SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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A B v Pridwin Preparatory School (1134/2017) [2018] ZASCA 150 (01 November 2018)

Today, the Supreme Court of Appeal (SCA), by a majority, dismissed an appeal against the judgement and order of the Gauteng Division of the High Court, Johannesburg. The judgment was written by Justice Cachalia and was concurred in by Deputy President Shongwe, Justice Skippers and Acting Justice Mothle. Justice Mocumie dissented.

The issue on appeal concerned the cancellation of two identical parent contracts by the the principal of a private school, Pridwin Preparatory School. The appellants concluded the contracts with the school on 8 March 2011 and on 9 March 2015 for their children DB and EB respectively. There were a series of events that led the school to cancelling the contracts that occurred over a period of eight months. In these events, the first appellant (AB) was involved in a number of altercations with school staff. The persistent harassment

of the school's staff members, according to the principal's affidavits, led to the cancellation of the contracts. On 30 June 2016, the principal wrote a letter to AB, informing him of the cancellation of the contracts. The principal explained that the incidents that AB was involved in amounted to breach of the contracts and as a result, the school was entitled to invoke the breach clauses in terminating the contracts. However, he elected to invoke the termination on notice clause, solely in the interests of the children so that their parents could make adequate arrangements to place them in another school. That clause permitted both the parents and the school to terminate the contracts on any ground on reasonable notice.

The appellants sought to have the termination of the contracts declared unconstitutional, invalid and unlawful, reviewed and set aside. They relied, mainly, upon two constitutional provisions, namely s 28(2), that the child's best interests are of paramount importance in every matter concerning the child, and s 29(1)(a), which confers the right to a basic education. They thus sought on appeal a finding that the school's decision to terminate the contract violated these provisions. Their second ground of attack was the termination clause be declared unconstitutional, contrary to public policy and unenforceable because it allowed Pridwin to cancel the parent contracts without hearing the parties or acting reasonably.

Justice Cachalia dealt with the challenges in turn. First, s28(2). He held that there was no dispute that Pridwin applied the best interests of the child principle when it terminated the contracts. He emphasized that the principal had considered the best interests of the children when he used the termination clause instead of the breach clause, as he was entitled to because of the continuous breaches committed by AB. In addition, the principal balanced the rights of the two children against those of all other children at the school as well as other stakeholders, in coming to his decision. He held held that the appellants insistence that they were entitled hearing before the contracts were cancelled focused on the interests of their children to the exclusion of all others. He rejected this approach and held that every person's rights are worthy of equal consideration. The court thus rejected the argument that s 28(2) gives rise to right to be heard before the parent contracts are terminated.

Second, s 29(1)(a). The appellants contended that Pridwin provides a basic education and is thus performing a constitutional function. Justice Cachalia found that the obligation to provide basic education is an obligation on the state, not one imposed on private institutions. Pridwin only has a negative duty not to unreasonably diminish a learner's access to existing education.

The court then dealt with the third challenge of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In the high court, the appellants contended that they had a right to be a hearing in terms of PAJA. The high court said that in cancelling the contracts Pridwin was not exercising a public function. It was exercising a contractual right that did not constitute administrative action and thus dismissed this argument. On appeal, the appellants contended that there was 'governmental' interest in the decision to cancel the contracts. Justice Cachalia held that Pridwin was not accountable to the public for a decision to terminate a parent contract. Neither was it answerable to any public authority for the manner in which it terminates the parent contracts.

Justice Cachalia also held that the School had acted reasonably in cancelling the contracts and that termination clauses in private contracts of the kind in issue in this case were not contrary to public policy and therefore not unconstitutional.

In a dissenting judgment Justice Mocumie found that the School ought to have given a hearing to the parents before terminating the contracts and had acted unreasonably in doing so. She also found that the termination clause contrary to public policy. She would have accordingly upheld the appeal.

In the result the appeal was dismissed with costs, including the costs of two counsel.