# The Parents' obligation to make joint decisions

As a family law attorney, I have the privilege—and sometimes the heartache—of walking alongside parents during some of the most emotionally charged moments of their lives. One of the most crucial, yet often misunderstood, aspects of post-separation parenting is the shared responsibility in making decisions that shape a child's life. Whether parents are married, divorced, or never partnered, the law recognises something far greater than their relationship's status: the child's best interest.

The Children's Act reminds us that parenting is not a role one can step in and out of when it's convenient. It is a lifelong commitment that demands cooperation, communication, and respect for the other parent's role, no matter how strained that relationship may be. This article explores the importance of joint decision-making, the legal consequences of acting unilaterally, and the pathways available when cooperation feels impossible. It is a call not only for legal compliance but for empathy and maturity, for the sake of the children who depend on both parents to guide them through life's most formative decisions.

The Children's Act provides that parents with parental rights and responsibilities (especially guardianship) must participate in the child's life decisions. Whether the parents are together, separated or divorced, the obligation remains to make joint decisions. One parent may not make decisions in a child's life unilaterally without involving the other parent.

When referring to joint decisions, it is essential to pause and mention that this does not include the child's daily routine, like bedtime, eating times, etc. These basic daily decisions will vest with the primary caretaker. Joint decisions refer to decisions regarding schooling and education, therapy, religion, relocation, medical decisions other than emergencies, extramural activities, relationships, etc.

But what would happen if a parent unilaterally makes decisions regarding these critical aspects of a child's life, without consulting the other parent? Would such decisions bind the other parent?  Would they have any recourse if they simply

cannot agree with the decision?

In the recent matter of A.J.E v W.R.E and Others (2025/006632) [2025] ZAGPJHC 50, which was heard in the Johannesburg High Court, a mother was forced to approach the court after the father unilaterally removed the children from the school they were attending. According to the father, the school was too expensive. He unilaterally decided that they must attend a more affordable school. The parties were divorced, and in terms of their divorce order, they were to make educational decisions jointly.

The court was disappointed with the father and ordered an immediate reversal of his unilateral decision, even though his decision was finance-based. The court also ordered him to pay the costs of the mother's urgent application, as the court found him vexatious in taking a unilateral decision.

The matter emphasises a parent's rights when such a parent does not condone a unilateral decision by the other parent, which is supposed to be jointly decided by both parents. Where a parent takes a unilateral decision, the other parent can challenge the decision in court. The court can (and often will) reverse the decision. If a parent takes a unilateral decision contrary to a court order, that parent is also in contempt of court and can receive a fine.

In cases where unilateral decisions are constantly made to alienate the other parent from the children, we have seen the court taking severe action, even removing the children from that parent's care, to ensure that both parents have input in decisions that must be made jointly.

But what would the position be if a parent needed to make a unilateral decision due to the other parent's refusal to cooperate? In such instances, the court will consider the circumstances under which the decision was made. One should remember that the court will always want a decision made in the child's best interest.

Joint decisions are a vital part of parenting, no matter how frustrating. Good communication ensures that joint decisions can be made effortlessly even after a separation. However, we have experienced that this is not always possible.

Should communication have broken down between parents to such an extent that the parents cannot make decisions jointly, we advise that the parents make the

decisions with the assistance of a mediator, who will facilitate the negotiation process as an objective and qualified third party.

If you are struggling with a similar situation, we advise you to contact us to discuss the difficulties you are experiencing and to find a solution to your problem.

Elmari Richter, Van Velden – Duffey Inc.