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

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: **12871/2021**

In the matter between:

RH Applicant
ID: […]

and

NM Respondent
ID: […]

Date of hearing: 14 February 2024

Date of judgment: 11 March 2024

JUDGMENT HANDED DOWN ELECTRONICALLY ON 12 MARCH 2024

INTRODUCTION

1. The parties are the biological parents of L, a boy who was born on […] 2016 and is currently 8 years old. They met when the respondent was a student and living as a tenant in a house owned by the applicant in

Cape Town. They were never married, but were involved in a romantic relationship from 2013.

2. In this opposed motion, the applicant seeks, as primary relief, an order granting him leave to permanently relocate L to Australia where he now resides and that the primary care of L be transferred to him from the date of relocation.

3. The respondent opposes the application and, in a counter application, seeks leave to relocate L permanently with her to Aix-en-Provence, France.

4. An application to transfer the primary care of a minor child coupled with relocation to a foreign country, met by a counter application to relocate the child to a different foreign country, presents slightly more complications and difficulties than the more common place “relocation applications” where the primary caregiver seeks to relocate the child to a different national or international jurisdiction.

BACKGROUND FACTS

5. At the time that L was born, the parties were no longer in a relationship but with his birth they reconciled and the respondent and L moved back in with the applicant.

6. The applicant however left for Australia in 2017 where he had secured a job, but continued to financially support the respondent and L. The

respondent had obtained a bursary for further PhD studies at Stellenbosch University.

7. The applicant visited South Africa in June / July 2017 and again in December 2017 / January 2018 but the relationship between the parties had begun to deteriorate and the respondent moved out of the former common home, together with L.

8. The applicant returned to Australia in 2018 and the issue of his contact with L has been highly contested ever since.

9. Towards the end of 2018, the applicant had to return to South Africa and began working again in South Africa for the same company. Shortly after that he reconciled with his former spouse, N. Later in 2019 he secured a sponsored permanent residence visa for Australia and moved there together with N and their son N, who is now 16 or 17 years old.[1]

10. During early January 2018, the respondent met D, a French national who was in South Africa on an internship visa and they began a relationship shortly thereafter. D subsequently secured a critical skills visa and prolonged his stay in South Africa. He and the respondent got married in 2022 and they now wish to relocate to France together with L.

[1] He was 15 as at the date of one of the expert reports referred to below but his date of birth does not appear from the papers.

11. In the meantime, the relationship between the parties became increasingly acrimonious, much of the acrimony relating to the applicant's contact with L. According to the applicant, the respondent at one point prevented him from speaking to L for a period of three months.

12. In July 2021, the applicant filed an application in this Court in which he requested an order that he and the respondent undergo various assessments and investigations (according to him she had been resisting his attempts at putting a care and contact plan in place) and that the primary residence of L be awarded to him.

13. That application culminated in an order granted by the honourable Mr Justice Thulare dated 16 November 2021 ("the 2021 Order"), the main features of which are (paraphrased):

    13.1 The application was postponed *sine die*;

    13.2 The Family Advocate was directed to investigate and submit a report regarding the best interests of L relating to care, contact and primary residence;

    13.3 The parties and L were directed to submit to a psychological evaluation, the outcome of which to become part of the record;

    13.4 The parties and L were to submit to a co-parenting workshop with Dr Mathilda Smit, an independent social worker in private practice;

13.5 Pending the finalisation of the aforementioned investigations and reports, the primary residence of L vested in the respondent and detailed provisions relating to the applicant's contact with L were set out, both for the period of the applicant's visits to South Africa and the contact arrangements to be implemented when the applicant is in Australia.

13.6 Paragraph 5.3.1, which is of particular relevance regarding contact with L when the applicant is in Australia, provided that the applicant should have telephonic / video / electronic contact with L no less than three times per week, including at least one day of the weekend at 09h00 South African time and that the respondent "*shall at all times protect the minor child's right of contact with the applicant and will take all necessary steps to facilitate this contact*".

13.7 Paragraph 5.3.2, in which it was stipulated that any and all school holidays shall be shared equally between the parties and further that one of the long school holidays would be spent with the applicant in Australia. In this regard it was provided in paragraph 5.3.6 that:

> "*Further, the respondent shall facilitate and take any and all necessary steps in order to assist with the visa and/or passport procurement process*."

13.8 Paragraph 5.5, which provided that L has the right of reasonable telephonic contact with both parents taking into account any time zone difference, his educational schedule and extramural activities.

13.9 Paragraph 5.7, which expressly permitted the parties to approach this Court, on such supplemented papers as may be applicable, to bring the reports of the Family Advocate to the attention of the Court. This is in essence what the applicant has done with the application before me.

14. The parties participated in a mediation session on 28 April 2023, which culminated in an agreed order of court made by the honourable Lekhuleni J which contained various agreed arrangements relating to interim contact, delivery of further affidavits, etc and also provided for further investigation and assessment by the Family Advocate and an appointed social worker, Ms Toni Raphael, as an independent expert to assist the Court.

15. The Family Advocate and Ms Raphael did submit reports pursuant to the 2023 Order, which are dealt with in some detail below.

THE APPLICANT'S CASE FOR RELOCATION OF L TO AUSTRALIA

16. The applicant's case (in his founding affidavit) is that, since the granting of the 2021 Order, there have been various occurences which necessitated him to approach the court again to seek to have L placed in his primary care, in Australia.

17. Before dealing with the occurrences on which the applicant relies and in order to provide the context for his complaints, it is necessary to mention the various expert reports that were produced and submitted pursuant to the 2021 Order, and were available at the time of the filing by the applicant of his founding affidavit in this application (further expert reports filed thereafter are dealt with later in the judgment) namely:

    17.1 Report by Family Advocate Z De Jager dt 7 February 2022;

    17.2 Report by social worker Dr Mathilda Smit dt 4 May 2022 (annexure to second Family Advocate report);

    17.3 Second report by Family Advocate Z De Jager dt 26 August 2022;

    17.4 Report by Family Counsellor S Olifant dt 26 August 2022;

18. The content of these reports are dealt with in some detail below but it is necessary for present purposes to point out that the applicant's case is largely built on a statement in the report by Family Counsellor Olifant to the effect that, in the event that the respondent does not comply with Court's Order in ensuring that L exercises reasonable contact with the applicant in Australia, the Court should consider whether she has the capacity to continue to act as L's primary caregiver. This statement is quoted and dealt with fully below.

19. The applicant makes the following allegations regarding the conduct of the respondent for his contention that, in accordance with the opinion

expressed by Ms Olifant referred to above, L should relocate to Australia and that he (the applicant) should become his primary caregiver:

19.1 During the end of November, the week after the 2021 Order was granted, the respondent frustrated the renewal of L's passport for him to visit the applicant in Australia during the June/ / July 2022 holiday as contemplated for in the 2021 Order. She arrived at the appointed branch of Nedbank to complete and sign the necessary forms but then, in return for her cooperation, sought the applicant's consent for L to travel to Mozambique and/or Botswana. When the applicant asked for time to consider this request, she refused and stormed out of the bank.

19.2 The respondent then, after L's passport was obtained later (according to the applicant this was only because the respondent wanted L to travel with her), failed and/or refused to timeously sign the visa documentation for his visit during June / July 2022, offering various excuses such as not having access to a printer, not being able to get away from work, not having internet, and a host of similar excuses. As a result, L's flights had to be cancelled and he was extremely disappointed and cried endlessly when informed that he could not visit the applicant in Australia during that holiday.

19.3 In relation to L's proposed visit to the applicant in June / July 2023, the respondent again failed and/or refused to attend to the

visa requirements, which again caused a postponement of that intended visit.

19.4 Over and above the frustration of L's visits to Australia, the respondent has been guilty of frustrating and preventing telephonic and electronic contact between him and L and generally not cooperating with the applicant in his attempts to nurture and build upon his relationship with L. These allegations centre around the following:

19.4.1 The applicant proposed and requested that his telephone calls with L take place between 07h00 and 07h15 (SA time), before L goes to school, but the respondent's insisted that the telephone calls can only occur after L returns from school, which falls between between 00h00 and 02h00 in Australian time. Later she insisted that such calls should be made at around 20h15 (SA time), which falls between 04h00 and 05h00 Australian time. The applicant's complaint was that this was too late in the evening for a small boy;

19.4.2 Being consistently late in facilitating phone calls;

19.4.3 Turning L's tablet device off thereby preventing the applicant and L from communicating via sms messages;

19.4.4 Numerous similar instances of deliberate (according to the applicant) frustration of contact between him and L, which the applicant listed in a shedule attached to his founding affidavit.

20. The applicant fears that the respondent is seeking to alienate L from him systematically and that, should she be allowed to relocate L to France with her, his relationship with his son will be completely undermined.

21. In his replying / opposing affidavit, the applicant accuses the respondent of seeking to belittle him in front of L by, for example, referring to him by his name and not “dad”. He says that she has referred to him as a “sperm donor” and that she “apparently” intends to change L’s surname.

22. It is to be noted in this regard that it appears from all of the uncontested facts and expert reports that the applicant has sought, and managed, to maintain a strong relationship and bond with L.

23. The applicant states further that he can offer L a stable and secure environment in Richmond, Australia, where he will also have a close friend in his step-brother N, with whom he already has a strong bond and relationship. He would have his own room and would be enrolled in Richmond West Primary School which is on the applicant’s way to work and within walking distance of their house. The applicant would take L to school in the mornings and either his partner N or his son N would

pick him up from school in the afternoons so that he would no longer need to spend his afternoons in aftercare, as is currently the situation.

24. Another advantage, according to the applicant, is the fact that English is the official language in Australia and that the culture is quite similar to that of South Africa, all of which would facilitate L's adjustment to the new environment. He intends to enroll L in French classes so that he will be able to adjust when he visits his mother in France in future.

25. According to the applicant, it would be in the best interests of L to relocate to Australia.

THE RESPONDENT'S CASE FOR RELOCATION OF L TO FRANCE

26. The respondent (in her answering affidavit, which also served as her founding affidavit in her counter application) disputes that she has ever been guilty of deliberately frustrating the applicant's contact with L.

27. She accuses the applicant of being inclined to verbally and mentally abuse her and according to her this is what happened on the occasion at the Nedbank branch and is what caused her to leave. She mentions that the applicant then, with L in tow, went to the nearest police station to lay a charge against the respondent and ask that she be arrested, which was obviously upsetting to L. She points out that the very next day she and the applicant sent WhatsApp messages to each other and attempted to put the necessary arrangements in place again.

28. She admits not having completed the necessary administrative requirements for L's visa to visit the applicant in Australia in June / July 2022, but says this was due to an extremely busy work and study schedule while at the same time caring for L. She points out that such a visit in any event took place shortly thereafter namely in September 2022.

29. She denies failing to timeously attend to the visa applications for L's travel in June / July 2023 and mentions that the applicant's attorney's letter containing the various demands were sent to her attorney shortly before she was to marry D and that "*it was accordingly impossible to provide my attorney with witness statements at the time*". In any event, according to her, responding to that letter was eventually overtaken by the launching of this application.

30. She denies ever deliberately frustrating contact through telephone calls, electronic communications, etc and responds to the allegation that she is systematically alienating L from the applicant by pointing out that they do have a strong bond, despite the distance between them.

31. According to the respondent, the applicant is guilty of seeking to influence L to prefer moving to Australia to live with him rather than to France with the applicant. She states that it has become increasingly concerning that whenever L visits the applicant, he returns in an anxious state of mind. When he returned from Australia on 12 October 2022, L was, according to the respondent, tearful and it took him days to recover. She also relates that after the ten day contact period L

spent with the applicant in March 2023, he was incredibly upset and said that the applicant had told him that the respondent was "*taking him to court*" and the L has also told her that it is her fault that he does not see the applicant because she chose to stay in South Africa. She states further that when L returned from Australia in March 2023, he stated that he "hated" France, which is contrary to the keen desire that he has previously expressed to go to France.

32. The applicant is currently involved in a PhD programme with the Stellenbosch University Sustainable Development Department and is in receipt of funding for the next three years of her studies. She has however already been offered employment with an international company based in Marseille, France, as the Head of Marketing for Sustainability. At the time of the filing by the respondent of her answering affidavit, D had received a three year work contract, as part of a fully funded PhD with La Sorbonne University in partnership with the Museum of Natural History in terms of which he will also receive a salary with all the social benefits offered in France. According to the respondent, his salary would be more than sufficient to support her and L and he also has substantial savings to ensure that they would be financially secure in France.

33. According to her, the plan is that they would initially live in one of D's parents' apartments, which is next to the parents' own home. She says there are various schooling options available to L where he would be

able to receive schooling in English and that D's parents have committed to pay for his primary school education.

APPROACH TO THE EVIDENCE GIVEN BY THE PARTIES AND THE VALUE OF THE EXPERT REPORTS

34. In the summary of the evidence above, I have only very succinctly dealt with the competing contentions and disputes between the parties, of which there are too many to deal with in detail.

35. I have also not summarised the evidence in the further affidavits filed by the parties (although I do refer to some of that evidence below), namely:

35.1 the Applicant's Reply and Opposing Affidavit filed on 26 April 2023;

35.2 the Applicant's Supplementary Affidavit filed on 16 January 2024, which (annexing the most recent expert reports, which are dealt with below);

35.3 the Applicant's Further Affidavit, *jurat* 6 February 2024, which was not formally filed of record at the time of the hearing of the matter. The parties' legal representatives exchanged submissions subsequent to the hearing of the matter regarding its admissibility. For reasons that appear below, I do not believe that this matter should be decided on the basis of accusations

and counter accusations contained in the parties' affidavits.[2] Nevertheless, for the sake of formality, and in keeping with the constitutional injunction that the best interests of a minor child are paramount, which in my view overrides conventional rules of evidence, I grant leave for the filing of the Applicant's Further Affidavit.[3]

36. There is such fierce contestation and acrimony between the parties that their experience, and narration, of events is more than likely somewhat clouded by bias and self-interest. This is not unusual in matters of this kind. In his heads of argument, the applicant's counsel very aptly refers to the following dictum in the judgment in the case of **ID v SP** 2017 JDR 0178 (GP):

> "*The courts as upper guardian of minors have the daunting task in deciding the destiny of minors and their parents, either due to their own actions or due to particular circumstances forced upon them, cannot agree on what would be in the best interests of their minor children. More than often, the parents tend to see the best interests of the children to their own self centered interests and then pose those interests as being that of the minor child. Rightly or wrongly, that is life. It does, however, impose a greater duty upon the court to determine what the best interests of the minor child are*."

37. The "**Plascon-Evans** rule" is virtually impossible to apply, given that the same issues and disputes have relevance to both the application

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[2] Satchwell J found herself in the same position in the case of **LW v DB** 2020 (1) SA 169 (GJ) at para [39]
[3] See eg **MS v KS** 2012 (6) SA 482 (KZP)

and counter application. It is not feasible to assign factual disputes to either the application or the counter application.

38. Moreover, the various expert reports that have been filed in this matter in my view provide more valuable information needed for its resolution than the evidence of the parties. The reports were compiled by experts who have interviewed the roleplayers, applied their minds to the case and reported extensively on the relevant factors to be considered in determining what would be in the best interests of L. In particular, the interviews that they have had with L provided them with his own experience and perception of the manner in which the applicant and respondent have behaved in matters concerning him, which is in my view more revealing than their evidence regarding those issues.

39. I accordingly turn to deal with the most relevant and important aspects of the various expert reports.

FIRST REPORT BY FAMILY ADVOCATE DE JAGER

40. At the time of compiling and submitting this report, the Family Advocate was not in possession of any opposing papers and the report must accordingly be treated with circumspection.

41. According to the report, she conducted preliminary consultations with the parties on 22 February 2022. This cannot be correct since the report is dated 7 February 2022, but it does appear that there was a consultation since she reports at some length on the respondent’s

version of events and the stance that the respondent adoptsin this matter.

42. The applicant's complaints to the Family Advocate, and the respondent's rebuttal thereof, as reported by the Family Advocate, accord more or less with what is said in their affidavits in this application.

43. At the time of compiling this report, the Family Advocate had had a telephonic discussion with a social worker, Dr Mathilda Smit, who had by that time completed co-parenting workshops and mediation sessions with the parties but had not yet compiled a report. Dr Smit was of the view that successful mediation would still be possible and indicated that the applicant had undertaken to pay for two individual sessions for the respondent in order to expedite the matter.

44. The Family Advocate accordingly took the view that further investigation and reporting had to be done and that a final Family Advocate report should be submitted in due course.

REPORT BY DR MATHILDA SMIT

45. Dr Smit is a social worker in private practice and was appointed as co-parenting mediator in the 2021 Order. The parties both attended a divorce education webinar that she hosted and she had joint mediation consultations with them on 10 December 2021 and again on 21January 2022 but, due to the acrimonious relationship between the parties, the respondent refused to further mediate and join consultations. She

accordingly then had an separate consultation with the applicant and N on 6 February 2022 and an individual consultation with the respondent on 17 February 2022. There was another joint mediation meeting on 10 April 2022.

46. She also saw L in a session on 20 April 2022 for two hours, with a view to reporting on the "Voice of the Child" as contemplated in section 10 of the Children's Act, 38 of 2005, which provides that:

> "*Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration*."

47. Dr Smit's findings in respect of L included the following:

47.1 His cognitive development is on par with his developmental age. In fact, his class teacher described him as one of her brightest pupils and as "*an amazing kid*".

47.2 As regards his relationship with the applicant, L indicated that he missed the applicant and spontaneously mentioned that he is going to fly to Australia and that his passport is going to be renewed. He chose the applicant as "*the person that will accompany him on a trip to the moon*", that he feels safe in the care of the applicant, that they have a strong bond and that he trusts the applicant.

47.3 As regards the respondent, he indicated that she has a calm face when he is with her and that he has a happy face at home. He also indicated that she reads to him, makes him happy when he feels sad and gives him the biggest hugs. Further, that the first thing he will do when he is in Australia is to make his mother a card and to get her a Jeep Wrangler, that he loves his mother and feels loved by her. He did however say that she does not play with him and that if he would change anything about her it would be to play with her to make her happy.

48. Dr Smit reached the following conclusions:

48.1 L feels loved by both parents and they both easily fit the criteria for “good-enough” parenting. He trusts and misses the applicant and his son and his attitude towards the applicant’s spouse is positive.

48.2 He clearly loves his mother but “*will be able to cope to be away from his mother for a period of six weeks*”.

REPORT BY FAMILY COUNSELLOR S OLIFANT

49. Ms Olifant is a social worker employed by the office of the Family Advocate and was assigned to this matter as family counsellor by Adv De Jager. She conducted a number of consultations with the parties and L and also had regard to Dr Smit’s report. On the applicant’s request, she conducted a Zoom meeting with the parties, Adv De Jager

and Dr Smit. She also had a consultation with Ms Belinda Von Wielligh, a paediatric occupational therapist who has been attending to L.

50. She also had regard to L's school reports and had a telephonic consultation with D.

51. Ms Olifant's report is comprehensive and I only highlight some of the points made therein that appear to me to have the most relevance.

52. She had a telephonic discussion with Ms Von Wielligh, who continued L's therapy sessions via Zoom on a weekly basis when he was in Australia. Ms Von Wielligh described L as being a resilient child who loves his father dearly and speaks a lot about his father during sessions.

53. Regarding L's visit that was supposed to take place in June / July 2022, after having considered the circumstances carefully, she found that,

> "*While the Mother denies that she delayed the finalisation of the passport and visa process deliberately or at all, it is safe to say that these processes were only attended to in the month leading up to* ***L****'s departure and could possibly have been finalised by the parents much sooner if the parents were able to communicate constructively and make joint decisions*".

54. According to her, it is not in dispute that both parents have good relationships with L but they have different views when it comes to their personal preferences, parenting styles and the best interests of L.

55. As regards her consultations with L himself, she reports, *inter alia*, the following:

55.1 Asked to identify and draw the people who form part of his family and are close to him, he drew a picture of himself, both his parents and his stepbrother.

55.2 He clearly relishes the talks with his father, especially the long talks on Saturday mornings, playing video games, etc and expressed that he misses his father and the activities they did together such as fishing, going on paddle boats and visiting his paternal grandmother. Significantly he expressed that he "*would be ok to go to Australia to visit his father for one month only and that he would be fine for those few weeks without his Mother as they could still speak to each other over video calls*". It must be noted however that he was only six years old at the time of that consultation.

55.3 He articulated that he shares a very good relationship with the applicant and that he gets along well with D.

56. Ms Von Wielligh reported to Ms Olifant that the ongoing acrimonious relationships between the parties is negatively impacting the parent-child relationships. Even after attending numerous mediations sessons with different professionals and co-parenting workshops, the parties are still not able to set aside their differences and focus on what is best for L and Ms Olifant expressed the professional opinion that

"*the parents need to learn to find ways to communicate regarding the best interests of L as ongoing litigation can never be in the best interests of L*".

57. In her evaluation, Ms Olifant *inter alia* made the following findings:

57.1 L has a good relationship with both parents, extended family members, both parents' partners and his stepbrother.

57.2 Both parents need to remain actively involved in L's life to ensure his emotional stability and that he receives adequate parenting from both parents.

57.3 She further expressed the following views, on which the applicant strongly relies in support of his case:

"*The undersigned is further of the professional opinion that L is being preventing from exercising meaning* (sic) *physical contact with the Father as it was evident during this enquiry that the Mother failed to make the necessary arrangements and to prioritise L's right to have holiday contact with the Father in Australia during July 2022. The undersigned is of the professional opinion that the Mother lacks insight into the importance of the Father-son relationship in that she fails to recognise the impact her behaviour has on the minor child's emotional well-being*"

and

"*The assessment has revealed that despite the fact that both parents continue to demonstrate limited insight in respecting the role each parent plays in the life of L, the*

parents, individually, have shown the capacity to care and to almost meet the physical and emotional needs when the minor child is in their respective care throughout the year."

57.4 As regards the issue of which parent should have the primary care of L, she found that, although the relationship between L and the applicant is strong,

"*At this stage, the undersigned is of the professional opinion that it is in L's best interests to remain in the Mother's primary care subject to the Father's reasonable rights of care and contact…*"

and

"*…At this juncture the undersigned is not convinced that it will be in L's best interests for his continuum of care and stability to be disturbed as the Mother is currently his safe haven and has been acting as his primary carer for the majority of L's life.*"

49.5 Finally, Ms Olifant made the observation which forms the basis for the applicant's case in this application, namely:

"*In light of the information procured during this enquiry, the undersigned is of the professional opinion that <u>in the event that the Mother does not comply with the Court's Orders in ensuring that L exercises reasonable contact with the Father in Autralia, the Court should consider whether the Mother has the capacity to continue to act as L's primary caregiver</u>. The parents cannot continue with actions and decisions with little regard for Court Orders.*

> *The minor child's best interests remain of paramount importance and it is a parent's duty to promote these rights. It is L's right to have a relationship with both parents.*" [Emphasis added.]

SECOND REPORT BY FAMILY ADVOCATE DE JAGER

58. This report in essence simply adopted Ms Olifant's report.

FURTHER EXPERT REPORTS

59. Three more expert reports were filed prior to the hearing of the matter, namely:

    59.1 A report by Ms Toni Raphael, a clinical psychologist (this report was filed by the respondent but Ms Raphael's appointment was confirmed by court order of the honourable Justice Lekhuleni of 28 April 2023).

    59.2 A report by Family Counsellor HL Le Roux dated 10 January 2024.

    59.3 A report by Family Advocate P Chababa dated 12 January 2024.

REPORT BY MS T RAPHAEL

60. The respondent has expressed harsh criticism of the fact that Ms Raphael, in the section dealing with her methodology, listed four people among those whom she interviewed, which turned out to be incorrect. Ms Raphael submitted an addendum to her report, admitting

the error, which she ascribed to drafting / editing / proofreading vagaries.

61. I do not intend to discard her findings and recommendations based on what appears to have been an innocent error. Other criticisms that have been levelled her report are dealt with below.

62. After having dealt with the parties' competing contentions as to what would be in the best interests of L, she reported on her own interviews of L, of which the following aspects are in my view significant:

62.1 He spontaneously told her that he has to go to France and referred to D as his "second dad".

62.2 He was very excited to go and visit the applicant again in Australia. He knew that the applicant wanted him to live in Australia and that the respondent wanted him to live in France, and informed Ms Raphael that he was going to live in France.

62.3 He spoke about the fact that the applicant and the respondent fight about things, and, regarding the occasion at the Nedbank branch said "*My dad was shouting at my mom. My mom doesn't like being shouted at, so she left. She was angry*." He also said that the respondent used to cry when the applicant was shouting at her, but that she and D don't fight. According to him "*Me and my mom are almost the same, except I have my dad's eyes*".

62.4 About going to Australia, he said "*My mom really wants me to see dad*".

62.5 The second interview was online while L was in Australia and he reported to Ms Raphael that the applicant's partner and son were very kind and he clearly enjoyed his stay with them very much.

62.6 During a third interview L said that he was glad that it was not his decision whether to live in Australia with his father or in France with his mother and that it would be a difficult decision to make because he did not want either parent to be upset. He then suggested that he "*lives in Australia, then go to France and repeat. I could change and could do both. Actually I want to go to Easter* (meaning Eastern Inland) *in the Pacific*".

63. In her findings, Ms Raphael found no evidence to suggest that either party was psychologically incapable of providing L with responsible and "good enough" parenting and to ensure that his developmental, physical, social, psychological and security needs were reliably met. She found that L enjoyed positive and secure attachments to both parties and that he needed and wanted to have contact and receive care from both of them.

64. Although L residing primarily with the applicant is an untested scenario, she found no reason to exclude this as a reasonable possibility in terms of L's best interests.

65. She found that the respondent "*did historically engage in parental gatekeeping and did, at times, attempt to obstruct and/or delay and/or impede aspects of H's contact*" and that the respondent "*was arguably passive-aggressive and hindered / delayed such contact not so much by acts of commission but omission*". However, rather than being obstructive and malicious, her conduct reflected her failure to be compliant with the applicant's demands and expectations as opposed to those of the court. She was in some instances very accommodating but less so when she felt that she was being disrespected or bullied by the applicant. Some of the applicant's expectations of the respondent "*specifically around facilitating L's contact with his extended family in South Africa, while he was in Australia, were not necessarily incumbent on her to meet*".

66. L did not present as an alienated child although there "*were potentially alienating behaviours that had occurred on both parents' parts*". He had however not internalised such alienating behaviour and had no negative narratives about the applicant, the respondent, N or D even though he was aware of the fact that they did not all like each other.

67. L identified with both his parents and experienced a sense of belonging to both and in both extended families, saying that he was like his mother but had his father's eyes and that he and his father had the same blood. She did find L "*to be slightly more aligned with (M) and (D), however, than with (H), his partner and son*". This was however not surprising since he had met D when he was two years old and living

with him and the respondent was his "*status quo*". The respondent had been the one physical and psychological constant for him throughout his life.

68. L was understandably reluctant to choose one parent over the other and "*Although ambivalent, it was the author's finding that if L were to have to make the choice, he would choose to remain in M's (and D's) primary care, whether in South Africa or France. Also, although he had known N longer than he had known D*". His attachment to N was ambivalent, unlike with D and although he did not want to choose between his parents, Ms Raphael's finding was that he "*felt positively about the status quo, namely being resident with (M) and (D)l*".

69. Ms Raphael found further that the respondent's relocation application was made in good faith, and without any hidden or alternative agenda.

70. As regards the choice between France and Australia, she considered that either Australian or French citizenship would be advantageous to L but she did express the opinion that there are certain advantages and disadvantages inherent in relocation to France vs Australia. In this regard she mentions the fact that Australia is an English speaking country, that L had been to Australia but not yet to France, that the applicant has been living in Australia for long enough to be settled into a home and social circumstances while the respondent's proposed relocation was still more unsettled and that L would be able to apply for Australian citizenship within a significantly shorter time frame than he would for French citizenship.

71. She also referred to advantages in relocating to France, namely access to the whole European Union with its diversity of opportunities, culture, etc, ability to travel more extensively and cheaply and that L would be able to get to know D's extended family and share their family culture, learn a new language and grow up with his half-siblings should the respondent and D have children together.

72. She made the finding that L could in principle adjust to living in Australia or France if he were provided with the appropriate support and if his contact with and access to the non-residential parent was protected, prioritised and ensured. Significantly, she stated that "*The possibility of L living primarily with his father in Australia and his mother in France, at different times and for different stages of his development, must be considered*".

73. Despite the sentiments expressed by her as referred to in paragraphs 67 and 68 above, she ultimately expressed the opinion that

> "*The best option for L, if M relocated to France, would be to reside primarily with H in Australia, for a period of one year or until he obtained Australian citizenship, after which he should reunite with M in France. This would give M and D the opportunity to relocate, find accommodation and settle into their jobs and studies in France. L could take formal French lessons in the interim and has the opportunity to spend time with N before he left home. L would then still have the opportunity to live in France and learn French while still a child, whereafter, having obtained Australian citizenship in the interim. While in Australia L could spend holidays in France and become more*

> *familiar with the places, people, language and culture before relocating there permanently. It was the author's opinion that for L to relocate to France first, and then to Australia and then potentially back to France, would be more disruptive than what is being proposed*." [Emphasis added.]

74. The respondent has expressed vigorous dissatisfaction with the proposal contained in the quoted paragraph in the supplementary affidavit filed by her shortly before the hearing, in which she points to a number of shortcomings in Raphael's methodology and analysis. She cites Raphael's failure to refer to an instance where the applicant's partner N was apparently intoxicated whilst L was in her care, the fact that the applicant unilaterally relocated to Australia in 2020 leaving L behind, failure to assess the applicant's situation and circumstances in Australia, failure to correctly and thoroughly deal with the requirements for obtaining citizenship, etc.

75. I do not consider the worth of Ms Raphael's report to be diminished by her failure to refer to every issue that has been put up by the parties for consideration. After all, she reported, in the respondent's favour, that L's choice would be to remain in the respondent's care. The recommendation in the passage quoted above is in essence no more than a practical proposal that takes into account Ms Raphael's view that the applicant offers immediate stable circumstances in Australia whereas the respondent and D would need some time to settle in France.

REPORT BY FAMILY COUNSELLOR H LE ROUX

76. Ms Le Roux is a social worker at the office of the Family Advocate, who was appointed as family counsellor for this matter. She assumingly replaced Ms Olifant.

77. She had regard to all of the reports that had been filed, and conducted interviews with L on 19 June 2023, with the respondent on 1 November 2023 and with the applicant on 14 November 2023.

78. In her report, she dealt with the history and background of the matter at some length before reporting on her assessment processes with L and the parties.

L's assessment process

79. The following aspects of Ms Le Roux's report on L assessment process are in my view of particular relevance:

    79.1 It is clear that L is very aware of the conflict surrounding his relocation either with the respondent to France or with the applicant to Australia and, like all the other experts, Ms Le Roux found him to be honest and sincere in his own assessment of the situation. He is trying to please both parents, which according to Ms Le Roux "*appears to have placed strain on his own emotional and psychological well-being*". He indicated a strong emotional bond and attachment with both parents.

79.2 He reported that he resides with the applicant and D in Cape Town but that "*we will be moving to France soon*" although he feels sad about not seeing the applicant and his stepbrother regularly.

79.3 Significantly, Ms Le Roux reports that "*When probed on his thoughts of relocating to France he indicated that he would like to do that, but that he does not think his father would like it. When probed about the option to relocate to Australia L did not express hesitance and seemed open to the option, he did however express that he does not think that his mother would be ok with it*".

79.4 He expressed equal love and affection for both parents.

79.5 As a final assessment, Ms Le Roux requested that L complete a "My Three Wishes" worksheet which is an activity typically used for a child to express their true desires. L listed his "wishes" as follows:

> "*To stay with my mom, to be the fastest man alive and to be the strongest man alive*."

Assessment of parental capacity

80. The significant aspects of Ms Le Roux's assessment of the parental capacity of the applicant and the respondent are the following:

80.1 Either parent is capable to assume primary care of L and both submitted proof and competency in processing the visa applications to secure his requirements as per the specifications of either France or Australia's visa pathways. Both have consistently demonstrated attentiveness and responsiveness to L's needs, which has resulted in the development of secure attachment with him. It will be in his best interests to continue to have meaningful and positive relationships with both and they need to both remain actively involved in his life.

80.2 Despite the allegations of the respondent frustrating and deliberately obstructing the applicant's access, there is still a strong and positive bond between L and the applicant.

80.3 Despite the level of acrimony between the parties, the applicant has indicated willingness to share the co-parenting responsibilities with the respondent, whereas she has "*indicated some reluctance to do so*". This hinders effective co-parenting and "*they both appear to have tried to undermine each other's parental capacity which is unacceptable and it cannot continue as it might cause distress for L as he grows older*".

80.4 Ms Le Roux expressed the view that the respondent appears to have a negative view of the applicant's involvement in L's life which explains "*her inclination to make unilateral decisions, and her adamant belief that restricting the minor child's contact with the father will somehow benefit him…*", which "*actions are not*

seen to prioritising the minor child's best interests as L requires the love and affection of both parents".

81. In conclusion, Ms Le Roux had harsh words for the parties' inability to establish a proper co-parenting relationship and opines that "*The parents fit the category of a high conflict separation that perpetually involves the minor child in the adults' conflict, which does not speak to the best interests of the child*".

82. She is concerned that L is forming part, and is often in the middle, of a power struggle between the parties who constantly blame and accuse the other parent of being spiteful and malicious. She is concerned that the acrimonious relationship "*could pose an ongoing risk to L's psychological development*".

83. She noted research suggesting that the single most important predictor of a child's adjustment post-separation is the quality of the relationship between the parties and that the acrimony between the parents "*thus represents the single most important risk factor*" to L's post-separation adjustment.

84. Particularly relevant, in my view, are the following two observations made by her:

> "*Children have different emotional needs at different stages of their lives and having two engaged and emotionally invested parents will contribute to a child receiving the benefit of being co-parented.*"

and

"*The long-term benefit L sharing time, and attention with both parents will solidify his individual relationships with his parents and these early bonds will develop in a strong sense of security in the parent/child relationships*."

85. Ms Le Roux then apportioned most of the blame for the acrimony between the parties to the respondent, stating that the respondent has "*historically engaged in parental gatekeeping behaviour*", and that she is concerned that she will most likely continue this pattern of behaviour.

86. In the final analysis, Ms Le Roux evaluated that it is not in L's best interests for him to relocate to France with the respondent, and her final proposals include:

86.1 that the parties shall remain co-holders of parental responsibilities and rights in respect of L;

86.2 that the primary care of L shall be varied to the care of the applicant, to relocate to Australia;

86.3 detailed provisions relating to contact and visitation rights to be enjoyed by the respondent.

REPORT BY FAMILY ADVOCATE P CHABABA

87. Adv Chababa had regard to all the reports that had been submitted and also had separate consultations with the parties.

88. She also referred extensively to the background of the matter, as well as to relevant case law and academic literature.

89. Adv Chababa ultimately supported the evaluation and conclusion by Ms Le Roux as being in the interests of L which conclusion "*should be made an order of this court*".

RELEVANT LEGAL PRINCIPLES

90. Section 28(2) of the Constitution of the Republic of South Africa, 1996 provides as follows:

> "*(2) The child best interests are of paramount importance in every matter concerning a child.*"[4]

91. The issue of *onus* of proof has been articulated by the Supreme Court of Appeal as follows:[5]

> "*The relief sought by the appellant of necessity involves a variation of this order and the appellant accordingly bore the onus of showing, on a balance of probabilities, that such a variation should be granted, although it must immediately be said that, because the interests of minor children were involved, the litigation really amounted to a judicial investigation of what was in their best interests: The Court was not bound by the contentions of the parties and was entitled mero motu to call evidence*."

[4] See also section 9 of the Children's Act, 38 of 2005
[5] **Jackson v Jackson** 2002 (2) SA 303 (SCA) at para [5]

92. In an earlier judgment,[6] the Supreme Court of Appeal referred to this *onus* as being "*to show 'good cause' for a variation of a custody order*" and held, further, that:

> "*In applications for the variation of custody orders, the Court, whilst not losing sight of the paramount consideraton, nevertheless, will have regard to the rights of the custodian parent. These rights have frequently been discussed in our courts. Generally speaking and subject to the 'predominant consideraton' the custodian parent, here the mother, has the right to have the children with her, to control their lives, to decide all questions of education, training and religious upbringing*."

93. In the matter of **Pepper v Pepper**,[7] Rogers J, for a Full Court of this Division *inter alia* held that:

> "*[55] Where a custodian parent wishes to emigrate with a child, the Court will be slow to prohibit this if the wish to relocate is genuine and reasonable – not because this is a right of the custodian parent, but because generally the best interests of the child will not be served by thwarting the custodian parent's wish*."

94. In the context of applications for the relocation of children, the following guidelines have been established:[8]

> "*Certain guidelines may be distilled from the Constitution, judgment of South African courts, conventions to which South Africa is a signatory:*

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[6] **Van Oudenhove v Bruber** 1981 (4) SA 857 (AD) at 867A-E
[7] Unreported, WCHC Case No 6743/2019
[8] **B v M** [2006] 3 All SA 109 (W) at para 64; **LW v DB** (*supra*) at para [20]

a. *The interest of children of first and paramount consideration.*
b. *Each case is to be decided on its own particular facts.*
c. *Both parents have a joint primary responsibility for raising the child and where the parents are separated, the child has the right and the parents the responsibility to ensure that contact is maintained.*
d. *Where a custodial parent wishes to emigrate, a court will not rightly refuse leave for the children to be taken out of the country if the decision of the custodial parent is shown to be bona fide and reasonable.*
e. *The courts have always been sensitive to the situation of the parent who is to remain behind. The degree of such sensitivity and the role it plays in determining the best interests of children remain a vexed question*."

95. I have not found case law involving a situation where both parents seek to relocate the child to different foreign countries. However, I do not believe that these circumstances in any manner alter the guidelines set out above, for the following reasons:

95.1 There is consensus among the experts that L's physical and emotional needs can be satisfied in both options, whether he relocates to France with the respondent or to Australia with the applicant.

95.2 It is not for the Court to decide which of the two countries is the best to live in.[9] However, should the circumstances and/or conditions in one country compare so poorly to the circumstances and conditions in the other that the best interests

[9] **LW v DB** (*supra*) at paras 31-33

of the child are affected by the choice, the Court may well find itself in the position that it has to enquire into that issue.

95.3 In my view, whatever differences there may be between France and Australia as regards living conditions, culture, etc, pale into insignificance compared to the need to secure the emotional well-being of L.

ANALYSIS

96. I am satisfied from the evidence and, more importantly, the reports by the various experts, that the respondent has in various respects and at various times conducted herself in a manner that sought to frustrate the applicant's contact with L. I have not in this judgment dealt with all of the applicant's allegations regarding this, but it suffices to say that the evidence bears out the findings that the experts, particularly Ms Raphael, Ms Le Roux and Adv Chababa, have made in this regard.

97. It must however not be forgotten that the respondent also accuses the applicant of seeking to influence L to prefer relocating to Australia to live with him, rather than relocating to France to live with the respondent.

98. Ms Raphael recommended that L first relocates to Australia for a year or until he obtained Australian citizenship, after which he could relocate to France. He in fact made such a suggestion himself to Ms Raphael.

99. Ms Le Roux, supported by Adv Chababa, recommended, simply, that the primary care of L be awarded to the applicant and that he relocates to Australia.

100. In this regard, I debated with Family Advocate Chababa (who attended the hearing) whether or not she persists in her recommendation that L should relocate to Australia with the applicant, despite his young age, the fact that the respondent has been his primary caregiver for his whole life, and the "true desire" that he expressed to family counsellor Ms Le Roux "*to stay with my mom*".

101. Adv Chababa persisted in her recommendation and in this regard made a submission to the effect that such a young child's response will sometimes change or be different, depending on the exact circumstances, the person asking the question, etc.

102. The Court will not lightly depart from the recommendations of a Family Advocate, and other experts, but in this instance I am not persuaded that it would be in L's best interests to relocate to Australia and for the primary care to be varied at this stage of his life. In coming to this view, I am persuaded, in particular, by the following considerations:

102.1 First and foremost is the "true desire" expressed by L himself to Ms Le Roux to be with his mother. The particular exercise that produced that response, as explained by Ms Le Roux, is designed to allow the child to express his desire in response to a

question that does not directly or indirectly require of him to make a choice between his parents.

102.2 Mr Raphael also came to the conclusion that L would prefer the *status quo* to be maintained.

102.3 It must surely be uncontentious to say that only the most compelling factors shall override the desire of an 8 year old boy to stay with his mother.

102.4 I accept that the respondent has frustrated the applicant's contact with L in the past and that her conduct has probably contributed the most to the acrimonious relationship between them which, if persisted with, does jeopardise the emotional well-being of L as well as the applicant's bond and relationship with his son. I must however also take into consideration the fact that her conduct has, at least thus far, not had that result. Stated succinctly and bluntly, her conduct has in my view not been so egregious as to warrant the "deepest wish" of the 8 year old L to be disregarded.

102.5 A factor that, in my view, provides the means by which the concerns of the applicant, as well as L's desire to have both parents in his life as much as possible, can be addressed, is a proposal made by the respondent mentioned in Ms Le Roux's report, where she *inter alia* notes that:

"*The Mother propose* (sic) *that L may relocate to Australia for a year once he has reached the age of 13 (2029), providing that he expresses a desire to do so, the Father can proof* (sic) *that he can provide in all of L's needs, a relocation plan and maintenance agreement is signed and therapeutic support offered to L to monitor his relocation and settlement.*"

and further that:

"*L is given the right to choose where he would like to spend his High school years 11 and 12*".

102.6 These proposals by the respondent indicate, at least, a change in the respondent's approach, if it was indeed previously one of seeking to eradicate the applicant from L's life. Whilst the idea of L spending a year in Australia when he is 13 years old might seem to be an extraordinary and disruptive solution, I believe that it is feasible. L would not be the first 13 year old to spend a year in a different country with one of his parents and he has shown the kind of positivity and resilience that in my view makes this a very workable solution. After all, Ms Raphael has recommended that he spends a year in Australia, then relocates to France. L himself has indicated a willingness to "do both". The respondent, who knows L very well, is the one who made the proposal, and I am certain that the applicant would welcome it with open arms.

102.7 Equally compelling is the fact that L has already accepted that he will be moving to France with the applicant and D. It is not difficult to imagine that, if those plans were to be overturned by

an order of the Court, L would experience that as a finding that his mother is not suitable to take care of him, which is very likely to be devastating to him.

102.8 One of the things that stands out in this case is that both parents love their son very much and there is reason to believe that, having gone through this tortuous litigation, there will be a more profound understanding of their duties as parents not to allow acrimony and distrust between them to affect L's emotional well-being. I am hopeful that the respondent will in future follow the orders that I make in relation to the applicant's rights of contact with L, not only to the letter, but also in the spirit of a mother who has perhaps gained a better understanding of the precious bond between a father and a son.

103. As I have mentioned, I consider the first proposal referred to in paragraph 102.5 above to be fair and sensible, and, more importantly, in L's best interests. I can well imagine that the idea that he will future be able to spend a whole year with the applicant will make him very happy. I do not believe that it would be a good policy to adopt the second proposal referred to, so far in advance.

104. A potential difficulty with the proposal is that if the acrimony and distrust between the parties persist, it will require facilitation by a neutral expert mediator, or another court application.

105. This Court will no longer have jurisdiction over this matter when the time arrives, and neither will the South African Office of the Family Advocate. It is also not feasible to appoint a specific independent social worker or other expert for such purposes so far in advance. However, the order that I make below, which follows the respondent's Notice of Motion, somewhat modified by a draft order presented to me by the respondent, *inter alia* provides that the parties take the necessary steps to register this Order as an order in a competent court in the relevant jurisdiction of Aix-en Provence, France. Any dispute between the parties as to the implementation and/or execution of that proposal, will have to be addressed to a competent court in the relevant jurisdiction.

106. Taking all of the above into consideration, I grant the order as set out below.

THE COURT'S ORDER

1. The applicant's application is dismissed.

2. The respondent is granted leave to remove L permanently from the Republic of South Africa and to relocate him with her to France as soon as she has secured the requisite long-term visas for L.

3. The applicant's consent to L being removed from the Republic of South Africa to relocate permanently to France, as required by section 18(3)

(c)(iii) read together with section 18(5) of the Children's Act, is dispensed with.

4. The applicant is ordered to sign any and all travel documents, visas or other forms required by any authority for L to leave the Republic of South Africa for the aforesaid relocation to France, within seven (7) days of being requested to do so by the respondent. Should he fail or refuse to do so, this Court may be approached by the respondent on the same papers, duly supplemented, for the appropriate relief.

5. The respondent is granted leave:

5.1 to renew L's South African passport or to apply for a foreign passport for L, based on her acquisition of citizenship in France in due course and the applicant's consent in respect hereof is dispensed with;

5.2 to obtain any necessary visa for L to allow him to travel between Australia, South Africa, and France and the applicant's consent in respect hereof be dispensed with.

6. The respondent shall take all steps, as advised by her legal representatives, to request that the provisions of this order are recognised, avoiding any conflict of laws, so that this order may be registered as an order in a competent court in the relevant jurisdiction of France, within the earliest period that the respondent's legal representatives can obtain the order, and after that, within 7 (seven)

days to furnish the applicant with proof that such order has been registered.

7. The applicant shall do all things necessary to assist the respondent in securing the aforesaid order. The respondent shall be responsible for all such costs incurred by the applicant in respect of any requirements, as advised by her legal representatives, in assisting the respondent in complying with this provision.

8. The respondent shall reimburse the applicant for such expenses or pay the relevant service provider directly witin 10 (ten) days of receipt of any invoice and/or proof of payment from the respondent.

9. With effect from the date of her relocation, L continues to be in the primary care of, and shall be primarily resident with, the respondent.

10. The respondent, as well as the applicant, shall be involved in the care of L, which shall include making joint decisions about major issues concerning L following the provisions of sections 30 and 31 of the Children's Act 38 of 2005, including but not limited to the following issues:

    10.1 Subject to paragraph 11 below, any major decisions relating to L's education including, but not limited to, his enrolment in any school, the extra tuition he may receive, and his enrolment in a tertiary institution.

10.2 Major decisions about L's medical and mental health care that require treatment of a serious nature (both in terms of the risk posed by the treatment and the cost thereof), except in the event of an emergency.

10.3 Any significant change in the rearing of L with regards to religious beliefs, cultural or traditional values.

10.4 Decisions affecting the residency and contact arrangements in respect of L.

10.5 Any other major decision which is likely to change significantly or to have an adverse effect on L's living conditions, education, health, personal relations with a parent of family member, or generally his well-being.

11. The respondent shall enroll L at the CIPEC International school or any other appropriate local school in France. The respondent is authorised to enroll the minor child at an appropriate educational institution without the applicant's consent being required.

12. The applicant shall not be responsible for contributing towards the costs of schooling or any education-related costs for the first three years whilst L attends CIPEC International school or any other appropriate local school in France. After three years following the commencement of L's enrolment at CIPEC International school or any other appropriate local school in France, the respondent and the

applicant shall pay the costs in respect of such further schooling and any education-related costs in equal shares.

13. The respondent shall provide the applicant with proof of L's registration at the appropriate school as soon as is reasonably possible.

14. After the applicant's and L's arrival in France, the respondent shall secure appropriate accommodation through an appropriate lease agreement for premises located not more than 20 km from L's school, and she shall provide the applicant with proof thereof.

15. From the date of this order and until the respondent and L's relocation to France, the applicant shall exercise contact with L in accordance with paragraph 16 of this Court's order of 28 April 2023.

16. Once the respondent and L have relocated to France the respondent shall forthwith provide the applicant with a calendar from L's school providing the dates for his school terms and holiday periods, which calendar shall after that be provided to the applicant annually in advance before the commencement of the first term of the school year.

17. On L's relocation to France, the applicant shall have the following contact with L on the terms and conditions that follow:

    17.1 Regular telephonic or Facetime or another form of electronic Facetime contact three times per week before L leaves for school for approximately 15 minutes each, and once, either on a Saturday or a Sunday morning, for an unlimited time period,

taking into account the daily needs and activities of L[…], as well as the time difference between France and where the applicant finds himself at the time;

17.2 For six weeks per annum during one of L's July and August summer school holidays, which contact shall take place in Australia. The applicant shall be responsible for the costs of L's return flight and for his costs while with him in Australia;

17.3 For an additional two weeks per year during either L's December / January Christmas school holidays or his February / March winter school holidays, alternating each year, which contact shall take place in Australia. The applicant shall be responsible for the costs of L's return flight and for his costs while in Australia.

17.4 Any other period during which is not during L's school holidays as set out abive when the applicant may be in France or Europe, taking into account L's schooling and extramural activities.

18. The applicant and the respondent shall reach agreement at the beginning of each year, by no later than 28 February, regarding the exact dates and times that L will spend with the applicant during the school holidays for that year, as set out in paragraphs 17.1 to 17.3 above.

19. In respect of the applicant's visits to France and/or Europe as the case may be, the following terms and conditions will apply:

19.1 The applicant shall be responsible for his travel costs and those of L whilst he is in his care.

19.2 Should the applicant wish to see L in some other country in Europe from time to time then, taking into account L's schooling and extramural activities, the respondent shall bring L to the agreed destination and fetch him at the end of the visit. The applicant shall be responsible for L's costs of travelling to and collection of L from the agreed drop-off and collection venue.

20. The applicant shall, by no later than sixty (60) days before the commencement of the contact period in France and/or Europe:

20.1 provide the respondent with an itinerary of their travels during the contact period and/or the details of his temporary accommodation during the contact period; and

20.2 provide the respondent with proof that he has booked and secured accommodation for L and himself, which accommodation shall be appropriate for housing L or alternatively, a detailed intinerary with the necessary contact details of the places where he and L will be staying and/or travelling to during the contact period.

21. The respondent shall be entitled to have telephonic, facetime or Skype sessions with L three times per week whilst L is in the applicant's care on the same terms as set out in paragraph 17.1 above. L should have

some WhatsApp / Discord messaging with the respondent daily whilst he is in the applicant's care.

22. The parties shall, subject to the provisions of this order, each be responsible for L's living costs when he is in their respective care.

23. On relocation, the respondent shall assume full responsibility for L's medical expenses.

24. In the light of paragraphs 22 and 23 above and subject to paragraph 12 above, with regard to his education, on relocation, the respondent shall not seek to claim any cash maintenance contribution from the applicant in respect of L's expenses including medical expenses, whilst L is in her care, so that the applicant can utilise all amounts equivalent to his pro rata maintenance contribution in respect of L's expenses for purposes of contact with L as set out above .

25. For purposes of enforcing the residency and contact orders in terms of the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, with effect from her relocation to France as provided for in this Order, L's place of habitual residence shall be in France. The provisions of the Convention bind the applicant and any competent court in South Africa, France or Australia may apply the provisions of this Convention.

26. The respondent shall not remove L permanently from France or relocate with him to a foreign jurisdiction without the prior written

consent of the applicant, alternatively, in the absence of such consent, a court order.

27. To facilitate L's travels between Australia, South Africa and France, the respondent is directed to ensure that:

27.1 L's South African passport and/or any foreign passport that he may in due course, obtain is/are valid and kept up to date;

27.2 The respondent, and the applicant, if this should be necessary, shall comply with the French Immigration and Travel Regulations and legislation.

27.3 The respondent and the applicant shall sign the necessary documentation in the prescribed format within seven (7) calendar days of a written request and shall cooperate with all legislative and regulatory requirements.

28. The respondent shall be obliged to obtain the applicant's written consent, which shall not be unreasonably withheld, alternatively in the absence of the applicant's consent, an order of a court, should she want to travel outside France or South Africa with L, as the case may be.

29. Once L has reached the age of 13 years, he may be relocated by the applicant to Australia to live with the applicant for one year, on the following minimum conditions:

29.1That L expresses a desire to do so;

29.2 That the applicant can prove that he can provide in all of L's needs;

29.3 That a relocation plan and maintenance agreement is signed by the parties, which signatures may not unreasonably be withheld by them;

29.4 That therapeutic support be offered to L to monitor his relocation and settlement;

29.5 That the applicant bears all the costs of such relocation as well as the respondent's application.

30. The applicant shall pay the respondent's costs of his application as well as the respondent's application.

_____
DC JOUBERT AJ

Date: _____

Applicant's counsel: **Mr HW Watson**

Applicant's attorneys: **Watson Law Incorporated**

Respondent's counsel: **Adv S Van Emden**

Respondent's attorneys: **Miller Du Toit Cloete Inc**