IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: **2391/2017**
Date heard: **22 June 2018, 06 to 08 August 2018**
Date delivered: **30 August 2018**

In the matter between:

S P Plaintiff

and

D P Defendant

JUDGMENT

LOWE, J:

INTRODUCTION

[1] In this matter on the Pleadings S P seeks by way of action, amongst other things, an order of divorce from her husband D P and also certain relief relating to the parties' two minor children, maintenance for herself (on what is referred to as a long-term basis) in the sum of R30,000.00 per month till her death, remarriage or cohabitation with a third-party, that Defendant maintain her medical expenses and the membership on the Medical aid fund, a

resettlement alliance of R1.5 million, the sole ownership of a particular motor vehicle presently in her possession, and costs.

[2] In response, Defendant similarly seeks a decree of divorce, implementation of the antenuptial contract between the parties, certain relief in respect of the minor children and costs of suit denying any obligation to pay maintenance to Plaintiff and failing to attend the maintenance for the children claiming the entitlement to be the primary caregiver.

[3] In short Plaintiff claims the breakdown of the marriage is due to Defendant having entered upon an extramarital relationship, refusing marriage guidance counselling and acting in a dismissive manner towards her, exhibiting no love or affection. The extramarital relationship is denied, Defendant claiming that the breakdown of the marriage was essentially Plaintiff's failure to communicate with him or to show him love and respect and essentially her failure to show interest in his business, and her refusal to work and contribute to the financial means of the parties, particularly what is referred to as the "huishouding". This is denied in turn.

[4] In due course, and no doubt guided by their legal teams, each made certain concessions which may be summarized as follows together with certain common cause facts:

[4.1] The Plaintiff and Defendant met when they were 17 and 16 years old respectively, entering upon a relationship which concluded in marriage on 6 February 1999;

[4.2] They struggled to have children, putting up their name for adoption but finally Plaintiff giving birth to two children, one in July 2005 and the

other in November 2007, both boys, now 13 and 10 years old respectively;

[4.3] The parties have thus been married for some 19 years;

[4.4] Plaintiff's financial needs are currently R17,250.00 per month she having a net salary of R6,000.00 per month thus having an agreed requirement for maintenance monthly of R11,250.00;

[4.5] Defendant agreed to pay maintenance to Plaintiff in the amount of R11,250.00 per month and provide her with a medical aid with the same benefits as his current medical aid, this being tendered however for a period of four years from the date of divorce as rehabilitative maintenance, Plaintiff however claiming this until her death or remarriage;

[4.6] The parties are to be co-holders of parental responsibilities in respect of the children, their primary place of residence to be with Plaintiff;

[4.7] Arrangements as to contact and the like are common cause;

[4.8] Defendant will pay maintenance towards the children at R2,000.00 per month per child to Plaintiff's bank account; he undertaking to maintain the children on his current medical aid scheme and pay the usual medical expenses;

[4.9] Defendant undertook to make payment of all the children's needs, the costs incurred in respect of school fees and the like as also tertiary education;

[4.10] The parties agreed to retain the furniture in their possession (they now living apart in two separate homes), Defendant owning his home, whilst

Plaintiff rented accommodation for herself and the children in the same town;

[4.11] Plaintiff will retain and maintain her present motor vehicle a 2015, Datsun Go 1.2.

[5] What remained in dispute was simply the question as to whether or not maintenance for Plaintiff should be limited to rehabilitative maintenance; whether or not the maintenance for both Plaintiff and the minor children should increase annually automatically by the CPI; the issue of a resettlement allowance as claimed which was persisted in; as also the question of the costs of the action. (At a later time the question of CPI increases were conceded).

[6] I must say that on the facts I should make it clear that the payments above will not serve to maintain Plaintiff in the same style or to the standard she enjoyed during the marriage, by any means.

THE RELEVANT FACTS

[7] The parties' marriage was, it is common cause, a happy one for some years, before running into troubled waters. I will deal with the breakdown of the marriage in due course but it suffices to say that Plaintiff persisted in her view that the breakdown of the marriage was solely due to the Defendant's alleged extramarital affair. Let it be said immediately, that Defendant conceded that he and the lady alleged in the affair sought comfort in each other's company but denies that this was improper, although they spent weekends away on occasions (although he maintains in separate accommodation). Plaintiff claimed that he confessed his love for the other woman, even informing the

children of this on one occasion – this disputed. Defendant's version in summary is that after the children were school going his wife refused to seek work to sustain the family income (as she had promised). She would go back to bed in the mornings after taking the children to school and he said that she in certain email communications conceded that she was at least partly to blame for the difficulties in the marriage which eventuated after some years – she saying in defence she would have said anything to attempt to save the marriage.

[8] In short the marriage is one of 19 years duration and the parties had enjoyed a fine standard of living occupying a four-bedroom home with swimming pool and all that they needed. There were two motor vehicles and a domestic worker in the home and a garden worker. They ate out at restaurants two to three times per month, went on weekends camping and fishing and had holidays at the sea in September and January every year. They had plenty of ready cash and could buy groceries on account at the business partly owned by Defendant. Defendant gave Plaintiff R4,000.00 per month in cash to buy things for herself and on occasion for the house. The medical aid was paid for by the business and she was able to have her hair and nails done. They were well off financially at least in the ten years prior to the divorce proceedings.

[9] Their standard of living was not contested and was essentially common cause, there is also the fact that Plaintiff on occasion worked at the school as a supervisor on a part-time basis and did other bits and pieces, Defendant saying however that she utilized the money therefrom solely for herself, which she contested.

[10] I have referred to the reasons for the breakdown, but should add, and it was common cause, that the third-party concerned was also getting divorced, Defendant informing Plaintiff that he wanted to get divorced in February 2017, she said, around the time the third-party informed them that she and her husband (their family friends) were also to get divorced. Plaintiff suspected something untoward in this regard from approximately September 2016, she saying Defendant confessed in February 2017 saying he did not love her anymore and would be leaving her for the third-party. Defendant disputed this. Sadly some time thereafter and when Plaintiff was away with the children for a weekend it transpired that Defendant was away for four days together with the third-party (but he maintains in separate accommodation), their one child attempting suicide. As to marriage guidance counselling it was Defendant's attitude that he did not consider this appropriate as the marriage had already gone beyond redemption in his view.

[11] It is true, as was contended in argument for Plaintiff, that Defendant's attitude in the witness box was argumentative and that he avoided questions, on occasions giving irrelevant examples and avoiding issues as to his financial circumstances and the businesses of which he was a joint owner with his brother. He also testified to grounds contributing to the breakup that were not pleaded, and on the maintenance issue effectively, said that whilst he was prepared to pay this for four years he was living in straightened circumstances and there must come a time when he was released from the burden so that he could live for himself.

[12] Currently Plaintiff is in rented accommodation suitable for herself and the children, but not of the same standard as the Defendant who stays in the

same four-bedroom house with swimming pool, drives a substantial motor vehicle, owns a caravan and is able to go away for weekends with the third-party concerned and with his children and sometimes the third-party's children. He still works in the same businesses as before (being joint owner of the two businesses), whilst she worked as a receptionist at [….] to assist making ends meet.

[13] It was common cause that the parties each had a substantial portion of the previous joint family furniture and that this had assisted Plaintiff considerably in setting up her new home. It was clearly her hope that in the litigation she would be ordered a sufficient resettlement allowance to enable her to purchase a home at least.

[14] Again in summary the parties' respective financial position and circumstances are set out below, but it must be said that it is essentially common cause that Plaintiff is at least currently unable to support herself either in the same style as previously was the case, nor even in a style approximating this, she having a substantial shortfall between what she can earn presently and her reasonable needs.

[15] Plaintiff earns a net salary of R6,000.00 per month as set out above, and has an admitted remaining need thereafter of R11,250.00 per month. She owns no assets of any description, save the furniture in the home and the motor vehicle.

[16] In marked contradiction Defendant is in a far better financial position. He has an unbonded immovable property with four bedrooms, pool and garden in their hometown worth on his own version between R700,000.00 and R850,000.00, insured for R2.5 million. The house was paid up in 2013 but

Defendant maintains it has been put up as security for the business, he having some difficulty in cross-examination in establishing this, it being common cause that there was no mortgage bond over the property. He maintained that there was a notarial bond in favour of Metcash but again this was not clearly established.

[17] His assets, as reflected above but excluding motor vehicles, were insured for R75,000.00, he owning a Toyota Prado 2010 model and caravan. He has retirement annuities and endowments with a total present value of R961,025.00 as at 5 March 2018.

[18] He has a 50% members interest in two close corporations with his brother worth, it would seem, approximately R7 million, being a grocer and bottle store respectively with a stock value of more than R3 million.

[19] It was alleged, and not successfully contested, that his members interest in the two businesses is substantial. Whilst Defendant put up the version that the businesses were under pressure as similar competing businesses had opened, he had a total combined members interest in the businesses in a very substantial sum it being alleged, and not seriously contested, that this was R7 million, with a combined stock value exceeding R3 million.

[20] To put it mildly, and as suggested by Plaintiff, he is a man of substantial means and was not as forthcoming as one would have hoped in this regard. He clearly felt very strongly that he should not be held forever liable to pay maintenance to Plaintiff, who he clearly regarded as historically having avoided being employed gainfully at all costs. This he clearly resented as he did the suggestion that he should be liable for her maintenance for longer than four years.

[21] In respect of Plaintiff's ability to support herself, Defendant virtually conceded effectively that she was earning in accordance with her ability, though suggesting that she should be seeking employment at other businesses in an attempt to improve her income. This was contested, Plaintiff contending that she had indeed done so but unsuccessfully – there was no evidence to cast doubt upon this.

[22] In this regard Plaintiff's employment history is briefly as follows. In 1999 when the parties were married she worked as a clerk earning R2,000.00 per month, and thereafter as a receptionist earning R3,000.00 per month, ceasing work shortly after the first child was born. As between that time and November 2017 she did not work full-time and devoted herself, so she said, to raising the children and taking care of the household needs. From about 2014 she worked here and there at a clothing shop at the local school, and on occasions as a school supervisor and from June 2016 baked muffins and utilized this income, she said, for the children's clothing and electricity, Defendant saying that she spent this on herself. She said that their first child was a difficult baby and that she had stopped work by agreement. She had only had her own bank account since June 2017, her income always being paid into the Defendant's bank account. Defendant contended that the agreement was that she would stop work only until the children were school going.

[23] It should be said immediately that against this background, it was clearly Plaintiff's case that she was unlikely to improve her income earning ability in the future, nor was it seriously contest that this was the case, it not being put or challenged in any meaningful way, nor was it suggested in what form or

how she would become self-supporting in the next four years or anytime in fact – even at the reduced style in which she now lives.

[24] Whilst there can be no doubt that the Defendant is a hard worker and more than competent businessmen, his suggestion that he had a limited income of R45,000.00 per month did not stand careful scrutiny and it became apparent in the evidence that a number of his expenses had not been listed amounting to some of R27,600.00 per month, and that he received a travel allowance, groceries, payment of his policies and contribution to his medical aid in a substantial sum. It was put in essence in argument that Defendant had understated his income, and access to assets, for the purposes of the trial and that in fact he was better off and had a greater income and access to cash than he conceded. There is in my view substance in this argument on the facts, and at the end of the day it cannot be gainsaid that Defendant is well-off, has a far greater income earning ability than Plaintiff, and that this is likely either to be maintained at current levels or increase, he having access to additional income and cash and certainly has access, if necessary, to same which could be realized to meet his maintenance obligations and his own standard of living – which I find certainly exceeds that of Plaintiff by some way.

[25] In essence when cross-examined on his business interests, the Defendant frequently referred to, and in essence hid behind, his auditors, suggesting on occasions some creative accounting on their part.

[26] In summary, against this background Plaintiff's financial monthly needs are in the sum of R17,250.00, there being no evidence to suggest, even remotely, that she would be able to earn anything like this herself at any time in the

future let alone for years hence. This was established in my view, and I find accordingly is a continuing need that she would be unable to meet herself at anytime in the future, on the probabilities. Indeed I do not understand this to have been seriously contested and the contrary was certainly not put to Plaintiff.

[27] Whilst, as I have said, Defendant contended unconvincingly for a limited income of R45,000.00 per month and no recourse to other sources, he clearly also has realizable capital assets of a substantial nature and the ability to grow his income, and access to funds from the business.

[28] It was not suggested that Plaintiff would reasonably be able to reduce her monthly needs, and indeed cannot be gainsaid that she lives at a standard considerably less than she used to do so, in respect of which the same cannot be said of Defendant, who although he pleads poverty, enjoys weekends away and the like, lives in a far better owned home than does Plaintiff, and has substantial capital assets capable of being realized if necessary.

[29] An illustration of this is that Defendant managed to pay off the second bond on his immovable property of R525,000.00 over six-years between 2007 and 2013. It must also be remembered that Plaintiff inherited a sum of money from her mother in 2000 – 2001 in an amount of R20,000.00 (or a similar amount) which was paid to Defendant's mother as part payment of the purchase price of R110,000.00 in respect of Defendant's present home.

THE FAULT ISSUE

[30] A detailed analysis was made of conduct as a factor in the award of maintenance under the Divorce Act in ***Swart v Swart*** [1]. In his judgment Flemming J made the following important observations:

[30.1] As far as marriage is concerned, an overall picture must be formed. The court must not try to assess the moral blameworthiness of the parties' conduct but try to identify that conduct which has really caused the breakdown. Thereafter considerations of justice must prevail in the determination of maintenance;

[30.2] The Court rejected the argument that only serious conduct was a factor which the Court should consider, stating that this was not indicated by the relevant clause. He pointed out that the legislature has not prescribed how much weight any factor was to carry;

[30.3] It would be regrettable if conduct, which was no longer the determining factor in granting a divorce, was nevertheless to play an important role in, *inter alia*, the determination of maintenance, and that the court should not engage in a close analysis of the parties' conduct during a long period prior to the divorce, but this does not justify the premise that conduct is now irrelevant. The view that both are usually to blame for the breakdown, leads to a more fluid and therefore more equitable approach;

[30.4] In the English case of ***Wachtel v Wachtel***[2] it was held, with reference to analogous legislation, that only "gross and obvious" conduct should be taken into account. In ***Swart*** *(supra)*, however, the learned Judge

[1] 1980 (4) SA 364 (O)
[2] 1973 1All ER 829 (CA) 835

found that the legislature had not indicated such a restriction; and he preferred to apply the test of what would be just, but conceded that frequently the two approaches would lead to similar results.

[31] See also ***Grasso v Grasso***[3] with regards to misconduct, where the Court stated that where misconduct was gross, fault assumed a greater relevance.

[32] I have carefully considered ***Botha v Botha***[4] relied upon by the Defendant's counsel. The matter is easily distinguishable on the facts and is not analogous. Of course I accept what is set out therein as to neither spouse having a right to maintenance[5]; that the Court has a general discretion[6] in this regard; that a just result must be achieved[7]. I have some difficulty with the proposition at paragraph [46] that what is just carries a moral component, though I accept completely that fairness and justice must be achieved as best possible. In this matter I have avoided moral judgment on the breakdown issue as opposed to simply identifying conduct which really led to the breakdown – then applying considerations of justice in the determination of maintenance. I also accept that there is no entitlement, without the facts justifying same, for a spouse to be maintained in the same standard as during the marriage.[8]

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[3] 1987 (1) SA 48 (C)
[4] 2009 (3) SA 89 (WLD)
[5] paragraph [29]

[6] paragraph [31]

[7] paragraphs [34] – [40] and [42] – [49]

[8] ***Louis v Louis*** 1973 (2) SA 597 (T). ***A V v C V*** 2011 (6) SA 189 (KZP) paragraph [9] and [17]. ***B S v P S*** 2018 (4) SA 400 (SCA) 403 [5] – [10]. ***Kroon v Kroon*** 1986 (4) SA 616 (ECD) 617 N – I and 637 C – F.

[33] In short, in this matter, I have no intention, on the evidence before me, of attempting to assess the moral blameworthiness of the parties' conduct, but rather look at the conduct itself to establish if there was any substantial conduct on either side which was a substantial reason for the breakdown. From what I have already said above, it becomes apparent that at this stage in the marriage between the parties, which had been happy for some time, the marriage relationship and their previous friendship had broken down due to a number of factors. Some of these (but certainly not all) can quite clearly be laid at Plaintiff's door, as whilst the children needed particular care at first, it became more than apparent that Defendant reasonably required or wished Plaintiff to contribute financially and to once again work meaningfully. It would seem that the parties' former friendship and love for each other was under considerable strain for a number of reasons some of which are referred to by Plaintiff in an email addressed to Defendant, which email she tried to explain away but in my view unsuccessfully. She herself in the email accepted some fault for the breakdown and promised to do better. Her contention that this was not true but her attempt to say anything to save the marriage, cannot be accepted. The Defendant, however, there can be no doubt on the evidence played his roll herein, formed a close friendship (much closer than had previously been the case) with the third party involved and sought comfort in her company and presence. This friendship was certainly inconsistent with the marriage and was reasonably viewed accordingly by Plaintiff. The third-party it would seem was in a difficult marriage and facing divorce and they sought what they felt they were not getting from their spouses from each other, at least emotionally, there being no final evidence to suggest that this in fact

became an intimate relationship, although the weekends away would certainly indicate this very real possibility on the probabilities. They continue in such a relationship presently.

[34] In my view however, it would be entirely wrong to lay any particular emphasis on the conduct of either of the parties as the primary or main reason for the breakdown of the marriage. They were both parties to conduct that caused the breakdown of the marriage, and in my view, the considerations of justice which must prevail in the determination of maintenance should not be affected either way in this regard. Both were to blame for the breakdown, for different reasons and I would err if I were to find that one or other solely caused this.

MAINTENANCE

[35] Section 7(1) of the Divorce Act, 70 of 1979 *("the Act")* determines as follows:

> "(1) A Court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of assets of the parties or the payment of maintenance by the one party to the other." (Own emphasis)

[36] Accordingly, in the absence of an order for payment of maintenance in terms of subsection (1) the provisions of Section 7(2) of the Act becomes relevant:

> "(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to (a) the existing or prospective means of each of the parties, (b) their respective earning capacities, (c) financial needs and obligations, (d) the age of each of the parties, (e) the duration of the marriages, (f) the standard of living of the parties prior to the divorce, (g) their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and (h) any other factor which in the opinion of the court should be taken

into account, make an order which the court finds just in respect of the payment of maintenance by the one party in whose favour the order is given whichever event may first occur."

[37] In the matter of ***Grasso*** *(supra)* [9] the Court held that not one factor is more important than the others, as follows:

> "In setting forth, in s 7(2) of the Divorce Act 1979, the various factors to which the Court is to have regard when considering the payment of maintenance upon divorce, no particular stress was laid on any one or more of these factors, and they are not listed in any particular order of importance or of greater or lesser relevance. The proper approach, it seems to me, is to consider each case on its own merits in the light of the facts and circumstances peculiar to it and with regard to those factors set out in this particular section of the Divorce Act – which list of factors is clearly not exhaustive of what the Court is to have regard to in deciding what maintenance (if any) is to be paid upon divorce by one spouse to the other, for the Court is free to have regard to any other factor which, in it opinion, ought to be taken into account in coming to a fair and just decision."

[38] Taking into account the factors referred to above in respect of those issues which must be considered in ordering maintenance, it is clear from the authorities that none of the factors relevant are dominant. Essentially it is the question of requirement and need on the one hand and the ability to pay on the other which are two important considerations which must be considered together with other factors relevant. It is in essence section 7 of the Divorce Act should be seen in the context of ensuring fairness between the parties. See ***Nilsson v Nilsson***[10]. I refer also to what I said about ***Botha*** *(supra).*

[9] at p 52 E – G
[10] 1984 (2) SA 294 (C) 297

[39] In this matter, it cannot be said that Plaintiff, a wife of long-standing, had merely shared Defendant's bed and kept house. For the first part of the marriage, until the children were born, she worked thereafter caring for the children and latterly contributing financially somewhat, quite apart from her having maintained the joint home and the ability of her husband to do what he did at work, on occasions at night when he was on duty, and at weekends. It should be said, in my view, that the facts of this matter in no way bring Plaintiff within an argument that a wife who has not worked during the marriage is entitled to no more than rehabilitative maintenance. *Cf* ***Grasso*** *(supra)*.

[40] Not only is the Plaintiff relatively far from being young, but she has two, still young children, previously enjoyed a high standard of living and is currently doing her best to work at her limit but earning far short of what she reasonably needs. There can be no reasonable prospect that she is able to retrain, or has the ability to do so nor is there, on the probabilities, a prospect of a greater earning capacity. In reality in the trial, and for good reason, this was not even put to her. Her financial need is more than established on a reasonable basis, and is not such as to place her in nearly the same standard of living as was previously the case.

[41] I have fully considered the existing and prospective means of each of the parties, their respective earning capacity, their financial needs and obligations, their age, the duration of the marriage and the standard of living prior to the divorce as also all other relevant factors. I have considered their conduct and expressed my view on such as it may be relevant to the breakdown of the marriage, and have traversed the parties' current financial situation. This is relevant both to the principle of an award of maintenance as

opposed to rehabilitative maintenance only, and the quantum thereof. In this matter there will be no transfer of assets between the parties, Plaintiff remaining in straitened circumstances with no capital assets of any description. I have not treated any of the factors above as dominant, and taking all the above into consideration have also had regard to the reasonable need of the Plaintiff and the ability of the Defendant to meet same[11].

[42] In my view, taking all these factors into account, and to effect fairness and justice between the parties, there can be no question that Plaintiff has established an entitlement to maintenance until her death or remarriage.

[43] As the quantum of that sum has been agreed between the parties it is unnecessary to turn any attention thereto, and both of the parties will in the future be able to apply for a reduction or increase thereof if circumstances are appropriate therefore.

RE-SETTLEMENT ALLOWANCE

[44] Turning to the claim for a resettlement allowance.

[45] In ***Zwiegelaar v Zwiegelaar***[12] the Honourable Mr Justice Chetty AJA (as he then was) held that:

> "[12] Ordinarily, the reciprocal duty of support *stante matrimonio* ceases upon dissolution of the marriage. However, the duty of support, i.e. maintenance, may be ext3ended after divorce if the Court is satisfied, having regard to the jurisdictional requirements laid down in s 7(2) of the Act, that it is just to do so.
>
> [13] It was not submitted, nor indeed could it be argued, that the term 'maintenance' should be narrowly construed. Sinclair in The Law of Marriage vol 1 at 443 correctly refers to maintenance in the matrimonial context as a reciprocal duty of support which 'entails the provision of accommodation,

[11] ***Swart*** *(supra)* at 377
[12] 2001 (1) SA 1208 (SCA)

food, clothing, medical and dental attention, and whatever else the spouses reasonably require.

[14] Upon dissolution of the marriage, the word cannot attract a different meaning. Where a Court is satisfied that the one spouse is entitled to maintenance and the jurisdictional requirements as laid down in s 7(2) of the Act have been met, then it is entitled to make an order which is 'just'. 'Just', in the context of s 7(2), entails a recognition in an appropriate case that the accommodation requirements of the one spouse have to be met as part of such spouse's reasonable maintenance needs. To hold otherwise would be to render nugatory the clear requirement that the maintenance award be 'just'."

[46] The Plaintiff claims in her particulars of claim a resettlement allowance in the amount of R1,500,000.00.

[47] It was suggested in this matter that justice and fairness required a resettlement allowance of some amount to be made, if not that claimed, it being suggested that Plaintiff was entitled to a sum to provide her with her own accommodation, which she would acquire by purchase.

[48] I cannot agree herewith, as the maintenance she has and that what I intend to award, is more than sufficient for her to be able to rent accommodation suitable for herself and the children (and after they leave home, for herself), and I do not consider that this is a matter appropriate to the award of a resettlement allowance.

COSTS

[49] As to costs, there can be no doubt that whilst the parties managed to settle most of the outstanding issues, for which they are to be congratulated, the Defendant put Plaintiff in the position where she had to proceed with the trial in order to succeed in her substantial maintenance claim. The trial proceeded,

notwithstanding that I urged upon the parties to spend the litigation costs more sensibly on the family, which sadly bore no fruit.

[50] At the end of the day, I consider Plaintiff to have been substantially successful in her claim although failing on the resettlement allowance issue. This was not an issue which in my view, took up any real trial time, nor was it such as to deprive Plaintiff of a cost entitlement, she having been substantially successful. The argument that this be restricted to the Regional Court Scale must be rejected – this was a substantial matter hard fought by experienced counsel and justifiably brought in the High Court.

[51] In the result, I make the following order:

1. A decree of divorce dissolving the marriage between the parties is granted.
2. Plaintiff and Defendant shall be co-holders of parental responsibilities and rights in respect of the minor children, D P and M P, as referred to in Section 18(2) and Section 30(1) of the Children's Act 38 of 2005, subject to the provisions set out herein below:
    2.1 The minor children shall have their primary place of residence with the Plaintiff who shall be the minor children's primary caregiver;
    2.2 Defendant shall have reasonable contact with the minor children, having regard to their social, school and extra-mural activities;
    2.3 Plaintiff and Defendant shall make joint decisions as to major decisions regarding the minor children's schooling, mental and medical healthcare, religious and spiritual upbringing and, any decisions as to their residence likely to significantly change their living conditions or have an adverse effect on their wellbeing; as provided for in Section 31 of the Children's Act 38 of 2005.

2.3.1 Defendant will, with effect from the granting of the divorce order, and until the children become self-supporting, contribute towards the maintenance of the two minor children as follows:

2.3.1.1 Defendant will pay an amount of R2,000.00 (two thousand rand) maintenance per month, per child. Defendant will pay the aforesaid sum directly into Plaintiff's bank account or in a manner, nominated in writing by Plaintiff from time to time, such payments to be made on or before the first day of each month;

2.3.1.2 Retaining the two minor children as beneficiaries of the current medical aid scheme of which Defendant is a member and ophthalmic costs of the minor children, alternatively payment of all medical-, hospital-, dental- and pharmaceutical expenses reasonably incurred on behalf of the said minor children;

2.3.1.3 Payment of all necessary costs incurred in respect of the minor children's school fees, tuition fees, extra-mural activities, school uniforms and equipment in respect of extra-mural activities; and also for their education at a college, university or other tertiary institution.

3. The Defendant is ordered to maintain the Plaintiff, with effect from 1 September 2018, until her death, remarriage or co-habitation with another as husband or wife, whichever event shall first occur, by:

3.1 paying to the Plaintiff the sum of R11,250.00 per month on or before the first day of every month by way of debit order into such bank account as the Defendant may nominate from time to time, the first payment to be effected on or before 1 September 2018;

3.2 retaining the Plaintiff at his cost as a member of his present medical aid scheme or another medical aid scheme with similar benefits.

4. The maintenance for the minor children and Plaintiff, as set out above, will increase annually by the average of the Consumer Price Index for the previous year, on the anniversary date of this Order.

5. The Defendant is ordered to pay the costs of the action.

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M.J. LOWE
JUDGE OF THE HIGH COURT

Obo the Plaintiff: Adv T Zietsman
Instructed by: Honey Attorneys, Bloemfontein
c/o Netteltons Attorneys, Grahamstown

Obo the Defendant: Adv J R Koekemoer
Instructed by: Pretorius Attorneys, Aliwal North
c/o Whitesides Attorneys, Grahamstown