

**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, PRETORIA**

CASE NO: 32681/2022

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

20 SEPTEMBER 2022

In the matter between:

**S[....]2 A[....] S[....]**

Applicant

And

**J[....]2 M[....] S[....]**

Respondent

In Re:

The appointment of a curator ad litem for:

**J[....] D[....] S[....]**

First Minor Child

(Born 12 February 2014)

And

**S[....]3 [....] S[....]**

Second Minor Child

(Born 14 September 2016)

## **JUDGMENT**

**NYATHI J**

### **A. INTRODUCTION**

**[1]** This is an opposed urgent application wherein the Applicant seeks an order appointing Advocate Marius Snyman SC as *curator ad litem* to two minor children J[....] D[....] S[....], born 12 February 2014, and S[....]3 [....] S[....], born 14 September 2016.

**[2]** In her founding affidavit to the application, the applicant states that the *curator ad litem* would represent the minor children, and make recommendations to this Court on the best interests of the minor children pertaining to contact with the respondent, care of the minor children, and treatment that they may need, following what they have been exposed to at the residence of the respondent.

**[3]** The respondent opposes this application on the basis that it is not urgent but is an abuse of the court process.

### **B. APPLICANT'S VERSION**

**[4]** This application follows an incident where the respondent, the father of the minor children, acted in a violent and abusive manner toward the *au pair*, R[....] V[....], in the presence of the minor children.

**[5]** The parties were married to each other and divorced on the 10th of February 2022. The two minor children were born from the marriage between the parties.

**[6]** In terms of the divorce order, the applicant was awarded primary custody of the minor children, subject to the respondent's rights of contact under supervision of an *au pair*, for a period of 12 (twelve) months from date of divorce.

**6.1** The respondent exercised contact with the minor children as per the settlement agreement, under the supervision of R[....] V[....], the *au pair* that was appointed by the respondent to supervise the contact with the minor children.

**6.2** The *au pair* would sleep over on the weekends that the respondent exercised his contact with the minor children, as per the settlement agreement.

**6.3** The *au pair* and the respondent developed a romantic relationship.

**6.4** On the weekend of 4 June 2022, the respondent had a violent outburst in the presence of the minor children, towards the *au pair*, with whom he was involved in a romantic relationship.

**[7]** R[....] V[....], the *au pair*, resided with the respondent on weekends, along with her minor son, and with the applicant during weekdays.

**[8]** According to R[....] V[....], the outburst was so severe that the *au pair* fled from the respondent's house, but before leaving, called the applicant to collect the minor children, because they were not safe alone with the respondent. The minor children were "completely paralysed with fear".

**[9]** The applicant proceeded to the respondent's residence with M[....]2 V[....]2, to collect the minor children. Upon their arrival, they found R[....] V[....] hysterical, as the respondent's abuse seemingly caught up to her in that moment.

**[10]** She informed the applicant that her and her son were not allowed to consume any food or cold drinks in the respondent's house, unless she paid for half of it. The respondent would often buy food only for himself, and not for her and her child.

**[11]** Taking into consideration the history of the matter and the fact that the respondent has a history of physical abuse towards the applicant and the minor children, it is the applicant's view that the respondent should be investigated by a forensic psychologist, to determine the future rights of access the respondent may enjoy with the minor children.

**[12]** The children have been presenting with various behavioural problems, amongst which is anxiety and fearful behaviour.

**[13]** In terms of the settlement agreement, the parties agreed to have the minor children assessed by an expert, one Dr Jana van Jaarsveld, for a period of 12 (twelve) months following the divorce.

**[14]** The purpose is to determine the respondent's rights of access to the minor children, given his aggressive history, and to monitor the children in light of their contact with the respondent.

**[15]** Dr van Jaarsveld is of the view, especially after the 4th of June, that a curator should be appointed for the minor children.

**[16]** The report of the Family Advocate also indicates the challenges between the respondent and the minor children

### **C. RESPONDENT'S VERSION**

**[17]** The respondent denies the events of the 4th of June 2022. In support of this denial, he attached an affidavit from R[....] V[....]. This affidavit contradicts the applicant's version and it is evident from the WhatsApp messages attached to the applicant's replying affidavit, that the affidavit of R[....] V[....] is not truthful.

**[18]** The respondent is of the view that the matter is not urgent, not taking into consideration the allegations made by both parties, and the behaviour of the minor children post the events of 4 June 2022.

[19] It would be in the best interests of the minor children if the allegations are at the very least investigated by a *curator ad litem*, and the children are safeguarded in the interim from any further trauma.

[20] For the duration of the investigation the respondent should have supervised contact with the minor children, every alternate weekend, from 9:00 - 12:00 on a Saturday and 9:00 - 12:00 on a Sunday.

[21] The minor children need an independent person to consult them, and address their needs, and report to Court in this regard.

[22] The parties cannot act as mediator in their own cause, as they should not be put in a position where they feel they need to choose one above the other as parents.

#### **D. ANALYSIS OF THE ISSUES**

[23] Due to the serious allegations that were levelled against the respondent, and the potential impact on minor children, the Court dealt with the application as one of urgency.

[24] The respondent's affidavit deals at great length with the very acrimonious disputes between himself and the applicant. What becomes apparent from a perusal thereof is that a lot of issues remain unresolved between the former spouses, despite the existence of the settlement agreement.

[25] The issue of access and visitation by the respondent to his two minor children has seemingly not been resolved between the parties.

[26] The appointment of a *curator ad litem* would in my opinion advance rather than retard the protection of the interests of the minor children in an atmosphere that is laced with acrimony as the instant case.

**[27]** A *curator ad litem* is defined as a person appointed by the court to conduct civil legal proceedings on behalf of another person, who because of minority... himself lacks the capacity to litigate.

**[28]** Section 28(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") states that a child's best interests are of paramount importance in every matter concerning that child. This has since been reiterated and confirmed in many cases.

**[29]** It is in full consideration of the above that I make the following order:

**29.1** That Adv. Marius Snyman SC is appointed as the *Curator ad litem* for the minor children, J[....] D[....] S[....] and S[....]3 [....] S[....] in the above matter (hereinafter referred to as the minor children).

**29.2** That the *Curator ad litem* shall investigate the matter and report thereon to the above Honourable Court, for which purpose the *Curator ad litem* shall have the following powers:

**29.2.1** To represent the minor children in matters of a legal nature, including but not limited to litigation and that in the execution of his power be entitled to commence and defend and/or be joined in any litigation and/or pending legal process, should the best interest of the children so require.

**29.2.2** The *Curator ad litem* shall be entitled to, in the best interests of the minor children, in the interim and pending final adjudication of this matter, issue directives pertaining to the parental responsibilities and rights to be exercised over the minor children.

**29.2.3** To represent the best interests of the minor children by advancing all arguments for and on behalf of the minor children relevant to this matter as well as all related matters.

**29.2.4** To enquire or consult with whatever person necessary in the completion of his mandate.

**29.2.5** To refer the minor children for such therapy as he deems fit for further and or other assessments or therapy should the Curator deem same of vital importance in his mandate to act in the best interests of the minor children.

**29.2.6** To refer the parties or other relevant persons to experts for further and/or other assessments or therapy should the Curator deem it necessary in executing his mandate to act in the best interests of the minor children;

**29.2.7** to compile a report that contains all the facts and circumstances and make a recommendation therein regarding the Parental Rights and Responsibilities to be exercised over the minor children;

**29.3** The costs of the *curator ad litem* shall be borne by both parties jointly, in equal shares.

**29.4** The costs of any expert appointed by the court, or the *curator ad litem* shall as a result of this order be borne by both parties jointly in equal shares.

**29.5** The court makes no order as to costs of this application.

**J.S. NYATHI**  
**Judge of the High Court**  
**Gauteng Division, Pretoria**

DATE OF HEARING:

28 JUNE 2022

DATE OF JUDGMENT:

20 SEPTEMBER 2022

## **APPEARANCES**

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