

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

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 31058/2020

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 31 May 2024E van der Schyff

In the matter between:

L T[...]

Plaintiff

and

C T[...]

Defendant

JUDGMENT

Van der Schyff J

Introduction

- [1] The parties were involved in protracted and acrimonious divorce proceedings. The divorce was enrolled for trial in September 2022. The evidence of expert witnesses was heard, but it soon became evident that it would not be possible to finalise the trial in the designated time and that the matter would become part-heard. A consent order was proposed by agreement in terms whereof the finalisation of the determination of the parties' parental rights and responsibilities was separated from the issue of divorce. The parties sought some degree of closure. Both counsel were of the view that some of the acrimony might subside if a decree of divorce was granted. I was satisfied that the provisions made with regard to the welfare of the minor children, albeit interim, pending the final determination of the issues, were satisfactory in the circumstances. A decree of divorce was granted, and the finalisation of the determination of the parties' parental rights and responsibilities regarding their two minor children was separated to be finally determined at a later stage.
- [2] The parties have two minor children, a daughter, L, born in December 2014, and a son, C, born in November 2016. Mrs. T[...] wants to be appointed the primary caregiver with Mr. T[...] having contact with the children on alternative weekends and school holidays. Mr. T[...] wants the court to order a 50/50 shared residency regime. The appropriate residency- and care- and contact regime, and maintenance remain contentious issues. The latter is only finally determinable upon finalisation of the residency, care, and contact regime.
- [3] The matter was eventually set down for trial for the week of 27 May 2024. In anticipation of the looming trial and the issues that had to be determined, and having regard to the effluxion of time since expert reports were filed, the *curatrix ad litem*, referred both minor children for a socio-emotional assessment to Ms. H. Sangster, a social worker. The *curatrix ad litem* provided the court with Ms. Sangster's report and with the reports of Dr. L. Stoker, the parental coordinator and Ms. E. Uys, a social worker and play therapist.

- [4] Ms. Sangster reported that the minor, L, made disclosures of alleged current sexual abuse implicating her father. Ms. Sangster subsequently reported the allegations to the relevant authorities.
- [5] The *curatrix ad litem* proposed that the minor child, L, be referred to Dr. Marita Rademeyer for a clinical assessment as per the recommendation of Ms. Sangster, and that Ms. Sangster's mandate be extended to include a forensic assessment of L regarding the allegations of sexual abuse. She also recommended that Mr. and Mrs. T[...] be referred to Ms. Karen Adams for a clinical assessment with the specific request to assess their parental capacity and to provide an opinion as to whether they have the necessary capacity to parent their children. The *curatrix's* final recommendation was that the minor, L, be removed from the care of her father and mother for the duration of her assessment, and placed either with a family member or at a registered place of safety.
- [6] The parties were *ad idem* that the issue regarding the appropriate residency, contact, and care regime that would be in the children's best interest should be postponed *sine die*, pending the finalisation of further forensic and clinical assessments of L and any criminal proceedings against Mr. T[...] that might flow from the allegations of sexual abuse.
- [7] The parties agreed to a procedure to be followed to determine the maintenance issue. Mr. T[...] proposed a maintenance increase that is incorporated in this order in the interim.
- [8] The existing interim residency, care, and contact regime, as far as the minor child, C, is concerned, remains intact. The remaining issue to be determined in the current proceedings is the interim residency, care, and contact regime as far as the minor child, L, is concerned.

Should the minor child, L, be removed to a place of safety for the duration of her clinical and forensic assessment?

- [9] The *curatrix ad litem* opines that the parents lack a basic understanding of what their children's emotional needs entail and the impact of their conduct on the children. She is of the view that the children may be in need of care and protection due to, among others, their continued exposure to their parent's conflict. Ms. Sangster's report echoed the view of other experts that the assessment data obtained by her suggests that both parents might have overtly and covertly influenced the children throughout the litigation process.
- [10] Mr. T[...] supports the *curatrix's* recommendation that the minor, L, be removed from her mother's care to a place of safety, and that both parents only be allowed supervised contact with the minor. His counsel submitted that the minor was subjected to abuse, the only question is who the abuser is, namely whether it is sexual abuse by Mr. T[...], or sexualization and indoctrination by Mrs. T[...]. He submitted that it is in the minor's best interest to be removed from any source of influence. He stressed that it is important for the 'preservation of evidence' that L be removed from her mother's influence or interference since the allegations made can hold serious consequences for Mr. T[...].
- [11] Counsel for Mrs. T[...] submitted that there is no evidence before the court that supports a finding that the minor children, and specifically, L, is a child in need of care that would necessitate her removal to a place of safety. She submitted that there is no evidence that Mrs. T[...] indoctrinates L. Counsel submitted that the court can, at most, order an investigation by a designated social worker as provided for in s 29 of the Children's Act, 38 of 2005. In the event that the court finds it necessary to limit contact between herself, and L, Mrs. T[...] proposed that she would leave the home and that a friend of hers would stay with the children to ensure that they are looked after. The children would then remain in their familiar living environment.

Discussion

- [12] The evidence before the court indicates that both parents, purposely or through indiscreet conversations with others in their presence, expose the children to the conflict and their respective views and distrust of the other parent. The parents have also not yet mastered the skill of civilized communication, a fact attested to by Dr. Stoker's recommendation that hand-overs of the children take place at school to minimise contact between them.
- [13] L is 9 years old, and I cannot disregard the impact that removal from her place of residency may have on L's physical and emotional security. There is currently not sufficient evidence before me that supports a finding that it is in L's best interests to remove her from the care of her mother, *albeit*, temporary.
- [14] I had regard to the report filed by Dr. Lynette Roux, who testified at the hearing in September 2022. It is evident that both Mr. and Mrs. T[...] were previously assessed by professional experts. No findings were recorded that depict either of them as psychologically unstable or incapable of parenting. Dr. Roux found that both parents are capable of providing for the children's needs, including their emotional and intellectual needs, and that both parents influence the children in some way or another.
- [15] As for the evaluation of Mr. and Mrs. T [...], I am of the view that they have been assessed previously. They have repeatedly been informed and warned of the dangers their conflict and inability to deal with each other in a civilized manner holds for their children's psychological and emotional well-being. It would be of no consequence to seek another assessment regarding their parental abilities.
- [16] In light of the allegations of sexual abuse and the expected ensuing criminal proceedings, I have no choice but to suspend Mr. T[...]’s unsupervised contact with

the minor L for the interim and to order the proposed forensic and clinical assessments. Both parties supported the *curatrix*'s recommendation regarding the identity of the proposed expert professionals.

[17] The parties are again implored not to involve the children in their disputes with each other, and not to discuss each other or the litigation with the children or within earshot of the children. They are urged to act reasonably; for example, if Mr. T[...] is present at school sports events where the minor is also present, she may greet her father and interact with him in public if she wishes to do so. It goes without saying that the interaction must be in plain sight and that Mr. T[...] may not engage in discussions relating to this litigation with the minor child. The interaction must be contextualized by the setting – e.g., a child meeting a parent at a school sports event.

[18] The costs of this application are costs in the cause.

ORDER

In the result, the following order is granted:

1. The final determination of the parties' parental responsibilities and rights are postponed *sine die*, pending the finalisation of investigations ensuing from allegations of sexual abuse made against Mr. T[...] by the parties' minor daughter;
2. The existing residency, care and contact regime as contained in the court order dated 9 September 2022, as far as it relates to the parties' minor son, Cornel T [...], remains effective;
3. The parties' minor daughter remains in Mrs. T[...]’s primary care. Pending the finalisation of the investigation into allegations of sexual abuse, Mr. T[...]’s contact with the minor child Laroche, shall be exercised under the supervision of Ms. Eunice Uys,

or a person appointed by her, on dates and at times determined by the parties in collaboration with Ms. Uys or the person appointed by her;

3.1. The supervised contact is to commence as soon as possible from the granting of this order;

3.2. Mr. T[...] is allowed to have a maximum of 6 hours of contact with Laroche each week, having regard to the minor's scholastic and extra mural activities and the availability of Ms. Uys or the person appointed by her. Ms. Uys may extend the hours per week that Mr. T[...] may have supervised contact with Laroche at Mr. T[...]’s request if she deems it in the minor’s best interest;

3.3. The supervised contact can be exercised at any venue agreed to by Ms. Uys;

3.4. No telephone contact between Mr. T[...] and Laroche is provided for;

4. Ms. Hester Sangster is ordered to do a forensic assessment of Laroche T[...] regarding allegations of sexual abuse. Ms. Sangster is requested to issue a report upon the conclusion of her assessment wherein the process, findings, and recommendations are set out.

5. The children's therapy with Ms. Eunice Uys is to continue;

6. Dr. Stoker’s appointment as parental co-ordinator and her mandate is not affected by this order;

7. The minor child, Laroche T[...], is referred to Dr. Marita Rademeyer for a clinical assessment.

- 7.1. Dr. Rademeyer must be provided with copies of all existing expert reports obtained in the period leading up to and during the litigation if she requests it;
- 7.2. Her assessment is to be done in the manner which, and in accordance with the parameters, she deems necessary, having regard to the context of the matter and the minor child's best interest;
- 7.3. Dr. Rademeyer may request information from collateral sources, which information must be provided within a reasonable time of being requested;
- 7.4. Neither of the parties may interact with Dr. Rademeyer, or communicate with her in any way, except if she requests such interaction or communication, except for scheduling the first appointment between Laroche and Dr. Rademeyer;
- 7.5. Dr. Rademeyer may consult with the minor whenever she deems it necessary;
- 7.6. Dr. Rademeyer is requested to issue a report upon the conclusion of her assessment wherein the process, findings, and recommendations are set out;
8. In the event that Dr. Rademeyer is not available to do the assessment within a reasonable time, the *curatrix ad litem* is to nominate another suitably qualified psychologist to conduct the assessment. The directives relating to Dr. Rademeyer will apply *mutatis mutandis* to the psychologist so appointed;
9. Mr. T[...] shall increase the cash contribution of his existing maintenance contribution to R2 500 per child per month;

10. The following scheduling order is made by agreement between the parties to expedite the finalisation of the maintenance issue:

- 10.1. Mr. T[...] will serve and file his financial disclosure forms by 5 June 2024;
- 10.2. The parties may serve and file requests for further particulars regarding each other's financial disclosure by 26 June 2024;
- 10.3. Answers to the further particulars sought, on affidavit, must be filed by 31 July 2024;
- 10.4. Heads of argument are to be filed as arranged when a hearing date is determined at a case management meeting. Any party may call for a case management meeting after 31 July 2024;

11. The plaintiff and defendant must contribute equally to the fees of Dr. Rademeyer, Ms. Sangster, Ms. Uys, Dr. Stoker, or any other psychologist nominated by the *curatrix ad litem*.

12. Once Ms. Sangster and Dr. Rademeyer's reports are available, any party or the *curatrix ad litem* may contact Judge van der Schyff's registrar to arrange a case management meeting to facilitate revisiting the interim arrangements or with the aim of finalising the matter.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the plaintiff:

Adv. I Hay-Vermaak SC

Instructed by:	Hendrik Haasbroek Attorneys
<i>Pro bono</i> appointment	
For the defendant:	Mr. T Dunn
Instructed by:	TJC Dunn Attorneys
Date of the hearing:	28 May 2024
Date of judgment:	31 May 2024