

## **INTERNET USED AS A VISITATION TOOL FOR DIVORCED PARENTS**

As we all know, the Internet has no borders. Travelers are able to communicate with their families using e-mail and videoconferencing and if parents are away, children can keep them up to date with their studies by sending their homework to them by e-mail, rather than the more expensive fax system.

At the Four Seasons Pierre Hotel in New York, three types of instant messaging on computers have been installed for travelers wanting to connect with home in a fast and efficient way. A major hotel chain in the United States of America is negotiating with Vialta Inc to provide guests with Vialta's Beamer, a picture-frame-sized video device that connects to a standard phone, in order for guests to communicate visually with their families.

Cross-border communication has now been taken a step further. Any father or mother who is divorced, with children, and who has access to the internet, may be able to logon and have virtual access to the Internet, says Michael Judin, Director of Goldman Judin Maisels Inc, Attorneys of Johannesburg.

A recent court decision in the United States of America appears to be the first in that country, and perhaps the first in the world, in which the court has allowed the Internet to be used as a visitation tool, thus allowing virtual access.

The case, which was heard by the State Appeals Court in New Jersey, arose when a former husband objected to the former wife and mother taking their nine-year old daughter from New Jersey to California. The mother offered to build a website for father and child to communicate and the court held that the Internet would provide a creative and innovative way for the divorced father and his daughter to keep in touch.

The court held that the online visits through a website with video capability will not cost the divorced father any of the time which he is entitled to spend each year in person with his daughter.

Although the ruling has been attacked by certain groups in the United States of America, this, nevertheless, opens a fascinating and exciting new field, according to Judin, and it will be interesting to see how South African courts will rule in this regard.

Following the judgment, Judin says that his firm is building into divorce settlement agreements drafted by them a clause, obviously if the parents agree, which provides for the building of a website with video capability, enabling the divorced parent to keep in touch with the child or children. Judin says that the clause contains restrictions regarding issues such as time when it may be accessed, content and other similar issues. An example of a clause drafted and used by Judin is as follows:

- 1 the custodian parent agrees to the non-custodian parent building, at the cost of the non-custodian parent, a website for the non-custodian parent and the minor child to communicate (below ~~A~~the website@);
- 2 the website may have video capability;
- 3 the non-custodian parent shall be obliged to obtain the custodian parent-s consent to the content of any documents, information or the like placed on the website by the non-custodian parent, which consent shall not be withheld unreasonably. Such consent shall not be required in respect of normal communication in the ordinary course between a parent and child;
- 4 the custodian and non-custodian parents agree that the minor child shall only have access to the website on the following days and at the following times:

- 4.1 days: xx
- 4.2 time: xx
- 5 It is recorded that the online visits through the website by the non-custodian parent will not cost the non-custodian parent any of the access to which he/she is entitled to spend, in person, with the minor child.
- 6 The non-custodian parent shall pay to the custodian parent an amount of Rx (xx Rand) per month as a contribution towards the cost of the minor child's Internet access for the above purposes.

Judin further explains that in South African law, a judge of the High Court is the upper guardian of all minor children and that all agreements between divorced parents regarding issues such as guardianship, custody and access are subject to the approval of a judge of the High Court, acting on the recommendation and advice of the family advocate. Judin says that in years gone by, it was common for divorce agreements to specify in chapter and verse format, the times during which and the manner in which access would be exercised by the non-custodian parent, but latterly it has become more common for divorce agreements simply to state that the divorced parent will have access at all reasonable times, providing that same does not interfere with issues such as the child's education, religious, social and extra-mural activities. Where the parties are unable to agree after the divorce, then either party can apply to court for relief and the court will normally show its displeasure where a party has acted unreasonably and not in the best interests of the minor child by awarding costs against that party.

Judin says that, as alternative dispute resolution methods such as mediation and arbitration have become popular around the world for many reasons, many parties are seeking to resolve the access issues in this manner, rather than taking the expensive route of coming before a judge in the High Court

Concludes Judin: it should always be borne in mind that it is the husband and wife who are getting divorced and not the children. Whatever ties the former couple break, the one tie that they can never break is that they remain mother and father of the same child. Parents who make this a priority and bear it in mind at all times can provide stable one parent homes for a child and indeed, says Judin, a child growing up happily with one parent, with proper and undisturbed access from the divorced parent, can grow up a more balanced child than one who lives in an unhappy home.

And yet another facet of our lives moves into cyberspace. Cyber-therapy, cyber-friends, cyber-relationships and now cyber-visitation rights. And after the State of Florida, no doubt cyber-elections!