

Contact rights and Covid-19

In these unprecedented times, many South Africans are still trying to adjust to life under lockdown amidst the Covid-19 pandemic. In an attempt to limit the spread of the virus, we have been forced to retreat to our homes in compliance with the President's regulations.

“For the period of the lockdown, every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant or seeking medical attention.”

Being confined to one's home for 21 days is however not without complications and have many South Africans been confronted with the question of where the lockdown leaves parents entitled to exercise contact with their children which are not placed in their care.

It is probably safe to say that most parenting plans or court orders do not contain any clauses titled “in case of state of disaster”. The Minister of Social Development, Lindiwe Zulu, has subsequently clarified that children may not be transported between their two parents and will have to remain in the care of the parent they found themselves in at the time of the lockdown.

Although one parent will not be able to exercise contact physically, parents are asked to navigate these new waters with understanding and cooperation and is this where communication between the parents become key.

Parents are asked to move away from strict and stringent compliance with previous court orders or parenting plans to allow the other parent to exercise telephonic contact as frequently as possible. Facetime, Skype and video calls are also strongly encouraged to ensure that parents are able to maintain the bond with their children during this time.

It is the responsibility of both parents to create a safe space for their children who may already be anxious and confused in light of the current circumstances - this means having access to both parents, albeit telephonically, as long as it is in the child's best interests.

Our courts, which are currently functioning at minimum capacity, will only be dealing with matters which are inherently urgent and will therefore not intervene in most parental disputes at this stage. Parents should however not make the mistake of thinking that their conduct during this time could not be held against them at a later stage - it may be interpreted as a clear indication of a parent's attitude towards the other and potential signs of parental alienation.

As the world prepares to fight this invisible enemy, we are reliant on the cooperation and understanding of parents and our fellow citizens during the lockdown. Children should be spared any unnecessary hardship resulting from the virus and will this responsibility fall on the shoulders of their parents.

Nicola Le Maitre