

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

CASE NO: 2022/49275

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
14/3/2022

In the matter between:

S[...], A[...]

(ID No: [...])

Applicant

and

S[...], C[...], H[...], P[...]

(ID No: [...])

Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] In this matter that was heard as an urgent application on 8 March 2022, I handed down the following order on 9 March 2020:

1. *Pendente lite the minor children will remain in the care of and reside with the respondent.*

2. *The applicant shall exercise contact with the minor children by having them with her every Friday from 14:00 to Sunday at 17:00 and every Wednesday from 14:00 to Thursday at 8:00, or some other time agreed between the parties.*

3. *Both parties will at all times keep the other informed of their residential address and any changes thereto, and of the whereabouts of the children when they are not at the stated residential address.*

4. *A person approved by both parties, namely one of Prof. Leentjie De Jong, Ms Jacky Griessel, or a third party, shall be appointed forthwith by the parties as Case Manager / Parenting Facilitator with her mandate to be as follows:*

4.1. *To minimise trauma for the children and deal with the relevant issues herein in the best way possible in a practical, child-centric, collaborative manner and avoiding litigation and adversarial processes;*

4.2. *To function as a mediator and as a monitor regarding the disputes before court between the parties. To this extent she will approach the mediation on the following basis: -*

4.2.1. *attempt to resolve the dispute by way of mediation as speedily as possible and without recourse to litigation;*

4.2.2. *have each party and the minor child (if necessary) participate in the dispute resolution process of the mediation;*

4.2.3. *use her discretion in considering the weight and sufficiency of information provided. She will have the authority to gather information through interviews, correspondence, email, telephonic and/or other informal means;*

4.2.4. *determine the protocol of all communications, interviews and sessions, including who will or may attend meetings. Legal practitioners are not entitled to attend such meetings, but a party will be permitted to caucus with his or her legal practitioner, either in person or by telephone, during such meetings. The parties and their legal practitioners will have the right to initiate or receive oral communication with the mediator. Any party or counsellor may communicate in writing with the*

mediator provided that copies are provided to the other party, and if applicable, their legal practitioners;

4.2.5.be able to confer individually with the parties and with others, including step-family members, extended family members and friends, partners (including boyfriends or girlfriends), household members and school and educational personnel;

4.2.6.involve in her services, elements of mediation, expert opinion, counselling and arbitration but will not purely fall into any of these categories;

4.2.7.use best efforts, together with the parties to preserve the privacy of the family and, more particularly, the minor children and restrict dissemination of information related to decisions to those who need to know the information; and

4.2.8.if the mediator, in the exercise of her sole discretion, regards a particular issue raised by one of the parties as trivial or unfounded, she is authorised to decline the referral of such issue for mediation;

4.3. To recommend further parenting training for either parent, if indicated, to ensure the child's best interests are advanced and protected;

4.4. To monitor the children's progress in her contact and relationship with both parents;

4.5. To have contact with the children's teachers if necessary;

4.6. To recommend any form of therapy for the children if necessary;

4.7. To monitor any of the children's therapies so recommended and agreed on or ordered by the court and have contact with the therapists;

4.8. To monitor the continued healthy parenting of the children;

4.9. To guide the parties as to what serves the best interests of the child;

4.10. To recommend any involved adult to go for appropriate therapeutic or medical interventions and parenting skills training if deemed necessary by her;

- 4.11. *To monitor any contact at her discretion; and*
- 4.12. *To compile a report for court to inform the court of the facts and circumstances relating to the disputes before court and to make recommendations for the court's consideration in regard to the care, primary residency and contact of the children and any other fact or information which in her opinion is relevant to the dispute.*
5. *A Psychologist approved by both parties, namely one of Dr Kelly Owen, Dr Fasser, or a third person, shall be appointed forthwith by the parties to undertake a forensic psychological investigation, evaluation and assessment which will include psychometric testing and any other test and/or evaluation she deems appropriate on the applicant, respondent and the minor children and to compile a report for the court and to make recommendations for the court's consideration in regard to the care, residency and contact of the children and any other fact or information which in her opinion is relevant to the dispute before court;*
6. *Each of the parties, through their respective legal representatives shall notify the other in writing regarding the availability of a Case Manager / Parenting Facilitator and Psychologist within ten court days from date of this order;*
7. *When the reports of the Case Manager / Parenting Facilitator and the psychologist are ready, either party shall be permitted to supplement their papers herein and return to court to seek whatever relief they deem necessary, if need be either as further interim relief in terms of Rule 43 pending the divorce proceedings or as final relief;*
8. *The Respondent shall be solely responsible for all the costs associated with the appointment of the Case Manager / Parenting Facilitator and Psychologist.*
9. *Each party shall pay his or her own legal costs.*

[2] The reasons for my order follow below.

Urgency

[3] Both parties brought urgent applications and made out a case for urgency.

Introduction

[4] The respondent brought an urgent application set down for 15 March 2022 in this Court. This prompted an application by the applicant set down for 8 March 2022 leading to a plethora of papers, much of it a duplication. When the matter was called on 8 March 2022, both counsel were in agreement that both matters be dealt with on the day under the heading of the matter as set down on 8 March 2022. Mrs S[...] is therefore referred to as the applicant and Mr S[...] as the respondent.

[5] The application set down for 15 March 2022 will not be proceeded with.

[6] The parties are married out of community of property and with the exclusion of the accrual system. Three children, now aged seven, four and two years, were born out of the relationship. Divorce proceedings are pending.

[7] During October 2021 the applicant moved out of the matrimonial home with the three children. The respondent was informed by the applicant's attorney that he would have no contact with the children. In November 2021 the applicant obtained a domestic violence interdict against the respondent on an *ex parte* basis and the order was confirmed without opposition on 15 November 2021. The respondent denies all knowledge of the order and the litigation has not been finalised.

[8] The applicant informs the Court that she was assaulted and intimidated by the respondent and that he will be appearing in the Criminal Court on 16 March 2022 to stand trial. These proceedings have also not been finalised and the respondent denies the alleged assault.

[9] The respondent complains that the interim order and the allegations of assault were used as a stratagem to prevent contact between him and his children.

[10] His attorney managed to arrange contact in December 2022 on alternate weekends. The children spend the December school holidays with the respondent.

[11] In January 2022 the respondent placed on record that he was disputing primary care but an attempt to arrange a round - table meeting was not met with any success.

[12] The applicant moved for a second time in three months during January 2022 but allegedly failed to inform the respondent of the children's address.

[13] The applicant intends to move to Bloemfontein where she intends to take up employment with the father of a man she is involved with romantically.

[14] The respondent fears that the move to Bloemfontein will further disrupt the lives of the children and because there is no support network there, the applicant shall have the stress of living in a strange city, working for the father of her friend in a new position that she is not qualified for.

[15] The respondent is the sole financial provider for the children.

[16] When the applicant informed the respondent of her new relationship and her intention to relocate to Bloemfontein, he refused to sign forms for the children to be admitted to a school in Bloemfontein. He says he did this as he did not regard the relocation to be in the best interests of the children.

[17] It is not disputed that the applicant has attempted suicide on at least two occasions. The first was in 2014 and the second in 2017. The applicant quite correctly points out however that these two incidents took place between 5 and 8 years ago.

[18] The applicant also suffers from the disease known as bipolar disorder and has undergone treatment for this disease.

The respondent's failure to return the children in February 2022

[19] The respondent failed to return the children to the applicant on 21 February 2022 and by then he had already brought the urgent application set down for

15 March 2022. This in turn led to the applicant's application set down for 8 March 2022.

[20] There are few facts not in dispute. The respondent's view is that pleadings in the divorce action have been held in abeyance in an attempt by the parties to settle the divorce action, whereas the applicant is of the view that the divorce action is proceeding on an unopposed basis and that the respondent is under bar.

[21] There would seem to be a total lack of communication between the parties and this is detrimental to the children.

[22] In terms of draft orders filed by the parties, it is common cause that a case manager/parenting facilitator should be appointed in the divorce proceedings. The names of Prof Leentjie de Jong and Ms Jacky Griessel have been mentioned. It is also common cause that a psychologist, such as Dr Kelly Owen or Dr Fasser, be appointed to undertake a forensic psychological investigation. The parties must be applauded for their agreement in this regard and the applicant has indicated that he would bear the costs of these investigations.

[23] As always with small children it is important that the status quo be interfered with as little as possible to ensure them a secure home environment to the extent that this is possible during the turmoil and upheaval of a divorce. For the reasons set out below I am of the view that the most secure environment for the children currently is at the former matrimonial home in Centurion and in the primary care of the respondent, subject to the respondent's right of access.

23.1 The minor children lived with both parents in the matrimonial home until October 2021 when the applicant moved out of the home into new premises, followed by a subsequent relocation to her mother's house.

23.2 The respondent had intermittent contact with the children in October to November 2021 and contact resumed in December 2021.

23.3 The applicant now intends to pursue a new life in Bloemfontein with a new romantic interest.

23.4 Despite the fact that she will be working full-time for a new employer, she has also intimated that she wanted to 'home school' the children.

23.5 The respondent has a support structure in that his mother and his mother in law (the applicant's mother) live close to the matrimonial home. Both grandmothers are therefore in close proximity.

23.6 The children have the services of a nanny and an au pair.

23.7 The respondent works from home.

[24] I am of the view that pending the outcome of the divorce proceedings, it will be in the best interests of the minor children to remain in the former matrimonial home where they have the support of family and others, and which is familiar territory for the children, rather than to relocate to any other home whether it be in Bloemfontein or anywhere else.

[25] I therefore made the order quoted above.

**J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **14 March 2022**

COUNSEL FOR THE APPLICANT: MS J SCALLAN

INSTRUCTED BY: STRYDOM M & ASSOCIATES

ATTORNEY FOR RESPONDENT: MS J CRONE

INSTRUCTED BY: FALCON & HUME ATTORNEYS

DATE OF THE HEARING: 8 MARCH 2022

DATE OF ORDER: 9 MARCH 2022

DATE OF JUDGMENT: 14 MARCH 2022