REPUBLIC OF SOUTH AFRICA

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

CASE NUMBER: 2021/20488

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED NO

16/02/2022

Judge Dippenaar

In the matter between:

NETCARE HOSPITALS (PTY) LTD
t/a NETCARE PINEHAVEN HOSPITAL

Applicant

And

ZUZETTER TAYLOR Respondent

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 11h30 on the 16th of February 2022.

DIPPENAAR J:

[1] The applicant seeks interim interdictory relief against the respondent pursuant to numerous defamatory publications made by the respondent on various social media platforms pursuant to the tragic death of her pregnant daughter, Mrs Scholtz and her unborn child at the applicant hospital on 7 January 2022. The matter was reported to the South African Police Services and it is anticipated that a formal inquest into her death will be launched imminently. A meeting was held on 23 January 2022 between the respondent and applicant's staff members, including various doctors who had treated Mrs Scholtz to explain what had occurred and to address the respondent's queries.

[2] The facts are common cause. After the death of her daughter and her unborn child, the respondent had embarked on a scurrilous campaign against the applicant and named staff members on a Facebook social media platform which elicited defamatory remarks and comments from unrelated third parties and members of the public. The respondent did not dispute this conduct.

[3] A letter of demand was sent by the applicant's legal representatives on 27 January 2022, inter alia offering its condolences and demanding that the respondent desist from her conduct and delete and retract the offending statements from all relevant social media platforms. On 29 January 2021 the respondent, who was legally represented, provided the undertakings requested. However, she did not adhere to these undertaking and made further posts on social media platforms.

[4] Pursuant to negotiations between the parties' respective legal representatives, an agreement was reached in terms whereof the respondent agreed to remove any reference to the applicant on any of the public platforms. The respondent however

continued with her attacks against the applicant and its staff members and further attended at the applicant on 12 March 2021 where she caused altercations with certain staff members, resulting in concerns being raised about their safety.

[1] In considering the applicant's claim for interim relief, the principles in *Webster v Mitchell*[1] apply. The requirements for interim interdictory relief are trite[2]. They are: (i) a prima facie right, although open to some doubt on the part of the applicant; (ii) an injury actually committed or reasonably apprehended; (iii) a favourable balance of convenience; and (iv) the absence of any other satisfactory remedy available to the applicant.

[2] The respondent did not meaningfully dispute the applicant's version but contended that she has desisted from further unlawful conduct after receipt of the 27 January 2021 demand and that she did not fully appreciate the implications of her conduct. According to the respondent, she is impecunious and is suffering from post traumatic stress for which she is being medicated. According to the respondent, the application has added insult to injury and further traumatized her.

[3] I am satisfied that the applicant has illustrated a prima facie right to relief on the undisputed facts. It was not disputed that the balance of convenience favours the granting of the relief and the respondent did not contend for any prejudice.

[4] At the hearing, the respondent argued that as there was no further evidence on the papers of any further defamatory posts after the date of delivery of her answering papers, there was no ongoing risk of harm and thus that the applicant failed to make out a case for the relief sought. It was further argued that the applicant has an alternative remedy and can pursue a damages claim against the respondent.

[1] 1948 (1) SA 1186 (W) 1189
[2] Setlogelo v Setlogelo 1914 AD 21

[5] In my view both these arguments lack merit.

[6] The stance adopted by the respondent in her answering affidavit and her previous conduct in the face of undertakings provided, illustrates that the respondent has no real appreciation of the wrongfulness of her conduct and the serious impairment of the dignity and safety of the applicant and its staff members, her conduct has caused. I am persuaded that a reasonable risk exists of her persisting in such conduct if the relief sought is not granted.

[7] I further agree with the applicant that the respondent's impecunious state would render the institution of a damages claim, as argued by the respondent to be an appropriate alternative remedy, nugatory. I am satisfied that the applicant has illustrated that it has no alternative remedy available.

[8] I conclude that the applicant is entitled to the interdictory relief sought.

[9] The normal principle is that costs follow the result. The respondent argued that due to her impecunious state an adverse costs order should not be granted against her. Whilst one has great sympathy for the tragic loss which the respondent has suffered, her flagrant disregard of the constitutional rights of the applicant's staff members cannot be countenanced and there must be consequences for her unlawful conduct. The applicant proposed a costs order which would only be enforced if the respondent breaches this order. Considering the conduct of the respondent, a punitive costs order would be warranted if this order is breached.

[10] I grant the following order:

[1] The respondent is interdicted and restrained from posting and/or sharing any defamatory, derogatory, violent, injurious or inciting comments, remarks and the like,

in respect of or referring to the applicant or its employees either directly or indirectly on any public or private social media platform, including but not limited to Facebook;

[2] The respondent is ordered to forthwith monitor all public and social media platforms in respect of which she has the control or authority in order to remove any and all defamatory, derogatory, violent, injurious or inciting language, comments and remarks, in respect of or referring to the applicant or its employees, either directly or indirectly, whether authored by the respondent herself or any other third party as soon as such comments or remarks are made, posted or published;

[3] The orders in [1] and [2] above, shall operate as an interim order with immediate effect pending the finding of a competent court declaring or ruling the conduct of the applicant or its employees to have been negligent or unlawful to any extent;

[4] The respondent is directed to immediately remove any and all defamatory, derogatory, violent, injurious and/or inciting language, comments and remarks in respect of or referring to the applicant or any of its staff members, either directly or indirectly, whether authored by the respondent herself or by any other third party, currently visible on any public or social media platform in respect of which the respondent has control and authority, including but not limited to the following Facebook profiles:

[4.1] “In memory of Monique Scholtz”;

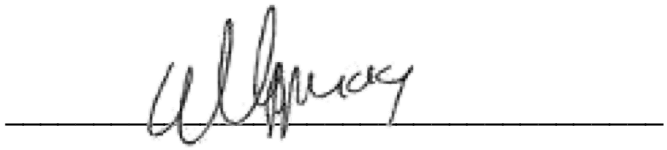
[4.2] “Monru Beauty Moolman”; and

[4.3] “Zuzette Taylor”.

[5] The respondent is directed to forthwith post on any and all public or social media platforms in respect of which the respondent has control or authority, including but not

limited to the Facebook pages in [4.1] to [4.3] above, in both English and Afrikaans, relevant and appropriate notices informing all viewers and users of such platforms of the prohibitions, together with a general warning against any language, comments or remarks which may be defamatory, derogatory, violent, injurious or inciting, referring either directly or indirectly to the applicant or its staff members;

[6] In the event that the respondent breaches or contravenes any of the provisions of this order, the applicant shall be entitled to approach the court on the same papers, duly amplified as may be necessary, for relevant relief, which relief shall include an order that the respondent is directed to pay the costs of this application on an opposed basis on the scale as between attorney and client.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

DATE OF HEARING	: 08 February 2022
DATE OF JUDGMENT	: 16 February 2022
APPLICANT'S COUNSEL	: Adv. WJ. Bezuidenhout
APPLICANT'S ATTORNEYS	: Whalley Van Der Lith Inc.
RESPONDENT'S COUNSEL	: Mr Riekie Erasmus
RESPONDENT'S ATTORNEYS	: Riekie Erasmus Attorneys