

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2022/13638

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
	17 October 2023
	DATE
SIGNATURE	

In the matter between:

PS

Applicant

And

CS

Respondent

JUDGMENT

MIA J:

[1] The applicant brings an application in terms of Rule 43 for relief pendente lite as follows:

- “1. The parenting plan attached as annexure “FA3” to the Applicant’s founding affidavit is made an order of court.
2. The Respondent is ordered to pay to the Applicant monthly maintenance in respect of the minor child in the amount of R39 000.00 on or before the last day of every month, commencing

That the parenting plan, annexure "FA3" to her founding affidavit, be made an order of court.

3. From 30 June 2023 and thereafter on the last day of each succeeding month, the Respondent is to pay the following expenses of the minor child, directly to the service providers:
 - 3.1 School fees.
 - 3.2 Extramural expenses and all reasonable expenses associated with the extramural activities.
 - 3.3 All school related expenses pertaining to the minor child.
 - 3.4 The monthly medical aid premium in respect of the minor child and all costs not covered by the medical aid plan.
4. The Respondent is ordered to pay to the Applicant monthly maintenance in respect of the Applicant in the amount of R18 600.00 on or before the last day of every month, commencing the last day of the month in which this order may be granted.
5. Alternatively, when the Applicant's temporary employment comes to an end, the Respondent is ordered to make payment in the amount of R51 000.00 in respect of the Applicant and R39 000.00 in respect of the minor child.
6. The Respondent is ordered to pay a contribution to the Applicant's costs pendente lite in the sum of R300,000.00, payable in six (6) tranches of R50,000.00 per month, payable on or before the first day of every

month following the granting of this order, which amount is payable to the Applicant's present attorney's Trust bank account.

7. The Respondent is ordered to pay the costs of this application."

[2] Counsel for the applicant argued that the matter be dealt with as a default application as the respondent failed to make full disclosure. On the basis of the limited disclosure, it was submitted that the respondent earned a net salary from the law firm partnership in the amount of R100,000.00.⁴⁰ The respondent's net income from employment for the preceding 12 months was R2,926,818.09.⁴¹ He also had a net income from self-employment or a partnership for the preceding 12 months of R1,080,000.00.⁴² Counsel thus argued that he was not candid regarding his income as the amount of R2,926,818.09 divided by 12 months was R 243,901.51, which exceeds the amount of R100,000.00 stated in paragraph 63 of the answering affidavit. The amount of R1,080,000.00 divided by 12 months was R90,000.00 and was less than the amount of R100,000.00 stated in paragraph 63 of the answering affidavit. On any consideration of the above amounts the proposition is that the respondent is not honest about his income earned more than he disclosed and can afford the maintenance claimed by the applicant.

[3] Counsel for the respondent resisted the submission that the matter be determined on an unopposed basis. He submitted that the respondent received no notification that he would be disbarred. Regarding the purpose of the disclosure and relying on the decision of this court in *E v E*¹ where, the Court confirmed the necessity of financial disclosure forms to enable the court to make informed decisions, it was argued that the respondent had submitted sufficient information. Counsel submitted that the respondent filed the necessary documents and tax returns. In short, he argued that there was compliance with the order, which required financial disclosure. Moreover, the applicant's heads of argument were filed based on the respondent's

¹ 2019(5) SA 566 at para 30

participation in the proceedings. If the matter proceeded on the basis proposed by the applicant, it would amount to a 'trial by ambush'. Counsel relied on the decision in *Mogale City v Black Tad Investments CC*² to support his view.

[4] Upon perusal of the *Mogale City* case, I could find nothing to support the respondent's position in the present matter, either factually or procedurally. I note, however, that the respondent was not notified that the applicant intended to take the point. Both parties ought to be heard to allow the court to consider the matter before making a decision. Moreover, there is an interest of a minor child which must be dealt with, and such cannot be dealt with in isolation. The matter can be remanded to allow for further disclosure. However, on the information available, there is sufficient information which indicates that the respondent can cover the applicant's claim. I proceed to consider whether the applicant is entitled to the amounts claimed.

[5] Counsel for the respondent submitted that there were aspects that were not contentious and were agreed upon. The parties have attempted to mediate aspects of the dispute. It is evident that the parenting plan was acceptable and agreed upon. The respondent, however, wished to request further contact on a Monday evening in addition to what had been agreed upon, in view of the arrangement being in place for some time. The applicant was not opposed to this and agreed to such an arrangement to reflect the factual position to date.

[6] In addition, counsel for the respondent asserted that the respondent tendered maintenance concerning prayers 3.1 to 3.4, which provided for school fees, related expenses and medical aid. The respondent was paying these amounts already without a court order and was willing to continue paying these amounts. The respondent was also willing to pay the cost of the applicant's motor vehicle insurance. He was not willing to pay a cash portion

² 2018 JDR 0767 SCA

of maintenance toward the applicant and tendered a cash portion for the minor child of R 7500.

[7] The respondent is unwilling to make a payment for the applicant because she expected that her employment would terminate in February 2023. This period was extended, and she was employed when the matter was heard. It was argued that she could approach the court if her circumstances changed. She will be able to demonstrate the change in her circumstances at the appropriate time rather than seek an amount of maintenance for a future period which would not materialise. Moreover, the respondent contends that the applicant has qualified as a chartered accountant and is unlikely to be in a position where she is unemployable. Her qualifications and her age both favour employment for the foreseeable future. The respondent supported this contention with advertisements for employment which were available to the applicant.

[8] I have considered this as well as the expenses of the applicant and the submissions made on behalf of the applicant that the accommodation expense was not related to a bond or rental but to levies related to the property. The applicant's expenses are shared equally with that of the minor regarding all items. It is not clear how the vehicle is an expense that the minor child incurs. The position however is that both parties who receive an income will contribute according to their respective abilities. The respondent earns the lion's portion and naturally, his contribution will be more. He has already tendered to cover the minor child's expenses in prayers 3.1 to 3.4. I remain to determine the cash portion due to the minor child and whether the respondent should receive a cash portion in view of her income.

[9] The minor child's maintenance needs are the only costs which need to be covered at present. I regard the applicant's income and the respondent's, which is not fully disclosed. Counsel for the respondent tendered a cash amount of R12 000 for the minor child's maintenance needs and covering the expenses in prayers 3.1 to 3.4. in respect of the minor child. The respondent

takes issue with the child's expenses, stating that the gym expense should not be allocated to the child; the amount is insignificant at R275. The accommodation costs relate to levies rather than bond or rental costs. The only other cost which I would deduct from the child's expenses is the allocation to the vehicle, which the respondent is liable for to the applicant, as I have indicated below. For the remainder of the expenses of the amount of R39 991.63, it is not inappropriate that the respondent contribute the amount of R15 000 per month towards the minor child's monthly expenses, having regard to the parties' respective incomes and their standard of living.

[10] In respect of the applicant's claim spousal maintenance is not an absolute right. The duty to provide and receive spousal maintenance depends on the need which is not unqualified.³ I have noted the submission that the parties lived a luxurious lifestyle. I have had regard to the submission that the applicant demanded her costs per correspondence and a month later demanded a higher amount. This amount in respect of her legal costs increased by approximately R100 000. She escalated her maintenance claim by R16 000. The demand and the application originated within a month of each other. There is no explanation for a change in the expenses. The applicant is employed. If her circumstances change, she may approach the court for relief showing a change in circumstances. The applicant has not demonstrated a need for maintenance considering that she is employed.

[11] I have noted that the motor vehicle was purchased upon the respondent's wish and her income is thus fettered with this expense for the foreseeable future. The vehicle will be utilised for the benefit of the applicant as well as the minor child. Thus, the respondent should cover the monthly cost of the payment of the vehicle until it is paid as well as the insurance premium in relation to the vehicle. This latter premium the respondent has tendered. The respondent had undertaken to cover certain insurance and medical expenses in relation to the applicant which I have taken into account and which the applicant will no doubt receive graciously.

³ *Reyneke v Reyneke* 1990(3) SA 927(E)

[12] The applicant's current expenses in total are R89 054.00. Her income is R58 141. Thus, her shortfall was stated as R31 813.00. Where the respondent pays R15 000 for the minor child's maintenance as well as R17 098.78 for the vehicle repayment, the applicant will not be out of pocket. The medical insurance I noted was not included in the list of expenses and is tendered.

[13] I have considered that the vehicle has been a choice imposed by the respondent and it is appropriate that he contribute to the cost and maintenance thereof. The respondent has already undertaken to pay for the monthly insurance. He can pay for the monthly repayments to ensure the minor child's daily travel arrangements are maintained in accordance with the standard the family was accustomed to.

[14] I have had regard to the submission that the applicant demanded her costs per correspondence and a month later demanded a higher amount. This amount in respect of her legal costs increased by approximately R100 000. She escalated her maintenance claim by R16 000. The demand and the application originated within a month of each other. There is no explanation for a change in the expenses. The applicant is employed. If her circumstances change, she may approach the court for relief, showing a change in circumstances. The context also indicates that the applicant cashed her retirement proceeds to support the family and the respondent. This will no doubt be ventilated at a later stage. The respondent is financially stronger at present. In view of mediation failing, the parties will have to interrogate the proprietary issues. They must be in a position to litigate on an equal basis.

[15] For the reasons above it is ordered *pendente lite* that:

1. The parenting plan attached as annexure "FA3" to the applicant's founding affidavit is made an order of court. In addition to the

contact of the respondent with the minor child agreed to in the parenting plan, the respondent is entitled to contact with the minor child every second Monday evening during school terms, which shall not be sleepover contact.

2. The respondent is ordered to pay to the applicant monthly maintenance in respect of the minor child in the amount of R15 000.00 on or before the last day of every month, commencing the last day of the month in which this order is granted and monthly thereafter on the last day of each succeeding month.
3. From 30 October 2023 and thereafter on the last day of each succeeding month, the respondent is to pay the following expenses of the minor child, directly to the service providers:
 - 3.1 School fees.
 - 3.2 Extramural expenses and all reasonable expenses associated with the extramural activities.
 - 3.3 All school related expenses pertaining to the minor child.
 - 3.4 The monthly medical aid premium in respect of the minor child and the applicant and all costs not covered by the medical aid plan.
4. The respondent is ordered to pay to the motor vehicle instalment in respect of the applicant's current vehicle as well as the insurance premium on a monthly basis until the vehicle is paid up, on or

before the last day of every month, commencing the last day of the month in which this order may be granted.

5. The respondent is ordered to pay a contribution to the applicant's costs *pendente lite* in the sum of R200,000.00, payable in six (6) tranches of R33,333,33 per month, payable on or before the first day of every month following the granting of this order, which amount is payable to the applicant's present attorney's Trust bank account.
6. The respondent is ordered to pay the costs of this application.

S C MIA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant : Adv CR Du Plessis
Instructed by :Louanne Visser Attorneys Inc.

On behalf of the respondent : Adv JW Kloek
Instructed by : Mark-Anthony Beyl Attorneys

Date of hearing : 27 July 2023
Date of judgment : 17 October 2023