



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)

Case No: 17958/13

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

28 July 2014

EJ Francis

In the matter between:

[M.....] [B.....] [E.....]

Applicant

And

[M.....] [P.....] [P.....]

Respondent

JUDGMENT

FRANCIS J

1. This is an opposed application in terms of rule 43 of the Uniform Rules of Court (the rules). The parties got married in community of property on 8 December 2002. There are two minor children born of marriage. The respondent has instituted a divorce action against the applicant which is set down for trial on 21 August 2014.

2. In this application the applicant is seeking access to the minor children. The respondent has filed a counterclaim and is seeking R5000.00 per month maintenance for each child, and a contribution of R20 000 for her legal costs.

2.

3. The first issue that needs to be determined is the issue of contact that the applicant should have with the minor children. The respondent sought an order that the applicant should have reasonable rights of contact with the minor children having regard to their scholastic, religious and general well being *inter alia* that every alternative weekend from 17h00 on Fridays when the applicant will collect the minor children from her residence and return them to her on Sundays at 18h00. The applicant on the other hand seeks an order that he should have contact with the minor children every alternate weekend from 14h00 on Fridays when he will collect them from their school and return them to school on Monday morning at 7h45. In paragraph 4.1 of the applicant's answering affidavit to the counter claim the applicant has admitted the contact arrangements proposed by the respondent. That being the case, there is nothing unreasonable about the arrangements proposed by the respondent.
4. This brings me to the respondent's claim for R5 000.00 maintenance for each child. I have considered the means of both parties and their expenses. It is clear that when it comes to the issue of maintenance in terms of rule 43 some parties are in the habit of inflating their expenses in an attempt to shirk their responsibilities towards their minor children. Some parties would use this opportunity to settle old scores against the other and in the process it is their minor children who suffer. The minor children are

on the applicant's medical aid, he is paying their school fees, school books and uniforms, pocket money, transport and clothing. The respondent is employed and is not impecunious. In my view it would be just and fair to order the applicant to pay R1 500.00 maintenance for each child.

3.

5. The respondent has not laid any basis why she is seeking a contribution towards her legal costs. She has stated as follows in paragraph 19 of her counterclaim:

"I state that the divorce action has been set down for trial in the above Honourable Court on the 21st August 2014 and I do not have sufficient funds to prosecute this action against the Applicant. I require a contribution from the Applicant towards my legal costs in the sum of R20 000,00 which amount I believe the Applicant is able to afford".

6. During the proceedings, the respondent's counsel indicated to this court that the respondent was no longer seeking a contribution of R20 000,00 but R5 000,00. The respondent has not informed this Court on what basis she is seeking R20 000,00, for example how it is arrived at; what unpaid costs have already been incurred, the projected amount up to and including the first day of the trial, etc. The respondent has failed to set out sufficient facts which if established by her at the trial on the hearing of the evidence would justify the court in granting an order for a contribution towards court. In this regard see *Van Zyl v Van Zyl* 1947 (1) SA 251 (T), *Nicholson v Nicholson* 1998 (1) SA 48 (W).

7. The application succeeds in part and fails in part too.
8. Both parties are *ad idem* that costs should be costs in the cause. I am in agreement with that.

9. In the circumstances I make the following order *pendente lite*:

9.1 The respondent will have primary residence of the minor children.

4.

9.2 The applicant will have the right to reasonable contact with the minor children, which will include but not limited to the right of the minor children with him as follows:

9.2.1 Every alternate weekend from 15h00 on Fridays when the applicant will collect the minor children from the respondent's residence and return them to the respondent on Sundays at 18h00;

9.2.2 Half of the long school holidays subject to Christmas, Easter and New Year alternating between the parties;

9.2.3 Alternate short school holidays;

9.2.4 On the applicant's birthday;

9.2.5 On Father's day;

9.2.6 On alternate Public Holidays that do not fall on a Friday or Monday from 08h00 to 18h00.

9.3 The applicant is to pay maintenance for the children in an amount of R1 500.00 per child per month.

9.4 The applicant is to pay the children's school fees which include private school fees.

5.

9.5 The applicant is responsible for the costs of uniforms, books, stationery, school tours, levies, extra lessons, extramural activities and equipment relating thereto for the children.

9.5 The applicant is to retain the children on his medical aid and is liable for the contributions payable to such medical aid scheme. Any medical excesses not covered by the applicant's medical aid scheme to be paid by the applicant.

9.6 Costs are costs in the cause.

FRANCIS J

HIGH COURT JUDGE

FOR APPLICANT : C MARYNOWSKI INSTRUCTED BY XULU ATTORNEYS INC

FOR RESPONDENT : G HARDY INSTRUCTED BY CLORINDA SCALCO ATTORNEYS

DATE OF HEARING : 21 JULY 2014

DATE OF JUDGMENT : 28 JULY 2014