

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2019/15250

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES:
NO
3. REVISED: NO
-

27 SEPTEMBER 2022

In the matter between:

T[...] S[...] F[...]

Applicant

And

S[...] C[...] D[...]

Respondent

JUDGMENT

OLIVIER AJ:

Introduction

- [1] The High Court is the upper guardian of minors. In this capacity the court has an obligation always to act in the best interests of minor children. This principle is the prism through which this application and counterapplication should be considered.
- [2] At the heart of this matter is a little boy, C, (“the child”) who is presently 7 years old. He was born to the Applicant and Respondent on 8 April 2016. His parents have never been married to each other.
- [3] The Applicant is T[...]S[...]F[...] (“the father” or “the Applicant”). He was formerly in a relationship with S[...]C[...]D[...] (“the mother” or “the Respondent”) for a period of six years, which terminated in January 2017. The Applicant is also the father of two sons (aged 16 and 13 years respectively) born of a previous relationship, who live with him.
- [4] The matter has a long and protracted history. The parties have engaged in an acrimonious tug-of-war for many years over the exercise of the father’s contact with the child. The matter has been considered in various *fora*, including the High Court and, most often, the Children’s Court. The Applicant’s parental rights and responsibilities are not in dispute, only the exercise of contact.
- [5] The Respondent has over the past three years made several serious allegations of sexual abuse against the Applicant, the most recent of which led to the Goodwood Magistrate’s Court, on application by the Respondent, suspending the Applicant’s unsupervised sleepover contact with the child. This has led to the present application. The Applicant has not seen the child since July 2021.

[6] The Applicant prays for of the following order:

1.1 that the Family Advocate's report attached to the Founding Affidavit and marked as Annexure "FA1" is made an order of Court;

1.2. that the Respondent is to return from Cape Town to Johannesburg with the minor child, C[...] S[...] F[...] ("the minor child"), in order to comply with the recommendations stated in the Family Advocate's report set out in paragraphs 50, 50.3, 50.4, 50.5, 50.9, 50.9.2 and 50.9.5;

1.3. that the Respondent is interdicted from approaching any Court other than the above Honourable Court to suspend any contact arrangements for the Applicant as set out in the Family Advocate's report;

1.4. should the Respondent be concerned regarding the care and wellbeing of the minor child at any stage, she is only to approach the above Honourable Court for any relief that she may seek regarding the minor child;

1.5. that the Respondent is to undergo an investigation by a psychologist, who must compile a report on the aspect of child alienation and the wellbeing of the minor child while in the care of the Respondent;

1.6. the Respondent is to pay the costs of the application.

1.7 Further and/or alternative relief.

[7] The Respondent filed a counterclaim, praying for the following relief:

1. That the Applicant's contact with the minor child, C[...] F[...] be deferred pending the finalisation of the criminal investigation and further criminal proceedings under Case numbers 386/06/2021 and 106/03/2021.

2. That the Applicant be ordered to pay the costs of this Application in the event of opposition.

Background

- [8] The tussle stretches as far back as October 2017, when the child was only 18 months old. In that month the Children's Court in Randburg (Magistrate Reid) made an interim order allowing the Applicant contact with the child, including weekend contact, following an application by the Applicant to exercise his right of contact with the child. The child was too young for sleepover contact at the time.
- [9] According to the Applicant, he had to contact the South African Police Services (SAPS) on occasion to assist him in enforcing the court order when contact was refused by the Respondent. The Respondent obtained a protection order against the Applicant in November 2017. The Respondent moved to Cape Town with the child that same month. She returned in June 2018.
- [10] In June 2018 the Respondent accused the Applicant of driving under the influence of alcohol. On 27 September 2018 the matter was referred to Tutela Family Care Centre, Linden, for investigation. The interim court order granted on 11 October 2017 was temporarily suspended and replaced with a new order allowing contact during the day over weekends, until finalization of the investigation. Week contact was temporarily suspended.
- [11] The Tutela report was released in November 2018. It concluded that the minor child was not in need of care and protection, and that the parties should be referred to a social worker or the Family Advocate's office for mediation and a parenting plan.
- [12] The matter was again before the Children's Court, on 24 January 2019. A postponement was granted to allow Icarus Mediation and Therapy to assist

the parties to resolve their issues. The order of 27 September 2018 was confirmed by the court.

- [13] According to the Applicant, the Respondent announced on 15 February 2019 that she was relocating to Cape Town with the child.
- [14] On 29 April 2019 the Applicant launched an urgent application in the High Court in Johannesburg to prevent the Respondent from taking the minor child to Cape Town. The Respondent was interdicted from relocating to Cape Town, pending an investigation by the Family Advocate to determine if relocation to Cape Town was in the best interests of the child. In addition, the Family Advocate was ordered urgently to compile a report and parenting plan.
- [15] In May 2019 the Respondent accused the Applicant of smacking the child. Tanya Kriel, a private social worker, was appointed to investigate the alleged physical abuse.
- [16] Ms Kriel's report was released in October 2019. She concluded that she was unable to find any evidence of the minor child being fearful of the Applicant or that he was deliberately being hurt by the Applicant. The child was comfortable in both parent's homes. She further recommended phased-in contact with the Applicant and the development of a parenting plan. (See below.)
- [17] In January 2020 the Family Advocate's report was released. It recommended that the Respondent may relocate to Cape Town, subject to certain conditions and assessments; the father's contact with the minor child was to be exercised as frequently as possible subject to any relocation. (The report is dealt with more comprehensively below.)
- [18] In February 2020 the Respondent accused the Applicant of sexual abuse of the child. The Teddy Bear Clinic investigated and released a report in this regard on 22 June 2020. No signs of sexual abuse were found. (The report is considered more comprehensively below.)

- [19] On 14 February 2020 the order granted on 24 January 2019, was varied by Magistrate Kopedi: the Applicant's visits with the child were to be supervised by the Respondent's brother, the Respondent, or the Respondent's mother.
- [20] On 28 July 2020 the Respondent advised the Children's Court that she wished to challenge the Teddy Bear Clinic report.
- [21] On 25 August 2020 the matter was postponed as the psychologist was not in court as she had not been subpoenaed.
- [22] At the next appearance, on 7 September 2020, the Children's Court set aside the previous interim order and ordered that the Applicant be granted unsupervised sleepover contact, every alternate weekend.
- [23] On 8 October 2020 the Respondent's attorney informed the Children's Court that the Respondent agrees to contact and that she no longer wants to pursue the sexual abuse matter. The magistrate referred the parties to the Family Advocate for mediation and a parenting plan. The interim order was extended.
- [24] On 30 November 2020 the Respondent informed the Children's Court that she did not wish to withdraw the sexual abuse allegations against the Applicant and that she wanted to proceed with that application. The magistrate ruled that it would not be in the best interests of the child to be subjected to further assessments, and further that the "[m]atter is postponed to 09/03/2021 for the forensic psychologist and for hearing of the matter (sexual abuse allegations)."
- [25] Following sleepover contact in January 2021 the Respondent accused the Applicant of sexual abuse. She reported the matter to the South African Police Service (SAPS) in Elsie's River.

- [26] On 9 March 2021 the Respondent conveyed the alleged abuse to a different magistrate, Ms Etchell. According to the Respondent, the magistrate refused to listen to the allegations. Ms Arend was cross-examined by the Respondent's attorney. The magistrate ordered that the Applicant be allowed two nights sleepover contact when in Cape Town. The matter was postponed to 11 May 2021.
- [27] On 11 May 2021, the Respondent was absent. The matter was postponed to 7 July 2021 for the Respondent and her attorney to be present.
- [28] During June/July 2021 the Applicant had sleepover contact with the child in Cape Town. Following the visit, the Respondent again accused the Applicant of sexual abuse. The Respondent reported the alleged abuse to SAPS, followed by a successful application in the Goodwood Magistrate's Court (sitting as a Children's Court), Cape Town on 16 July 2021, under a new case number, to suspend the Respondent's sleepover contact with the child. The order of March 2021 was suspended. (See below.)

Sexual abuse allegations

- [29] The first allegation was levelled against the Applicant in January/February 2020 after the child's return from a weekend contact with the Applicant in January. According to the Respondent the child refused to go to school and conveyed certain information to the Respondent pointing to sexual abuse. The child was examined by Dr Dorman on 28 January 2020, who made no concerning findings (see Teddy Bear Clinic Report below). The Respondent reported the alleged abuse to the Family Advocate, but her report had already been compiled and was released the following day.
- [30] The Respondent approached the Children's Court and the Applicant's contact was changed from unsupervised contact to supervised contact. Nicola Arend (Teddy Bear Clinic) investigated the complaint and found no signs of abuse; the

Applicant's unsupervised contact was subsequently restored. Her findings are recorded below.

- [31] Following sleepovers over late December 2020 and early January 2021, the child allegedly said things that raised the Respondent's suspicions about possible abuse. This prompted the Respondent to report the matter to the Elsie River SAPS on 3 March 2021, under case number 106/03/2021.
- [32] Following a sleepover from 15-17 June 2021 in Cape Town, where they stayed with friends, the child reported a sore bum to the Respondent. The mother inspected the child and noticed cuts. The child told her things which against raised her suspicions. She contacted Captain Fortuin, who was involved in the first investigation, who referred the Respondent and the child to the Victoria Hospital Forensics Unit. The child was examined by Dr Clare Floweday. The doctor completed a J88 form. Although the doctor noted that there was no evidence of trauma on general examination, she recorded that there was evidence of blunt object penetration of the anus on clinical examination. The child subsequently received anti-retroviral drugs and was referred to the Rape Crisis Center for counselling.
- [33] Doctor Floweday also completed a Form 22 (*Reporting of abuse or deliberate neglect of a child*). Under the heading "Brief explanation of occurrence(s)", she noted: "Previous case made of similar episode in 2020. Now Caleb gives history of dad putting finger in anus. Trauma to anus confirmed on examination." She concluded that "given this is not first incident and positive findings on examination, I strongly advise child not to be left alone with his dad until case has been investigated."
- [34] The Respondent stated in her answering affidavit that she met with Sergeant Daniels on 21 June to give her statement and to open a docket. According to the Respondent, she was told by Captain Fortuin that the complaints were being investigated under one case number, 386/06/2021. The investigation was still active at the time of this hearing.

[35] The Goodwood Children's Court in Cape Town was subsequently approached. In support, the J88 form, form 22, a report by Ms Manuel, a social worker, and a statement by the child taken by Captain Fortuin outlining the alleged abuse, were submitted to the court. Magistrate D Lakey ordered as follows on 16 July 2021: "The interim order made in the Randburg Magistrate Court, Gauteng Province, under case number 40/2020 on the 9 March 2021, paragraph 6, is hereby suspended until finalization of the court order aforementioned." (sic) Paragraph 6 of the previous order reads: "Father allowed 2 night sleepover when [Mr F[...]] is in Cape Town." The Respondent subsequently terminated all contact between the Applicant and the child.

Reports

Tutela Family Centre (November 2018)

[36] The investigation by Mr T S Mudavanhu, a social worker, was the result of an allegation by the Respondent that the Applicant had smelled of alcohol when he dropped off the child following a visit.

[37] The report expressed the professional opinion that the child was not a child in need of care and protection. The report highlighted the constant conflict between the parents. The social worker recommended that the parents be referred to a social worker in private practice or the Family Advocate's office for mediation and a parenting plan. The Applicant was advised to attend a programme on responsible alcohol use at SANCA. (The report did not specifically find that the Applicant had consumed alcohol in the presence of the child, or that he had been driving under the influence of alcohol. The Applicant strenuously denied the allegations.)

Icarus Mediation and Therapy (January 2019)

[38] This was an attempt at mediation between the parties, in line with the recommendations in the Tutela report. According to the Applicant, they held two sessions. The first session had gone well, but the second session was terminated when it “got out of hand”.

Tania Kriel (October 2019)

[39] Ms Kriel is a social worker in private practice. She assessed the child based on concerns of the Respondent that the Applicant was smacking the child (physical abuse). She found that the parents distrust each other and that their conflict will impact negatively on the child should it continue. She could not find any evidence of the child fearing his father or that he was deliberately being hurt by his father. She concluded that the child was comfortable in both homes and interacted freely with the family members at each home. The relationship between the Applicant and the child was of such a nature that he was comfortable in the care of his father and more contact should be phased in. The report made the following specific recommendations:

The biological parents should co-parent the minor child and place his best interest as a priority. More contact with Mr F[...] should be phased in. A parenting plan should be done to assist the parties to describe phased in contact. (sic)

Family Advocate (January 2020)

[40] The report of Ms M E Fourie (the Family Advocate) is comprehensive and makes specific recommendations. It was based in part on the report of the family counsellor in the Office, Ms V Naidoo. The parties were interviewed on 11 June 2019 and 10 December 2019.

[41] The Applicant requested that the recommendations in the report be made an order of court. During argument it was clarified that the Applicant wanted the recommendations to be made an order of court, not the entire report.

[42] The Respondent claimed that the Family Advocate's report was out of date as it had been done prior to the most recent allegations of sexual abuse.

[43] The recommendations are reproduced below:

50. Based on the available information, the undersigned is of the professional opinion that the Respondent and the minor child be allowed to relocate to Cape Town subject to the outcome of any further forensic assessments and/or play therapy. Depending on the aforesaid, future sleepovers, if any, can then be phased-in with the assistance of a professional person. The assistance of a professional person is important in order to monitor the child's adjustment and to support the child and his parents through the process of extended contact.

50.1 The parties to retain full parental responsibilities and rights as contemplated in Section 18 of the Children's Act 38 of 2005, in respect of the minor child.

50.2 The minor child to primarily reside with the Respondent.

50.3 The relocation of the Respondent and the minor child is subject to the outcome of any further psychological assessments and/or play therapy, as well as the phasing-in of sleepover contact, prior to them relocating.

50.4 The parties to jointly appointment a mental health professional/play therapist, in order to assist them with the phased-in of sleepover contact; moreover, to monitor C[...]s adjustment during the phasing-in of the sleepover contact. It is recommended that prior to the Respondent's relocation to Cape Town, contact between the Applicant and the minor child is to be exercised as frequently as possible under the guidance of the mental health professional/play therapist. ...

50.5 C[...] to be enrolled in play therapy (see paragraph 50.4) to support him through the phasing-in of at least one night sleepover and the relocation.

50.6 The Applicant to exercise contact with the minor child in Cape Town at least one weekend a month. Depending on how regular the contact is going to occur; C[...] first to visit the Applicant for two consecutive days, without any sleepover. In the event that the contact is going to be exercised on a monthly

basis, the parties to then implement one night sleepover, where after two-night sleepovers can be implemented. The aforesaid is subject to consistent and regular contact.

50.7 Telephonic and/or other electronic contact, such as Skype/Facetime/WhatsApp video calls, to be exercised. The said contact is to occur daily with the routine of the child, alternatively on the days and/or between the times as determined by the parties.

50.8 The provisions of paragraph 50.5 above do not absolve the Applicant from his duty to maintain the child in terms of Section 18(2)(d) of the Children's Act 38 of 2005. The maintenance issue is currently pending in the Maintenance Court and will be heard on 7 April 2020.

50.9 The following conditions are applicable to the above-mentioned arrangements:

50.9.1 It is important that both parties continuously consult each other, even if it is via email, with regards to the well-being and progress of the minor child.

50.9.2 Both parties are to regularly discuss the general and/or specific emotional and/or academic progress of the minor child, to evaluate and implement any assistance and/or intervention which may benefit the minor child, as well as to employ mutual decision-making processes.

50.9.3 It is recommended that the parties are, if possible and in the best interests of the minor child, to be flexible concerning the relevant contact arrangements in order to allow for optimal contact. The parties are continuously to apply a meaningful and open form of communication.

50.9.4 Both parties are to refrain from the use of illicit substances and/or the inappropriate use of alcohol in the presence of the minor child.

50.9.5 In the event that the parties have reached a deadlock, specifically with regard to the above-mentioned arrangements and/or any element pertaining to the minor child, it is recommended that the parties appoint a healthcare professional and/or other suitable qualified professional, in Cape Town and/or Johannesburg depending on the nature of the dispute, in order to monitor and evaluate the situation; facilitate guidance and/or therapeutic assistance to the minor child regarding any applicable issue; guide the parties and/or facilitate

therapy and/or parental guidance to either or both of the parties; require either or both of the parties to undergo a psychological assessment, if required; make, implement and/or facilitate recommendations regarding any element pertaining to the application of the parties' parental responsibilities and rights if necessary; and/or assist the parties with the resolution of any future disputes and the compilation of a parenting plan which incorporates the above-mentioned recommendations.

50.10 It is important that the parties consult each other with regards to any major decisions regarding the minor child as per Section 31 of the Children's Act 38 of 2005. (sic)

Teddy Bear Clinic (June 2020)

[44] The Teddy Bear Clinic investigated the first accusations of sexual abuse. The child was interviewed. The conclusions of Nicola Arend, a forensic psychologist who conducted the investigation, are reproduced below:

9.1 C[...] F[...] did not disclose any information to me at any time during the assessment that could be construed as child sexual abuse. The child interacted enthusiastically during the interviews, and spoke fondly of his father, the accused, showing no concerns of fear or anxiety towards his father. The child described that he wanted to spend more time with his father. This is not expected of a child who had allegedly been physically hurt during significant acts of sexual abuse as alleged by the mother.

9.2 The alleged disclosures made by the child is to the mother. The allegations as presented by the mother are significant abuse (penetration of the anus by finger/s and penis of the father, genital oral contact of the child's mouth on the father's penis, witnessing sexual acts between the father and his girlfriend, Runi. The mother transcribed her conversations with the child, including her lengthy questioning of the child, using leading and suggestive questions directed at the child. For a child of this age and developmental stage, it must be considered that suggestive, repetitive and contaminating questioning techniques can damage the ability of a child to accurately present their experiences.

9.3 There were no concerning physical findings by Dr Dorman. The mother emotional presentation was suspicious, and Dr Dorman felt concerned about what to believe about the mother's presentation of information.

9.4 The father's other two children, T[...] and G[...] F[...] from a previous relationship of whom the father is the primary parent, speak fondly of their father and his treatment of them and of C[...] F[...]. The father is described by both children, who politely yet confidently presented their views, as loving, protective and playful. T[...] and G[...] F[...] both explained that C[...]’s mother had not been kind or nurturing towards them, described that Caleb would cry when he had to leave his father's care, and C[...] would call out to his father to help him (video footage supplied during this assessment).

9.5 C[...]F[...] was engaging and enthusiastic during the interviews when the mother was not present, but noticeably resistant of interaction when in the company of the mother. This type of behaviour by a child is concerning, and should be explored further. The child should attend play therapy with a play therapist agreed to by both parents, and taken to sessions alternately by each parent. C[...]’s relationships with key people in his life can be explored further, while using the time to allow C[...] to learn about body safety, safe and unsafe touching, good and bad secrets.

9.6 The appointment of a case manager or parenting coordinator may serve as an additional safety net. It is difficult to gauge whether the mother unintentionally influenced the child the (sic) make utterances after being questioned in a leading and suggestive manner, or whether the mother exaggerated the statements made by the child, or whether the mother intentionally and maliciously fabricated the allegations of child sexual abuse. It was a concern to me that the mother has meticulously captured information about the father and child over a long period of time, but in this lengthy questioning of the child about child sexual abuse, it is assumed that the mother did not audio or video record the alleged disclosures as they were not presented as evidence to me.

9.7 Notwithstanding the mandate of this assessment to investigate allegations of child sexual abuse, this child has voiced a need to have more contact with his father. The development of a detailed parenting plan or court ordered contact schedule is crucial to align the parenting alliance and formally recognise both parents' rights and responsibilities. This may address the

power imbalance in this co-parenting dyad and the ability to misuse that power. It is a consideration that the mother has undermined the father's relationship with the child in the past. This child must enjoy his right to have a meaningful relationship with both his parents.

Applicant's submissions: main application

[45] The Applicant seeks to have regular contact with the child, which the Applicant submits is in the best interests of the child. This is supported by the recommendations of the experts.

[46] The Applicant to date has no knowledge of the child's wellbeing, or where he attends school. The Applicant has had no communication with the child whatsoever since contact was terminated.

[47] The Family Advocate conducted a comprehensive investigation taking all factors and reports into consideration, and made specific recommendations, which should be made an order of court.

[48] The Applicant denies the sexual assault allegations and avers that there is no evidence of sexual assault. To date there has not been any contact from any police officer, prosecutor and/or investigating officer to obtain a statement from any person present during the last sleepover contact. However, in the supplementary affidavit the Applicant states that he was interviewed by two officers of the Cape Town Family and Child Services (FCS) on 15 March 2022 at SAPS Linden.

[49] A confirmatory affidavit was attached to the papers by the Applicant's girlfriend at the time, Runisha Makan, who was present at most of the contacts. She states that the allegations are false.

[50] The Applicant's counsel argued that the tone of the Fortuin statement is not that of a five-year old child. She identified other issues with the statement: the statement is typed, which is impossible as a child of five years cannot type a

statement; in paragraph 2 of the statement, the allegation that the child knew the difference between telling the truth and telling a lie, goes against the grain of the voice of the child and is impossible when it comes to a five-year-old child; the statement was drafted in a way that has the child speaking in the first person which is impossible as he cannot write this way and/or type such a statement; the statement was not stamped or confirmed by any confirmatory affidavit by Captain Fortuin and/or any police stamp. The Applicant fears that the letter was written by the Respondent.

[51] The Applicant avers that the Respondent's criticism of the experts and her accusations of alleged bias result in a delay which favours the Respondent as it results in the Applicant losing contact with the child. The Respondent had issues with the Icarus investigation, the way Kriel had concluded her findings, her recommendations, and her independence. She claims that Kriel was biased and that Arend, the psychologist who compiled the Teddy Bear Clinic report, failed to do a thorough investigation.

[52] The Respondent made bald statements on behalf of the minor child without any substantiation. The Respondent attached her "notes" to her papers, which is not substantiating evidence of anything.

[53] It would not be in the best interests of the child for him to be subjected to further assessment. In October 2020, the magistrate stated unambiguously that the minor child should not undergo any more assessments as the number of assessments to which the child had been subjected at such an early age, was unfair and not in the best interests of the child.

[54] It would be in the best interests of the child for the Respondent to be psychologically evaluated and assessed on the issue of child alienation and gatekeeping, to determine why the Respondent is so averse to the Applicant having a relationship with the minor child. The Applicant was willing to submit to psychological assessments should it be in the best interests of the child.

- [55] The Respondent claims that the Family Advocate's report was outdated but on her own version says that she has been complying with the Family Advocate's report.
- [56] The Family Advocate's report made provision for the Respondent to relocate to Cape Town but only subject to certain conditions, which were not met.
- [57] The Respondent did not share a good relationship with the sons of the Applicant and excluded them from the minor child, which is recorded in the Teddy Bear Clinic report.
- [58] The Applicant submits that the Respondent did not co-operate with Miss Mphelo of the Family Advocate's Office, who had assisted them with preparing a parenting plan, which the Respondent refused to sign. The Respondent claims to have cooperated with Miss Mphelo, who strongly suggested that they attend counselling sessions to resolve their issues before even attempting a parenting plan. An e-mail from Miss Mphelo is attached to the founding affidavit, stating that the Respondent refused to sign the parenting plan. Allegedly, the Respondent insisted that the Applicant and Respondent attend at a family life centre prior to the Applicant exercising his right of contact with the child.
- [59] When experts recommend further contact, the Respondent manufactures false allegations; the Respondent "fled" with the minor child to Cape Town without the Applicant's knowledge or consent, despite the court order being in place.
- [60] The Respondent in her answering papers fails to address the wellbeing of the child, where the child is currently residing and whether the child is, in fact, safe. The Applicant has no knowledge of the whereabouts of his child.

Respondent's submissions: main application

[61] The relief claimed by the Applicant is improper because the entire report cannot be made an order of court; the Applicant does not indicate which parts should be made an order of court. Even if the Applicant had only the recommendations in mind, they should not be made order of court, because of the delay in applying for the order, the change in circumstances of the parties, and the allegations of sexual abuse. The report of the Family Advocate does not have the force of law unless it is incorporated in a court order. Some of the orders granted subsequently differ from the recommendations in the Report.

[62] The Applicant is attempting to implement the conditions set by the Family Advocate which includes forensic assessment, play therapy and so forth, whilst the magistrate advised that the child had been assessed enough.

[63] By trying to limit where the Respondent may approach a court for relief, the Applicant is essentially seeking a final interdict. Respondent's counsel submitted that a court must hear a matter that falls within its jurisdiction and has no discretion to refuse simply because another court has concurrent jurisdiction – also, it is a Plaintiff or Applicant who chooses the forum.

[64] In respect of the referral for psychological investigation on child alienation and wellbeing of the child, if the Respondent is referred for assessment, so too should the Applicant – but this should be held back until such time as the criminal matter has been finalised. The Respondent is concerned about the cost implications of a psychological assessment.

[65] Both parties have resorted to litigation regarding contact, not only the Respondent.

[66] The order interdicting the Respondent from moving to Cape Town was granted pending the investigation of the Family Advocate, which was published in January 2020; the Respondent relocated to Cape Town only in September 2020. The Respondent did not require the Applicant's consent to relocate to

Cape Town, although she had to take his views into consideration. Respondent claims that this was complied with during the meetings with the Family Advocate.

[67] The Respondent's move to Cape Town was justified: the Applicant had made minimum payments towards maintenance since 2017, and she pursued a job opportunity in Cape Town as an event organiser.

[68] It would not be in the best interests of the child to return to Johannesburg. The Respondent will have no work, nowhere to stay, and no school for the child. He has been settled in Cape Town since September 2020.

[69] Counsel for the respondent referred me to *LW v DB* where Satchwell J observed:

Should LW live in Cape Town or DB move to Pretoria or one seek opportunities in Australia, then of course, R will be parted from a parent whom he loves and from whom he has known nothing but love and care.

Regrettably that is the nature of divorce or separation of parenting co-habitation that does not endure throughout a child's life. That is the fate of a child whose parents do not live together.

The solution of our courts can never be to order that separated parents must live at close proximity to each other in order that each parents lives in close proximity to a child. Our courts have not been appointed the guardians of adults and parents are not the prisoners of our courts.¹

[70] Finally, it was submitted that none of the relief claimed was in the best interests of the child.

Counterapplication

¹ *LW v DB* 2015 JR 2617 (GJ) at paras [50]-[52].

[71] The Respondent launched a counterapplication wherein she seeks an order that the Applicant's contact with the minor child be deferred pending the finalisation of the criminal investigation and further criminal proceedings under case numbers 386/06/2021 and 106/03/2021.

[72] Respondent's counsel argued that the Respondent is not seeking an open-ended interdict, as claimed by the Applicant, but is bringing an application for relief in terms of section 28 of the Children's Act:

A person referred to in subsection (3) may apply to the High Court ... for an order:

(a) Suspending for a period, terminating any or all parental responsibilities and rights which a specific person has in respect of a child, or

(b) Extending or circumscribing the exercise by that person of any or all the parental responsibilities and rights that person has in respect of the child.

[73] In terms of section 28(4) when considering such application, a court must take into account:

(a) The best interests of the child.

(b) The relationship between the child and the person whose parental responsibilities and rights are being challenged.

(c) The degree of commitment that the person has shown towards the child.

(d) Any other fact that should, in the opinion of the court, be taken into consideration.

[74] The relief claimed is only for contact to be deferred pending finalisation of the criminal case – not suspended, terminated, or extended forever. In *GM v KI* the court held that a suspension cannot be indefinite:

This suggests that it can be for a specified period, or can be linked to the occurrence of a future event. The latter approach obviously has the potential to create some uncertainty when it comes to establishing, for the purposes of

dealing with third parties, whether the event that delineates the suspension has occurred or ceased to operate ... Such uncertainties are generally capable of resolution by way of affidavit or other means of satisfying third parties as to the position. And as a last resort the court can be approached for clarity.”²

[75] On the other hand, the Applicant submits that the Respondent is essentially seeking an open-ended interdict with no return date, which is not competent relief.

[76] There is no proper evidence of the alleged investigation.

[77] The Applicant’s attorney of record contacted the Goodwood SAPS (Constable Sebapo) and was advised that case number 106/03/2021 had been closed. In respect of case 386/06/2021, the Applicant’s attorney of record was advised by Captain Reineveld of the FCS, on 13 December 2021, that the investigation is still active. (According to the Respondent, both complaints are being investigated by FCS under the latter case number.)

[78] The Applicant’s attorney of record contacted Dr Floweday for clarification of aspects of her report, on 28 February 2022. She replied by e-mail on 3 March 2022. I have reservations about the Applicant’s attorneys of record approaching her, as her medical report is a critical part of the criminal investigation. It does not take the matter much further, considering my views on restoring the Applicant’s contact with the child set out below.

Best interests of the child

[79] When a court acts in its capacity as the upper guardian of minor children, whether it is to resolve a dispute of contact, custody or primary residence, it

² 2015 (3) SA 62 (GJ) at para [16].

concerns itself with one primary question: what is in the best interests of the child?

[80] The rights of children are enshrined in section 28 of the Constitution.³ Section 28(2) provides that a child's best interests are of paramount importance in every matter concerning a child.

[81] The scope (including potential limitations) of the paramountcy principle was considered by Sachs J in *S v M*:

A more difficult problem is to establish an appropriate operational thrust for the paramountcy principle. The word "paramount" is emphatic. Coupled with the far-reaching phrase 'in every matter concerning the child', and taken literally, it would cover virtually all laws and all forms of public action, since very few measures would not have a direct or indirect impact on children, and thereby concern them. Similarly, a vast range of private actions will have some consequences for children. This cannot mean that the direct or indirect impact of a measure or action on children must in all cases oust or override all other considerations. If the paramountcy principle is spread too thin it risks being transformed from an effective instrument of child protection into an empty rhetorical phrase of weak application, thereby defeating rather than promoting the objective of section 28(2). The problem, then, is how to apply the paramountcy principle in a meaningful way without unduly obliterating other valuable and constitutionally protected interests.⁴

[82] The Children's Act provides for a child-focused concept of parental responsibilities and rights. Section 7 gives a list of factors that courts must consider when determining what is in the best interests of the child. They are:

(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely—

³ Constitution of the Republic of South Africa, 1996.

⁴ *S v M (Centre for Child Law as Amicus Curiae)* [2007] ZACC 18 at para [25].

- (a) the nature of the personal relationship between—
 - (i) the child and the parents, or any specific parent; and
 - (ii) the child and any other care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards—
 - (i) the child; and
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from—
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child—
 - (i) to remain in the care of his or her parent, family and extended family; and
 - (ii) to maintain a connection with his or her family, extended family, culture or tradition;
- (g) the child's—
 - (i) age, maturity and stage of development;
 - (ii) gender;
 - (iii) background; and
 - (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
 - (i) any disability that a child may have;

- (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by—
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (m) any family violence involving the child or a family member of the child; and
- (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

[83] These factors do not exist in a vacuum. Each case is different, and a court is enjoined to take into account the unique context and facts in a particular dispute to determine the best interests of the child.

[84] As remarked by Sachs J in *S v M*, a truly principled child-centred approach requires a close and individualised examination of the precise real-life situation of the child involved. To apply a pre-determined formula for the sake of certainty, irrespective of the circumstances, would be contrary to the best interests of the child.⁵

[85] In *Cunningham v Pretorius*, Murphy J, in the context of emigration, commented on the approach to follow when determining the best interests of the child:

What is required is that the court acquires an overall impression and brings a fair mind to the facts set up by the parties. The relevant facts, opinions and circumstances must be assessed in a balanced fashion and the court must render a finding of mixed fact and opinion, in the final analysis a structured

⁵ At para [16].

value judgement, about what it considers will be in the best interests of the minor child.⁶

[86] While the rights of the child are paramount, it must not be forgotten that the right of the child to have contact with his parents, is complemented by the rights of the parents to have contact with their child. They are not distinct from one another. Contact, therefore, is part of a continuing relationship between parent and child. The more extensive that relationship is with both parents, the greater the benefit to the child is likely to be.

Evaluation

[87] I start with some general observations. It is not an easy task for a court to establish the best interests of the child. As referred to above, this determination is often intertwined with the rights of the parents. A conflict-free home environment, and loving and caring relationships with both parents, is important to the development of a minor child. In the event of a divorce or separation, a stable home life is disrupted. The impact on the minor child can be devastating. It is the parents' responsibility to ensure that there is as little disruption as possible. Parents should appreciate the importance of maintaining the parent-child bond. Acrimony should as much as possible be pushed aside for the benefit of the child. Despite their differences, parents should be united in always seeking to do what is in the best interests of the minor child. An environment should be created which will facilitate, not harm, an existing loving relationship between each parent and the minor child. This is dependent, of course, on a parent enjoying a loving relationship with the minor child at the time of the separation.

[88] The Applicant made submissions regarding Parental Alienation Syndrome, but it is not for this court to make any finding in this regard. The facts of the case

⁶ [2008] ZAGPHC 258 (21 August 2008) at par [9].

are sufficiently clear and speak for themselves. There are worrying trends, as raised in the reports.

[89] It is worth drawing the parties' attention to *Richies v Richies* in which Van den Heever J made the following apposite observation:

A parent who unnecessarily deprives a child of the opportunities to experience the affection of its other parent and breaks down the image of that other parent in the eyes of the child, is a selfish parent, robbing the child of what should be its heritage in order to salve his own wounds. And regrettably often parents wounded by their marital conflict lose their objectivity and use, as very effective clubs with which they beat the foe, the object both profess to love more than life itself, their children, who suffer further trauma in the process.⁷

[90] The Applicant has prayed for the Respondent to be assessed psychologically in respect of alienation and gatekeeping. I have concerns about the invasive nature of such an order. But in addition, I am concerned that at this stage it could do more harm than good, considering the already-toxic relationship between the parties and the on-going police investigation. However, it is an issue that should be revisited at a later stage, on the advice of a social worker or another expert who can express a professional opinion on whether such assessment is justified. A parenting coordinator, as discussed below, could play an important role in this regard.

[91] I considered whether to refer both parties for psychological counselling, to give them insight into their respective conduct and behaviour and how this impacts on the child. It is necessary for the parties to reflect on what it means to act in the best interests of the child. However, this is not the right time for such intervention, considering the criminal investigation. Similar to the assessment of the Respondent for gatekeeping and child alienation, psychological intervention is an issue that should be revisited at a later stage. Again, there is a role for a

⁷ 1981 (1) PH B4 (O).

parenting coordinator to play in this regard. To the Applicant's credit he has agreed to psychological counselling or assessment.

[92] The Respondent has made several serious complaints of sexual abuse. The Applicant has denied all allegations. The findings of the Teddy Bear Clinic and the concerns raised by Dr Dorman during his interview with Ms Arend do not reflect well on the Respondent.

[93] However, the present allegations should be taken very seriously. The report of Dr Floweday is a cause for concern and cannot be ignored. The report is clear that there are signs of anal bruising. The cause and nature of the bruising is unknown at this stage, but it is consistent with the insertion of a blunt object. The Applicant's attorneys of record contacted Dr Floweday for clarification, who suggested that there could be another explanation for the bruising, but I do not consider it appropriate to consider her response, as her report is part of a criminal investigation which must run its course.

[94] The relief claimed by the Applicant that the Respondent should be limited to launching proceedings in Gauteng only, is unduly restrictive. I also have doubts about the competency of such an order. In *Standard Bank v Thobejane; Standard Bank v Gqirana* Sutherland AJA set out the law relevant to concurrency of jurisdiction and the choice of court, specifically in circumstances where the High Court and magistrate's courts have concurrent jurisdiction.⁸ That case dealt specifically with the National Credit Act 34 of 2005, but it appears to me that the principles apply with equal force more generally. It was held that a court is obliged to hear any matter that falls within its jurisdiction and has no power to exercise a discretion to decline to hear such a matter on the ground that another court has concurrent jurisdiction. The court restated the general principles regarding the choice of court at the start of litigation:

⁸ *The Standard Bank of SA Ltd and Others v Thobejane and Others* (38/2019 & 47/2019) and *The Standard Bank of SA Ltd v Gqirana N O and Another* (999/2019) [2021] ZASCA 92

Self-evidently, litigation begins by a plaintiff initiating a claim. Axiomatically, it must be the plaintiff who chooses a court of competent jurisdiction in just the same way that a game of cricket must begin by a ball being bowled. The batsman cannot begin. This elementary fact is recognised as a rule of the common law, founded, as it is, on common sense.⁹

[95] It must be borne in mind that there are rules that apply in respect of launching proceedings which the Respondent would need to comply with, including disclosing similar proceedings in a different court. The Applicant could raise defences of *lis pendens* or *res judicata*. I note the Respondent's attempt to transfer the case that was being heard in the Randburg Children's Court, to the Goodwood Children's Court in Cape Town.

[96] The conditions set by the Family Advocate were not fully complied with prior to the Respondent's relocation to Cape Town. However, that horse has bolted. I do not believe that it would be in the best interests of the child to order the Respondent and child to return to Johannesburg. It would cause unnecessary disruption to the child's life. His stability and comfort depend in large part on the Respondent having a stable financial income and secure employment. Ms Naidoo, Family Counsellor in the Family Advocate's office, in her report, noted that the move to Cape Town would improve her circumstances and ultimately the child's circumstances.

[97] Applicant's counsel submitted that if the court was not inclined to grant the relief which the Applicant seeks, the court should consider some form of contact arrangement. The Respondent does not oppose interim supervised contact.

[98] In *Kok v Clifton* the court observed the following about the need for parental contact:

It is a common-place that it is in the interests of the child of divorced parents that it should not be estranged from either parent; the child should not be placed in such a position as to lose affection for either of its parents, nor that

⁹ At para [25].

either of the parents should lose affection for and interest in the child. It is of importance to this child, in my view, that the father should retain his affection for the child and his interest in him.¹⁰

[99] I take the view that it is in the best interests of the child that contact with the Applicant is restored. The child is now 7 years old, and at a critical stage of his development. He should not be deprived of contact with his father. However, I am mindful too of the need to protect the child from any physical or psychological harm, more so in light of the criminal investigation.

[100] I do not consider it prudent at this stage for the Respondent to be present during the scheduled contacts, considering their high-conflict relationship. The child should not be unduly inhibited in how he interacts with his father. The reservations that the Respondent may have can be addressed by limiting the forms of contact and its frequency, and by supervision of contact.

[101] Contact will be reintroduced incrementally. Initially, contact will be limited to audio communication, but may transition to video communication in due course as set out in the order below. No in-person contact is allowed, pending the outcome of the criminal investigation against the Applicant. Supervised audio or video contact is possible – for example, a group call via Whatsapp.

[102] I intend to appoint a Parenting Coordinator (see below). Any concerns that the Respondent may have about the exercise of contact should be raised with the Parenting Coordinator in the first instance before taking any other action. Should the Applicant have any concerns about interference by the Respondent in the exercise of his contact with the child, these should be raised with the Parenting Coordinator.

[103] Applicant's counsel suggested during oral argument that this court should assume the role of case manager (called a facilitator in the Western Cape). Counsel could not provide me with any specific precedent which gives a court the authority to do so. I have serious reservations about the prudence of

¹⁰ 1955 (2) SA 326 (W) at 330B-C.

acceding to this request. Diane Davis AJ explained in *TC v SC* that “[p]arenting co-ordination is a non-adversarial dispute resolution service provided by mental health professionals or family law lawyers who assist high-conflict parents in divorce situations to resolve child-related disputes in an expeditious and child-focused manner, in order to minimise parental conflict with its associated risks for children.”¹¹ This is not the role of the court.

[104] Respondent’s counsel submitted that it was premature to consider case management.

[105] In *Hummel v Hummel*¹² Sutherland J (as he then was) held that the notion of a case manager is one that derives from the practice of the courts and is not a label used in the Children’s Act. The role is one of facilitating decision-making and rendering assistance to the parents, not to make decisions for them. The court concluded that ‘the appointment of a decision-maker to break deadlocks is a delegation of the court’s power; itself an impermissible act.’¹³

[106] In *TC v SC* the court considered whether a court has the authority, by virtue of its inherent jurisdiction as the upper guardian of minor children, to make an interim order whereby a facilitator is appointed to deal with parenting disputes. The learned acting judge identified certain limitations to the exercise of the powers which may be allocated to a case manager/facilitator/parenting coordinator:¹⁴

106.1 the parties must have already reached agreement on the terms of a parenting plan, whether interim or final, which has been made an order of court, and the coordinator’s role must be limited to addressing implementation of that order.

¹¹ 2018 (4) SA 530 (WCC).

¹² 2012 JDR 1679 (GSJ).

¹³ At para [13].

¹⁴ See paragraphs [51]-[68] of the judgment.

- 106.2 The coordinator's decision-making power must be confined to ancillary rulings, which are necessary to implement the court order, but do not alter the substance of the court order or involve a permanent change to any of the rights and obligations defined in the court order.
- 106.3 All decisions of the coordinator must be subject to comprehensive judicial oversight in the form of a full reconsideration of the court decision. This means that the rulings of the coordinator are not in effect final, even if they operate immediately pending review, because they are susceptible to alteration by the court.
- 106.4 In the absence of the consent of the parties to the appointment of a coordinator and the terms of their appointment, a court should not impose a coordinator on parties without conducting the necessary inquiries and making the findings regarding the following:
- a. The welfare of the child or children involved who are at risk through exposure to chronic parental conflict, because the parties have demonstrated a longer-term inability or unwillingness to make parenting decisions on their own (for instance by resorting to frequent, unnecessary litigation), to comply with parenting agreements or court orders, to reduce their child-related conflicts, and to protect their children from the impact of that conflict.
 - b. Mediation has been attempted and was unsuccessful or is inappropriate in the particular case. (This is a necessary finding to ensure that the appointment of a coordinator without parental consent is a last resort reserved for the cases of particularly intractable conflict.)
 - c. The person proposed for appointment as the coordinator is suitably qualified and experienced to fulfil the role of a coordinator.
 - d. The fees charged by the proposed coordinator are fair and reasonable in the light of their qualifications and experience and

that the parents can afford to pay the services of the coordinator. One of the parents must agree to pay for the services of the coordinator.

[107] In the present case there is no parenting plan. The experts recommended that the parties compile a parenting plan. One attempt was made, but came to naught after the Respondent declined to sign it.

[108] There exists chronic parental conflict. The parties have demonstrated an inability to make parenting decisions on their own. They have resorted to frequent and sometimes unnecessary litigation. The parties' relationship is progressively becoming more acrimonious, as shown by the present litigation. The negative effects of this on the child cannot be overstated.

[109] The Children's Act provides in section 6(4)(a) that "an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided."

[110] To this end I propose that the parties engage constructively to compile a parenting plan that is in the best interests of the child. The parenting plan must comply with sections 33—34 of the Children's Act.

[111] I propose the appointment of a Parenting Coordinator to facilitate the negotiation of a parenting plan and oversee its implementation for a limited period, and to assist in mediating disputes between the parties. The facilitator's brief is limited, to avoid a delegation of the court's power, as cautioned by Sutherland J in *Hummel*. An agreed plan which is the result of compromise and negotiation has a significantly higher chance of success than one that is imposed on the parents by the court. Any such plan should take into consideration the parental rights and responsibilities of each parent on an equal

basis and should include detailed provisions on the exercise of contact between the Applicant and the child. The best interests of the child should be the paramount consideration.

[112] There is a caveat: I take the view that it would serve little purpose to negotiate a parenting plan at this stage while the criminal investigation is still active. Parties should negotiate a parenting plan only once the investigations against the Applicant have been terminated by SAPS, or a decision has been taken by the National Prosecuting Authority (NPA) not to prosecute the Applicant.

[113] Interim contact arrangements will apply while the investigation is still active, as outlined in the order below. Should the NPA prefer charges against the Applicant, the interim contact arrangements in Part A will be suspended with immediate effect pending the outcome of the prosecution. Should the investigation be terminated by SAPS, or a decision taken by the Director of Public Prosecutions not to prosecute the Applicant, contact as set out in Part B of the order below will be implemented with immediate effect pending finalisation of the parenting plan within 3 (three) months.

[114] I have attempted to craft the order below in such a way that the father's right to contact is not denied, while paying equal consideration to the concerns of the Respondent. The order also acknowledges that a parenting plan that sets out detailed contact arrangements, and the appointment of a parenting coordinator to assist in formulating and implementing such plan, is in the best interests of the child.

[115] I propose that copies of this order be served on the Commanding Officer: FCS, Cape Town, and the Director of Public Prosecutions: Western Cape.

[116] The order will also be served on the Family Advocate, Johannesburg.

[117] The parental rights and responsibilities of the Applicant are not disputed, and there is no need to address this in the order below. Only the exercise of his contact with the minor child is in issue.

[118] I am not granting the relief sought in either of the applications, for the reasons set out above. I have crafted an order based on the submissions of counsel, which results in partial restoration of the Applicant's contact with the child, but which takes into consideration the Respondent's concerns. Counsel agreed to some form of supervised contact should I not grant either of the orders. I am directing the parties to conclude a parenting plan in order to formalise contact arrangements. This is in line with the recommendations in each of the reports, including the recommendations of the Family Advocate, which is part of the relief sought by the Applicant. The Applicant asked for case management by the court; instead, I am appointing a Parenting Coordinator. I consider the entire order to be in the best interests of the child.

Costs

[119] The Respondent argues that the Applicant should pay costs on an attorney and client scale. Her reasons are that the Applicant was aware of the allegations of sexual abuse, and that she is acting in the best interests of the child. The Applicant seeks costs in both applications.

[120] It is trite that in awarding costs, a court has a discretion, which must be exercised judicially upon a consideration of all the facts. This discretion is broad but not unlimited. Established principles should be considered. As a rule of thumb, a successful party is entitled to his or her costs. It is also trite that an award of attorney and client costs is the exception, not the rule. Ultimately, the court must make a determination that is fair to all parties.

[121] This is a matter in which the court has been called upon to exercise its authority as upper guardian of minors. I accept that both parties believe that they are

acting in the best interests of the child in bringing and opposing the respective applications.

[122] I am sensitive to the possibility that granting costs or partial costs in favour of one party will further exacerbate the conflict-ridden relationship between the parties and affect the relationship between both parents and the child detrimentally.

[123] Satchwell J observed in *LW v DB* that parents act out of love and not common sense. She stated that she regretted that the parents in that matter, who could ill afford it, had to incur legal expenses. In that case each party was ordered to pay their own costs.¹⁵

[124] I am of the view that the fairest outcome is for each party to pay their own costs.

[125] I stress that I consider the order that follows to be in the best interests of the child and in accordance with the submissions made by counsel.

IN THE RESULT THE FOLLOWING ORDER ISSUES:

1. The main application is dismissed.
2. The counterapplication is dismissed.
3. A Parenting Coordinator is appointed, who shall be either a social worker or a clinical psychologist, with no less than 5 (five) years' experience in family mediation, and who shall be selected by mutual agreement between the parties within 10 days of this order.
4. If the parties fail to reach agreement on who to select as Parenting Coordinator, the parties are directed to approach the Family Advocate on an urgent basis for assistance in selecting a Parenting Coordinator.

¹⁵ Para [109].

5. The Parenting Coordinator is empowered to:
 - 5.1 implement and monitor the contact schedule as set out in this court order below, pending preparation and implementation of the parenting plan;
 - 5.2 assist in, and advise the parties on preparing a parenting plan;
 - 5.3 implement the parenting plan, and to monitor compliance for a period of 3 (three) months;
 - 5.4 assist the parties generally to resolve disagreement or disputes between them, at the request of one or both parties;
 - 5.5 advise generally, at the request of one or both parties, on the best interests of the child.
6. Any of the parties is entitled to challenge the determinations of the Parenting Coordinator in a competent court of law.
7. The costs of the Parenting Coordinator will be shared equally between the parties.

CONTACT

8. The Applicant's contact with the child is restored, as set out below.
9. The contact arrangements in Part A must be implemented as soon as the Parenting Coordinator has been selected and s/he has accepted the appointment in accordance with paragraph 3 above.
10. Upon notification by SAPS and/or the Director of Public Prosecutions: Western Cape, that the investigations under case numbers 386/06/2021 and 106/03/2021 have been concluded and that the Applicant will not be prosecuted for any offence in respect of these matters, the contact arrangements in Part A will terminate and Part B will come into effect immediately pending finalisation of a parenting plan within 3 months.

11. If the Applicant is formally charged or prosecuted for any offence/s under case numbers 386/06/2021 and/or 106/03/2021, the contact arrangements in Part A will terminate with immediate effect.

12. Contact: Part A

12.1 **Phase 1 contact** shall be for a period of 1 (one) month. The Applicant shall maintain supervised telephonic or other audio contact with the child three times a week, for 15 minutes, during time slots agreed between the parties. Should the parties fail to reach agreement, the Parenting Coordinator shall identify suitable time slots. Any costs associated with this shall be borne equally by the parties.

12.2 **Phase 2 contact** follows on the completion of phase 1 and will apply until implementation of the parenting plan. The Applicant shall maintain audio or video contact with the child three times a week, for 30 minutes, during time slots agreed between the parties. Should the parties fail to reach agreement, the Parenting Coordinator shall identify suitable time slots. Any costs associated with this shall be borne equally by the parties.

12.3 Contact in terms of Part A will be supervised by a family member, or other suitable person selected by agreement between the parties. Should the parties fail to reach agreement, the Parenting Coordinator shall mediate between the parties.

13. Contact: Part B

13.1 **Phase 1 contact** shall be for a period of 2 (two) months. The Applicant is allowed unsupervised contact with the child in Cape Town two weekends a month for two consecutive days (Saturday

and Sunday) from 08h00 until 18h00 each of the days, without sleepover contact.

- 13.2 **Phase 2 contact** shall follow on the completion of Phase 1 and shall apply until finalisation of the parenting plan. The Applicant is allowed unsupervised contact with the minor child in Cape Town two weekends a month: one weekend for two consecutive days from 08h00 on Saturday until 18h00 on Sunday, with sleepover contact; one weekend from after school on Friday until 18h00 on Sunday, with sleepover contact on Friday and Saturday.
- 13.3 The minor child may exercise daily, unrestricted audio or video contact with either parent irrespective of whose care he is in.
- 13.4 No specific provision is made for contact on public holidays, Christmas Day or New Year's Day. This is a matter for agreement between the parties, within the parameters set out above.
14. The parties must consult each other with regards to any major decisions regarding the child, as per section 3 of the Children's Act.
15. It is directed that a copy of this order is served on the Commanding Officer: FCS, Cape Town, and the Director of Public Prosecutions: Western Cape.
16. It is directed that a copy of this order is served on the Family Advocate, Johannesburg.
17. Each party shall pay their own costs.

M Olivier
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to CaseLines. The date and time for hand-down is deemed to be 16h00 on 27 September 2022.

Date of hearing: 26 May 2022

Date of judgment: 27 September 2022

On behalf of Applicant: K Howard (Ms)

Instructed by: Raphunga Attorneys

On behalf of Respondent: T Engelbrecht (Ms)

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