

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

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

DATE: **6 October 2021**

Case No: 2964 / 2021

In the matter between:

NH

Applicant

and

RH

Respondent

JUDGMENT

WILSON AJ:

1 The applicant (“Mrs. H”) approaches the court under Rule 43 seeking an order regulating contact with, and the residence of, the parties’ minor children; directing the respondent (“Mr. H”) to make payment of maintenance *pendente lite*; and ordering Mr. H to make a contribution to her costs in a pending divorce action.

2 By the time the matter was argued before me, the parties had reached agreement on contact with and the residence of, their children, and on the arrangements to be made to facilitate a reasonable contribution to Mrs. H’s legal costs. Mr. H also accepted responsibility for the payment of Mrs. H’s medical aid

premiums, those of the parties' children, as well as any reasonable additional costs not covered by medical aid. He also agreed to make payment of the parties' children's school fees, the bond instalments on the matrimonial home, and various other expenses associated with the upkeep of that residence.

3 The only issue placed before me for decision was the cash payment due to Mrs. H to maintain her, and the parties' children, who will primarily reside with her. Here, the parties are very far apart indeed. Mr. H ultimately tendered a payment of R8000 per month. Mrs. H stated that she requires R31 405 per month.

4 It is trite that Mrs. H's entitlement to maintenance must be assessed having regard Mr. H's means and to the standard of living enjoyed by the parties when they lived together. In the course of that assessment, Mrs. H's reasonable and moderate claims carry more weight than any extravagant or unmotivated demands. Mr. H's version is entitled to the requisite degree of credit if it evinces a willingness to implement rather than evade his lawful obligations (see *Taute v Taute* 1974 (2) SA 675 (E), 676D-H).

5 The problem in this case is that Mr. H has not placed before me the information I require to assess his true means. Mr. H is employed as a Senior Manager responsible for Information Technology with a well-known statutory body. His post-tax salary is just over R88 000 per month. Ms. Putzier, who appeared from Mr. H, sought to persuade me that his true net monthly income from this employment is much lower – somewhere in the region of R56 000 per month. When questioned on the basis of this submission, Ms. Putzier referred to one set of Mr. H's bank statements, which, it was submitted, show deposits from Mr. H's employer of no more than that amount. However, Ms. Putzier was unable to explain how this could be squared with Mr. H's financial disclosure form, which declared an annual income net income of R1056058.62 from Mr. H's employment, or with Mr. H's own expectation, also stated in the disclosure, that he will earn the same amount during the next financial year.

6 That, together with the fact that Mr. H clearly has more than one bank account, convinces me that Mr. H's true net income from his employment is just over R88 000 per month.

7 However, the real difficulty in this case is the contradictory versions advanced on the papers about the true value of Mr. H's business interests, beyond his employment. Mr. H controls at least two enterprises, which yield an income separate and distinct from the income he derives from his employment. It is impossible to discern, on the papers, what Mr. H's true income from these business enterprises is. Ms. Putzier submitted, on the strength of Mr. H's financial disclosures, that there was little-to-no income being derived from these enterprises, whose fortunes are said to have precipitously declined at almost exactly the same time as Mr. H left the marital home.

8 Mr. H's answering affidavit tells a different story. Paragraph 25 of that affidavit states – almost as an aside – that one of those enterprises has generated an income of “approximately R200 000 per month (averaged out over the last 8 months)”.

9 Difficult though it is to discern Mr. H's true position from the documents submitted, I am satisfied that the cash contribution sought by Mrs. H is well within his means. I would probably have reached this conclusion if I had no regard at all to his business interests, and based my judgment simply on his salaried income. However, it seems to me that Mr. H derives significant additional income from his outside enterprises. Any doubt I have about his true means is the result of his failure to make adequate disclosure of that income. It is only fair that he rather than Mrs. H bear the consequences of that failure.

10 As consequences go, though, Mrs. H's maintenance requirements are not very great. They consist, in the main, of fairly banal household expenses for her and her children. I find nothing unreasonable in them. I am satisfied that they are within Mr. H's reasonable means.

11 Accordingly, I make the following order *pendente lite* –

1. The applicant and respondent shall retain parental responsibilities and rights in respect of the two minor children born of the marriage between the parties as provided for in terms of Sections 18, 19 and 20 of the Children's Act, Act 38 of 2005 (“the Act”).

2. Care and primary residence of the two minor children born of the marriage between the parties is awarded to the applicant.

3. The respondent is awarded specific parental responsibilities and rights with regard to contact with the two minor children born of the marriage between the parties as contemplated in Section 18(2)(b) of the Act, which shall include contact on alternate weekends from 19h00 on a Friday until 17h00 on a Sunday; alternate short school holidays and mid-term breaks, with the two minor children to spend alternate Easter holidays with the respondent; one half of all long school holidays on the basis that the two minor children shall spend alternate Christmas portions of the December/January long school holiday with the respondent; alternate long weekends and public holidays which do not form part of a school holiday or a mid-term break; every Father's Day on the basis that the two minor children shall spend every Mother's Day with the applicant; the two minor children's respective birthdays for a period of three hours.

4. The respondent is ordered to pay maintenance to the applicant in the amount of R31 405 per month, commencing on 11 October 2021, and thereafter on or before the first day of each month, without deduction or set-off, by electronic funds transfer into such account as the Applicant may from time to time nominate in writing.

5. The respondent is to retain the applicant, the major child and two minor children as dependant members on the Respondent's medical aid scheme.

6. The respondent shall make payment of all reasonable additional medical expenses not covered by the medical aid scheme, including all medical, dental, pharmaceutical, surgical, hospital, orthodontic and ophthalmic, psychotherapeutic, occupational therapeutic and chiropractic expenses, as mutually agreed to by the parties, to the relevant service provider within 5 (five) days of receipt of invoice.

7. The respondent is to pay the costs of the major child's tertiary education including all books and equipment in respect thereof.

8. The respondent is to make payment of the two minor children's educational expenses, including private school fees and related educational expenses inclusive of books and stationery, school uniforms (including two summer and two winter uniforms per child per annum), extra-mural activities and lessons, equipment and attire relating to their sporting and/or extra-mural activities, and school tours and outings. The respondent shall make payment directly to the service providers, within 5 (five) days of receipt of the relevant invoice.

9. The parties are to sell the BMW M3 bearing registration "Riyah GP" ("the BMW") and, from the proceeds of the sale, are to purchase another vehicle ("the replacement vehicle") to the maximum value of R 300 000.00 (three hundred thousand rand). The respondent is to pay the license fees, maintenance costs and vehicle insurance in respect of the vehicle so purchased. The applicant shall be entitled to the use and possession of the vehicle so purchased *pendente lite*.

10. The respondent is to pay the following directly to the relevant service provider:

10.1 the bond instalments and insurance in respect of the immovable property situated at [...] G[...] Place, Midstream Estate, Halfway House ("the home");

10.2 the homeowners' levies payable in respect of the home;

10.3 the municipal accounts levied against the home;

10.4 the householders' insurance in respect of the home;

10.5 the homeowners insurance in respect of the home;

10.6 the costs of the home's telephone and internet connection;

10.7 the cellphone accounts of the applicant and the parties' three children;

10.8 the minor children's school fees and related expenses;

10.9 the vehicle loan instalments, license fees and vehicle insurance in respect of the motor vehicle purchased in accordance with paragraph 9;

10.10 the medical aid premiums and reasonable additional medical expenses not covered by the medical aid scheme, in respect of the applicant, major child and two minor children; and

10.11 the major child's tertiary fees and related costs.

11. The difference between the amount for which the BMW is sold and the amount the replacement vehicle costs will be deposited into the applicant's attorney's trust account to fund the applicant's costs in the divorce action.

12. The costs of this application are costs in the divorce action.

S D J WILSON

Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 6 October 2021.

HEARD ON: 16 September 2021

DECIDED ON: 6 October 2021

For the Applicant:

Z Marx du Plessis

Instructed by Shapiro and Ledwaba Inc

For the Respondent:

R Putzier

Instructed by Nance Kivell Attorneys