



FOSTER CARE – THE DO'S AND DONT'S

1. Introduction

Foster care – refers to children being in need of care and protection and being provided with the necessary care and protection.¹ According to Government website, the definition of foster care is as follow:

Foster care is the temporary placement of a child who is in need of care and protection. The child is placed in the care of a suitable person who is not the parent or guardian of the child.²

In terms of section 46 of the *Children's Act* 36 of 2008 (herein after "*the Children's Act*") there are specific orders the Children's Court has to rule on, this includes an alternative care order, which includes an order placing a child in the care of a person designated by the court to be the foster parent of the child.³ A person may have identified a child in their community which they believe is in need of care and protection and which they would deem necessary to place in foster care, often seen as a good Samaritan in their

¹ Section 156(1)(e) of the *Children's Act* 38 of 2008.

² <https://www.gov.za/services/adopt-child/foster-care> visited on 18 September 2022.

³ Section 46(1)(a)(i) of the *Children's Act* 38 of 2008.

community, this task is much easier said than done. The purpose of this article is to equip such person in not only knowing what they may be getting themselves into, but also what possible obstacles there may be and how to overcome them.

2. Application process

Firstly it must be determined whether you may approach the court; in terms of section 53 of the *Children's Act* either the child or any person acting in the interest of the child may approach the court to make an order as referred to hereinabove.⁴ The child of interest must qualify to be fostered, this means the child must be under the age of eighteen (18) and that child must be in need of care and protection.⁵ Examples of a child in need of care and protection, includes a child who lives or works on the streets or begs for a living, a child who has been exploited or is in a state of physical or mental neglect.⁶

The application has to be made to the nearest Department of Social Development office or an accredited child protection organisation to foster a child. Your application must include an affidavit stating that the child is in need of care and protection and why, the child's birth certificate, your identity document and if applicable the parents' death certificates.⁷ A social worker will then be appointed and do an investigation which involves the applicant, child and parents or guardian, where after the social worker will compile a report to present to the Children's court. The presiding officer at

⁴ Section 53 of the *Children's Act* 38 of 2008.

⁵ Section 150 of the *Children's Act* 38 of 2008.

⁶ Section 150 of the *Children's Act* 38 of 2008.

⁷ <https://www.gov.za/services/adopt-child/foster-care> visited on 18 September 2022.

the court will make a finding based on the social worker's report and determine whether the child is in need of care and protection. The presiding officer will then finally, if the application was successful issue a court order approving the placement of the child with the foster parent. The court order will show the names of the foster parent, the foster child and the duration of the foster placement.⁸

3. Possible obstacles

The first obstacle that a person applying to become a foster parent may face is the financial impact it can have, therefore the government of South Africa allows one to apply for a child welfare grant which shall not be unreasonably be withheld and can be applied for on their website.⁹ The second obstacle a person may encounter is one where the social worker doesn't deem the child as a child with the need of care and protection. In the case of *SS v Presiding Officer of the Children's Court: District of Krugersdorp and Others*¹⁰ the Child Commissioner erred in finding that the child was not one who need care and protection, the Appellant's in this matter however relied on the abovementioned sections of *the Children's Act* in proving that the child was one in need of care and protection, namely that the child falls within the meaning of section 150(1) (a) of the *Children's Act*, which reads as follows:

(1) A child is in need of care and protection if, the child-

⁸ <https://www.gov.za/services/adopt-child/foster-care> visited on 18 September 2022.

⁹ <https://www.gov.za/services/adopt-child/foster-care> visited on 18 September 2022.

¹⁰ *SS v Presiding Officer of the Children's Court: District of Krugersdorp and Others* (14/1/4-206/10, A3056/11) [2012] ZAGPJHC 149; 2012 (6) SA 45 (GSI) (29 August 2012)

(a) has been abandoned or orphaned and is without any visible means of support;

(b) displays behaviour which cannot be controlled by the parent or care-giver;

(c) lives or works on the streets or begs for a living;

(d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;

(e) has been exploited or lives in circumstances that expose the child to exploitation;

(f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;

(g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;

(h) is in a state of physical or mental neglect; or

(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose

control the child is.¹¹

4. Conclusion

Applying to become a foster parent comes down to proving one section and that is in terms of any provision in section 150(1) of the *Children's Act*. Fostering a child may not be an easy process, but if a person can prove that a child is really in need of care and protection there shall be no doubt by the Children's Court when giving an order for a person to become a foster parent and provide exactly that – care and protection.

Contact Malan Lourens Viljoen Inc. for any help with applying to become foster parents.

Annami den Heyer (B Com Law & LLB) - Candidate Attorney

This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your legal adviser for specific and detailed advice.

¹¹ Section 150 of the *Children's Act* 38 of 2008.