

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO.: 73662/16

On this the 4th day of October 2016

BEFORE THE HONOURABLE MR JUSTICE FABRICIUS

In the application of:

CENTRE FOR CHILD LAW

Applicant

And

**MEMBER OF THE EXECUTIVE COUNCIL FOR
SOCIAL DEVELOPMENT, GAUTENG**

First Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
HEALTH, GAUTENG**

Second Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
EDUCATION, GAUTENG**

Third Respondent

MINISTER FOR SOCIAL DEVELOPMENT

Fourth Respondent

MINISTER OF HEALTH

Fifth Respondent

MINISTER OF BASIC EDUCATION`

Sixth Respondent

THE UMEPHI PROJECT

Seventh Respondent

DRAFT ORDER

HAVING HEARD COUNSEL AND BY AGREEMENT BETWEEN THE PARTIES, IT IS ORDERED THAT:

1. The matter be disposed of by way of urgency in accordance with Uniform Rule 6(12);
2. [REDACTED] (hereinafter the “child”), in terms of section 171(1) of the Children’s Act, 38 of 2005 (hereinafter the “Act”) be transferred from the alternative care of Umephi Child and Youth Care Centre be transferred to the alternative care of Father Smangaliso Mkhathshwa Child and Youth Care Centre (hereinafter “FSM children’s home”).
3. The seventh respondent is ordered to provide the Gauteng Department of Social Development with:
 - 3.1 a comprehensive report of all the programmes that the child was exposed to and her progress.
 - 3.2 case file with a closing report;
 - 3.3 undertaking that Umephi will deregister the Statutory Case file.
4. The seventh respondent is ordered to provide the Gauteng Department of Education with a full record with regard to the child’s schooling (including Grade

R) and progress reports.

- 5 The seventh respondent is ordered to provide the Gauteng Department of Health with a full record of all prescription medication taken by the child whilst in its care.
- 6 The child will, in terms of section 168 of the Act, remain with Walter Sisulu Child and Youth Care Centre until the de-attachment period, as set out hereunder, is finalised:
 - 6.1 For three weeks: One day visits at FSM children's home accompanied by her social worker or auxiliary worker or child youth care worker;
 - 6.2 For two weeks: One night sleepover visits, preferably from Thursday to Friday;
 - 6.3 A five day mid-week sleepover.
 - 6.4 Depending on the child's de-attachment and adjustment to FSM children's home the five day mid-week sleepover will be repeated until she is permanently at FSM children's home.
 - 6.5 Personnel from the Walter Sisulu Child and Youth Care Centre will continue to visit and contact the child until at least one month after her transfer has been finalised to enhance the transfer.
7. The Head of the Gauteng Department of Social Development will assign an

additional child and youth care worker to the unit where the child will be placed for at least three months after her permanent placement with FSM children's home.

8. The child will be assessed by the Gauteng Department of Education and will be placed in a grade according to her abilities at Tsosoloso Special School, Soshanguve.

8.1 With due regard to the lateness of the academic year, the child will interact with her new classmates as soon as her transfer has been finalised, but will only start formal schooling in 2017.

9. The child's medical file with Dr. Helen Clark at Chris Hani Baragwaneth Hospital will be transferred to Weskoppies Hospital where she will be treated by Prof. Debbie van der Westhuizen, a child psychiatrist.

10. Advocate Elizabeth Baloyi-Mere of the Pretoria Society of Advocates is appointed as curator *ad litem* of ELIZABETH MAJOLA for the purposes of monitoring her placement at the FSM children's home and seeking any legal relief that may be necessary on her behalf in respect of her placement.

11. That as curator *ad litem* of the child, Advocate Elizabeth Baloyi-Mere is authorised and empowered:

11.1 to have access to and consult with the child;

- 11.2 to interview persons and officials who have relevant knowledge pertaining to the child and/or her placement;
- 11.3 to have access to official documents and records pertaining to the child, including medical records;
- 11.4 to negotiate on behalf of the child with interested parties and with any private or provincial or national governmental institution or official(s) for the appropriate treatment and accommodation of the child;
- 11.5 to settle any disputes that may arise subject to the approval by a JUDGE in chambers of this DIVISION; and
- 11.6 to approach a Judge in chambers of this DIVISION, on reasonable notice to the parties, authorising an appropriate alternative placement in the event that her placement at the FSM children's home breaks down.
12. That Advocate Elizabeth Baloyi-Mere be directed to compile a report, within one month of the date of this order, a second report on 31 January 2017 and a third and final report by 31 March 2017, detailing:
 - 12.1. what steps each of the respondents has taken to give effect to paragraphs, 6,7, 8 and 9 respectively, of this order;
 - 12.2. what further steps each of the respondents intend taking to give effect to paragraphs 6,7,8,and, respectively, of this order;

- 12.3 when the respondents intend taking each further step to give effect to paragraph 6,7,8 and 9 of this order; and
- 12.4 any other issue that the curator *ad litem* believes to be relevant to the child's placement and/or the suitability thereof.
13. The respective parties may, within one month after service of the said reports, to deliver their commentary on the said report.
14. The curator *ad litem* may, within a further period of two weeks after service of the reports, deliver her reply to the said commentary.
15. The first, second and third respondents to pay the costs of the *curato ad litem*.
16. The first respondent to pay the taxed or agreed party and party costs of this application, including the costs of one counsel.
17. The applicant is directed to supplement its papers for Part B of this application by 1 March 2017.

BY ORDER

AM Skelton

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RM Courtenay

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Counsel for the Applicant

JF Barnardt

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Counsel for the First – Third Respondents