

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 61861/2015

24/8/2016

In the matter between:

V O W

Applicant

and

B L W

Respondent

JUDGMENT

MAAKANE AJ:

1. This is an application in terms of Rule 43 of the Uniform Rules of thi\$ court. The Applicant, who is the Plaintiff in the main divorce action, is seeking an order in the following terms, *pendente lite*:

- 1. That both parties retain their full parental responsibilities and rights in terms of Sections 18, 19 and 20 of the Children's Act, 38 of 2005 in respect of the minor child born of the marriage relationship between the parties;*

- 2. That primary residence and primary care of the minor child born of the marriage relationship between the parties shall be with the Applicant;*

3. That the Respondent shall be entitled to reasonable contact with the minor child at all reasonable times;

4. That the Respondent pay maintenance to the Applicant in respect of the minor child born of the marriage between the parties in a sum of R5,000.00 per month, on or before the first day of every month;

5. That the Respondent, in addition to the foregoing maintenance in respect of the minor child, pay:

5.1 Respondent shall retain the minor child, at his costs, as a dependent on the Applicant's current medical scheme or a scheme with analogous benefits and shall pay the monthly premiums (and any escalations) timeously and on due date. Respondent shall also bear the costs of all reasonable expenditure in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the child and not covered by the medical aid scheme, including any sums payable to a physiotherapist, occupational therapist, speech therapist, psychiatrist, psychologist and chiropractor, the costs of medication and the provision, where necessary, of spectacles and/or contact lenses;

5.2 That the Respondent pay the minor child's private school fees and the costs of the minor child's school necessities, including the costs of school uniforms (two summer and two winter school uniforms per annum), the costs of the minor child's extra-mural activities, the costs of the minor child's international and local polo tours, the costs of the minor child's extra lessons and the costs of the minor child's books and stationery for schooling purposes.

6. That the Respondent pay maintenance to the Applicant for herself in a sum of R20,000.00 per month, on or before the first day of every month.

7. Defendant shall retain the Applicant, at his costs, as a dependant on her current medical scheme or a scheme with analogous benefits and shall pay the monthly premiums (and any escalations) timeously and on due date. Respondent shall also bear the costs of all reasonable expenditure in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the Applicant and not covered by the medical aid scheme, including any sums payable to a physiotherapist, occupational therapist, speech therapist, psychiatrist,

psychologist and chiropractor, the costs of medication and the provision, where necessary of spectacles and/or contact lenses.

8. That the Respondent, in addition to the foregoing, continue to pay:

8.1 the bond instalment in respect of the immovable property where the Applicant resides, being [...] Road, Douglasdale, Randburg, Gauteng, which is also a bond in respect of property where the Respondent resides and works from;

8.2 the rates and taxes and electricity costs in respect of that immovable property;

8.3 the cellular telephone costs of the Applicant and of the minor child;

8.4 the salary of a domestic worker, not to exceed R2,600.00 per month;

8.5 the costs of a landline and internet subscription;

8.6 the costs of DSTV supply to the said immovable property.

9. That the Respondent be ordered to make an initial contribution towards the Applicant's legal costs in the sum of R10,000.00 in equal monthly instalments of R1,000.00 per month, on or before the first day of every month.

10. That costs hereof be costs in the divorce action, the restrictions of Rule 43(7) and (8) not to be applicable."

2. The Respondent has consented to some but not all of the prayers sought. More specifically, the issues in dispute are the following:

(a) Maintenance payable to the minor child;

(b) Maintenance payable to the Applicant;

(c) Contribution towards legal costs.

MAINTENANCE TOWARDS THE MINOR CHILD:

3. As maintenance towards the minor child, Applicant is seeking an amount of R5,000.00 per month. Over and above that, she seeks an order in terms of which Respondent is to be liable for the minor child's medical aid, school fees as well

as all necessary costs.

4. On the other hand, Respondent tenders to pay as maintenance toward the minor child pocket money directly to her. In addition thereto, he tenders to pay for her school fees and all related school expenses, medical aid, clothing and cell phone.

MAINTENANCE TOWARDS THE APPLICANT:

5. The Applicant is seeking maintenance for herself *pendente lite*, in the amount of R20,000.00 per month. In addition to that, she seeks an order in terms of which Respondent is to be liable for her medical aid fees, bond instalments in respect of the property she now occupies, rates and taxes, cell phone; salary for the domestic worker, costs of the landline and internet subscription as well as DSTV.
6. Respondent tenders to pay to the Applicant rehabilitative maintenance in the amount of RS,000.00 per month for six months. Notwithstanding the tender, Respondent argues that the Applicant has not made out a case for maintenance for herself in the amount claimed. In this regard, reliance was placed on the case of **Willson v Willson 1984 (2) SA 294 (C) at page 295 E - F** where the Court held the following:

"Primarily Rule 43 was envisaged to provide temporary assistance for woman, who had given up careers or potential careers for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence, maintenance claims and, if children had been born, custody claims could be properly determined. It was not created to give an interim mealticket to women who quite clearly at the trial would not be able to establish a right to maintenance"

7. Respondent further argues that the Applicant is currently receiving some work and is able to earn an income of approximately R40,000.00 per month. This amount of money so goes the argument, is sufficient for the Respondent to maintain herself. Respondent denies Applicant allegation that her monthly

expenses amount to approximately R52,000.00.

8. Be that as it may, and notwithstanding all of the above, Respondent tenders to pay to the Applicant as rehabilitative maintenance, an amount of R5,000.00 for six (6) months.

CONTRIBUTION TOWARDS LEGAL COSTS:

9. The Applicant is also demanding from the Respondent an amount of R10,000.00 payable at the rate of R1,000.00 as contribution towards her legal costs.
10. Respondent argues that he is not in a financial position to can make this contribution. Taking into account his current financial position, the Applicant is better off. He also complains that the Applicant has frustrated the whole divorce process and has been the reason for incurring of additional legal costs.

EVIDENCE:

11. Rule 43(1) provides as follows:

"43 Matrimonial matters

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

- (a) Maintenance pendent lite;*
- (b) A contribution towards the costs of a pending matrimonial action;*
- (c) interim custody of any child;*
- (d) interim access to any child."*

12. The circumstances of this case are not unusual. The Applicant is currently 58 years old, and the husband, the Respondent is now 44. They were married for approximately eighteen (18) years. As regards the causes of the breakdown of the marriage, allegations and counter-allegations of infidelity have been made by each party against the other. I do not deem it necessary to deal with that any further.
13. Both parties have in their affidavits set out their financial positions and also their capacity to earn income.
14. In her founding affidavit, Applicant states that they used to conduct business through a company known as N. (Pty) Ltd. She was employed by S. until January 2007 when she started working for their company as its Commercial Director.
15. According to her, Respondent then started to insult and manipulate her. He ultimately sold the company to an employee. The business gradually failed and the Respondent was not paid the purchase price.
16. The parties hereafter started working from home, through a business entity known as [...] & Associates. The entity did business in strategy leadership facilitation and consulting.
17. According to the Applicant, Respondent to this day runs the business. Applicant however, appeared to have registered it in the name of his mistress, and is now known as B... (Pty) Ltd.
18. In his answering affidavit Respondent admits that they did run a business, known as N.. A portion of this was sold to a BBBEE company for approximately R2.7 million. The proceeds of this sale were used to pay the parties' debts. He points out that he took the company back it had debts of about R6 million. He managed to pay about 98% of these debts and was able to prevent having it liquidated.
19. He admits that he still owns the business of his own. He however denies that the business is registered in the name of Ms Williams and or that they run the

business together. Ms Williams runs a separate company registered in her own name.

20. Respondent has two (2) other children from his previous marriage that he is maintaining. He is currently making bond repayments in respect of their two properties, including the one occupied by the Applicant. He also pays for electricity, water as well as rates and taxes for both properties.

21. He has the potential of earning between R60,000.00 and R200,000.00 per month. However, is not the actual income he earns. His financial situation is not sound at all. As a result of this the City of Johannesburg from time to time disconnects the water and or electricity supply to both properties. This is because he is unable to keep up with the payments. When this happens, his father, who is a pensioner would help, utilising his pension. This situation is confirmed by the Applicant.

22. Respondent points out that if he were to be ordered to pay the amount claimed by the Applicant, he will not be able to do so and his fear is that this may result in the sequestration of his estate.

23. It must be borne in mind, that relief in terms of Rule 43 is only *pendent lite*, pending finalisation of the divorce action.

24. Taking into account all the above considerations, I am of the view that the Applicant has made a proper case for her own maintenance and contribution for legal costs *pendente lite*. However, in deciding on the amounts, I have to take into consideration the parties' financial means.

ORDER:

25. Consequently the order that I make *pendente lite* is the following:

1. Both parties shall retain their full parental responsibilities and rights in terms of Sections 18, 19 and 20 of the Children's Act, 38 of 2005 in respect of the

minor child;

2. The primary residence and primary care of the minor child shall be with the Applicant;
3. The Respondent shall be entitled to reasonable contact with the minor child at all reasonable times;
4. The Respondent shall pay maintenance to the Applicant in respect of the minor child in an amount of R2,000.00 per month, on or before the seventh day of every month;
5. Respondent shall further pay the minor child's private school fees as well as all related school necessities, including the costs of school uniforms, extra lessons, books, stationery and cellular telephone costs.
6. The Respondent shall pay maintenance to the Applicant for herself an amount of R10,000.00 per month, on or before the seventh day of every month;
7. Respondent shall retain both the Applicant and the minor child, as dependants on his current medical aid scheme and shall pay the monthly premiums timeously and on due date;
8. Respondent shall also bear the costs of all reasonable expenditure in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the minor child and not covered by the medical aid scheme;
9. The Respondent shall continue to pay the bond instalments as well as water, electricity and rates and taxes in respect of the immovable property where the Applicant resides, being [...] Road, Douglasdale, Randburg, Gauteng, and also in respect of property where the Respondent currently resides and works from;

10. Respondent shall in addition continue to pay:

10.1. Costs of a landline and internet subscription;

10.2. Costs of the DSTV supply to the immovable property.

11. The Respondent shall make an initial contribution towards the Applicant's legal costs in the sum of R5,000.00 payable in equal monthly instalments of R1,000.00 per month, on or before the seventh day of every month;

12. Costs hereof shall be costs in the divorce action and the restrictions of Rule 43(7) and (8) shall not be applicable.

S S MAAKANE
Acting Judge of the
High Court of South Africa
Gauteng Division, Pretoria

APPEARANCES:

Counsel for the Plaintiff	:	Adv. S Venter
Instructed by	:	Shapiro and Ledwaba Inc.
Counsel for Defendant	:	Adv. A M Smit
Instructed by	:	Douglas McCusker Attorneys