THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 20693 / 2024

In the matter between:

ST CYPRIAN'S SCHOOL	Applicant
and	
RV	First Respondent
ACV	Second Respondent

Coram: Wille, J
Heard: 22 November 2024
Order: 26 November 2024
Reasons: 29 November 2024

REASONS

WILLE, J:

INTRODUCTION

[1] The first and second respondent's daughter is at school and educated by the applicant. The first respondent is indebted to the applicant regarding outstanding school fees for the sum of R407 902,15.[1]

[2] The applicant is an independent school for the most part, receives no government funding and relies entirely on school fees and donations to fund its operations and educate learners enrolled at the school.[2]

[3] The respondents knew that the applicant relied on school fees to fund its operations and provide their daughter with an education. School fees must be paid for being educated at an elite private school.[3]

[4] The payment of school fees and the quantum thereof year on year was (and continues to be) regulated by an enrolment contract. This contract determined that the education of the first respondent's daughter by the applicant was dependent on the first respondent timeously paying for school and related fees incidental to the education of their daughter. Undoubtedly, the contract of enrolment records that a failure to pay the school fees following the agreed contractual terms constitutes a breach of the contract, which, if unremedied (and if these fees remained unpaid), would inevitably result in the exclusion of the respondent's daughter from the applicant school.[4]

OVERVIEW

[5] It is not the subject of any dispute that the first respondent is in arrears regarding the payment of his daughter's school fees in the sum of R407 902,15.[5]

[6] The applicant endeavoured over several years to accommodate the first respondent and, over the years (from time to time), engaged with him to restructure the

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1 Plus, interest thereon.
2 It does receive some government funding for Grade R.
3 This is not disputed.
4 The "Contract of Enrolment".
5 Affordability was the issue.

payment of these arrears. During the hearing, the first respondent conceded that affordability was the issue and that he could not pay the outstanding arrears.[6]

[7] Several payment indulgences were afforded to the first respondent, and these arrangements were reduced to writing through an acknowledgement of debt and various addenda.[7]

[8] It is common cause on the papers that the first respondent has not adhered to these agreements and has failed to comply with the payment terms he agreed to concerning the payment of the arrears due regarding his daughter's school fees.[8]

FACTUAL MATRIX

[9] The first respondent has been in arrears for over four years. A payment plan was negotiated by agreement about four years ago. After that, a plethora of correspondence followed concerning the payment of arrear school fees, and the first respondent did not comply with the undertakings given by him.[9]

[10] The *modus operandi* of non-payment and broken undertakings continued during this school year. It seemed to me that the last straw that broke the camel's back was the first respondent's flat-out refusal to sign the most recent restructuring agreement, which had been drafted in a last-ditch effort to record in writing the terms of the most recent agreement between the applicant and the first respondent so that his daughter could be enrolled at the school for her next academic year.[10]

CONSIDERATION

[11] At all material times hereto, the applicant took steps to procure the enrolment of the first respondent's daughter in an alternative school for the upcoming school year. This 'alternative' school is a government-subsidized school and is in the same suburb

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6 He averred that third parties in turn, owed him large sums of money.
7 Several written agreements were concluded with the first respondent in this connection.
8 The first respondent is simply not able to pay the outstanding arrears.
9 The applicant attempted over the years to structure a payment plan to benefit the first respondent.
10 The first respondent refused to sign this agreement.

where the respondents' son attends school.[11]

[12] This reserved place (at the alternative school) remains open for acceptance by the first respondent's daughter. Surprisingly and unashamedly, the first respondent says that this alternative school is 'unsuitable' because this school is not predominantly white, and this does not align with his daughter's cultural values.[12]

[13] Although this case involves the interests of a minor child (constitutionally infused), it is really about applying the contract law. I say this because (a) the contractual relationship between the parties has terminated, thereby vesting the applicant with a clear right to the interdictory relief it sought, (b) the applicant has a reasonable apprehension that unless interdicted, the first respondent will present his daughter at the school for the commencement of the next school year because he refuses to have his child educated anywhere other than at the applicant school, and (c) the applicant has no alternative remedy other than the interdictory relief it sought in the application.[13]

[14] As alluded to, I must consider the minor child's best interests in this case, not in isolation but within the peculiar circumstances of this factual matrix. Thus, I must, among other things, consider the reason why the exclusion of the learner is sought. In the context of the exclusion of a child from an independent school, it has now been established that:

> '…*Schools that provide basic education are under a constitutional duty not to diminish the right to basic education and at all times to act in the best interests of the child*…'[14]

[15] In the case of an exclusion of a learner based on the non-payment by parents of school fees, this issue has now been definitively determined by way of our precedent jurisprudence as follows:

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[11] St George's Grammar School, which is an excellent government-subsidized school.
[12] The less said about this argument, the better.
[13] Setlogelo v Setlogelo 1914 AD 221 at 227.

> '*… any decision to suspend or expel a learner during school term must satisfy due process. These include adequate warning prior to suspension or exclusion, provision to make arrangements to settle fees, or the opportunity to make arrangements to enrol a learner at a new school…*'[15]

[16] This, the applicant has done. I say so because (a) the applicant has secured an alternative good school for the education of the learner, (b) the applicant has on numerous occasions sought to negotiate a settlement with the first respondent, and (c) the first respondent has been given several opportunities to settle the arrear and outstanding school fees due to the applicant.[16]

[17] Before these reasons were delivered, the first respondent said I had not determined the *applicant's* application to strike out. The respondents were not legally represented; they were represented in person by the first respondent. Because of this, I prevailed upon the applicant's counsel not to proceed with the applicant's application to strike out and for all the papers to be considered. This was undoubtedly to the benefit of the respondents. This limited issue, which the first respondent says falls to be determined in our apex court, is exceedingly challenging to understand.[17]

[18] The first respondent also sought to appeal and set aside a previous court order about mostly the same issues that did not favour his case. Finally, the first respondent sought some species of declarator setting aside the entire education policy/framework/programme of the applicant (and it seems to be an attack in a broader sense as well) as unconstitutional and calls for the appointment of a committee to review the entire educational policy/framework/programme.[18]

[19] This is in circumstances where the respondents have yet to define the alleged constitutional issue, and several interested parties have not been joined to the application. This court is not obliged to trawl through the papers to seek out the alleged

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[14] AB and Another v Pridwin Preparatory School and Others 2020 (5) SA 327 (CC) at paragraph [93].
[15] NM v John Wesley Schools 2019 (2) SA 557 (KZD) at paragraph [70].
[16] No more could reasonably or legally be expected from the applicant in the circumstances.
[17] This "constitutional issue" remains undefined.
[18] Mr Justice Nuku's prior order refused the relief sought by the respondents.

constitutional issue the respondents may wish to pursue.[19]

[20] In a final throw of the dice, the respondents sought to argue some obscure points relating to completely unrelated specified legislation that had nothing to do with the issues for determination.[20]

[21] The first respondent submitted that he was 'coerced' into signing the acknowledgement of debt and the other supporting documents in which he undertook to pay the outstanding amounts due to the applicant. The jurisdictional facts supporting these allegations were completely absent from the papers presented to the court.[21]

[22] The arguments made by the respondents to the relief sought by the applicant were challenging to understand. The applicant had a good case. The first respondent's case was not good. Thus, I granted the interdict sought by the applicant, preventing the respondents from enrolling their minor child at the applicant's school for the next school year. I also granted an order for the first respondent to repay the arrear school fees with interest.[22]

[23] The applicant requested costs on the attorney and client scale. The written agreements provided for costs on this scale. However, I declined the request. I did this because the first respondent was in a difficult financial position, and using my discretion, I reasoned that costs on party and party scale would suffice in these specific circumstances. These are then the reasons for my order.[23]

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E. D. WILLE

Cape Town

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[19] Rule 16A of the Uniform Rules of Court.

[20] The first respondent raised unrelated issues in connection with Consumer Law and the National Credit Act.

[21] The instrument was emailed to the first respondent, and he appreciated the indulgence granted to him.

[22] The amount that was to be paid was the sum of R 407,902,15, together with interest thereon.

[23] The acknowledgement of debt made provision for costs on the attorney and client scale.