

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

CASE NO: 54532/2016

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 20 October 2023

E van der Schyff

In the matter between:

J[...], A C

FIRST PLAINTIFF

PATTERSON, M W

SECOND PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

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JUDGMENT

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Van der Schyff J

**Introduction and context**

[1] In this claim for loss of support, there are only two contentious issues, one of which was resolved during the proceedings. The resolved issue relates to the quantum of the first plaintiff's claim for funeral costs. The parties came to an agreement in this regard. The second issue, which necessitates this judgment being written, relates to the defendant's liability regarding the loss of support claim instituted by the first

plaintiff on behalf of a minor child, R, who was, at the time of the breadwinner's untimely death, placed in protective care with the first plaintiff and the deceased.

- [2] The evidence before the court is that the first plaintiff and the deceased adopted two children, took another child in foster care, and received the minor, R, in protective care with the intention to adopt him. A few months later, a motor vehicle accident occurred, and the first plaintiff's husband passed away. She, nevertheless, continued with the adoption and adopted R.
- [3] The defendant (the Fund) contends that the deceased had no legal duty to support and maintain R, and as a result, the Fund is not liable for the loss suffered by the minor in this regard.
- [4] Counsel for the first plaintiff referred the court to applicable case law, to wit, *JT v Road Accident Fund*,<sup>1</sup> *Metiso v Padongelukfonds*,<sup>2</sup> *Jacobs v Road Accident Fund*,<sup>3</sup> and *Piaxao and Another v Road Accident Fund*.<sup>4</sup>

## Discussion

- [5] The first plaintiff's evidence that baby R was placed in protective care with herself and her husband after they expressed the intention to adopt him was not contested. This intention to adopt was later realised, albeit after Mr. J[...] passed away.
- [6] While the deceased was alive, he and his wife took full responsibility for and provided for R's financial and emotional requirements. *In casu*, the duty of support arose in the fact-specific circumstances of the relationship between R and the deceased. The deceased, together with the first plaintiff, voluntarily assumed the obligation to support R, and this gave rise to a reasonable expectation that the maintenance contributions would continue. Adoption is a process, and although the

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<sup>1</sup> 2015 (1) SA 609 (GJ) at 617B.

<sup>2</sup> 2001 (3) SA 1142 (T).

<sup>3</sup> 2010 (3) SA 263 (SE) at 268J.

<sup>4</sup> 2012 (6) SA 377 (SCA) paras [39] – [41].

formal process was only concluded after the deceased's death, the process commences with him being an active participant therein. Having regard to the first plaintiff and the deceased's expressed intention, the family relationship between them and R came into being when R was taken into their home, albeit, in terms of a court order affording them protective care. In *Paixao*, Cachalia AJ, amongst others, said:

'Evidence that the parties intended to marry, may be relevant to determining whether a duty of support exists, ... But it does not mean that there must be an agreement to marry before the duty is established. ... But once it has been established that the deceased has undertaken to support Mrs Piaxao and her children, ... I cannot see any reason why Michelle's claim should fail. Her claim, like her mother's, arose from the same 'family relationship.'

[7] I have considered the affidavits and reports filed of record, and am of the view that the defendant correctly did not take issue with the quantum of the respective claims, except for the claim for funeral expenses, which the parties later agreed on.

## **ORDER**

**In the result, the following order is granted:**

- 1. The draft order marked 'X', dated and signed by me, is made an order of court.**

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 emailed to the parties/their legal representatives as a courtesy gesture.

For the plaintiffs:

Instructed by:

For the defendant:

Instructed by:

Date of the hearing:

Date of judgment:

Adv. JPJ du Plessis

Adams & Adams

Ms. Kunene

State Attorney

17 October 2023

20 October 2023