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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/44169

DELETE WHICH IS NOT APPLICABLE

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

In the matter between:

K[....] R[....]

Applicant

and

K[....] M[....] R[....]

Respondent

In re:

the ex parte application of: -

K[....] R[....]

Applicant

and

C[....] R[....]

First

Respondent

K[....] M[....] R[....]

Second Respondent

R[....] M[....] R[....]

Third

Respondent

(in re: **N[....] M[....] A[....] R[....]**)

JUDGEMENT

SEGAL AJ

1. This matter came before me having been specially allocated as an urgent application by the Acting Deputy Judge President Carelse, in circumstances where it had been set down on the urgent roll during the previous week but was not ripe for hearing.
2. The matter was argued before me for two days and short heads of argument were filed. After the argument had been concluded, and at the request of counsel, I allowed supplementary heads of argument to be filed.
3. The application concerns the best interests of a 6-year-old boy **N[....] M[....] A[....] R[....]** ("**N[....]**") who will turn 7 on 18 November 2020. **N[....]** currently resides with his mother, the respondent in this application, **K[....] R[....]** (hereinafter referred to as "**K[....]**").

BACKGROUND

4. By way of background, the applicant, **K[....] R[....]** (hereinafter referred to as

“K[....]”) (who is K[....]’s mother and N[....]’s maternal grandmother), brought an urgent *ex parte* application on 13 December 2019. The reason for the application having been brought *ex- parte*, according to K[....], was that *inter alia* she feared for N[....]’s physical and emotional safety in the event that K[....] found out about the application before the order was granted, additionally, N[....] was in the care of Mr Phillip Prichard whilst the respondent was in Akeso Clinic. An order was granted on 13 December 2019 (“**the 13 December order**”) in the following terms:-

- “...3. *That Adell-Mari Wolmarans (“Wolmarans”) a social worker be appointed in terms of section 29 of the Childrens Act, Act 39 (sic) of 2005 (“the Act”) to investigate the circumstances of the minor child in terms of section 155(2) of the Act;*
4. *That the Applicant be granted rights of care and contact over the minor child in terms of section 23 of the Act, and that the minor child immediately be removed from the care of the first respondent and that the minor child reside at the residence of the respondent with the applicant until otherwise ordered by this court;*
5. *That the applicant further be awarded guardianship over the minor child in terms of section 24 of the Act for the time being until such time as this court orders otherwise;*
6. *That both Adell-Mari Wolmarans and Dr Robyn Fasser (Fasser) alternatively Ilse R[....]se, who are both clinical child psychologist’s be appointed to assess and possibly treat the minor child if in their professional opinion, such treatment is warranted;*
7. *Reports by Wolmarans and Fasser / Robbertse be produced within a period of three (3) months as from the date of this order, or on such extended time period as Fasser / Robbertse and Wolmarans may request of this court, suitably substantiated;*

8. *The applicant be granted leave to supplement her founding affidavit after receiving reports mentioned in paragraph 6 above.*
5. After the grant of the order and service having been effected upon her, K[....] brought a reconsideration application in consequence of which the order was varied and a revised order ("**the 19 December order**") granted in the following terms:-

" *Clause 5 of the Order be deleted and replaced with the following:*

5. *Pending the finalisation of the reports and recommendations made by the experts appointed in terms of clause 6 and 7, the applicant and second respondent be awarded co-guardianship over the minor child in terms of section 24 of the Act. Both parties shall advise the other party in writing by WhatsApp and by mutual agreement of the minor child's daily activities. Such agreement shall not be unreasonably withheld by either the applicant or the second respondent. Unless exceptional circumstances exist (such as an unforeseen emergency), the minor child shall be at home no later than 17h00 and shall not be taken any earlier than 7am on any given school day. On weekends, public holidays and school holidays, the minor child shall be home no later than 20h00.*

Clause 8 of the Order be amended to read:

8. *Without the applicant conceding that the first respondent is entitled to do so, all parties be granted leave to supplement their papers after receiving the reports mentioned in clause 7 of the Order.*

Clause 9 of the Order be amended to read:

9. *A copy of the applicant's ex parte application and the Order to*

(sic) together with this order be served on the third respondent and (where not already attended to) on the second respondent by no later than 16 January 2020.

Clause 11 of the Order be amended to read:

11. *the parties shall be entitled to approach the court on 19 February 2020 for further directions in relation to this matter.*

Clauses 3, 6, 7 remains the same.

2. *The parties agree that the minor child will travel together with the applicant and the second respondent from Johannesburg to Cape Town in order to celebrate Christmas at the Family Home, at [...] for the period 21 December 2019 until 26 December 2019 with the minor child's, friends and families (sic), after which the second respondent and the minor child shall return to Johannesburg to reside at [...]. The applicant shall thereafter return to Johannesburg to reside with the second respondent and the minor child on 28 December 2019 at [...].*
3. *The applicant shall pay travel and accommodation costs of the second respondent and the minor child pursuant to paragraph 2 above.*
4. *The applicant shall make payment in full of all costs associated with the experts mentioned in paragraph 6 and 7 of the Order by Justice Makume, which payment shall be made directly to the relevant expert.*
5. *The parties agree that they shall be afforded a period of 1 (one) calendar month to challenge any report or part thereof, failing which the reports and recommendations made by the appointed experts shall be final and binding upon them."*

6. Consequent upon the grant of the 19 December 2019 order, Dr Robyn Fasser (**“Dr Fasser”**) was appointed to conduct a full forensic investigation in relation to N[....]’s best interests and the allocation of parental responsibilities and rights. Dr Fasser was assisted by social worker Adell-Mári Wolmarans (**“Wolmarans”**) who conducted an interactional analysis and whose report was incorporated into the report of Dr Fasser. As such, it was always understood the Wolmarans would assist Dr Fasser in her investigation.
7. In the period between the grant of the 19 December 2019 order and the present date, N[....] has resided between Cape Town and Johannesburg with K[....] and K[....] in the same residence at times and with K[....] alone at other times.
8. The investigation and report of Dr Fasser was delayed as a result of the COVID-19 pandemic, the parties being in Cape Town for a period of time and Ms Wolmerans contracting Covid. Ultimately Dr Fasser’s report was released on 14 September 2020.
9. The findings and recommendations of Dr Fasser triggered the urgent application which was launched by K[....] on 24 September 2020. K[....] seeks an interim order for the implementation of Dr Fasser’s recommendations on an urgent basis pending the finalisation of the matter and the hearing of part B of the notice of motion in the ordinary course.

THE RESPONDENT’S OPPOSITION

10. K[....] opposes the relief sought by K[....] on various grounds and seeks an order that the application be struck from the roll for want of urgency alternatively, that the matter be referred to oral evidence in light of the disputes of fact on the papers, which she contends to be material. K[....] contends that the current status quo should be maintained pending the finalisation of the matter.

11. Additionally, K[....] contends that the non-joinder of N[....]'s biological father, Mr Boccia ("**Mr Boccia**") should preclude a decision being made at this stage, as should the fact that the views expressed in the reports of K[....]'s therapist, Dr Hanan Bushkin ("**Bushkin**") and N[....]'s therapist, Orley Zaaks ("**Zaaks**") contradict the opinion of Dr Fasser. Further points *in limine* raised by the respondent include the absence of a family advocate's report and failure to initiate mediation on the part of the applicant.
12. I was also directed by K[....] to the critique of Dr Martin Strous ("**Dr Strous**"), an Educational Psychologist who considered Dr Fasser's report and provided a critique thereon.
13. I shall deal with these points *in limine* hereunder:-

13.1 Urgency

- 13.1.1 The respondent contends that the Court's "summary determination on urgency" has resulted in injustice and prejudice being caused to the respondent and N[....]. I do not agree.
- 13.1.2 The application was referred to me by the ADJP as a specially allocated urgent application for determination during the week of 12 October 2020.
- 13.1.3 In advance of the hearing I read the initial urgent application and the reconsideration application of December 2019 as well as the Notice of Motion, affidavits and annexures filed of record in the present application. From the papers, it was readily apparent to me that the matter is urgent and that it should be treated as such. Dr Fasser's report speaks of extreme urgency and the resultant risks that could follow if urgent steps are not taken.

13.1.4 Notwithstanding the respondent's contentions that she had been prejudiced, on account of the urgency with which the application had been brought, she managed to file an answering affidavit together with annexures that span some 500 pages (much of which comprised repetitive content), initial heads of argument of 38 pages and supplementary heads of argument of some 180 pages together with annexures.

13.2 Disputes of fact, drastic relief and referral to oral evidence

13.2.1 The respondent contends that by virtue of the fact that there are disputes of fact on the papers, it is inappropriate to deal with the matter on motion court proceedings.

13.2.2 The applicant, so the respondent contends, should have foreseen that these disputes of fact would have arisen and proceeded by way of action. I do not agree that in the circumstances of this matter intervention could have waited until the hearing of a trial action. Trials can take many months if not years to be finalised with *dies non* and the December court recess looming and resulting in obvious delays. Having regard to the urgency for intervention enunciated in Dr Fasser's report a delay of this nature is not in N[....]'s best interests.

13.2.3 The respondent argued that Part A of the Notice of Motion does not merely foresee "a holding position" to be implemented until the adjudication of Part B of the Notice of Motion. She contends that the relief sought is final in effect in that it seeks to remove all parental

responsibilities and rights from the respondent, only providing for the reinstatement thereof at a later date, provided that the parenting coordinator has recommended it and a substantive application launched.

13.2.4 The respondent asserts that the relief sought by the applicant will result in the severing of the bond between mother and child and will be finally dispositive of the issues.

13.2.5 I cannot agree with these contentions particularly in that I do not intend to grant an order in the terms sought by the applicant. The order that I intend to grant is indeed interim in nature and affects only the issues of primary residence and contact pending the finalisation of part B of this application.

13.2.6 I indicated during the hearing of the matter, I did not intend to grant a final order and as appears from my order below, the respondent will have every opportunity to challenge the report and recommendations of Dr Fasser, without having been denuded of her parental responsibilities and rights in the interim as sought by the applicant.

13.3 Differing experts' opinions

13.3.1 Ms De Wet on behalf of the respondent urged me to reject Dr Fasser's report out of hand on a variety of

bases including *inter alia* that Dr Fasser's report is incorrect, that it is not supported by the respondent's experts, that it is not supported by the facts, that it is illogical and that incorrect procedures were followed by Dr Fasser (according to Dr Strous).

13.3.2 It was argued on behalf of K[....] that experts can err and that the court is not bound by expert recommendations; that experts should not usurp the functions or discretion of the court; that expert witnesses must lay a factual basis for their conclusions and explain their reasoning to the court.

13.4 The Court's assessment of the experts

13.4.1 I have carefully considered the content of Dr Fasser's report and am persuaded there is good reason for certain of her recommendations to be implemented urgently and on an interim basis. I have not however accepted her recommendations as a "package deal" as I was urged to do by counsel for the applicant.

13.4.2 As such, I have tailored the order that I intend to make to provide for an interim position to ensue pending the finalisation of Part B of the matter. K[....] will retain intact the parental responsibilities and rights of care, contact and guardianship pending finalisation of Part B of this matter.

13.4.2 The experts that are before this court having consulted with both the applicant and the respondent and with

N[....] are the two experts that were appointed by this Court in December 2019 namely Dr Fasser and Wolmerans.

- 13.4.3 These experts have fulfilled a strictly forensic function and they have not engaged therapeutically with either of the parties or with N[....]. They have not formed personal or professional bonds with either of the parties or N[....] and are not aligned with either party. There is nothing before me which casts aspersions on their neutrality and objectivity; this, despite the respondent's contentions to the contrary.
- 13.4.4 No objection to the identity of either Dr Fasser or Wolmerans was raised in the respondent's reconsideration application and I accordingly do not conclude that these experts are the applicant's experts. They are in fact, the Court's experts.
- 13.4.5 One of the main attacks on the reports of Dr Fasser and Wolmerans is the fact that these reports do not take into account the views of Bushkin and Zaaks. K[....] contends that because Bushkin and Zaaks have seen her and N[....] respectively on a weekly basis since 23 / 24 June 2020, they have better insight into the respondent and N[....]. The respondent seeks to elevate the views expressed by Bushkin (in a one-and-a-half-page report) and Zaaks (in a two-and-a-half-page report) as having similar value and carrying similar weight to the reports of Dr Fasser and Wolmerans.

- 13.4.6 I cannot agree that the reports of Zaaks and Bushkin should be ascribed the same weight as those of Dr Fasser and Wolmerans. Zaaks and Bushkin are both treating therapists and are not qualified as expert witnesses in this matter. The fact that they are treating therapists precludes them from assuming a forensic role. The two functions are mutually exclusive. Bushkin and Zaaks have not met with the applicant, have not investigated the matter and are not in a position to express an opinion or make recommendations as forensic experts.
- 13.4.7 Additionally, the views of Bushkin and Zaaks were in fact communicated to Dr Fasser and comprised part of the collateral information that Dr Fasser considered in reaching the conclusions which she reached. Their reports form part of her report. The fact that Dr Fasser did not concur with their views does not indicate that she did not take such views into account in the ultimate formulation of her opinion and recommendations.
- 13.4.8 Insofar as Dr Strous' critique is concerned I do not take issue with the fact that he tenders a critique as an educational psychologist. His critique however is only that, a critique. It is not a comparable assessment to that of Dr Fasser. He has not conducted an assessment, interviewed the parties and N[....], conducted psychometric assessments (or considered Dr Fasser's raw data), obtained collateral input and the like.

13.4.9 Dr Fasser's report plainly lays a factual basis for her conclusions and she is clear in her explanation of attachment theory which underpins the reasons for her recommendations.

13.4.10 In the circumstances, I rely on the evidence of Dr Fasser and Wolmerans which *prima facie* persuades me that the current state of affairs in respect of N[...] cannot prevail and that an interim order must issue.

13.5 Non-joinder of Mr Boccia

13.5.1 The respondent contends that any decision to remove N[...] from Johannesburg constitutes an interference with the parental responsibilities and rights of Mr Boccia and would amount to the exclusion and negation of Mr Boccia's rights.

13.5.2 Mr Boccia was cited as the third respondent in the application of December 2019. It is common cause that no steps whatsoever were taken by him to assert his rights. This despite the fact that that he was aware of the conflict between the applicant and the respondent and the forensic investigation of Dr Fasser.

13.5.3 The respondent has, in this application, attached an affidavit deposed to by Mr Boccia as annexure "AA1" which confirms annexure "AA6". It is plain from a perusal of these documents that Mr Boccia was aware of this application. No explanation for his failure to intervene is given. He confirms that he was not involved in N[...]’s life

for the majority thereof until last year and that he sees N[...] for “a reasonable period of time” every alternate Saturday. His contact was interrupted during lockdown and he did not see N[...] when K[...] was in Cape Town and during the period where contact was not allowed on account of the COVID-19 regulations.

- 13.5.4 To the extent that Mr Boccia now wishes to become involved in this litigation, I have made provision for him to do so in relation to Part B of this application. However on an urgent and interim basis his rights are one of many factors to be taken into account and are not determinative of the matter.

DR FASSER’S REPORT

14. Dr Fasser’s report runs to some 164 pages. The report of Wolmarans which spans 26 pages is attached to Dr Fasser’s report. Dr Fasser finds *inter alia* that N[...] is exhibiting severely disturbed attachment patterns specifically in his relationship with K[...], his behaviour is dysregulated and manifests as displaying anger and aggression, agitation, and defiance.
15. Dr Fasser attributes this to the fact that N[...] has a disorganised attachment with K[...] who *inter alia* has an expectation that N[...] should care for her (rather than the other way around), and is not capable of taking on a healthy, “stronger and wiser” role with N[...], leading him to feel afraid and having to take control of the relationship himself.
16. Dr Fasser concludes that N[...]’s interests have been severely compromised. She explains that initially, he had a secure and healthy attachment to K[...], which was summarily severed, and that his subsequent attachment to K[...] has proved to be disorganised, to the extent that N[...] is psychologically not thriving and is at great psychological risk. Although much debate ensued

during argument concerning the actual length of time that K[....] served as N[....]'s primary attachment figure, it is quite clear on K[....]'s own version, as furnished by her to Dr Fasser and Wolmarans that this ensued for approximately the first 20 to 36 months of N[....]'s life (paragraph 7.2.1.4 of Wolmarans' report) and for the first two and a half years (paragraph 4.2.5.15 of Dr Fasser's report). Additionally, K[....] confirmed her understanding that K[....] was N[....]'s primary attachment figure for the first number of years of his life (paragraph 4.2.5.22 of Dr Fasser's report).

17. Dr Fasser finds that K[....]'s current input is unhealthy and is not promoting N[....]'s psychologically healthy development. Dr Fasser explains that it should not be assumed that N[....] should be permanently deprived of K[....]'s input. If and when it is established that he is sufficiently resilient, emotionally regulated and once K[....] has developed more appropriate parenting acuity, he may not be affected as profoundly as he currently is.
18. In order to achieve this, Dr Fasser recommends that N[....] be placed with K[....] immediately. Dr Fasser's investigation reveals that N[....] has the foundation blocks to build a healthy secure attachment as a result of K[....] being his primary caregiver and primary attachment figure in the first number of years of his life. Notwithstanding that K[....] has not assessed without flaws, Dr Fasser opines that of the available options, placing N[....] with her would attend to the finding of her investigation, insofar as N[....]'s need to establish a secure attachment with an important other.
19. K[....] is in a position to supply N[....]'s safety, shelter and educational needs. She is emotionally available, patient, compassionate, affectionate and empathetic. Dr Fasser concludes that Katheen has the ability to understand and work in a positive and healthy manner with N[....], which would certainly serve his best interests.
20. Unfortunately, N[....] was removed from the proximity of K[....] and Dr Fasser's investigation has revealed that the continuation of a secure and healthy attachment did not occur with K[....]. Instead, and what Dr Fasser considers to

be extremely concerning, it appears that based on the narratives of both K[....] and K[....], Ms Kraus' assessment and Ms Wolmarans's assessment, N[....] is exhibiting severely disturbed attachment patterns specifically, in relationship with his mother. This manifests as extreme anger and aggression towards K[....]. The extent of N[....]'s aggression, agitation and defiance was reported both by K[....] and K[....].

21. The serious developmental risks for N[....] if his circumstances are not immediately remediated are enormous. Dr Fasser outlines the damage to his personality development and notes he is already displaying extremely concerning sadistic tendencies. He is at risk of increased psychopathology and psychological and social dysfunction if intervention is not urgently procured.
22. According to Dr Fasser, who quotes various research and psychological literature, once N[....]'s primary attachment relationship is secured, he will then be in a position to form psychologically and emotionally healthy structures with others which will, in turn, allow him to engage with his future as he should.
23. According to Dr Fasser, K[....]'s abdication in parenting has resulted in N[....]'s attachment to her being disorganised and this has left N[....] to manifest controlling-punitive behaviour.
24. Dr Fasser opines that there are most certainly enormously serious developmental risks for N[....] associated with this pattern of behaviour if it is not remediated immediately. Aside from the damage to N[....]'s personality development, and given that he is already displaying extremely concerning sadistic tendencies, literature indicates that without remediation of the insecure and disorganised attachment, school performance can be negatively affected and cognitive regulatory functions could leave the child handicapped, scholastically and socially.
25. Dr Fasser also concludes that without intervention it would appear that N[....] is at serious risk for developing psychopathology and psychological and

social dysfunction.

26. According to Dr Fasser, given N[....]'s current age there is an exclusive window of opportunity within which an intervention will be effective and long lasting. This needs to be effected immediately to ensure that N[....] matures psychologically healthily; with his intellectual ability supported appropriately and his emotional, psychological and relationship potential maximised.
27. Although both K[....] and K[....] have personality weaknesses and vulnerabilities, Dr Fasser concludes that K[....] manifests conditional love for N[....] rather than unconditional love which is a requirement for healthy parenting. K[....]'s personality vulnerabilities do not facilitate an unconditional relationship in that her personality does not lend itself to attuned, empathic, coherent parenting. These features are essential for a child to develop psychologically and emotionally healthy structures which allow a child to engage with the world as he should. The "waiting and hoping for remediation" puts N[....] at further risk. She contends that this must take place immediately.
28. On the evidence before me, it is my *prima facie* view that this matter is extremely urgent and that the continuation of the existing status quo will result in irretrievable psychological harm to N[....] which will not be capable on remediation in due course. In contradistinction there is no evidence before me that leads me to conclude that psychological harm will come to N[....] if he is placed in K[....]'s care between the date of the grant of this order and the date of the finalisation of Part B.
29. The co-residence of K[....] and K[....] in one home together with N[....] is untenable for everyone. The conflict which continually arises is undisputed. It appears that on each occasion that K[....] co-resides with K[....], there is a falling out which results in K[....] leaving K[....]'s residence. K[....] similarly appears to be incapable of residing with K[....] and N[....] in Johannesburg.
30. What is clear is that a perpetuation of the current status quo will redound to N[....]'s detriment. N[....]'s best interests and future psychological wellbeing cannot be sacrificed on the altar of retaining a status quo that is patently

unworkable and fraught with conflict. What N[....] may lose by leaving school before the end of the school term will be compensated by the emotional and psychological benefits that he will gain by restoring his primary attachment with K[....]. I have no doubt that K[....] will ensure that his schoolwork is completed as required.

31. In order to allow both the applicant and the respondent to proceed on an even footing insofar as the allocation of parental responsibilities and rights is concerned, I do not intend to suspend the operation of K[....]'s parental responsibilities and rights as sought by the applicant and as recommended by Dr Fasser. This is a matter that can stand over for determination in Part B. The applicant and respondent's conduct insofar as the exercise of their parental responsibilities and rights are concerned during the coming months, will be telling and will no doubt inform the final decision to be made by the Court when Part B is ultimately adjudicated.
32. Although there has been an attempt to introduce new facts which do not form part of the record, into the heads of argument, I have ignored these facts for the purposes of this judgment as they are not properly before me.
33. In the circumstances I make the following order.

Pending the finalisation of Part B it is ordered as follows:-

1. The applicant and the respondent shall continue to co-hold care, contact, guardianship and the duty of maintenance in respect of the minor child, N[....] M[....] A[....] R[....] ("**N[....]**") as contemplated in Section 18(2)(a)-(d), 18(3), read together with Section 23 and Section 24 of the Children's Act 38 of 2005.
2. The primary place of residence of N[....] shall vest with the applicant in Cape Town.
3. The handover of N[....] by the respondent to the applicant will be facilitated by a social worker, namely Adell-Mari Wolmarans alternatively Jaqueline

Griessel.

4. The applicant is authorised to involve the services of the South African Police Services insofar as it is necessary to do so in order to facilitate the handover off N[....] to the applicant.
5. Decisions in respect of N[....]'s religion, major medical interventions, education and extramural activities will be made by the applicant and the respondent in terms of Section 31 of the Act in conjunction with the parenting coordinator referred to below. In the event of a dead-lock, the parenting coordinator's decision shall be final and binding.
6. The parenting coordinator will facilitate discussions with the applicant and the respondent (either jointly or separately) on the issues that are subject to the decision making referred to in paragraph 5 above.
7. The applicant will take immediate steps for N[....] to commence therapy with a therapist situated in Cape Town, nominated and appointed by the parenting coordinator.
8. Neither the applicant nor the respondent shall be permitted to interfere with N[....]'s therapy: -
 - 8.1 communication by the applicant and/or respondent with N[....]'s therapist will occur through the parenting coordinator, unless the therapist initiates contact with either the applicant or the respondent spontaneously;
 - 8.2 the applicant is responsible for payment of the costs of N[....]'s therapy in the event that it is not covered by N[....]'s medical aid scheme.
9. The applicant will take immediate steps to enrol N[....] in occupational therapy in Cape Town. The applicant is responsible for payment of the costs

of N[....]'s therapy in the event that it is not covered by N[....]'s medical aid scheme.

10. The respondent's rights of contact with N[....] shall be phased in under the guidance and monitoring of the parenting coordinator as follows: -

- 10.1 Pending in-person contact between N[....] and the respondent, N[....] will have electronic contact over the Zoom digital platform with the respondent. The Zoom contact should occur alternate days for 15 minutes per session. The respondent shall refrain from speaking negatively of the applicant and the R[....] family during the Zoom sessions aforesaid. This contact may be varied by the Parenting coordinator.

- 10.2 Subsequent to a three-month period having elapsed from the date of the applicant and N[....]'s relocation to Cape Town pursuant to this order, the respondent shall be entitled to exercise such further phased in contact as is stipulated by the Parenting coordinator.

11. Senior mental health practitioner, Dr Astrid Martalas, alternatively Mr Martin Yodaikin, is appointed to act as parenting coordinator in this matter with immediate effect: -

- 11.1 the parties are ordered to enter into a contract of engagement with Dr Astrid Martalas, alternatively Mr Martin Yodaikin, such contract to be suitably amended by the parenting coordinator in terms of the specific demands of this matter;

- 11.2 the parenting coordinator will function as a mediator and a monitor in respect of any potential dispute that may arise between the applicant and respondent or in the event of any occurrence of unhealthy parenting;

11.3 the parenting coordinator shall: -

11.3.1 facilitate and manage contact between the respondent and N[....];

11.3.2 assist in the mediation of any disputes between the applicant and the respondent in the interim;

11.3.3 monitor N[....]'s care and well-being by, *inter alia*, being entitled and authorised to:

11.3.3.1. liaise, weekly or otherwise, with N[....]'s therapist/s;

11.3.3.2 receive any information from said therapist/s relevant to his/her mandate.

11.4 the parties are ordered to engage constructively with the parenting coordinator, who is tasked with gaining an understanding of N[....]'s maturing needs;

11.5 the applicant and the respondent will be responsible for payment of the costs of the parenting coordinator in equal (half) shares.

12. The applicant shall serve a copy of this order on N[....]'s biological father, R[....] M[....] Boccia ("**Mr Boccia**") and Mr Boccia shall be entitled to apply for leave to intervene in Part B of this application, should he wish to do so, within 20 court days of service of this order upon him.

13. The applicant and respondent shall refrain from speaking negatively of the other to N[....] and/or from engaging in any alienating behaviour in respect of the other.

14. Part B of the applicant's application is referred to oral evidence at a time to be arranged with the Registrar alternatively the judicial case manager on the following questions:-
 - 14.1 whether the recommendations of Dr Fasser as contained in her report of September 2020 should be finally implemented;
 - 14.2 whether N[....] should be permanently removed from the care of the respondent and remain in the care of the applicant and if so, the period for which N[....] should reside with the applicant; and
 - 14.3 the extent of the parental responsibilities and rights that the respondent should hold during the period that N[....] is residing with the applicant, specifically the extent of the contact that the respondent shall have with him;
 - 14.4 whether N[....] should permanently reside with the respondent and whether the respondent should hold full and unfettered parental responsibilities and rights to the exclusion of the applicant;
 - 14.5 whether the applicant should continue to hold or to co-hold full parental responsibilities and rights in respect of N[....] and if so, the nature and extent of such rights.
15. The evidence shall be that of the witnesses who have deposed to affidavits in respect of Part A of the application.
16. In the event that either party wishes to call additional witnesses, such party shall file a witness statement containing the evidence to be given in chief by the witness or, the court at the hearing, may permit a person to be called despite the fact that no such statement has been served in respect of his/her evidence.
17. Either party may subpoena any person to give evidence at the hearing,

irrespective of whether such person has consented to furnish a statement or not.

18. The fact that a party has served a statement in terms of paragraph 15 or 16 hereof, or subpoenaed a witness, shall not oblige such party to call the witness concerned.

19. To facilitate the issues being referred to oral evidence, the parties shall each be entitled to, and/or responsible to and/or compelled to:-

19.1 approach the Honourable Deputy Judge President with a request that:

19.1.1 a period of at least 5 to 10 days be allocated for the hearing of oral evidence as soon as possible;

19.1.2 a judicial case manager be appointed to facilitate that the oral evidence is heard as expeditiously as possible.

19.2 deliver a discovery affidavit as envisaged by Uniform Rule of Court 35(1) within 10 days from the date of this order and such supplementary discovery affidavits as may be required;

19.3 provide to the other party either a hard copy or electronic copy of any documents so discovered, as may be requested by such party subject to the appropriate tender as to the costs of photocopying such documents, if applicable;

19.4 file any and all expert reports as envisaged by Uniform Rule of Court 36(9)(a) and (b) in relation to those experts that they wish to call to give evidence at the hearing within 15 days of the date of this order;

19.5 ensure that a meeting of the respective experts is convened,

and that said experts endeavour to produce a joint minute within 10 days after the delivery of the reports referred to in paragraph 19.4 above;

19.6 convene a pre-trial conference as envisaged by Uniform Rule of Court 37 within 15 days of the date of this order;

19.7 upload all pleadings, notices, applications and other documents onto the Caselines platform as may be required.

20. The respondent shall continue with her weekly therapy to address any psychological weakness that she may have and receive parental guidance and/or training.

21. The costs of Part A of the application are reserved, to be adjudicated by the Court hearing the oral evidence in Part B.

L SEGAL

3 NOVEMBER 2020

Heard on: **06 & 09 October 2020**

Judgment Delivered on: **03 November 2020**

Appearances

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