IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 77303/2018
REPORTABLE: YES / NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED.
DATE: 17/05/2021

In the matter between:

ADV M VAN ROOYEN obo M G[…] N[…] Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT

K. STRYDOM (AJ):

1. This matter was placed on the Settlement Roll on the 15th of April 2021.
2. M N[...] sustained severe injuries as a result of a motor vehicle collision which occurred on the 14th of February 2010. M N[...] had an unfortunate childhood, having lost his caregivers, being his paternal grandmother and father, after which he was left in the care of his paternal aunt, who does not have any parental rights and/or responsibilities. Having been born on the […], M N[...] was […] at the date upon which the matter appeared on the Settlement Roll.

3. Adv Van Rooyen was appointed as his *curator ad litem* on the 31st of January 2019.

4. M N[...] sustained a fracture of his right tibia which has healed as well as a concussive head injury. The Neuropsychologists differ with the regards to the severity of the concussive brain injury, with Doctor Olivier stating that it is a severe concussive injury and Mrs Peta suggesting that the outcome is more in keeping with a mild brain injury.

5. However, the common thread is that he does suffer from neurocognitive deficits and behavioural changes which is confirmed by poor school performance. It is also not in dispute that he suffers from Post-Traumatic Stress Disorder as well as Major Depressive Disorder.

6. The Educational Psychologist Mrs Bubb (having no counterpart as an expert) notes that the deficits found tie in with a more severe concussive brain injury in a young child at a vulnerable age of brain development. She regards M N[...] as significantly compromised.

7. The Psychiatrist Dr Shevel is of the view that M N[...] is not educable but is trainable.

8. The Industrial Psychologist is of the view that M N[...] will obtain a grade 12 qualification but has many problems and suggested a higher post morbid contingency deduction to account for this.

9. Despite the aforementioned findings, none of the experts gave any indication as to M N[...]'s legal capacity or his ability to manage his own affairs.

10. In the submission documents in support of settlement, however, it is stated that the experts are *ad idem* that the award needs to be protected. The Plaintiff and curatrix ad litem argue that that M N[...] is not someone who can be declared of unsound mind under Uniform Rule 57. As such, the reasoning goes, that in accordance with the views of the *curatrix ad litem*, the award must be protected by a Trust.

11. It was brought to my attention that the Road Accident Fund objects to the creation of the Trust and refers to the wording of the Rule 57 (13) which states:

"Save to such extent as the court may on application otherwise direct, the provisions of sub rules 1 to 11 shall, mutatis mutandis, apply to every application for the appointment of a curator bonis to any person on the ground he is by some disability, mental or physical, incapable of managing his own affairs."

12. The Road Accident Fund reasons that:

"T*here is no way that the attorney can allege that they do not have to bring an application in terms of Rule 57 for the creation of a trust to protect the claimant's compensation amount to be paid by the RAF. The application in terms of the rule enables the court to make an informed finding whether this is necessary or not and which method of protection is more appropriate in the circumstances"*.

13. It is interesting to note that the same correspondence from the Road Accident Fund states that they would appoint legal representatives to argue this point. The correspondence is dated the 22nd of September 2020, however as at the 15th of April 2021 when the matter appeared before me there was no legal representation by the Road Accident Fund. Their submissions as raised above are accordingly not formally before this Court. It should also be noted that, even if the submissions were before Court, given the appointment of Adv Van Rooyen, it is uncertain how the Road Accident Fund avers that Rule 57 was not complied with. Adv Van Rooyen has provided a comprehensive report with her findings and recommendations as required by Rule 57 and this Court is in a position to evaluate those submissions and findings.

14. Having accepted that the settlement amount is fair and in line with the evidence, I queried the curatrix ad litem regarding the proposed trust and specifically what authority the Court has to bind M N[...] to the terms of the trust once he reached age of majority as no finding of incapability has been made. Supplementary submissions and heads of arguments were delivered by Ms Marx (Counsel for the Plaintiff) and Ms Van Rooyen.

Issues to be decided:

15. Naturally, for the period of minority, the Court as the upper guardian of minors is entitled to *mero motu* make any decision to safeguard the interests of the minor and the curatrix ad litem, as guardian, is entitled to act on his behalf.

16. The main issue therefore to be decided is whether the Court, on recommendation of the *curatrix ad litem,* can bind a minor to a disposition of his estate (the award being managed by a trust) for a period that continues into majority, without a finding of inability to manage his own affairs.

Principles applicable to adult patient's vis a vis inability and trusts:

17. The curatrix ad litem argued that in the M N[...]'s case, it would not be appropriate to declare him of "unsound mind"

18. It is important to distinguish between of Rule 57(13) of the Uniform Rules of Court, which related to a declaration of inability to manage own affairs due to some mental or physical impediment and Rule 57(1), which relates to a declaration that the person is of unsound mind or mentally disordered, which is not the position *in casu*. These are two separate types of declarations with different consequences. The query raised during the settlement hearing pertained to Rule 57(13) and not Rule 57(1).

19. There is authority for the fact that a curator bonis (and by implication a trust) may be appointed even where a person is compus mentis under Rule 57(13). As was stated in Ex Parte Wilson: In Re Morison 1991 (4) SA 774 (T)

"The condition of the respondent appears to fall within the ambit of Rule 57(13) of the Uniform Rules of Court rather than Rule 57(1), which relates to a declaration that the person is of unsound mind or mentally disordered, which is not the position in casu.

It can be accepted that although curator bonis are not usually appointed to persons who are compos mentis, yet a curator may be appointed to a person if he desires it, provided the facts establish an incapacity to manage his affairs due to some defect of body or mind. (See Ex parte Berman NO: In re Estate Dhlamini 1954 (2) SA 386 (W) at 387. See also Ex parte De Villiers and Another 1943 WLD 56 at 58 and Ex parte Bell 1953 (2) SA 702 (O) at 703-4, where reference is made to the various Roman-Dutch authorities pertaining to such a situation.) It is, however, important to note that in De Villiers' case supra Millin J at 59, in referring to three earlier decisions, said it was very likely that the Court in those last-mentioned cases would have been unwilling to appoint a curator had it not appeared that this was the desire of the person concerned. Furthermore Millin J, in the case before him, said emphatically at 59 that he would certainly not take the management of her money out of the patient's hands were it not clear that she wished it. (See also Nkosi v Minister of Justice 1964 (4) SA 365 (W) at 367H.)

It is of course well known that each case must be decided on its own set of facts, but as a general proposition it can be accepted that the Court does not usually interfere to appoint a curator where the person concerned is compos mentis and furthermore actively opposes any such appointment, as is the position in casu." [Underlining my own]

20. That the requirement of consent (in the absence of a declaration of inability) forms part of South African has been established. For instance, in the matter

of ***Modiba obo Ruca; in re: Ruca v Road Accident Fund*** (1261/2013; 63012/13) [2014] ZAGPPHC 1071 (27 January 2014) it was stated that:

> *"The curator's report must deal with all relevant facts that may impact upon the question whether the patient is of unsound mind or not and is therefore of great importance to the court faced with the question whether the patient should be declared to be incapable of managing all or part of his affairs and be placed under curatorship"*
>
> *44. Another potentially grave problem that may raise its head is the proposal presently under discussion were to be accepted, is the express disavowal of any intention to seek a declaration that the patient is unable to deal with his personal affairs, or is unable to deal with funds that are about to be awarded to him. The proposed trust is paraded as the answer to the problems the patient is alleged to experience in dealing with large sums of money… Whether the trustees are instructed to deal with the funds in a particular fashion or for a particular purpose only or not, without a declaration of inability to manage these funds or all of his belongings, a trust can only be created with the patient's express prior consent validly given. Should this consent later be held to have been of no force and effect the cause of the patient's mental impairment, the consequences may be dire. It is difficult to discern what benefit the failure to issue a declaration of inability may render to the patient, whose incapacity to deal with funds is the only reason the trust is being created."* [Underlining my own]

"45. The preferable practice must in the light of the aforegoing considerations surely be that a patient who suffers from a mental disability resulting in the inability to manage all or some of his own affairs should be declared to be unable to do so. Such an order protects the patient and those who interact with him. It forms the basis upon which the appointment of a curator bonis or bonis et personae is justified in law, as the patient's fundamental rights to dignity and freedom to decide how she or he would prefer to live his or her life are compromised by granting to a curator the right to take decisions on behalf of the patient… These considerations do not necessarily apply in all instances in which the patient is able to consent to the appointment of a curator bonis as discussed above." [Underlining my own]

21. The principles as set out in the ***Ruca*** matter are underscored by the constitutional values of freedom and dignity. As stated in ***Barkhuizen v Napier*** 2007 (5) SA 323 (CC) "*Self autonomy, or the ability to regulate one's own affairs, even to one's own detriment, is the very essence of freedom and a vital part of dignity the extent to which the contract was freely and voluntarily concluded is clearly a vital factor as it will determine the weight that should be afforded to the values of freedom and dignity*".

22. It is a fundamental rule of Roman-Dutch law that: "*Without legal authority, no man should be deprived of the free administration of his own affairs*." (Quoted from Sande: "Treatise upon restraints upon the alienation of things", Webber's translation, part 1 cap 1 sec 1 nr 5)

23. Accordingly, where adults are concerned, without a finding of an inability to manage his own affairs, funds can only be protected with the express consent of the adult. This naturally assumes that the *curator ad litem* in those instances has properly discharged him or her of their duties in investigating the competency of the patient.

The Authority of the *curatrix ad litem* to bind a minor to a trust that will continue into adulthood:

24. It was submitted by the Plaintiff that, as the curatrix at litem currently has the authority to bind M N[...] (by virtue of his minority), such actions taken will also bind him once he reaches majority. Counsel for the Plaintiff referred me to 3 (three) cases as authority for the submission that a guardian may bind a minor to a contract that extends into majority.

25. In ***Du Toit v Lotriet*** (1918 OPD 99) Justice Ward, agreeing with the majority decision stated:

> "*The power given to guardians in respect of the wards is intended for the protection of the latter during minority, and, in the absence of special circumstances should not be exercised so as to deprive the ward of the power to deal freely with his property upon attaining majority. Voet lays down that "tutors ought to regulate their proceedings so that leases granted by them shall terminate when their own curatorial administration terminates."* [Underlining my own]

"There are many cases, however, in which a rigid adherence to this Rule would prevent a minor's property being let, and it is to such cases that the passage from Voet (19, 2, 17) cited during the argument seems to apply. That passage reads: Pupils are bound to ratify after puberty leases made by tutor in good faith and for such a moderate time as the custom of the distinct sanctions beyond the period of puberty."

26. The majority held that:

"Now the rule of law applicable to a case of this sort is that as a general rule the power of a guardian to deal with a property or affairs of his ward is limited to the period of his guardianship and ceases with the termination thereof. If, however an order to proper utilisation of such property and the beneficial administration of such affairs it is necessary to enter into a contract which while commencing during such guardianship <u>unavoidably extends to a moderate period</u> beyond in accordance with the customs of the country… the ward will be bound by such contract until the termination thereof." [Underlining my own]

"*I do not think that a hard and fast rule can be laid down. Each case must depend upon its particular circumstances. In the above case the court upheld a contract of insurance which imposed liabilities upon a minor after he obtained his majority".* (This is in reference to the matter of ***Skead v Colonial Banking and Trust Co. Ltd*** 1924 TPD 497 at page 503).

The Court upheld a contract upheld a contract of insurance which imposed liabilities upon a minor after he obtained his majority. The present case, however, goes far beyond that one. The effect of the contract was to deprive the ward of the free use of a considerable portion of his income after he attained majority, it restricted the enjoyment of his proprietary rights after he attained majority and I therefore think the father exceeded his authority as natural guardian in entering the contract." [Underlining my own]

27. I was furthermore referred to the matter of ***In re: Nooitgadacht, ex parte Wessels*** (1902) 23 NLR 81 as well as ***Wood v Davies*** 1934 CPD 250 of which the head note reads:

"*Although as a general rule the power of a guardian to deal with the property or affairs of his ward is limited to the period of his guardianship and ceases with the termination thereof, no hard and fast rule can be laid down, and in proper cases a guardian may be held not to have exceeded his authority even though he has entered into a contract which imposes liabilities upon the minor after he has attained majority*."

28. I disagree that these cases are authority for the authority of a guardian to bind a minor to a contract that affects him into the age of majority, unreservedly. For the minor to be bound, once an adult, the contract would have had to have been beneficial and the minor would have had to have been assisted by the guardian in the conclusion thereof, as opposed to the guardian acting on

behalf of the minor. It is only when these requirements are met, that the minor, upon attaining majority, may ratify the contract.

29. With regards to the first requirement, it was stated in *Myhill v RAF* (505/2012) [2013] ZASCA 73 (29 May 2013)

"The principles relating to the rescission of a contract concluded on behalf of a minor are well established and do not need to be dealt with in any detail. Suffice it to say that the parties were correctly agreed that a contract may be set aside under the restitutio in integrum if it is shown that it <u>was prejudicial</u> to the minor at the time it was concluded. In that regard, it is necessary to show that the prejudice suffered was serious or substantial. As Boberg states 'to succeed in a claim for restitution the minor must show that the transaction against which he or she objects was inimical from its inception'. [Underlining my own]

30. As to the second requirement, for instance, Christie *The Law of Contract* 7th Edition 2016 at page 274 states that:

"This is clearly the effect of the line of cases in which it has been held that a guardian's authority <u>does not extend</u> beyond minority, the guardian has no power to bind the minor to contractual liabilities extending beyond the minor's coming of age. It follows that when the guardian's ultra vires act takes the form of <u>assisting</u> the minor in contracting, the minor may ratify the contract on attaining majority… but where it takes the form of

contracting on the minor's behalf no question of ratification can arise, since the contract is a nullity." [Underlining my own]

31. Interestingly enough, the footnote pertaining to the "*long line of cases*" mentions the caselaw referred to by the Plaintiff.

32. In the present matter, given that the disposal of the award by the Road Accident Fund is done on the instance of the guardian (the *curatrix ad litem*), such a contract would be a nullity and incapable of ratification by M N[...]. There has been no evidence before Court that M N[...] was in any way involved in the decision that his award should be placed into a trust.

33. It is important to note that the award from the Road Accident Fund does in fact fall to the minor and forms part of his estate – whilst a guardian is entitled to administer the award, the award still remains the property of the minor child's estate. In, for example testamentary trusts, the asset belongs to the belongs to the person who donates it, until such a time it is donated. Whether or not a parent decides to leave any assets to their child, is their choice. Concomitantly, the choice as to how such assets are to be administered after their death (in general), also falls to the parents. In casu, however, the award belongs to Mr N[...] as of right and forms part of his estate upon granting of said award. Had he been an adult, he would have been able to choose how his estate should have been administered.

34. Despite my finding that foundation of the trust to administer the award is not capable of ratification *in casu*, the question of M N[...]'s capacity, in any event, to ratify or to consent to the formation of a trust afresh.

35. <u>The mental capacity of M N[...]:</u>

36. At present there are 2 (two) factors which influence M N[...]'s legal capacity namely his minority and his need of protection due to his brain injury.

37. His minority will fall away in less than a year. His mental disability, unfortunately, from a reading of the reports, seems to be a lifelong impediment. The *curatrix ad litem* during argument pressed against the declaration of inability on the basis of the severe impact it would have M N[...]'s day to day functioning. She cited, for instance, the fact that he would not be able to open a bank account unassisted. I am of the view that these sentiments rather resort to a finding under Rule 57(1) – where the patient is declared of unsound mind.

38. A declaration of incapability is, however, indeed a great inroad into to personal liberties of a person and is not one that should be made lightly. On the other hand, as previously referred to, a person's constitutional right to dispose of his own affairs as he deems fit weighs just as heavily.

39. Where the person is an adult, the protection of funds can be dealt with in a relative straightforward manner by obtaining his consent, in view of the fact that he is regarded as capable of understanding the effect. It is not unknown for parties to even consent to the appointment of a *curator bonis* despite no

finding of incapability. What complicates the matter *in casu,* at present, is that M N[...], even if he was capable of managing his own affairs, cannot consent to the formation of the Trust, given his minority. In this regard his guardian by way of the *curatrix ad litem* can give such consent. However, once he turns 18, he acquires the rights to determine how he wishes to manage his own affairs. At that stage, his mental capacity to consent, or otherwise, comes into question. The expert reports provided, unfortunately, do not address his capacity save for stating that monies should be protected. This is not sufficient to endow this Court with the authority to deprive him of his future rights of disposal of his assets as he deems fit.

40. As I have previously indicated, none of the experts address his capability to manage his own affairs, save to state that he needs assistance with managing a large award. I have noted the submissions by the *curatrix ad litem* that he is not unable to manage his own affairs, save for the handling of money.

41. Whilst it may be true that he will struggle with a large award, the same hold stead for a plethora of uninjured South Africans who are unable to manage large sums of money. Cases such as where Lotto money won by an illiterate person is spent within a few months on unnecessary luxuries, come to mind. Would the family of such a person, be entitled to approach the Court for an order that the money be placed in trust, despite the fact that there is no legal impediment to such a winner managing his own affairs? The dictum in

Barkhuizen v Napier (supra) clearly indicates that it is a person's constitutional right to dispose of his assets even to his own detriment.

42. On the basis of the submissions by the curatrix and the expert reports, I cannot make a finding of incapability against M N[...] and as such there is no legal impediment that he suffers from that would give this Court the authority to oust his right to self-autonomy.

The Proposed Trust Deed

43. In the matter of ***Dube N. O. v Road Accident Fund*** 2014 (1) SA 577 (GSJ) at paragraph 26, the Court set out the ideal features for a Trust instrument executed for the purposes of administering a minor's money. Amongst these is that:

> *"If apposite, the trust should be stated to terminate at an appropriate date, which should be after the obtaining of his majority and, in the case of disability of the child, should take account of whether such disability is likely to be permanent or temporary and the nature thereof."*

44. The provisions of the proposed Trust deed for M N[...] named the M G N[...] Trust are telling:

    44.1 Section 4 thereof refers to the transferral of the Trust assets at the death of M N[...].

44.2 Section 5 refers to the Trust maintaining M N[...] mentally and physically, being able to send him overseas for medical advice to provide accommodation for a caretaker or nurse if necessary.

44.3 Section 13 thereof states that it requires and application to the High Court to terminate or dissolve the Trust prior to the death of M N[...].

44.4 The powers of the Trustee are very broad and include *inter alia* the ability to purchase, sell or hire purchase assets, to acquire money through loans, to encumber the assets of the Trust and to perform all acts on behalf of the Trust.

44.5 More worrying, the object of the Trust gives the Trustee an absolute discretion (Section 5.4) to do anything in his discretion that he deems necessary for the wellbeing of M N[...].

35 From the aforementioned it can be gleaned that the proposed Trust takes complete control over the award made to M N[...] and provides an almost unfeterred discretion to the Trustees. This is typically a Trust that would be necessary, for instance, for a person who is completely incapable of managing his affairs. Save for his current incapacity due to minority, there is no such finding against M N[...] that would affect him upon attaining majority.

36 I am of the view that this particular Trust goes further than “assistance” and is in fact complete control in managing his money. The inroads that are made on M N[...]’s ability to manage his affairs are severe, with specific reference to the Trust alone.

37 From a reading of the wording, this appears to be what is called an “Ownership” or “Discretionary” trust; one where the assets, liabilities, right and duties relating to the trust, vest within the trustees alone. Beneficiaries in such a trust have no claim on trust property as they do not have ownership or a vested interest in such a trust, until such it is allocated to them in terms of the trust deed. As such they have a mere expectation of benefit in the future. They have a personal right as opposed to a real right as to the trust property. However, this is not the only form a trust can take – for instance, in so called “bewind” trusts, ownership vests in the beneficiary and the trust is merely administered by the trustees. (See JG Vosser: *Trust Administration in South Africa* 2020 Edition pages 42 and 43)

38 Whilst it has become practice in these types of matters to create a discretionary trust, the reasoning for the specific type of trust in relation to the facts of the case needs to be investigated and motivated by the curatrix

Finding

39 Whilst a minor, the curatrix ad litem, has the authority to bind M N[...] to a contract and to manage his estate. However, whether or not that contract will remain binding after age of majority depends on the requirements as set out in paragraph 28 supra.

40 With regards to the whether the proposed trust is beneficial, it is accepted that, for the period of minority left, it would be. However, as I have indicated above, once M N[...] attains majority, it would make grave inroads into his *“enjoyment of his proprietary rights after he attained majority”* (See: Lotriet supra), nor does it “*moderately extend*” for a period into his majority.

41 The issue of whether or not M N[...] can ratify the trust upon attaining majority, depends on whether he had consented to the formation of the trust with the assistance of his curatrix ad litem/ guardian or whether his award was deposited thereinto on the sole behest of his guardian. There is no indication that he was consulted in this regard or voiced any opinion. He is […]years old, near the age of majority and, had he been part of the decision to administer his award via trust, would presumably have been bound to ratify such terms when he reached majority - unless he could prove that the terms were prejudicial. I have previously indicated that the terms of the proposed trust deed have the effect of depriving M N[...], once he is of age, of any say in the administration of his award and gives very broad discretions to the trustee. The determination of prejudice, in light of my finding, is irrelevant for the present purposes, however. It is evident that M N[...] is not involved in the decision to place the award in a trust and is therefore not bound to ratify it once he attains majority.

42 No finding having been made against him in terms of his ability to manage his own affairs, the Court has no authority to force him consent to the formation of a trust once he reached the age of majority. There is however sufficient evidence to find that, should he so wish, the necessity of such a trust was occasioned by the collision and the sequalae he suffered from as a result.

43 In making the order below, I am, however guided by section 28 of the Constitution which states that a child's interests are the most important consideration in any matter concerning the child.

44 In **S v M** (Centre for Child Law Amicus Curiae) 2007 (12) BCLR 1312 (CC) at paragraph 24 the Constitutional Court held as follows:

'[T]his court has recognised that it is precisely the contextual nature and inherent flexibility of section 28 that constitutes the source of its strength. …..

Viewed in this light, indeterminacy of outcome is not a weakness. A truly principle led child-centred approach requires a close and individualised examination of the precise real-life situation of the particular child involved. To apply a pre- determined formula for the sake of certainty irrespective of the circumstances would in fact be contra to the best interests of the child concerned.'

45 In view of the aforementioned, I am of the view that the current proposed trust should be amended to disband within 6 months after M N[...] reaching the age of majority. The extended period provides a reasonable timeframe within which Ms Van Rooyen, as curatrix ad litem can file a follow up report indicating whether, now that he is a major, Mr N[...] (as he will be then) is capable of managing his affairs. Should such a finding be made, but it still be submitted that he merely requires assistance due to his cognitive deficits, Mr N[...] may consent to the formation of another trust, the cost of which the Defendant will be liable for (as the need for said trust stems from the injuries sustained in the collision).

46 The following order is made:

1. The defendant is ordered to pay to the plaintiff, in her representative capacity as curatrix ad litem, for the benefit of M G N[...] (born […]), R3,666,088.00 (THREE

MILLION SIX HUNDRED AND SIXTY SIX THOUSAND AND EIGHTY EIGHT RAND) in full and final settlement of the claim.

2. It is noted that the payment in paragraph 1 and the costs will be made within 180 (One Hundred and Eighty) days after settlement or taxation.
3. The RAF's link number is [….]; Claim number: […].
4. The defendant is ordered to furnish to the plaintiff, for the benefit of M G N[...] (born […]) an undertaking in terms of section 17(4)(a) of Act 56 of 1996 in respect of future accommodation of the plaintiff in a hospital or nursing home for treatment of or rendering of a service or supplying of goods to M[…], to compensate the plaintiff in respect of the said costs after the costs have been incurred and on tendering of proof thereof, arising from the collision which occurred on 14 February 2010.
5. The defendant is ordered to pay the plaintiff's costs the action, such costs to include
    a. The costs of counsel;
    b. The reasonable taxable fees of:
        i. Dr J J du Plessis, neurosurgeon;
        ii. Corlien MacDonald, occupational therapist;
        iii. Dr R L Dippenaar, ophthalmic surgeon;
        iv. Dr V M Close, orthopaedic surgeon;
        v. Dr D A Shevel, psychiatrist;
        vi. Dr Louise Olivier, clinical neuropsychologist;
        vii. Dr Dries Schreuder, industrial psychologist;

viii. The costs of obtaining all actuarial reports from the actuaries 3One Consulting Actuaries;

c. The reasonable costs for the drafting of the Trust Deed and registration of the M GI N[...] TRUST with the Master of the High Court referred to hereunder;

d. The further costs of the curatrix ad litem, including the costs all reports already furnished and any further reports and investigations or consultations as ordered below in paragraph 5(g), as well as her attending the trial on 13 October 2020.

e. The amount in paragraph 1 and the costs are to be paid into the trust account of Messrs Marais Basson as follows: Bank: Standard Bank Account holder: Marais Basson Incorporated Account number: [….] Branch code: 052750

f. After deduction of agreed/attorney and client fees due to the plaintiff's attorney and their correspondent, and after deduction of disbursements (including counsel's fees), the net amount of the award is to be paid to into a trust to be formed for the benefit of M G N[...].

    i. The Trust will stipulate that it will be disbanded 6 months after M G N[...] attains majority.

g. The curatrix ad litem shall file a further report, following consultations with inter alia, Mr N[...] and the relevant experts upon the attainment of majority by M G N[...] indicating:

    i. Whether M G N[...] is capable of managing his affairs.

ii. If he is found incapable, how his award is to be protected and any other recommendations to safeguard his interests.

iii. If such safeguard recommendation is made, what type of trust instrument should be used to cater for the specific needs of M G N[...]

iv. If he is not found to be incapable, but consents to the formation of a trust on terms that he agrees with, the Defendant shall be liable for the costs of the formation and administration of the trust.

h. The plaintiff will furnish the defendant with at least 14 (FOURTEEN) days written notice of taxation.

_____

K STRYDOM
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA

Heard on: 19 April 2021
Judgement delivered:

Appearances:

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