

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 4969/14

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 7 February 2022 E van der Schyff

In the matter between:

J V C[....]

APPLICANT

and

L C[....]

RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] I heard this application in August 2021. A judgment was handed down dealing with the court's jurisdiction to hear the application. The parties were ordered to file financial disclosure forms and their tax returns before the matter could be disposed

of. It only came to my attention during January 2022 that the parties filed the financial disclosure forms as early as September 2021. The applicant also filed his IRP 5 and other documents requested. On 2 February 2022, the respondent provided an affidavit explaining that she is categorized as a 'zero return' taxpayer. I apologise for the delay insofar as it can be attributed to my office. I subsequently provided the parties with the opportunity to supplement their papers and heads of argument. Both parties' counsel indicated that the matter could be finalised on the papers as it stands.

- [2] The need for this order stems from the parties' inability to sit down and discuss their children's maintenance needs and their respective financial abilities to provide for their children. The applicant takes issue with the fact that he must pay the costs attributed to the children's tertiary studies and their monthly maintenance. He argues that the respondent's financial burden to provide for the children is reduced because the children study away from home. His main concern seems to be that the children's monthly maintenance is to be paid to the respondent. In a letter sent to the respondent, dated 26 May 2020, his attorney wrote – 'it is our client's intention to 'channel' [J]'s maintenance towards his tertiary educational costs and daily living expenses at Elsenburg College and still give the balance to J to spend as he pleases – not to reduce the maintenance; our client will go even further and still pay the full maintenance to your client during holidays when J visits his mother'.
- [3] The applicant currently pays R18 189.13 to the respondent towards monthly maintenance for his children, excluding the amounts he pays towards their tertiary education. In terms of the existing court order, he also provides for the costs associated with their tertiary studies. The son seems to have completed his studies. With reference to the parties' daughter's proposed foreseen tertiary expenses, the applicant stated in his founding affidavit that the estimated costs amounted to:
- i. Registration fees: R7 500,00
 - ii. Study fees: R 44 375,00

- iii. Books: R 10 000,00
- iv. Accommodation: R25 000,00

In the financial disclosure form completed in September 2021, the applicant reflects the following expenses regarding the said child's tertiary expenses:

- i. [R] Akademia: R 48 900,00
- ii. Accommodation: R 3 750,00

I accept that the amount reflected for 'Akademia' is a once-off amount for tertiary studies annually. The costs for accommodation are a monthly expense.

- [4] The applicant is wrong when he avers that 'it is ludicrous that the respondent receives maintenance for the children while they are not a maintenance burden on her'. The applicant loses sight thereof that the respondent is still to provide a home for the children to return to during their holidays. She is to provide their daily living expenses not catered for by the applicant. He takes issue with the fact that the monthly maintenance is paid to the respondent and not the children. Although the children attained majority, they are still financially dependent on their parents. The responsibility to provide a family home and to ensure that the children's daily needs, inclusive of financial and emotional needs, are met falls on the respondent. This is a consequence of the divorce and the fact that the respondent is the children's primary caregiver.
- [5] The applicant submitted that sufficient grounds exist for the existing court order relating to the children's maintenance to be amended. However, he does not make out a case that he cannot provide in the children's maintenance needs, that their maintenance needs are excessive, or that the respondent is in a position to contribute more than she currently is. Parents generally have to stretch their budgets and incur additional debts to provide for their children's tertiary education. The fact that the respondent did not earn an income when the maintenance order was agreed to while she is currently earning an income does not per se mean that the existing order needs to be amended. The financial disclosure forms filed indicate that the respondent also contributes to the children's maintenance. She

earns what can be described as 'meager' an income by baking and selling rusks, doing the Golf Club's laundry, doing embroidery and needlework, and selling wood while working as an administrative clerk for a salary of less than R5000.00 per month. SARS categorises her as a 'zero return' taxpayer. The applicant's gross annual employment income (taxable), on the other hand, is reflected on his latest IRP5 as R 1 764 692. Total Tax, SDL, and UIF contribution deductions are reflected as R 524 570,95.

- [6] In the specific circumstances of this case, I am of the view that it is just for each party to pay its own costs. The applicant did not succeed in the relief sought, but he was left with no alternative than to approach the High Court.

ORDER

In the result, the following order is made:

1. The application for the amendment of the existing maintenance order is dismissed;
2. Each party is to pay its own costs.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be sent to the parties/their legal representatives by email as a courtesy gesture. The date for hand-down is deemed to be 7 February 2022.

Counsel for the applicant:	Adv. B Bergenthuin
Instructed by:	Cilliers & Reynders Attorneys
Counsel for the respondent:	Adv. S Strauss
Instructed by:	J Brewis Attorneys
Date of the hearing:	25 August 2021
Date of first judgment:	30 August 2021

Filing of financial disclosure forms:	20 September 2021
Respondent's affidavit <i>re</i>	
tax returns received:	2 February 2022
Date of judgment:	4 February 2022