



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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<hr/>	
4/11/19	
DATE	SIGNATURE

Case No: 855651/2018

In the application of:

**IOANNIS NICOLAKAKIS**

First Applicant

**CLEO NICOLAKAKIS**

Second Applicant

and

**IN RE:**

**APPOINTMENT OF CURATOR *BONIS* TO**

**ARTHUR A NICOLAKAKIS**

"The Patient"

---

**JUDGMENT**

---

**D S FOURIE, J:**

[1] This is not only a sad case, but also a difficult one. Sad, because it concerns litigation between family members. The "patient" is the father of the first applicant and the husband of the second applicant. He was born on 15 January 1942. A curator *ad litem* has already been appointed in terms of Rule 57 and now the applicants apply for an order declaring the patient to be

incapable of managing his own affairs. He opposes the application throughout. He already filed an answering affidavit as well as a supplementary answering affidavit, both running into hundreds of pages.

[2] The matter is complex for various reasons. The business concerned is a countrywide multimillion Rand enterprise. According to the first applicant the patient is a shareholder, member and director of multiple entities colloquially known as "Roman's Pizza". The patient points out that he is not only "a shareholder", but the only shareholder of this enterprise.

[3] Bearing in mind that this is an application in terms of Rule 57 for the appointment of a curator *bonis*, I was faced, when the matter came before me a few days ago, with a set of court papers of no less than 1 500 pages. Amongst these papers are the founding affidavit, an answering affidavit, a replying affidavit by the first applicant, a replying affidavit by the second applicant, and a supplementary answering affidavit by the patient.

[4] The curator *ad litem* had already filed three reports and on the day before the hearing she filed another one. In an attempt to assist the Court, the Master also filed three reports. In addition to that, there are no less than twelve expert reports consisting of, *inter alia*, reports by neurologists, psychiatrists, psychologists and a report by a specialist physician and subspecialist geriatrician.

[5] To complicate the matter, there is no agreement amongst these experts. Generally speaking, there are two schools of thought. The one group

holds the view that the patient is not capable of managing his own affairs and therefore supports the application for the appointment of a curator *bonis*. The experts of the other group do not agree. They are of the view, generally speaking, that the patient does not require curatorship. The difference of opinion vary between the patient having clear structural brain changes with a clinical presentation which is *"in keeping with dementia"* and on the other hand a view that his cognitive functioning is consistent with normal aging and depression not secondary to a psychosis or a dementing process.

[6] This is not where the difficulty ends. There are also serious factual disputes between the applicants on the one hand and the patient on the other. It is not necessary to deal with that at this stage, save to mention that there also appears to be a tug of war amongst these family members with regard to money and property. According to the first applicant the patient has drafted a new will and he is in the process of creating new trusts and companies to ensure that his friend as well as his personal assistant (amongst others) benefit from his estate, instead of the second applicant.

[7] The applicants are of the view that this conduct is the result of the patient suffering from dementia. The patient disagrees. He states that the first applicant has taken large loans totalling approximately R150 million from the business which he has failed to repay. He also refers to a *"conflict which exists on a family level between me and my son and my wife"*. His perception is that his wife has decided to side with his son against him. The applicants deny the existence of a family feud or that the application has been brought for commercial reasons as suggested by the patient.

[8] No wonder that the Deputy Judge President has decided to regard this matter as a special motion. The matter was set down to be heard on <sup>29</sup>~~22~~ and <sup>30</sup>~~23~~ October 2019. It is clear that this matter is very important to both the applicants and the patient. This is also apparent from the fact that for the applicants there are no less than two attorneys and four counsel, two of whom are silks. The respondent is represented by one attorney and three counsel, two of whom are also silks. There is also the curator *ad litem* who thought it necessary, due to certain allegations being made against her, to appoint her own attorney and counsel, also a silk.

[9] The applicants and the patient also attended the hearing. The applicants sat on the one side of the court room, behind their legal representatives. The patient sat on the other side of the court room, behind his legal representatives. There was no sign of any communication between the applicants and the patient. On the contrary, there was tension in the court room, even amongst some of the counsel from time to time. No doubt this matter has become a bloody court battle amongst family members who are supposed to be close to one another. This is why I indicated in the beginning that this is not only a sad case, but also a difficult one.

### INTERLOCUTORY APPLICATIONS

[10] When this matter came before me on <sup>27</sup>~~22~~ October 2019 I first had to deal with three interlocutory applications. The first applicant applied for leave of which the substance can be summarised as follows:

- (a) permitting the filing of a further replying affidavit by the first applicant in response to the supplementary answering affidavit filed by the patient;
- (b) permitting the filing of a further affidavit by the first applicant in response to the final report filed by the curator *ad litem* on 19 August 2019;
- (c) directing the curator *ad litem* to further investigate issues raised by the applicants under cover of certain correspondence by submitting it to the medical experts;
- (d) permitting the parties to file further affidavits in relation to a report which the curator *ad litem* may present to Court subsequent to her further investigation;
- (e) finally, to postpone the main application *sine die*.

[11] The second and third interlocutory applications have been filed by the second applicant. The substance thereof can be summarised as follows:

- (a) first, the second applicant should be permitted to also file a further replying affidavit. In anticipation of such relief being granted, it has already been prepared and attached to the application;

- (b) second, a further expert report, prepared by Dr Colin who is a psychiatrist, should also be admitted. A copy of this report has been attached to the application.

[12] All three interlocutory applications have been seriously opposed. I do not intend to deal with all the arguments in detail. I shall confine myself to what I perceive as the real issue in each case. I now turn to deal with each of these applications.

#### FIRST INTERLOCUTORY APPLICATION

[13] The first applicant did not attach to his application the proposed further replying affidavit. One therefore does not know what the contents thereof will be. I therefore requested counsel for the first applicant to indicate what the main purpose of these affidavits is. According to him it would be to put further facts before Court to demonstrate the "*mental deterioration*" of the patient. This will include new factual evidence as well as further expert evidence.

[14] During argument counsel for the first applicant referred to the final report of the curator *ad litem*. According to that report the curator concluded as follows:

*"I cannot submit that my investigation established with the required degree of certainty, and having regard to the requirements of Rule 57, an incapacity of the patient to manage his own affairs. Accordingly, in my opinion a recommendation for the relief sought in the notice of motion pertaining to the appointment of a curator bonis and/or curator ad personam is not warranted at this stage."*

[15] It was contended, *inter alia*, that the applicants were not afforded an opportunity of responding to this report, whereas such an opportunity was afforded to the patient. It should be pointed out that the filing of a further answering affidavit by the patient was agreed between the parties already some time ago.

[16] Counsel for the patient argued that this application is an abuse of process, it amounts to an invasion of the constitutional rights of the patient and it ignores the principle that in all litigation there should be a moment when the process is brought to finality.

[17] It is not difficult to foresee what will happen if the filing of further affidavits is allowed and the curator *ad litem* is ordered to continue her investigation. New factual evidence, as indicated by counsel for the first applicant, will no doubt cause a similar application by the patient to allow him the opportunity of filing a further answer thereto. This, and a further report on the merits by the curator *ad litem*, is in my view a recipe to create procedural chaos. It will open the floodgates for further and new evidence in addition to the 1 500 pages which are already before me. Taking into account these considerations, I am of the view that it will neither be fair to the parties, nor in the interests of justice to allow a postponement for the purpose as requested by the first applicant. The first interlocutory application can therefore not succeed.

## SECOND INTERLOCUTORY APPLICATION

[18] This is to a certain extent similar to the first interlocutory application in that the second applicant also applies to file a further replying affidavit. When this affidavit was debated in Court, it soon became clear that many of the issues addressed therein, have already been ventilated earlier in other affidavits. Put differently, to allow these allegations to also become evidence will amount to a repeat of what has already been dealt with.

[19] Furthermore, insofar as it also contains new evidence, the effect thereof will be the same as I have already indicated above with regard to the first interlocutory application. Finally, having regard to the contents of this affidavit, I fail to see how it will assist the Court to determine the main issue, i.e. whether or not the patient is capable of managing his own affairs. On the contrary, to allow it will only add to the existing list of factual disputes. For these reasons I am of the view that this application should also not be granted.

## THIRD INTERLOCUTORY APPLICATION

[20] The third interlocutory application is for leave to file a further report by an expert, being that of Dr Colin. According to his *curriculum vitae* he is registered as a specialist psychiatrist. He was a lecturer in the Department of Psychiatry, University of Pretoria and Weskoppies Hospital from 1991 to 1994. There is also a list of ten publications, some authored by him and others as a co-author by him. He has been in private practice since 1995.



[21] Dr Colin points out in his report that he was requested to perform a documentary analysis. He did not examine the patient. He only had the opportunity to interview the second applicant on 10 October 2019. He refers to a list of information as well as to copies of no less than 15 reports from professional people. He points out, with reference to one of these experts (Prof Szabo) that collateral information is critical and any opinion expressed without collateral information regarding the competence of any particular patient, must be taken with caution. He says the following in this regard:

*"Looking at the diverse professional opinions obtained, one is under the impression that there might be subjective opinions expressed not taking into consideration the full extent of collateral information, or even that no collateral information at all was obtained."*

[22] He then presents a discussion of brain abnormalities found as well as physical diagnoses that could possibly contribute to cognitive impairment leading to impairment in capacity. In this regard he refers to findings on MRI scans which were requested by Dr Smuts, a neurologist. According to Dr Colin it is clear from the results of these scans that there are three components that should be noted. The first is that of arthrosclerosis leading to so-called multiple small high signal lesions. These represent little strokes because of occlusion of the penetrating arteries at the base of the brain. This indicates an underlying disease process called arthrosclerosis.

[23] He further points out that the second component found on the MRI scans of the patient's brain are various description of degrees of brain atrophy, from generalised atrophy to very specific parietal and temporal atrophy. The third

component according to him is that of a more prominent area of an increased signal on a MRI-scan indicating a possible haemorrhage or stroke in relation to the right posterior horn of the lateral ventricle. According to the neurologists, these MRI scans indicate a very clear organic affliction of the brain of the patient that is extremely significant and would lead to definitive cognitive impairments.

[24] He also refers to the presence of sleep apnoea which was diagnosed and confirmed by Dr Meyer. With regard to psychometric tests he provides a summary of the different opinions and then concludes that on a very concrete level of evidence it is clear that psychometric testing agrees about findings of cognitive impairment, but with very specific emphasis on impaired executive functioning. He also refers to the second report of the curator *ad litem* which contains, according to him, *"extremely valuable collateral information for diagnosing the patient's psychiatric disorder"*. Without giving a full summary of the contents of his report, I now turn to his conclusion which states as follows:

*"The patient's competence is severely impaired by predominantly behavioural abnormalities, impaired executive functions, and some cognitive impairment, leading to extremely poor management of his own affairs, as well as the finances and the management of a large business. It is also clear that he is seriously disinhibited in several regards, irrational and aggressive outbursts, and completely inappropriate sexual advances. The patient has and continuous to cause serious harm to his business, and immense stress to his family. Mr. Arthur A. Nicolakakis' impaired competence necessitates the appointment of a curator bonis."*

[25] It was argued on behalf of the second applicant that this report is important for at least two reasons: first, it emphasises the need for collateral

information as opposed to only "*bedside testing*" without taking into consideration the full picture of the patient's life outside the consulting room. Second, it was argued that although this report comes at a late stage, the real reason for this belated report should also be taken into account. This, according to counsel, is the result of a failure to always cooperate with the curator *ad litem*.

[26] Without repeating all the arguments, it was contended on behalf of the patient that I should focus on the facts, evidence and expert reports which are already before Court. There comes a time, so the argument goes, that a clear line should be drawn. This is encapsulated in the principle that in all litigation there comes a moment that the process must be brought to finality. According to counsel that hour has now come.

[27] I also regard the principle of finality as important. This matter initially came before my brother Davis J on 4 December 2018 as an *ex parte* urgent application. On that day the curator *ad litem* was appointed and after the filing of many affidavits as well as expert reports, I also questioned the wisdom of allowing any further expert reports. I have already concluded with regard to the first and second interlocutory applications that no further evidence should be allowed. Why should I not also follow that same approach with regard to the filing of Dr Colin's report? In this regard there are the following considerations to be taken into account.

[28] Having regard to the two schools of thought amongst the experts, why were they not requested to meet with each other and to prepare a joint minute? This is the usual procedure to follow where experts differ from one another. The

absence of a joint report between the experts in this matter is problematic. When this issue was put to counsel for the second respondent, it was pointed out that arrangements to that effect had already been put in place as early as May 2019. According to the minutes of a meeting held before Acting Deputy Judge President Raulinga on 28 May 2019 the meeting of experts was discussed. Paragraph 4 of the minutes reads as follows:

*"Enquiries were made whether the round table discussions have been arranged by the curatrix ad litem. The curatrix ad litem's recommendations in her second report of 28 February 2019 in respect thereof were discussed and the logistical challenges in coordinating such meetings with professional(s) in the same expertise and disciplines, was debated. The curatrix ad litem proposed that the round table meeting should be held between experts in the same disciplines to render the outcome of such meetings meaningful."*

[29] It appears that thereafter the curator *ad litem* was directed by the Acting Deputy Judge President *"to arrange and hold the recommended round table meetings with the medical experts and thereafter to file her final report"*.

[30] The curator *ad litem* deals with this issue in her final report under the heading *"The Expert Meetings"*. From the explanation given it appears that Dr Smuts had already arranged for a joint meeting of the neurologists which was held on 2 July 2019. A signed copy of the joint minute is in the court file.

[31] Insofar as the other experts are concerned, it appears that the curator *ad litem* was unable to arrange for a date and time that was suitable for all during normal business hours. She then called upon them to attend a meeting of

experts to be held on Saturday 3 August 2019 at Circle Chambers. The invitation was addressed to the following experts:

- (a) Dr Coetzer (geriatrician);
- (b) Mr Visser (clinical psychologist);
- (c) Dr Mohanlal (psychiatrist);
- (d) Ms Da Costa (psychologist);
- (e) Dr Fine (psychologist);
- (f) Dr Van der Walt (clinical psychologist).

[32] Only Mr Visser indicated that he will be in attendance. All the other experts were unable to attend, for various reasons. Dr Mohanlal (psychiatrist) indicated that he saw the patient for treatment purposes only and did not want to get involved in the medico-legal side. Dr Fine, another psychiatrist, indicated that he is now also the patient's treating psychiatrist but *"unfortunately unable to attend the meeting"*. He also pointed out the following:

*"... I do not believe that I can co-sign any Joint Minute in this matter, as the other experts are psychologists and not Registered in the Field of Psychiatry as I am."*

[33] Dr Mohanlal filed a very brief report on 7 December 2018 in which he indicated that it is *"not for medico-legal purposes"*. Without coming to any conclusion regarding the appointment of a curator *bonis*, he referred the patient to Dr Fine for forensic psychiatric assessment. In his report of 16 January 2019 Dr Fine concluded, *inter alia*, that with regard to competence and contractual

ability he does not feel that the patient had any impairment in such abilities due to a dementing process, but that probably he has some age-related memory difficulties, but not to a significant degree. Later, on 2 April 2019, Dr Fine indicated in a letter to the patient's attorney that *"I can see no reasons to advise or recommend that a curator bonis should be appointed"*.

[34] The curator *ad litem* also explains in her final report that she approached Professor Szabo on the recommendation of Mr Visser *"as I wished to appoint a further psychiatrist to evaluate the patient and to provide me with an opinion as to whether any changes occurred since the patient was last evaluated"*. She then points out that in terms of paragraph 4.2 of the court order granted on 4 December 2018 she was authorised to appoint any expert which may be deemed necessary to conduct any further medical assessments required by her.

[35] Professor Szabo was prepared to assist. An appointment was arranged for him to see the patient on 6 August 2019. However, she points out that the patient refused to attend. In a letter dated 5 August 2019 the patient's attorney explained, with reference to earlier correspondence, *"that our client would not consult with another psychiatrist"*. In the concluding paragraph of her final report the curator *ad litem* indicates that the relief sought with regard to the appointment of a curator *bonis* and/or curator *ad personam* is not warranted at this stage. In Court she indicated that she would have preferred a report by Prof Szabo after he had the opportunity to examine the patient as well as a follow-up report by Mr Visser.

[36] From the above analysis the following picture starts to unfold: there was an attempt to arrange for a meeting of the other experts, but due to their unavailability such a meeting was not possible. The result is that the experts could not discuss and debate the main issue with one another. Such a debate is always important, because it may result in them concurring with one another. It appears to me that amongst all these experts there is only one psychiatrist, Dr Fine, who filed a report with regard to the patient's ability to manage his own affairs. As pointed out above, Dr Mohanlal, also a psychiatrist, made no recommendation in this regard. Professor Szabo also made no recommendation as the patient refused to consult with him.

[37] That leaves Dr Fine as the only psychiatrist who has made a recommendation, amongst all the experts. He has to a certain extent isolated himself by indicating that he is not prepared to sign a joint minute with experts who are not also "*Registered in the field of Psychiatry as I am*". This is not an ideal situation, particularly if one bears in mind that the patient refused to consult with another psychiatrist, Prof Szabo. These remarks are neither intended to criticise Dr Fine, nor to point a finger at him. On the contrary, his position is not only fully understood, but also respected. It is not always clear to what extent the other experts took collateral evidence into account. Both Prof Szabo and Dr Colin are of the view that this is extremely important. If Dr Colin's report is allowed, it will enable him to debate collateral evidence, the contents of the MRI scans and other issues with Dr Fine and to prepare a joint report with him. Such an exercise will be extremely valuable to the Court.

[38] I therefore agree with the approach followed by the curator *ad litem* in this regard. Another report by another psychiatrist would have been extremely helpful. This matter concerns the well-being of the patient and it is unfortunate that he did not attend the consultation and examination with Professor Szabo. Under these circumstances and for these reasons I am of the view that the report by Dr Colin should be admitted as part of the battery of expert reports.

### OTHER ISSUES

[39] The curator *ad litem* indicated during argument that she would have preferred a report by Prof Szabo and a follow-up report by Mr Visser. The applicants requested me to make an order that the patient should attend a consultation with and an examination by these two experts. In her supplementary report of 28 October 2019 she also refers to paragraph 4.5.5 of the order granted by Davis J on 4 December 2018 in terms whereof the curator should investigate "*whether the patient should be interdicted from driving any of his motor vehicles*".

### THE REQUEST FOR FURTHER EXAMINATIONS

[40] On the face of it the request that the patient must subject himself to further examinations would under normal circumstances appear to be reasonable. However, this is not the usual case where a party is requested to attend an examination by an expert in matters such as, for instance, a third party claim where the plaintiff claims payment of compensation for personal injuries suffered. Although it was pointed out that the curator *ad litem* has been



authorised by an order of this Court to appoint experts she deems necessary, I also have to take into account the following circumstances. The patient was already subjected to at least nine consultations and examinations by experts. The patient has the following to say in this regard:

*"As a result of the ex parte order ... I have been subjected to needless interviews and medical examinations, I have had my conduct analysed and dissected and I have had my life history and the personal and private difficulties between my son and wife and me splashed publicly across hundreds of pages of court papers ... there have been very public, untruthful and scandalous allegations against me in relation to my relationship with my wife and family, my physical health, my sexual proclivities, my emotional state and a character assassination of who I am as a person."*

(Page 666 and 667 of the papers.)

[41] Properly interpreted, this appears to be a protestation against another examination regarding his ability to manage his own affairs where the patient effectively says *"now I have had enough"*. I also doubt whether it is envisaged by Rule 57 that a patient should be subjected to a multiplicity of medical examinations of this nature. There are at least twelve expert reports obtained over a period of almost one year, and yet there is no finality. How far should this process still be drawn out? Furthermore, I have already concluded that the report by Dr Colin should be allowed. He will now be able to confer with Dr Fine. Taking into account all these considerations, I am of the view that the request for further consultations and examinations by experts to report on the ability of the patient to manage his own affairs, should not be granted.

## DRIVING ASSESSMENT

[42] The curator *ad litem* was unable to comply with paragraph 4.5.5 of the court order referred to above. The following is a brief summary of the background to this issue.

[43] In his report of 9 November 2018 Dr Terblanche (neurologist) points out that the patient was advised to have his driving skills evaluated by Mrs Caroline Rule. The first applicant states in his founding affidavit (26 November 2018) that the patient has suddenly started driving carelessly and recklessly *"and has had two car accidents in the past six months causing serious damages to his vehicles"*. There is no outright denial of these allegations. The patient states (*inter alia*) the following in this regard: *"The 'serious damage' to my vehicle from the accident of 29 October 2018 totalled R7 000.00. This can hardly be seen as serious ... when I grazed a curb stone at the office"*.

[44] In an attempt to comply with the court order referred to above, the curator *ad litem* decided to have the driving skills of the patient evaluated. On 15 August 2019 the attorney of the curator *ad litem* addressed a letter to the patient's attorney, in which the following was stated:

*"We have obtained instructions from our client regarding the appointment with an occupational therapist and she requires Mr Nicolakakis to attend an appointment with Ms Rozanne Groenewald, an occupational therapist based in Lyttelton Manor, Centurion ..."*

[45] On 16 August 2019 the patient's attorney replied with an email wherein he stated the following:

*"We confirm that our client will attend the requested assessment with an occupational therapist. Once the appointment has been made and the report received, we will revert to you therewith."*

[46] On Monday 19 August 2019 the patient's attorney confirmed the arrangement as follows:

*"Our client will be attending his nominated occupational therapist. We will keep you informed as to the outcome thereof after my client's return from Greece."*

[47] The curator points out that from 12 August 2019 when the patient's attorney tendered his cooperation, Ms Groenewald had provided seven available sets of dates for an assessment. The curator concludes by stating the following:

*"Despite the repeated undertakings by Mr Levitt that the patient would cooperate and that he would revert, I have at the time of drafting this report (28 October 2019) not been informed of the patient's attendance at any of these sessions or at any other occupational therapist that he may have appointed for a driving assessment."*

[48] From the evidence referred to above, it *prima facie* appears that there is a need and also good reason to have the patient's driving skills evaluated by an occupational therapist. This will include (according to the curator *ad litem*'s supplementary report), an assessment in office as well as an on-road evaluation. It does not appear, on the face of it, that this assessment will also involve an examination with regard to his ability to manage his own affairs. The driving assessment appears to be something totally different.

[49] Moreover, it also appears from the correspondence referred to above that there is an existing agreement in place between the two attorneys to have the patient's driving skills assessed. There is also sufficient evidence to indicate a reasonable apprehension that the patient may cause injury to himself or to other road users if he is no longer capable of driving a motor vehicle safely. Put differently, it is not only the interests of the patient but also that of the general public which should be taken into account. No doubt, the curator has been authorised by an order of this Court to investigate the question whether the patient should be interdicted from driving any of his motor vehicles. Furthermore, it has been agreed that he may be assessed in this regard. It is also necessary that this should be done as soon as possible. It will be irresponsible of me not to make an order in this regard.

#### EXECUTION OF THE ORDER

[50] The curator *ad litem* plays a pivotal role in this matter. She has already filed four reports. Having read them and having seen her in Court, there is no doubt that she complied with her duties in a professional manner. However, she will still be involved and the execution of the order which I intend to make, will be to a large extent her responsibility.

[51] It should be borne in mind that the purpose of the order which I have in mind, is not to force any expert to cooperate. These are all professional people, who I accept, are also very busy. However, their cooperation will be of great assistance to this Court. The curator is therefore requested to invite all experts of whom a report has already been filed, also Dr Colin whose report will be filed

soon, to attend joint meetings, preferably on dates suitable to them and according to their field of expertise. However, it is for them to decide when, where and with whom to meet.

[52] It is also important, when a joint minute is prepared and the experts concerned do not agree with one another about the main issue (whether or not a curator *bonis* should be appointed), that they be requested to minute their agreements and disagreements, to debate the disagreements and to also state their respective reasons for not agreeing with one another. These reasons are very important, because it may assist the Court in coming to a conclusion, one way or the other. All parties are therefore requested to assist the curator *ad litem* where possible.

### **PROPOSALS BY THE PARTIES**

[53] I invited all the parties to prepare draft court orders to assist me. The applicants have suggested an order which will allow for the filing of the first and second applicants' further replying affidavits as well as the report of Dr Colin. In addition thereto they also request that the patient should submit himself to evaluations by Dr Colin, Prof Szabo and Ms Groenewald. It was also suggested by counsel for the second applicant that none of the parties should be allowed at a further hearing of this matter to rely upon the report of an expert who has failed or refused to attend a joint meeting or to participate in the preparation of a joint minute. I don't think it is necessary or desirable to address this issue at this stage.

[54] The patient has requested that all the interlocutory applications be dismissed and also that Dr Colin's report should be excluded. The curator *ad litem* also filed a proposed draft order in which she addresses, *inter alia*, the issues of costs pertaining to her involvement. I have considered all these proposals carefully and the order that I intend to make will reflect an approach, somewhere in between, which I deem fair to both parties, taking into account the evidence referred to above, the issues discussed and the concerns which I have raised.

### **ORDER**

In the result, I make the following order:

1. The first interlocutory application by the first applicant is dismissed;
2. The second interlocutory application by the second applicant is dismissed;
3. The third interlocutory application by the second applicant is granted and in this regard it is ordered that:
  - 3.1. The report of Dr Colin dated 23 October 2019 is admitted into evidence;
  - 3.2. Dr Colin shall be entitled to participate in meetings with other experts, debate issues with them and also to prepare with them a joint minute;
4. The curator *ad litem* is directed, with a view to determine whether the patient is capable of managing his own affairs, to request all experts

employed in relation to this matter, i.e. on whose behalf a report has already been filed, including Dr Colin, to attend joint meetings (according to their professional expertise, if they so prefer), to debate issues and to prepare joint minutes, recording their agreements and disagreements and stating the reasons for any disagreement, for consideration by this Court;


5. The patient is ordered to submit himself to a driving skills evaluation to be conducted by Ms Groenewald (occupational therapist) on a date to be arranged by the curator *ad litem*;
6. No person shall be entitled to interfere with or obstruct the curator *ad litem* in the execution of her duties referred to in this order;
7. The curator *ad litem* is directed to file a report only with regard to the execution of her duties referred to in this order as soon as possible after she has become able to do so;
8. The applicants' attorneys of record are directed to ensure that the attorney of the curator *ad litem* is provided with a complete set of the indexed and paginated bundles of all the papers in the matter as soon as possible;
9. The curator *ad litem* is authorised, at the request of any one of the experts on behalf of whom a report has been filed, to provide copies of all such documents as identified and which form part of the official set of papers before Court;

10. The curator *ad litem* is directed to forward a copy of this order to each of the experts on behalf of whom a report has been filed, including Dr Colin;
11. The costs of the curator *ad litem* and her legal representatives, to include attorney and senior counsel, shall be paid on a 50:50 basis by the applicants and the patient on the same scale as which the parties are paying their legal representatives, i.e. on an attorney and client scale, pending the final determination of the matter and reconsideration of the distribution of the curator *ad litem*'s costs between the parties;
12. The curator *ad litem* and her legal representatives shall provide invoices to all the parties concerned at monthly intervals, or as necessary, which shall be paid within 30 courts days of the date on which an invoice has been served/rendered;
13. The preparation, attendance and the preparing of joint minutes by experts, as well as expenses incurred by them incidental to what they are requested to do, shall be paid on a 50:50 basis by the patient and the applicants within 30 court days after the curator *ad litem* has presented their accounts to the parties concerned, pending the final determination of the matter and reconsideration of the distribution of these expenses between the parties;
14. The outstanding accounts of Dr Smuts and Mr Visser shall be paid by the patient, as was undertaken in Court on <sup>30</sup>~~28~~ October 2019, within 7 court days of date of this order;
15. Fourie J is appointed as case manager to assist in expediting the finalisation of the main application and to also adjudicate any



interlocutory and other applications incidental to the main application and for this purpose the court file shall be kept in the office of the Registrar of the case manager;

16. Any party, as well as the curator *ad litem*, may with due notice approach the case manager for a directive when it becomes necessary;
17. The main application is postponed *sine die* to a date to be arranged with the case manager and all parties concerned;
18. Costs of the main application as well as those costs incurred on <sup>29</sup>~~27~~ and <sup>30</sup>~~28~~ October 2019 are reserved, save for those costs which have already been dealt with above.

  
 D S FOURIE  
 JUDGE OF THE HIGH COURT  
 PRETORIA  
 4/11/19