

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

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

Date: **13th July 2023** Signature: _____

CASE NO: 015642/2022

DATE: 13th July 2022

In the matter between:

D, T L

Applicant

and

G, B

Respondent

Neutral Citation: *D, TE v G, B (015642/2022)* [2023] ZAGPJHC --- (13 July 2023)

Heard: 9 May 2023

Delivered: 13 July 2023 – 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 14:30 on 13 July 2023.

Summary: Family law – urgent application – child's best interests are of paramount importance in every matter concerning the child – parental alienation

syndrome ('PAS') – way in which court should view allegations of PAS – more often than not PAS has a detrimental effect on a child's psychological and mental well-being – court should not hesitate to intervene in the interest of the minor child – alienating parent deprived of contact pending therapy – applicant granted relief claimed.

ORDER

- (1) The applicant's non-compliance with the Uniform Rules of Court, pertaining to form and/or time periods, is condoned and dispensed with and the matter is heard and determined as one of urgency in terms of Rule 6(12)(a) of the said Rules of Court.
- (2) Pending the finalisation of the action instituted in this Court under case number: 015642/2022,
 - (a) Save for paragraphs 37, 37.1, 37.3, 42, 44, 45, 46, 47, 48 and 49, the order granted by Moosa J on the 5th of June 2020 under case number: 28072/2016 be and is hereby suspended with immediate effect.
 - (b) The applicant is awarded full parental responsibilities and rights in respect of the minor child, [M] ('the minor child').
 - (c) Primary residence of the minor child shall vest with the applicant.
 - (d) The respondent is granted specific parental responsibilities and rights only.
 - (e) The minor child shall not have any contact with the respondent for a period of three months from date of this order and while the minor child is undergoing the therapy process outlined below.
 - (f) Upon the expiration of the three-month period referred to in subparagraph (e) of this order, the minor child may have contact with the respondent on a supervised basis for two hours twice a week and two hours on the weekend.

- (g) The minor child will continue therapy with his current psychologist, provided that such psychologist has qualifications and experience in treating the effects of *parental alienation syndrome*. In the event that the current psychologist lacks the necessary qualifications and experience, another suitably qualified psychologist will be nominated by the *curator ad litem*, Adv Mark Haskins SC. The psychologist will be mandated to assist the minor child with: -
- (i) reconstruction therapy to ensure that the minor child does not continue to develop personality pathology and to guide the minor child in overcoming the grief, anxiety and possible guilt he will experience as a result of this intervention.
 - (ii) recovering of his natural true self.
 - (iii) repairing the damage done to his attachment bond with the applicant and his maternal grandparents.
- (h) Once the treating psychologist confirms that the minor child is ready, the respondent may be reintroduced into the minor child's life under controlled and monitored conditions and safeguards in place to prevent a repeat of the past years of conflict and alienation.
- (i) The costs of the treating psychologist will be borne by the parties in equal shares.
- (j) The contact referred to in subparagraph (e) above, shall be supervised by a suitably qualified social worker, which social worker shall be nominated by the Chairperson for the time-being of the Gauteng Family Law Forum. The respondent shall make payment of all costs associated with the appointment of and supervision by the social worker.
- (k) The parties shall jointly and within 5 (five) day from date of this order, approach the Deputy Judge President of the division of this Court to appoint a judicial case manager to ripen the trial action with the view of applying for a preferential trial date with special allocation.

- (3) The respondent shall pay the costs of this application and the costs of his counter application.

JUDGMENT

Adams J:

[1]. In terms of our Constitution and the Children's Act¹, a child's best interests are of paramount importance in every matter concerning the child. In issue in this matter, which came before me as an urgent application in the Family Court on 9 May 2023, is the interest of an eight-year-old boy, who shall be referred to simply as 'M' or 'the minor child'. He was born on [...] February [...] and has since his birth been caught in the middle of a tug-of-war between the applicant (his mother) and the respondent (his father), who were never married, but had agreed to have a child together and to conceive M.

[2]. The mother and the father have been involved in ongoing litigation since M's birth. Importantly, on 22 November 2022 this Court (per Wilson AJ), on application by the father, granted an order, which reads as follows: -

'(1) Advocate Mark Leonard Haskins SC, an advocate of the High Court of South Africa, be appointed as *curator ad litem* for the minor child, namely [M] (hereinafter referred to as "the minor child") with the powers to:

- 1.1. Legally represent and/or act on behalf of the minor child in the pending court proceedings between the parties;
- 1.2. Investigate the minor child's living circumstances in respect of the minor child's current and/or future care, residency and/or contact arrangements;
- 1.3. Interview the minor child, the [father] and/or the [mother], and/or any other person who has relevant information pertaining to the minor child's care, residency and/or contact arrangements;
- 1.4. Have unrestricted access to the minor child for purposes of fulfilling the mandate given to the *curator ad litem* in terms of this order;
- 1.5. Have access to any and all documents or reports that directly or indirectly pertain to the minor child's present care, residency and contact arrangements;

¹ Children's Act, Act 38 Of 2005;

- 1.6. Ensure the minor child's voice, views and wishes, as appropriately expressed in terms of Section 10 of the Children's Act, No. 38 of 2005, are made known to the Court and the parties. The Voice of the Child interview shall be conducted by a suitably qualified psychologist or social worker of not less than ten years' standing;
 - 1.7. Approach the Court, on notice to both the [father] and the [mother], for an order clarifying and/or expanding upon and/or restricting any power necessary in order to promote and/or protect the minor child's best interests;
 - 1.8. Compile a report for the Court in respect of the minor child's care, residency and contact arrangements within 60 days of the grant of an order of Court;
- (2). The parties shall bear the costs occasioned by the appointment of the *curator ad litem* and/or his attendances in terms of prayer 1 above in accordance with their pro rata means, or as agreed.
- (3)
- 3.1. Leonard Carr ("Carr"), a clinical psychologist, is appointed to urgently conduct a full investigation regarding the circumstances of the minor child, including but not limited to the manner in which the parental rights and responsibilities of the applicant and the respondent should be structured and/or exercised, and to furnish a report to the Court in this regard.
 - 3.2. The applicant shall bear the costs occasioned by Carr's appointment and/or attendances.
- (4)
- 4.1. The [mother] shall upon receipt of the report by Carr, be entitled, but not obliged, to appoint a clinical psychologist of her choice, to urgently conduct a full investigation regarding the circumstances of the minor child, including but not limited to the manner in which the parental rights and responsibilities of the applicant and the respondent should be structured and/or exercised, and to furnish a report to the Court in this regard.
 - 4.2. The [mother] shall bear the costs occasioned by the appointments and/or attendances of the expert referred to in 4.1 above.
- (5) The [father] and the [mother] are directed to co-operate with both Carr's investigation as well as the investigation of the expert in 4.1 above.
- [3]. Prior to the order of 22 November 2022, an eleven page very comprehensive order was granted also by this Court (per Moosa AJ) on 5 June 2020, in terms of which the parental responsibilities and rights of the mother and the father in relation to M were regulated from that date thence. By the time the latter order was issued by Moosa AJ, eight other court orders had been granted by this court, all of which dealt with one or the other dispute between

the parties in relation to the exercise of their parental responsibilities and rights. A number of experts had been engaged to assist in the resolving some of the burning issues between the parents and no less than three parenting coordinators had been appointed up to that point, none of whom lasted the distance.

[4]. The foregoing gives some indication of the animosity which was prevalent throughout the history of the litigation between the parties. It was against this background and the history of the matter that Moosa AJ, as upper guardian of all children in this Court's jurisdiction, opted to formulate an order regarding access and contact that, as the court put it, 'would endure from the present, until the age of majority'. The application which served before Moosa AJ was in fact an application brought by the father to have the mother declared to be in contempt of a previous court order. The relief sought by the father was not granted. However, as already indicated, Moosa AJ, in the hope that the animosity between the parents would be brought to an end, issued the above order, which definitively and in detail regulated the parties' parental responsibilities and rights in relation to M. The said order clearly did not have the desired effect.

[5]. In a nutshell, the order of Moosa AJ, which expressly superseded and replaced all previous court orders, directed that the mother and the father would remain jointly vested with full parental responsibilities and rights and that the primary care and residency of M would alternate in a shared residency scheme to be implemented in a fortnightly cycle from a Friday to the following Friday, and which was to continue until M attained the age of majority. The shared residency arrangement was implemented with effect from 22 May 2020. In terms of the said order, Dr Lynette Roux, a clinical psychologist, was appointed as parenting coordinator. Dr Roux resigned as parenting coordinator at the beginning of March 2021, whereafter Adv Vicky Olivier succeeded her for the period 18 March 2021 to 17 August 2021, when she also resigned as parenting coordinator without the need to be replaced by a further parenting coordinator as was confirmed by an order of this Court on 17 August 2021.

[6]. That brings me back to Wilson AJ's order of 22 November 2022, pursuant to and in terms of which Adv Haskins SC was duly appointed as *curator ad litem* for the minor child, and the psychologist, Mr Leonard Carr, proceeded to conduct a full investigation into the circumstances of the minor child. By 22 February 2023, Mr Carr had completed his investigations and produced his final report, as he was directed to do by the said court order. He *inter alia* made the followings findings: (1) That there are a number of professional reports and that there had been numerous interventions, and yet the outcome thus far was that M was more at risk than ever and that his psychological functioning was, at that stage, 'in a process of rapid and very concerning decline'. (2) Past interventions failed in ending the conflict, but instead created fertile conditions for the conflict between the mother and the father to persist and escalate with no end in sight. He therefore recommended that 'drastic measures are needed to decisively put an end to this conflict'. (3) M is living in a psychologically chaotic and emotionally dysregulated family, which is no doubt frightening and confusing. This, so Mr Carr opined, renders him susceptible to clinging onto the most actively influencing and persuasive parent's belief system to help him to navigate through and make sense of his chaotic world. (4) Matteo, who should be the subject of the matter, is rendered into a mere object by the ongoing conflict and vicious power struggle between his parents 'who both believe and claim that they are acting in his interests while behaving like two rivalrous small children trying to convince authority figures that they are the ones who are being victimised and who should be favoured'. (5) 'Parental alienation' makes the world in which M is being raised a treacherous and emotionally dangerous one. To survive in this world, he must learn to become at best a tactical liar and a remorseless politician, at worst become so bound up in the alienating parent's delusional belief system that his attachment bonds are disrupted and he himself becomes delusional.

[7]. Most importantly, and this finding deserves particular emphasis, Mr Carr concluded that M suffers from a mild level of parental alienation syndrome on a moderate level where his negative feelings or attitude towards the targeted parent, being his mother, are more pronounced and are interfering with his

ability to maintain a relationship with that particular parent. He is exhibiting behavioural characteristic of a moderate level where he is displaying early signs of the alienation interfering with his ability to maintain a relationship with his mother and her relatives. Moreover, it was found by Mr Carr that M demonstrates a marked lack of empathy when he is under the influence of his father's agenda and he is at risk of losing the ability to see his mother as a person with valid emotions and experiences.

[8]. All of the foregoing translate, so Mr Carr concluded, in M showing early signs of a shared psychotic disorder also known as *folie deux* in which he has adopted the delusional beliefs of his father, despite the lack of evidence to support them. This, in turn, so it is averred by the applicant, has resulted in M seemingly becoming convinced that his mother and her parents are harmful or dangerous – the very definition of 'Parental Alienation Syndrome'.

[9]. For all of these reasons, Mr Carr is of the view that M needs a period of protective separation from his father's influence. He therefore recommended that M should not have contact with his father for three months while he is undergoing therapy as outlined in the final report. At the same time, the father will need to be guided as to how to be a healthy co-parent and help M to accept and be happy in his mother's care and control. Thereafter, so the recommendation continues, M may have contact on a supervised basis for two hours twice a week and two hours on the weekend.

[10]. Mr Carr furthermore recommends that M continues therapy with his current psychologist who will need to start helping him with the tasks to ensure that he does not continue to develop personality pathology. This should include reconstruction therapy with M being helped to overcome the grief, anxiety and possible guilt he will experience because of this intervention. The next step in his healing would be the recovery of his natural true self, not the adaptive false self that he has developed to accommodate the demands of his father's pathogenic parenting. Thereafter, so Mr Carr further recommends, M would need assistance in repairing the damage done to his attachment bond with his mother and his maternal grandparents.

[11]. The last phase, according to Mr Carr's recommendations, when a treating psychologist confirms that M is ready, would be the reintroduction of the father into M's life under controlled and monitored conditions and safeguards in place to prevent a repeat of the past years of conflict and alienation.

[12]. The issue to be considered in this application is whether the recommendations of Mr Carr are to be implemented as being in the best interest of the minor child.

[13]. The application is opposed by the father, who has launched a counter-application in which is sought *inter alia* an order appointing two other clinical psychologists to consider and to analyse the aforesaid report of Mr Leonard Carr dated 22 February 2023, and to report to the Court whether Carr's investigative process, findings and/or recommendations are valid. In effect what the father seeks is an order restarting the whole process, which was commenced by the order of Wilson AJ. More about that later on in the judgment.

[14]. The foregoing issues are to be decided having regard to the expert report by Mr Carr, as well as taking into account the opinions of other experts. Mr Carr's report should be weighed against the criticism levelled against it by the father.

[15]. As rightly submitted by Ms Bezuidenhout, who appeared on behalf of the mother, the role of an expert is significant in this situation as the child's expressed views cannot have any credibility under these abusive circumstances. An expert would be able to point first to the factors of the case which strongly suggest that there has been alienation by the parent with care and in addition advise the Court on the prognosis for the future, for example by assessing the short- and long-term effects on the child of persistent alienation and of the ability of the alienating parent to change. At first blush, this, in my view, has been done by Mr Carr.

[16]. Moreover, one of the other experts in the matter, a Dr De Wit, found that the father's behaviour is 'primarily governed by a pathological sense of envy poignantly illustrated by the protracted litigation where he is indulged through

the court system and a protective attorney to fight'. Pathological envy is described as 'spoiling hostility' and 'devastating the other parent' is the primary goal and the desire to retaliate against the other parent provides the vehicle to essentially 'take back that what is felt to be stolen'.

[17]. It is the case of the mother that this mode of thinking permits 'the [father] to indulge his rage and aggression towards [her] and [her] mother, as he views "us" as the source of despair and perpetual turmoil and he continues to engage in litigation to direct his aggressive wishes against [her] and [her] family by unconsciously killing off the other parent psychologically and emotionally, essentially making that parent emotionally unavailable to the child'.

[18]. It is also the mother's case that the father's behaviour, as confirmed by Dr De Wit, is governed by a pathological sense of entitlement and primary narcissism. The father perceives himself as intellectually and morally superior and uses this vantage point to explain his control. By way of an example, he made the following remark in an email to the mother: -

'Please remember you did not finish high school and you went to a remedial school, your limitations are not his. Matteo is different, he is very smart, he likes to be involved in many activities as many kids in his class and age and he manages all extremely well and he is always curious to know and do more. He is the most amazing kid.'

[19]. The evidence before me suggests that M holds the view that his mother and maternal grandparents are far more encouraging of his relationship with his father than his father is of the relationship between M and his mother and grandparents. M is also acutely aware of the animosity between his father and his grandparents and stated on several occasions that 'my Pappa does not like them'.

[20]. M is of the view that he is the cause of conflict and pain for both his parents. He noted on two occasions that his parents 'had been fighting since before I was born' and stated that 'they will fight until I am 30 years old already ... They will always fight ... I will have my own wife and children already and they will still fight over me'. When he was asked about three wishes that may come true, he wished that 'Pappa will stop moaning at Mamma', that 'they will not go to Court and fight about me' and that 'they will talk to each other

nicely and that my Pappa will talk nicely to my aunty and my granny and grandpa and not ask me what they say about him’.

[21]. It is for all of these reasons that Mr Carr, in his final report of 22 February 2023, concluded that M suffers from a mild level of parental alienation syndrome on a moderate level where his negative feelings or attitude towards his mother are more pronounced and are interfering with his ability to maintain a relationship with her. Mr Carr accordingly recommended that, in the interest of M, he needs a period of protective separation from his father’s influence.

[22]. In his final report of 10 March 2023, the *curator ad litem*, Mr Haskins SC, agrees with the findings of Mr Carr and confirms that he supports Mr Carr’s recommendations. The curator based his conclusions on *inter alia* the consultations he had with M, during which, so he submits, it became clear to him that M was not open to any discussion other than to convey to him the views which he was repeating in almost mechanical fashion and that is that he wanted to reside with his father and not have anything to do with his mother or his maternal grandparents. According to the curator, M conducted himself almost in robot-like fashion, making accusations against his mother and his maternal grandparents in a manner that suggested that he had been programmed to do so. The curator accordingly submitted that no reliance whatsoever could be placed on M’s expressed view – as it is obviously the unreliability of such a view caused by the circumstances more fully referred to by Mr Carr.

[23]. I find myself in agreement with the views and recommendations of the *curator ad litem*, supported by the clinical psychologist, Mr Carr. Their approach cannot be faulted. The simple fact of the matter is that Mr Carr’s expert opinion is based on sound reasoning and is underpinned by the facts. So, for example, the curator’s investigations led him to conclude that M is suffering severely from the consequences of the clear inability of the parties to jointly act in his best interests.

[24]. Mr Haskins also drew attention to a rather bizarre incident on 30 January 2023, when M, on arriving home from school with his mother, said to her that if

he could not reside with his father, he would 'sacrifice his own life'. Obviously, such statements are serious and concerning, but as correctly pointed out by his mother, there can be little doubt that such utterances by M are not his, but are most probably words being put into his mouth.

[25]. I also do not agree with the submission by Ms Rosenberg SC, Counsel for the father, that the expert opinion of Mr Carr should not be accepted on the basis that his conclusions and recommendations are contradicted by factual reality and establish a bias against the father. Far from it. A reading of Mr Carr's report, as I have already indicated, confirms that his opinion is based on sound reasoning and founded on the facts in the matter. The father's approach in that regard is, in my view, rather artificial and overly legalistic.

[26]. Similarly, I do not accept the highly theoretical 'preliminary' opinion by Ms Christie Els, on whose report the father relies for the relief claimed by him. Her critique of the reports by Mr Carr and Dr De Wit is, in my view, without merit.

[27]. On the other hand, the respondent's counterclaim, if granted, would not be in the interest of the minor child. As submitted on behalf of the mother, the father's proposed solution is dilatory and ineffective as a solution to remedy the trauma experienced by the minor child. Very little, if any, purpose would be served by a so-called 'critique report' in relation to the report by Mr Carr. As I have already indicated, in my view, the expert opinion of Mr Carr is well-reasoned and based on sound premises.

[28]. In the premises, I am of the view that the relief sought by the applicant should be granted as being in the minor child's best interests, and the counter-application falls to be dismissed.

[29]. What remains is the issue of the costs of the application and the counter-application. In that regard, the general rule is that the successful party should be granted her or his costs. *In casu*, I cannot think of any reason why this general rule should be deviated from. I therefore intend granting costs in favour of the applicant against the respondent.

Order

[30]. Accordingly, I make the following order: -

- (1) The applicant's non-compliance with the Uniform Rules of Court, pertaining to form and/or time periods, is condoned and dispensed with and the matter is heard and determined as one of urgency in terms of Rule 6(12)(a) of the said Rules of Court.
- (2) Pending the finalisation of the action instituted in this Court under case number: 015642/2022,
 - (a) Save for paragraphs 37, 37.1, 37.3, 42, 44, 45, 46, 47, 48 and 49, the order granted by Moosa J on the 5th of June 2020 under case number: 28072/2016 be and is hereby suspended with immediate effect.
 - (b) The applicant is awarded full parental responsibilities and rights in respect of the minor child, [M] ('the minor child').
 - (c) Primary residence of the minor child shall vest with the applicant.
 - (d) The respondent is granted specific parental responsibilities and rights only.
 - (e) The minor child shall not have any contact with the respondent for a period of three months from date of this order and while the minor child is undergoing the therapy process outlined below.
 - (f) Upon the expiration of the three-month period referred to in subparagraph (e) of this order, the minor child may have contact with the respondent on a supervised basis for two hours twice a week and two hours on the weekend.
 - (g) The minor child will continue therapy with his current psychologist, provided that such psychologist has qualifications and experience in treating the effects of *parental alienation syndrome*. In the event that the current psychologist lacks the necessary qualifications and experience, another suitably qualified psychologist will be nominated by the *curator*

ad litem, Adv Mark Haskins SC. The psychologist will be mandated to assist the minor child with: -

- (i) reconstruction therapy to ensure that the minor child does not continue to develop personality pathology and to guide the minor child in overcoming the grief, anxiety and possible guilt he will experience as a result of this intervention.
 - (ii) recovering of his natural true self.
 - (iii) repairing the damage done to his attachment bond with the applicant and his maternal grandparents.
- (h) Once the treating psychologist confirms that the minor child is ready, the respondent may be reintroduced into the minor child's life under controlled and monitored conditions and safeguards in place to prevent a repeat of the past years of conflict and alienation.
- (i) The costs of the treating psychologist will be borne by the parties in equal shares.
- (j) The contact referred to in subparagraph (e) above, shall be supervised by a suitably qualified social worker, which social worker shall be nominated by the Chairperson for the time-being of the Gauteng Family Law Forum. The respondent shall make payment of all costs associated with the appointment of and supervision by the social worker.
- (k) The parties shall jointly and within 5 (five) day from date of this order, approach the Deputy Judge President of the division of this Court to appoint a judicial case manager to ripen the trial action with the view of applying for a preferential trial date with special allocation.
- (3) The respondent shall pay the costs of this application and the costs of his counter application.

L R ADAMS

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON: 9th May 2023

JUDGMENT DATE: 13th July 2023

FOR THE APPLICANT: Advocate F Bezuidenhout

INSTRUCTED BY: Etienne Cloete Attorneys,
Southdale, Johannesburg.

FOR THE RESPONDENT: Advocate R Rosenberg SC

INSTRUCTED BY: Cuthbertson & Palmeira Attorneys Inc,
Sandton

CURATOR AD LITEM FOR
THE MINOR CHILD: Advocate M L Haskins SC
