THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED: ***Yes***

Date: ***25th November 2021*** Signature: _____

CASE NO: 36838/2021

DATE: 25th November 2021

In the matter between:

MILES, SARAH JEAN	First Applicant
KOLLER, DARRYL BRENT	Second Applicant

and

MILES, KATHERINE MAUREEN	First Respondent
STOCK, DAMIEN LEONARD	Second Respondent

Heard: 22 November 2021 – The 'virtual hearing' of this opposed application was conducted as a videoconference on *Microsoft Teams*.

Delivered: 25 November 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 25 November 2021.

Summary: Family law – the Children's Act – assignment of contact and care of a minor child at risk of suffering harm – interest of the child of paramount importance – termination of parental responsibilities and rights.

ORDER

(1) The *rule nisi* issued on 6 August 2021 (as varied on 31 August 2021, 17 September 2021 and 18 October 2021) be and is hereby confirmed, subject to the amendments / variations as provided for in this Court Order.

(2) The minor child, A J M ('the minor child'), shall remain in the care of the first and second applicants, as provided for in terms of section 23(1)(b) of the Children's Act, Act 38 of 2005 ('the Children's Act').

(3) In terms of s 23(1)(a) of the Children's Act, the first respondent shall continue to exercise and enjoy contact with the minor child as provided for in the Order of this Court (per Matojane J) dated the 18 October 2021.

(4) Advocate G Olwagen-Meyer shall remain the appointed *Curatrix ad Litem* of the minor child, A J M, until released from her duties by this Court as provided for herein and shall have the following specific powers and duties:

4.1 to represent the best interest of the minor child by advancing all arguments for and on behalf of the minor child relevant to this matter, as well as related matters;

4.2 to represent the minor child in all matters of a legal nature, and to ensure that the minor child's best interests and wellbeing are upheld at all times;

4.3 to consult with any professional or expert, or other persons that are involved with the family, or the minor child or the first respondent's medical care;

4.4 to consult and collaborate with the State Attorney as well as the South African Police Services in the pending criminal investigation and obtain all necessary information in respect thereof;

4.5 to approach this court to amend the powers and/or duties of the *Curator ad Litem*;

4.6 to collaborate with the appointed experts, including Ms Irma Schutte, Ms Tanya Kriel and any other experts so appointed and to facilitate their involvement.

(5) The *Curator ad Litem*, with the assistance of Ms Irma Schutte and Ms Tanya Kriel, shall in addition have the following duties and powers:

5.1 to monitor and report on the rehabilitation and therapeutic healing of the first respondent;

5.2 to monitor and report on the commitment of the first respondent to her psychological and psychiatric therapy;

5.3 to stipulate how, when and where bonding therapy between the first respondent and the minor child is to take place, which must include general parenting and an attachment program, to restore the relationship between the first respondent and the minor child, until such time that it is restored to the satisfaction of the relevant involved experts;

5.4 to stipulate how, when, where and if contact between the first respondent and the minor child can take place;

5.5 to identify and nominate a suitable nursery school for the minor child to attend;

(6) Any party, including the *Curatrix ad Litem*, may approach this court on supplemented papers, to address the future exercise of Parental Responsibilities and Rights pertaining to the minor child.

(7) The first respondent shall have the right to approach this court for the placement of the minor child in her care provided that she has complied, to the satisfaction of the *Curatrix ad litem*, with the terms of this order, and in addition thereto with the following:

7.1 The first respondent has admitted herself into an accredited substance use rehabilitation facility;

7.2 The first respondent has submitted to the treatment of the Psychiatrist, Dr Miriam Close ('Dr Close') on or before 30 November 2021 to be

admitted in the Dual Diagnosis Unit of the Crescent Clinic to receive treatment for alcohol dependence which will include psychiatric, medication and treatment regarding personality aspects by a Psychologist who will also assist Dr Close with the first respondent's therapy;

7.3 The first respondent will have abided by all outpatient programmes and recommendations made by Dr Close; ('the rehabilitation programme');

7.4 The first respondent will have fully cooperated with the rehabilitation program for the full period stipulated by the rehabilitation team in such clinic ('the rehabilitation team'), and until otherwise determined by the *Curator ad Litem*, the psychiatric leader of the rehabilitation team must submit monthly reports of the first respondent's progress and prognosis to the *Curatrix ad Litem* (who shall file same on *CaseLines* for the court's benefit);

7.5 In addition, the first respondent shall have attended at 'Beat the Addiction', and complied fully with Dr Kirsten's recommendations to treat her addiction. And once discharged from the rehabilitation clinic, the first respondent attends Alcoholics Anonymous meetings on a weekly basis and provide the *Curator ad Litem* with proof of all such attendances;

7.6 Unless the first respondent's medical professionals advised otherwise, the first respondent has diligently complied with all medication regimen prescribed by the rehabilitation team, and provided the *Curatrix ad Litem* with proof thereof;

7.7 The first respondent has subjected herself to random carbohydrate deficient transferrin (CDT) tests at the *Curator ad Litem's* request, which the first respondent attended to within 24 (twenty-four) hours of the request being made by the *Curatrix*;

7.8 The first respondent has provided the *Curatrix ad Litem* with ongoing documentary proof of her medical treatment on a weekly basis;

7.9 The first respondent has completed two comprehensive parenting courses, one pertaining to general parenting, and the other as an attachment programme to restore the parent child bond; and

7.10 The first respondent absolutely abstains from the use of alcohol and all other psychoactive substances unless prescribed by the rehabilitation team.

(8) In such event, the *Curatrix ad Litem* shall file a report to all parties concerned as well as to this court.

8.1 For this purpose, the *Curatrix ad Litem* and the relevant social workers shall be entitled to interview all the relevant and necessary parties, including the parties to this application, friends, family and employees, as well as the minor child and the first respondent's doctors, psychologists, rehabilitation team, psychiatrists and others involved in the minor child and the first respondent's medical care and treatment, without having to obtain the parties' prior permission thereto.

(9) The first respondent shall henceforth be liable for all costs associated with the above, including but not limited to:

9.1 The costs of the rehabilitation centre, the rehabilitation team and any other relevant experts treating the first respondent and the minor child;

9.2 The costs of the *Curatrix ad Litem*;

9.3 The costs of Ms Irma Schutte, Ms Tanya Kriel and any other social workers and experts nominated by the *Curator ad Litem*;

9.4 The costs of all prescribed medication for the first respondent and the minor child;

9.5 A contribution towards the minor child's maintenance to be made to the first and second applicants as well as the identified nursery school fees and ancillary expenses.

9.6 The costs of all CDT tests.

(10) The second respondent's Parental Responsibilities and Rights are terminated as provided for in Section 28 of the Children's Act, save for the obligation to maintain the minor child.

(11) The first respondent is to pay the costs of this application, including all reserved costs to date, and the costs of all experts incurred by the applicants to date (with the exception of Ms Irma Schutte for whom the applicants shall be liable until date hereof).

(12) This application and the further conduct of the litigation between the parties shall henceforth be case managed and Adams J be and is hereby appointed as Case Manager of this application.

JUDGMENT

Adams J:

[1]. This matter came before me in the Opposed Motion Court on Monday, 22 November 2021, which was the extended return day of the *ex parte* order granted by Vally J on 11 August 2021, as extended and varied from time to time by subsequent orders of this Court on 31 August 2021 (per Makume J), on 17 September 2021 (per Weiner J) and again on 18 October 2021 (per Matojane J). The matter concerns the interest of an eight-month old baby girl, who had been subjected to the most horrendous trauma imaginable at the very tender age of five months allegedly at the hands of the second respondent, her biological father. The first respondent is the biological mother of the infant and the assault on her little girl happened 'on her watch'.

[2]. The order granted *ex parte* by Vally J placed the minor child in the temporary care of the first applicant, who is the sister of the first respondent, and the second applicant, the first applicant's partner. The first respondent has had unsupervised contact with the minor child since 18 October 2021.

[3]. The first and second applicants seek *inter alia* the confirmation of the extended *rule nisi*, whereas the first respondent prays for an order discharging

the rule and for an order that care of the minor child be returned to her in due course subject to her complying with certain conditions relating to her rehabilitive and therapeutic treatment to address alcohol addiction challenges and other problems presently faced by her. The first respondent seeks a discharge of the *rule nisi* on the basis inter alia that the applicants have failed to disclose material facts to the court. The second respondent, who is facing possible criminal charges relating to the assault on the minor child, played no part in these proceedings.

[4]. It is the case of the first respondent that the matter be referred to the hearing of oral evidence as soon as practically possible in light of the dire effect this matter has on the minor child and the ongoing damage being done in respect of the first respondent's maternal bonds. In the interim, so the first respondent contends, she is fully aware of the concerns and recommendations raised in the reports by experts, which relate to the interest of the minor child, who is at risk of again being exposed to the possibility of physical, as well as psychological harm if the necessary safeguards are not put in place to prevent such harm. She states that she takes the allegations very seriously and will do whatever it takes to have full time contact and care restored to her.

[5]. It is submitted on behalf of the first respondent that as regards opinions by the various experts and their recommendations, due regard should be had to the provisions in the Children's Act, which specifically refer to the preservation of families and the family structure. I agree with this contention. It is so that the Children's Act makes express provision for prevention programmes which are designed to accommodate and aimed at the strengthening and building the parent-child bonds. However, when all is said and done, the interest of a minor child is paramount.

[6]. The *Curator ad Litem*, Advocate Olwagen-Meyer, in her comprehensive and very helpful final report, was able to give a succinct summary of the opinions of the various experts appointed to investigate what would ultimately be in the best interest of the infant. On the basis of these reports, Ms Olwagen-Meyer made the recommendations set out in the paragraphs which follow.

[7]. She had regard to the fact that allegations were made of alcohol abuse by the first respondent before and during her pregnancy which continued after the child was born. She also considered the fact that the infant was reportedly neglected by the first respondent, who evidently lacked the ability to adequately care for the minor child. The Curatrix did however not lose sight of the fact that the first respondent is the biological mother, who also suffered as a result of the traumatic assault on her five-month old baby.

[8]. Having considered all of the reports by the various experts and taking into consideration the results of her own investigations, including interviews of and consultations with interested parties, Ms Olwagen-Meyer recommended first and foremost that the second respondent's parental responsibilities and rights as set out in section 18 of the Children's Act 38 of 2005 ('the Children's Act') remain suspended but for the duty to contribute toward the maintenance needs of the minor child. Under no circumstances, so she opined, should the first respondent be allowed any contact with the child.

[9]. The Curatrix also agrees with the experts that at this point in time the child should not forthwith be returned to the first respondent. I agree. There can be little doubt that such action would not be in the best interest of the infant. The real possibility exists that the child, if returned to the mother forthwith, would again be exposed to the risk factors identified in respect of the first respondent's ability to provide adequate care and parenting for the minor child. The return of the child into the care of the first respondent is a process which should be carefully managed and it cannot and should not be done without the rehabilitative and therapeutic treatment of the first respondent being put into place and complied with.

[10]. I agree. The first respondent should subject herself to an alcohol abuse rehabilitation program as proposed by the psychiatrist and the psychologist. This is so, having regard to the diagnosis and/or outcomes of the various assessments of and relating to the first respondent. Conversely, so Ms Olwagen-Meyer recommends, the paramount interest of the minor child would best be served by her remaining in the care of the first and second applicants, who have been taking

care of her since the assault on the person on the infant during August 2021, until such time as alternative placement arrangements can be put in place.

[11]. The Curatrix is also of the view that a parental coordinator should be appointed. The first respondent contends that there is no need for a parental coordinator. The functions which the Curatrix contemplates to be performed by the parental coordinator, so it was contended on behalf of the first respondent, can and should be executed by the Curatrix, in conjunction with one or more of the other experts, such as the social workers. I find myself in agreement with the contentions on behalf of the first respondent. I therefore intend ordering, insofar as it may be necessary, that certain of these functions should be performed by the Curatrix, assisted by the experts already appointed in the matter. Importantly, and in view of the fact that the first and second applicants have indicated a willingness to continue caring for the child for the foreseeable future, I do not see a need for the child to be placed with alternative caregivers.

[12]. There are also certain allegations made against the applicants of alcohol and substance abuse, although, according to the expert reports, this has never placed the minor child at risk. Therefore, as recommended by Ms Olwagen-Meyer, the applicants, as well as the first respondent, should continue to subject themselves to random CDT testing upon the request of the Curatrix to ensure the safety of the minor child when she is in their care and/or they exercise contact with her. And, as recommended by the Curatrix, the first respondent will have to prove that she can maintain her sobriety over an extended period of time. Once she had overcome her poor decision making coping mechanisms, alcohol abuse disorder as well as other personality disorders diagnosed, she should be afforded such parental duties and responsibilities as would be in the interest of the child.

[13]. In that regard, I am of the view that, provided the Curatrix is satisfied that the child is not at risk of harm, she should be returned to the care of the mother, who should be continually monitored. If necessary, the first respondent should be supervised or assisted by an independent nursing aid.

[14]. In my view, the legal process should be brought to finality as far as is possible at this stage. I do not believe it to be in the interest of the minor child that

the litigation should drag on indefinitely. I therefore intend ordering that this matter be case managed by myself going forward. That would assist with the implementation and the review from time to time of the recommendations.

[15]. On the basis of the aforegoing and having regard to report by the Curatrix ad Litem, as well as the submissions made on behalf of the first respondent, I intend granting an order as prayed for by the applicants with certain variations.

Order

Accordingly, I make the following order: -

(1) The *rule nisi* issued on 6 August 2021 (as varied on 31 August 2021, 17 September 2021 and 18 October 2021) be and is hereby confirmed, subject to the amendments / variations as provided for in this Court Order.

(2) The minor child, A J M ('the minor child'), shall remain in the care of the first and second applicants, as provided for in terms of section 23(1)(b) of the Children's Act, Act 38 of 2005 ('the Children's Act').

(3) In terms of s 23(1)(a) of the Children's Act, the first respondent shall continue to exercise and enjoy contact with the minor child as provided for in the Order of this Court (per Matojane J) dated the 18 October 2021.

(4) Advocate G Olwagen-Meyer shall remain the appointed *Curatrix ad Litem* of the minor child, A J M, until released from her duties by this Court as provided for herein and shall have the following specific powers and duties:

4.1 to represent the best interest of the minor child by advancing all arguments for and on behalf of the minor child relevant to this matter, as well as related matters;

4.2 to represent the minor child in all matters of a legal nature, and to ensure that the minor child's best interests and wellbeing are upheld at all times;

4.3 to consult with any professional or expert, or other persons that are involved with the family, or the minor child or the first respondent's medical care;

4.4 to consult and collaborate with the State Attorney as well as the South African Police Services in the pending criminal investigation and obtain all necessary information in respect thereof;

4.5 to approach this court to amend the powers and/or duties of the *Curator ad Litem*;

4.6 to collaborate with the appointed experts, including Ms Irma Schutte, Ms Tanya Kriel and any other experts so appointed and to facilitate their involvement.

(5) The *Curator ad Litem*, with the assistance of Ms Irma Schutte and Ms Tanya Kriel, shall in addition have the following duties and powers:

5.1 to monitor and report on the rehabilitation and therapeutic healing of the first respondent;

5.2 to monitor and report on the commitment of the first respondent to her psychological and psychiatric therapy;

5.3 to stipulate how, when and where bonding therapy between the first respondent and the minor child is to take place, which must include general parenting and an attachment program, to restore the relationship between the first respondent and the minor child, until such time that it is restored to the satisfaction of the relevant involved experts;

5.4 to stipulate how, when, where and if contact between the first respondent and the minor child can take place;

5.5 to identify and nominate a suitable nursery school for the minor child to attend;

(6) Any party, including the *Curatrix ad Litem*, may approach this court on supplemented papers, to address the future exercise of Parental Responsibilities and Rights pertaining to the minor child.

(7) The first respondent shall have the right to approach this court for the placement of the minor child in her care provided that she has complied, to

the satisfaction of the *Curatrix ad litem*, with the terms of this order, and in addition thereto with the following:

7.1 The first respondent has admitted herself into an accredited substance use rehabilitation facility;

7.2 The first respondent has submitted to the treatment of the Psychiatrist, Dr Miriam Close ('Dr Close') on or before 30 November 2021 to be admitted in the Dual Diagnosis Unit of the Crescent Clinic to receive treatment for alcohol dependence which will include psychiatric, medication and treatment regarding personality aspects by a Psychologist who will also assist Dr Close with the first respondent's therapy;

7.3 The first respondent will have abided by all outpatient programmes and recommendations made by Dr Close; ('the rehabilitation programme');

7.4 The first respondent will have fully cooperated with the rehabilitation program for the full period stipulated by the rehabilitation team in such clinic ('the rehabilitation team'), and until otherwise determined by the *Curator ad Litem*, the psychiatric leader of the rehabilitation team must submit monthly reports of the first respondent's progress and prognosis to the *Curatrix ad Litem* (who shall file same on *CaseLines* for the court's benefit);

7.5 In addition, the first respondent shall have attended at 'Beat the Addiction', and complied fully with Dr Kirsten's recommendations to treat her addiction. And once discharged from the rehabilitation clinic, the first respondent attends Alcoholics Anonymous meetings on a weekly basis and provide the *Curator ad Litem* with proof of all such attendances;

7.6 Unless the first respondent's medical professionals advised otherwise, the first respondent has diligently complied with all medication regimen prescribed by the rehabilitation team, and provided the *Curatrix ad Litem* with proof thereof;

7.7 The first respondent has subjected herself to random carbohydrate deficient transferrin (CDT) tests at the *Curator ad Litem's* request, which the first respondent attended to within 24 (twenty-four) hours of the request being made by the *Curatrix*;

7.8 The first respondent has provided the *Curatrix ad Litem* with ongoing documentary proof of her medical treatment on a weekly basis;

7.9 The first respondent has completed two comprehensive parenting courses, one pertaining to general parenting, and the other as an attachment programme to restore the parent child bond; and

7.10 The first respondent absolutely abstains from the use of alcohol and all other psychoactive substances unless prescribed by the rehabilitation team.

(8) In such event, the *Curatrix ad Litem* shall file a report to all parties concerned as well as to this court.

8.1 For this purpose, the *Curatrix ad Litem* and the relevant social workers shall be entitled to interview all the relevant and necessary parties, including the parties to this application, friends, family and employees, as well as the minor child and the first respondent's doctors, psychologists, rehabilitation team, psychiatrists and others involved in the minor child and the first respondent's medical care and treatment, without having to obtain the parties' prior permission thereto.

(9). The first respondent shall henceforth be liable for all costs associated with the above, including but not limited to:

9.1 The costs of the rehabilitation centre, the rehabilitation team and any other relevant experts treating the first respondent and the minor child;

9.2 The costs of the *Curatrix ad Litem*;

9.3 The costs of Ms Irma Schutte, Ms Tanya Kriel and any other social workers and experts nominated by the *Curator ad Litem*;

9.4 The costs of all prescribed medication for the first respondent and the minor child;

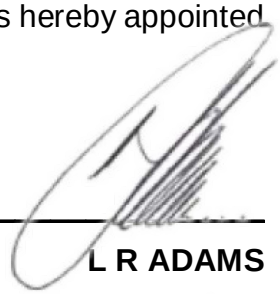
9.5 A contribution towards the minor child's maintenance to be made to the first and second applicants as well as the identified nursery school fees and ancillary expenses.

9.6 The costs of all CDT tests.

(10). The second respondent's Parental Responsibilities and Rights are terminated as provided for in Section 28 of the Children's Act, save for the obligation to maintain the minor child.

(11). The first respondent is to pay the costs of this application, including all reserved costs to date, and the costs of all experts incurred by the applicants to date (with the exception of Ms Irma Schutte for whom the applicants shall be liable until date hereof).

(12). This application and the further conduct of the litigation between the parties shall henceforth be case managed and Adams J be and is hereby appointed as Case Manager of this application.



L R ADAMS

Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

HEARD ON:	22nd November 2021 as a videoconference on *Microsoft Teams*
JUDGMENT DATE:	25th November 2021
FOR THE FIRST AND SECOND APPLICANT:	Advocate Riani Fereira
INSTRUCTED BY:	Savage Jooste & Adams Incorporated, Pretoria
FOR THE FIRST RESPONDENT:	Advocate Nicky Strathern
INSTRUCTED BY:	Van Zyl Johnson Incorporated, Woodmead.
FOR THE SECOND RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance
CURATOR AD LITEM FOR AND OBO THE MINOR CHILD:	Advocate Gi-Gi Olwagen-Meyer