

'Virtual' visits

Roy Bregman

'Virtual Visitation is the use of electronic communication tools like e-mail, instant messaging, video conferencing, video calls, video mail, etc. over the Internet or any other communication media. Virtual visitation is intended to 'supplement', never replace, in-person time between a child and both parents' (www.InternetVisitation.org)

I am often consulted by a concerned parent (usually the father) to advise him whether he should give his consent to his ex-wife's relocating to another country with his children.

It has become trite law (eg, *Ford v Ford* [2004] 2 All SA 396 (W)) that the best interests of the child or children, and not the parent who has custody have to be considered before relocation. Even if the mother has made adequate arrangements for the move, which would imply that the child would get a proper (or even better) education, standard of living and way of life it may not necessarily be in the child's best interest to be separated from her father for most of the year.

Even though my client might believe intellectually that his child's best interests would be served by giving his permission he is naturally apprehensive that his child would soon forget him.

The antediluvian days of communicating via letters have long gone to be replaced by the era of Voice Over Internet Protocol (VOIP) that enables the parent and child to talk to and see each other via the Internet at local telephone rates. But many lawyers and judges are still unaware of this technology.

So my client does have the option of 'virtual visitation' – the chance to talk with his daughter through an internet video connection as often as they like. There is, of course, no substitute for real visits but these chats could sustain them inbetween their face-to-face visits, which might happen only three weeks per year.

Now my client can see his daughter's development (that new tooth, haircut and outfit) on a daily basis even though he cannot see her in person.

Although other countries (http://www.internetvisitation.org/web_pages/legislation.html) have enacted legislation that makes virtual visitation an official option, South Africa has not. However, I submit that our courts would be disposed to making virtual visitation a part of a divorce agreement. The only practical consideration is how the father enforces his rights from Johannesburg when his ex-wife has reneged on the arrangement in Sydney.

For more information on how to use virtual visitation as a part of a divorce decree or parenting plan, the authors of Virtual Visitation will e-mail you a free. PDF handbook that discusses all aspects of virtual visitation, from basic 'How To' and 'What to Use' to sample decree wording: E-mail: Handbook@InternetVisitation.org

Using reported judgments, I have drafted a few clauses catering for virtual visitation via telephone calls, e-mail, instant messaging and video connections. What follows is a mere guideline. It applies to the father as defendant but it could apply equally to the other parent. Also, it contemplates that the children are young and need parental assistance. The defendant might have to agree to pay for a computer consultant to set up a compatible computer system in the plaintiff's home to enable the defendant and the children to communicate on the Internet and by fax.

Telephone privileges and internet communications

The parties agree that as the plaintiff is relocating to Australia it is in the best interests of the children to supplement periodic in-person visits with the defendant through contact with the children via telephone, fax and web-based communication by means of camera-computer technology and regular e-mails.

Each party should set up video conferencing in their respective homes at their own cost and ensure that those systems are fully operational at all times. Alternatively, the plaintiff should ensure that the children have a computer with a printer in their bedroom plus a telephone with an answering machine and a separate dedicated phone line with broadband connectivity.

Alternatively, the defendant should provide the plaintiff with a computer and pay for a service plan for e-mails and video conferencing and be responsible for all costs and expenses for future upgrades, and to pay for DSL, or greater quality, connection for the plaintiff for two years.

The defendant should have liberal telephone privileges and Internet access to the children during reasonable hours. The plaintiff shall assist the children when the defendant and the children participate in video conferencing or the exchange of e-mails.

Alternatively, from time to time the parties shall agree on an age-appropriate and a reasonable schedule of communication by telephone, Internet, and fax.

Alternatively, the defendant can initiate three telephone or Internet video conferencing communications with the children each week at reasonable times, and the children are allowed to communicate with the defendant whenever they desire, for a reasonable duration.

Until they can read and write, the plaintiff undertakes to send regular e-mails to the defendant on behalf of the children and to print all e-mails and faxes sent by the defendant to the children. The plaintiff shall keep these in an appropriately marked folder and read them to the children whenever received and when asked to do so thereafter.

The plaintiff undertakes to give the defendant reasonable notice of any and all special events for the children. If the defendant is unable to attend the event, the plaintiff will videotape the event and send the tape to the defendant.

For the more technically savvy, the defendant shall build a web site, which should include the use of camera-computer technology to give the defendant, his family and friends, the ability to communicate directly with the children on a regular basis and review their school work and records and other extra-curricular progress online. The plaintiff undertakes to upload files to the website on a regular basis.

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