECIAL CARE TO ENSURE THAT AS MUCH TIME IS SPENT TOGETHER AS IS PRACTICAL AND POSSIBLE. FURTHERMORE, THE SCHOOL AND HOSTEL AT OTJIWARONGO APPEAR TO BE SMALL AND INTIMATE AND IN MY VIEW MAY VERY WELL HAVE GREATER POTENTIAL TO PROVIDE A WITH AN OPPORTUNITY TO SHINE HER LIGHT, WHICH APPEARS TO HAVE BEEN IN W'S SHADOW. ANY PROBLEMS ARE ALSO MORE LIKELY TO BE DETECTED SOONER THAN IN A LARGER, LESS INTIMATE SET UP.

[37] Mr *Vaatz* argued strongly that A is at an age where she needs her mother as custodian. I think there is merit in this submission, but bear in mind that the presence and guidance of other female persons at the hostel would also be to A's benefit. While this may not be an adequate substitute for a mother's guidance and special care, it is clear that the mother in this case also needs to be guided to some extent. This may very well be an aspect which should receive further attention in future and when A is older.

[38] The question of maintenance has arisen in passing. Obviously a variation of the divorce order may impact on this issue. However, the parties have not provided sufficient information for this Court to come to an informed decision of who should pay what. In the circumstances I shall rather make a suitable adaptation and leave it to the parties to exercise their further rights in the lower court should they deem it fit.

[39] Having considered the relevant issues, the following order is made:

1. The matter is postponed for review to a date during October 2011 to be arranged with the Registrar.
2. Interim custody and control of the minor child A is granted to the applicant.
3. The respondent shall have reasonable access to the minor child A, which shall include, but not be limited to, one week-end per month and the school holidays during May and August.

The applicant shall not be required to pay maintenance in respect of A to the respondent or in terms of any other existing court order.

5. The applicant shall continue to pay maintenance of N\$2500 in respect of the minor child W unless an order to the contrary is made by this or any other court.

VAN NIEKERK, J

Appearance for the parties

For applicant:

Adv C van der Westhuizen

Instr. by Du Pisani Legal Practitioners

LATER MS Y CAMPBELL OF DU PISANI

LEGAL PRACTITIONERS

For respondent:

Mr A Vaatz of A Vaatz & Partners