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

CASE NO: 30290/21

(1) REPORTABLE: Yes  / No

(2) OF INTEREST TO OTHER JUDGES: Yes  / No

(3) REVISED: Yes  / No

Date: 08 July 2023

WJ du Plessis

In the matter between:

I[...] C[...] M[...] G[...] D[...] G[...]

Applicant

and

J[...] H[...] V[...] V[...]

Respondent

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**JUDGMENT**

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**DU PLESSIS AJ**

**Background**

[1] This is a relocation application in the urgent court, where the Applicant seeks leave to relocate with her and the Respondent's three minor children to Belgium, her country of origin, where the children also hold dual citizenship. The matter is opposed, with the Respondent filing a counter-application requesting that Legal Aid appoints a legal representative for the three minor children to present them in legal matters, including an application for relocation.

[2] The Applicant and Respondent are in an acrimonious relationship with the children caught in the crossfire, as evidenced in the affidavits and the expert reports, the

details of which need not be repeated in the judgment. As an addendum to this judgment, I also attach communication to the children to explain to them the outcome of this judgment. It is, after all, their best interest that I had in mind when writing this judgment.

- [3] The question of what is in their best interest is contextual based on the facts. The question of urgency, is likewise based on the facts. I will set out the facts as comprehensive as an urgent court judgment allows before dealing with the legal question.

### **The facts**

- [4] The parties fell in love in Burundi when they both worked there, and got married in 2007. The family lived a nomadic life, moving from country to country depending on the Applicant's work. From their union, four children were born. Helia, now a major living in the Netherlands, S[...] (16), M[...] (14) and E[...] (11). The application for relocation only pertains to the youngest three children.
- [5] When trouble began to surface in the marriage, the parties decided to settle in South Africa, the country of birth of the Respondent, in 2014. They have lived here ever since. The hope was that the Respondent start a business and be the breadwinner. This, however, did not work out as planned. After being unemployed for a while, the Applicant found employment as a Diplomatic Attaché employed by the European Union. As is the nature of these postings, it comes to an end.
- [6] The Applicant's contract was set to expire in August 2022. However, she extended it for another year due to divorce proceedings that the Respondent instituted in June 2021.
- [7] In the meantime, she has found new employment in her native Belgium, commencing 1 September 2023. The children are enrolled in various schools, with the school year starting around the same time. The Applicant has a house in Belgium, with her family living nearby. She also has a strong network of friends.

- [8] At the time of the instituting of the divorce, there was an agreement that the family would move to Belgium at the end of the Applicant's posting. However, this agreement crumbled as the divorce progressed, and the animosity grew. There has also been an acknowledgement in the Rule 43 application that the Applicant will be relocating to Belgium. The expert report of Dr Duchen (dealt with later) mentions the fact that the parties once agreed about the move to Belgium at the end of the Applicant's posting and that this would be in the children's best interest.
- [9] With the issuing of the divorce action, the Respondent also launched a Rule 43 application praying that the primary residence of the minor children be shared equally between the parties, as well as maintenance. The court, in September 2021, rejected the shared residency and ordered that the minor children remain in the primary care of the Applicant, with the Respondent having rights of contact, and reducing the maintenance to about 15% of what was asked and for a limited period of six months, which six months lapsed in February 2022.
- [10] In the meantime, the office of the Family Advocate was approached for a full investigation and recommendation in the matter. The Family Advocate confirmed the outcome of the Rule 43 application: primary residence with the Applicant, with contact for the Respondent.
- [11] The parties agreed to cooperate with an investigation into the best interest of the minor children, especially concerning the residency and the prospect of relocation. They agreed to appoint Dr Ronel Duchen. Dr Duchen started her investigation in October 2022, releasing a comprehensive report on 11 June 2023.
- [12] The crux of the findings regarding relocation was that living in Belgium would, from a psychological perspective, anchor the children better than remaining in South Africa. That is despite the children's expressed wishes to remain with their father.
- [13] After the report was sent to the parties, and attempt was made to discuss the content of the report and the implication on the relocation decisions, but the

parties failed to do so. The children started packing their belongings to be shipped to Belgium.

[14] On 19 June 2023, the Respondent rejected the recommendation of Dr Duchen and withdrew his consent to the removal of the minor children from South Africa.

### **Ad urgency**

[15] The Applicant intends to fly to Belgium by 14 July 2023 to settle the family before her employment, and their new schools start. She argues that she would not receive substantial redress in another court in this timeframe.

[16] The Respondent argues that he has been prejudiced by the application being brought urgently, that the application is not urgent, and that he had little opportunity to oppose the matter.

[17] I disagree. The Respondent was aware of the possible relocation for years and knew that the outcome of a decision would hinge on Dr Duchen's recommendations. She made the recommendation for relocation on 11 June 2023. In light of the school starting end of August and the time needed for the family to settle in and deal with the disruption in their lives, I deem the application sufficiently urgent.

### **Ad merits**

[18] This court must essentially decide two issues: 1) what will be in the children's best interests and 2) should a legal representative be appointed for the children to assist the court in deciding what is in the best interest of the children with regards to the relocation?

[19] The report of Dr Duchen notes that the children are concerned about the move to Belgium for different reasons. S[...] worries about the school curriculum and feels she is finally settled socially and happy. M[...] is worried about his maternal grandmother (who talked negatively about the Respondent in the past) and his mother's friends. E[...] is worried that she will not fit in in Belgium.

- [20] The children stated to Dr Duchen that they prefer their father as he is more available to them while their mother works and because they can decompress their stress with him. They also enjoy all the fun activities they do together, like boating on the dam and motorbiking.
- [21] The Applicant avers that their reluctance to relocate is due to the Respondent's influence on the children. The report of Dr Duchen supports such an averment, as she finds that the Respondent tries to alienate the children from the Applicant.<sup>1</sup> The Respondent also struggles to contain his anger and contempt of the Applicant in front of the children, which Dr Duchen notes undermines the minor children's relationship with their mother.<sup>2</sup> E[...]s therapist also referred to exaggerated feelings of anger towards the mother without a logical explanation, indicating that she overidentifies with her father.<sup>3</sup>
- [22] The Applicant's parenting style was not free of criticism. Dr Duchen found that the Applicant's inability to regulate her emotional responses in parenting may lead to inconsistent emotional support and difficulty responding effectively to the children's emotional needs and that her personality style can create challenges in maintaining a stable and structured parenting approach.
- [23] The children coped best with optimal involvement with both parents, Dr Duchen found. However, at the moment, both parents' capacity to parent and guide the children raised some concerns. The children are psychologically vulnerable and do not experience attachment security with either parent.<sup>4</sup>
- [24] She also states that it would be difficult for the children to be separated from their father and that the emotional support that the father provides is sometimes

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<sup>1</sup> Para 669 of Dr Duchen's report.

<sup>2</sup> Para 705.

<sup>3</sup> Para 712,

<sup>4</sup> Paras 703, 707.

contaminated by his own emotional responses.<sup>5</sup> Likewise, Dr Duchen found that it would be difficult for the children to be separated from their mother, as she provides them with continuity and organises many aspects of their lives.<sup>6</sup> Ultimately, she found that the children's best interest would be served by a context that could provide them with the highest degree of stability.<sup>7</sup>

[25] Another important finding for this application was that Dr Duchen did not believe that the Respondent would be capable of handling the administrative side of looking after the children himself.

[26] After the report was sent to the parties, they could not agree on a way forward. On 19 June 2023, the Respondent, through his attorney, informed the Applicant that he rejects the findings of the report and does not consent to the removal of the children from South Africa. This urgent application was launched as a result.

[27] Seemingly aggrieved by the outcome of Dr Duchen's report, the Respondent's legal representative requested Prof Pretorius for an opinion of the report without consulting with the Applicant.<sup>8</sup> The Respondent further provided Prof Pretorius with certain information. The opinion of Prof Pretorius, and the recommendations made, are thus based on the report and information provided by the Respondent only. The recommendations will be evaluated in that light.

[28] Although Prof Pretorius did touch on the circular destructive dynamic between the parties and the emotional divorce, this was not the focus of her report. She highlighted the children's voices, their requests, and their reasons for wanting to stay. She highlighted the dangers of parental alienation in limiting contact with a parent, focusing on certain problematic parental behaviour and submitting proof of

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<sup>5</sup> Paras 668, 705, 712, 719, 741 of Dr Duchen's report.

<sup>6</sup> Para 668

<sup>7</sup> Para 708.

<sup>8</sup> The Applicant noted her concern that her personal information was shared with the expert without her permission, and likewise question the ethics of whether a recommendation can be made without a fuller investigation based on input from at least the Applicant herself as well. This court takes note of this concern, and hope that the legal representative of the Respondent likewise took note.

such to, for instance, a court to try and convince the court that a parent is unfit to be a parent. She noticed that Dr Duchen's report shows that both parties already engaged in such behaviour. Her concern was that a relocation would bring about alienation as the children would see the Respondent less and less.

[29] In reply to Prof Pretorius' evaluation, Dr Duchen clarified her report. I duly consider that this was after the Applicant's legal representative sent Prof Pretorius' report to Dr Duchen.

[30] She indicated that they were largely in agreement. Still, she disagreed that her report supports the finding that the Applicant engaged in alienating behaviour. The strict enforcement of a court order to create great structure around the contact between the children and the Respondent and to create distance between her and the Respondent cannot be classified as alienation, however valid M[...]s feelings are that his mother was keeping him from his father.<sup>9</sup>

[31] Dr Duchen also emphasised that the Applicant has developed a strategy for settling the children into life in Belgium. The Respondent did not make such plans, presumably because he awaits the outcome of this case. She then states, "if the Court decides that the children must relocate, the support of two parents settling the children will be invaluable during the transition phase".<sup>10</sup>

[32] She also re-emphasises the importance of contact with their father. The children will benefit from knowing how and when they will see their father.<sup>11</sup> She indicated that she gave due consideration to the children's views and wishes but that the question should rather be what weight she attached to their views and wishes concerning her assessment of their best needs.<sup>12</sup> This was evaluated with regard to their circumstances as a family.

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<sup>9</sup> Para 26.

<sup>10</sup> Para 45.

<sup>11</sup> Para 46.

<sup>12</sup> Para 50.

[33] In short, she states that she considered the views of the children keeping the following in mind:<sup>13</sup>

- i. that they participated meaningfully in an age-appropriate way;
- ii. that they may not understand the cause and effect of their decision because they do not have all the information concerning psychological and financial consequences that they might understand;
- iii. that emotionally their emotional functioning might impact their expressed views, and here she expresses concern with regard to E[...]’s position;
- iv. that the information that they rely on is incomplete and distorted, with specific reference to the Respondent’s reactive responses;
- v. attachment insecurity that leads to a fluctuation of views (also confirmed by the children’s psychologist), employed as a coping strategy to deal with changing circumstances;
- vi. the undue influence that one parent might have on the child, a concerning dynamic in the family;
- vii. the fact that the children primarily spent leisure time with the Respondent might create an unrealistic perception of the nature and quality of the relationship with the parent.

[34] In other words, if these other factors are not aligned, one must be cautious not to assign exclusive weight to the child’s views and wishes. This is not disregarding their wishes but considering them within the context of what will be in their best

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<sup>13</sup> Para 59 – 62.

interest. Her finding was that what would be in the children's best interest would be a situation that creates stability, predictability and the possibility of having a meaningful relationship with both parents.

[35] With this in mind, she states what made her come to her conclusion:<sup>14</sup>

- i. Inconsistent alignment between the children and the parents over time, coupled with attachment insecurity;
- ii. Concern about Respondent's ability to support the children's relationship with the Applicant, alienating behaviour and overtly exposing the children to his anger towards her;
- iii. Concern about the alignment of the children's views with the Respondent's capacity to care for the children on his own in South Africa since, during the assessments, he was vague about how he would organise their lives;
- iv. Concern about the Respondent's organisational abilities and ability to organise time, establish routines and structure for the children;
- v. Concern that after a fallout with the Applicant, they lived with the Respondent for two weeks during the school term but returned to the Applicant voluntarily after two weeks.

### **The law**

[36] It seems apt to start with the warning in the case of *LW v DB*.<sup>15</sup> I don't have to determine who are good and bad parents. Parents are not perfect, and sometimes being parents magnify inadequacies and unresolved psychological issues. This is also evident from the various findings of Dr Duchon and the explicit

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<sup>14</sup> Para 68.

<sup>15</sup> 2015 JDR 2617.

recommendation that both parents attend parenting courses to upskill themselves in raising adolescents independently. It is especially heart-breaking to witness character destruction in cases such as these, where it is impossible to order amicable cooperation and support for one another, despite the lingering heartache and rage.

[37] Still, the starting point of any inquiry must be the Constitution. Section 28(2) of the Constitution states

"A child's best interests are of paramount importance in every matter concerning the child"

[38] This is confirmed in s 9 of the Children's Act. It is a factual question based on the circumstances and merits of each case. S 7(1) of the Act sets out factors the court must consider.

[39] There is a list of cases dealing with what this entails. The old case of *Van Deijl v Van Deijl*<sup>16</sup> stated that welfare must be taken in its widest sense – economic, social, moral and religious considerations play a role, as well as the emotional ties and the ties of affection. *French v French*<sup>17</sup> sets out four categories to consider when considering what is in the child's best interest: the preservation of the child's sense of security; the suitability of the caregiving parent regarding the parent's character; material considerations; and the child's wishes.

[40] However, the Constitution and Children's Act realigned our focus to focus not on the parent but on what would be in the children's best interest. The parents' characteristics, abilities and situations will play a role in considering what is in the children's best interest. Still, it will be viewed from, as far as possible, the children's physical, social and psychological needs.

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<sup>16</sup> 1966 (4) SA 260 (R).

<sup>17</sup> 1971 (4) SA 298 (W) 298H.

- [41] As of the relocation, there is a myriad of cases that documents equally complex situations. In *Van Rooyen v Van Rooyen*,<sup>18</sup> for instance, the mother, an Australian citizen, was permitted by the court to relocate with her children by placing much emphasis on the personal circumstances of the custodial parent and how that ties up with what is in the children's best interest. In *Wicks v Fischer*<sup>19</sup> the court refused permission to the mother, also the custodial parent, to relocate to the United Kingdom, placing less emphasis on the personal circumstances of the custodial parent and more on the child's best interest. Although the mother had a lucrative job opportunity in the United Kingdom, the uncertainty of whether she will be moving again led the court to refuse permission as to the possible unsettling effect this would have on the child. *Heynike v Roets*<sup>20</sup> likewise emphasised the custodial parent, the mother's, interest in the relocation, granting the permission to relocate.
- [42] After the promulgation of the Children's Act, there was a move away from the so-called pro-relocation (with the primary caregiver) approach.<sup>21</sup> In *Cunningham v Pretorius*,<sup>22</sup> the court was instead guided by the child's best interest. In the end, it permitted relocation to the USA with the custodial parent, the mother, but only after considering various competing factors. In *HG v CG*<sup>23</sup> it was not in the children's best interest to move with the mother to Dubai.
- [43] There has thus been a move in caselaw from what seems to be a preference to the wishes of the custodian parent and the idea of shared parenting and how time will be spent between the two parents if the relocation is permitted (or not). My starting point is thus not a presumption in favour of the Applicant since she has been awarded primary residency in the Rule 43 application.

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<sup>18</sup> 1999 (4) SA 435 (C).

<sup>19</sup> 1999 (2) SA 504 (N).

<sup>20</sup> [2001] 2 ALL SA 79 (C).

<sup>21</sup> Domingo, Wesahl "For the sake of the children": South African family relocation disputes." PELJ 14.2 (2011).

<sup>22</sup> [2008] ZAGHPC 258.

<sup>23</sup> 2010 SA 352 (ECP).

[44] As the upper guardian of minors, this court has a duty to consider and evaluate as many factors as possible to decide what is in the child's best interest in this relocation debate. The following factors were considered in coming to my decision are:

- i. The family has moved around the world many times. Belgium is not an unfamiliar country to the children. They were brought up following the Belgium culture, and they speak the language. They have visited the country many times.
- ii. The children expressed that they prefer to stay with the Respondent. The Respondent plays an important part in their life as far as decompressing their stress is concerned. Despite this, Dr Duchen stated that the children have an insecure attachment and are not attached to any one parent more than the other.
- iii. The Respondent spent much time with the children when they were younger while the Applicant was working, and thus has a bond with the children that should be considered and nurtured. Adequate contact is essential for this purpose.
- iv. The Applicant made proposals for contact. The Respondent did not make contact proposals. During the oral address, I expressed my concern about how the Respondent could afford the trips to Belgium and what would happen if the parties could not agree on contact time. The Applicant tendered to pay for at least one trip to Belgium a year for five years and that she will carry the costs for getting the minor children in South Africa. There was a suggestion as to a mediator should they not be able to agree.
- v. The Respondent later went on various business missions, occasionally in other countries. He has been separated from the children for longer periods. The children have not been separated from their mother for long periods.

- vi. The Respondent states that he has been unemployed for two years now. However, he also goes on business missions to Burundi occasionally. It is unclear from the papers if he can provide for the children, even if he were to get maintenance from the Applicant. He does not live in Pretoria. Should the relocation permission be refused, it is unclear where the children will stay, what schools they will attend, and how he will meet their daily needs.
- vii. Since the Respondent mostly took care of the children while he was not employed, there is no indication that the Respondent can provide the same level of care while being gainfully employed.
- viii. The Applicant, perhaps due to her working obligations, spent less time with the children in leisure activities to create a deep bond. However, she took care of their daily needs and structured their life in a predictable way. Since the separation, the Applicant has been the sole provider for the children's financial needs. The Applicant has clear plans, and she proactively ensures that they are actioned.
- ix. The Applicant is more likely to support the children's relationship with the Respondent than the Respondent is to support the children's relationship with the Applicant. It is possible to structure the order to provide quality contact time (that the Respondent is good with) with the Respondent to prevent alienation from the Respondent.
- x. Both parents love and care for the children in their imperfect way. There is not a lack of love for the children. They both want to be with their children.
- xi. The Applicant is not relocating out of spite or malice. This relocation has always been on the cards and, until recently, was supported by the Respondent.

[45] Based on the above list of considerations, read together with the report of Dr Duchen that states stability and predictability would be in the children's best interest, as well as having meaningful contact with both parties, the children should be allowed to relocate to Belgium with the Applicant. This has always been the plan, and she has taken proactive steps with the children's needs and future in mind for life in Belgium. Although she sometimes strictly enforced the court order regarding contact, she has not denied the Respondent contact with the children. She has also proposed a workable plan to ensure the Respondent has contact with the children. The fact that it is in holiday time also corresponds with the Respondent's strong parenting skill: spending leisure time with the children and having fun, as children and parents should.

#### **Counterclaim for legal representation**

[46] Section 28 of the Constitution provides that a legal representative should be appointed if it is proven that the children would suffer substantial injustice. No case was made out for substantial injustice. The request is that the children's voices be heard. I have reserved judgment to reconsider this counter-application carefully. In the words of Dr Seuss, "a person's a person no matter how small".<sup>24</sup>

[47] Section 10 of the Children's Act provides that

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate *in an appropriate way* and views expressed by the child *must be given due consideration*. (my emphasis)

[48] There is no guidance in the section itself on how the views must be placed before the court. Children are autonomous individuals who should be taken seriously.

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<sup>24</sup> Dr Seuss *Horton hears a who!*

[49] I can assure the parties, especially the children, that whether their voices were adequately heard absent legal representation was duly considered. I conclude that the comprehensive report of Dr Duchen, who duly captured their wishes, is sufficient. Prof Pretorius also mentioned it and considered what impact it might have on the children, which I duly consider in light of the limitations of that report. It is, in any event, not disputed that the children wished to stay with their father. To subject them, yet again, to another inquiry and another alien process will prolong the inevitable agony of having to leave their father in South Africa and adjusting to live in Belgium. This is not in their best interest.

### **Conclusion**

[50] A decision to end the tumultuous situation that the parties, especially the children, find themselves in at the moment, that provides security and structure, would be in the children's best interest. This was also Dr Duchen's recommendation. The parties will also do well to heed the experts' finding that the children will function optimally in an environment where both parents support the children. I cannot order the parties to do that, even if that would be in their best interest.

### **Order**

[51] I, therefore, make the following order:

1. The Applicant's non-compliance with the forms, service and periods prescribed in terms of the Uniform Rules of Court is condoned and the matter is heard as urgent in terms of Dispensing with the forms and service provided for in Rule 6(12) of the Uniform Rules of Court;
2. The Applicant's application to relocate with the minor children is granted. The Applicant is authorised to remove the parties' minor children from South Africa, namely:
  - 2.1. S[...] O[...] S[...] v[...] V[...] born on 3 November 2006;
  - 2.2. M[...] C[...] A[...] v[...] V[...] born on 25 October 2008;

2.3. E[...] I[...] A[...] v[...] V[...] born 16 November 2011.

3. The Applicant is given permission to relocate with the minor children to Belgium. The consent for removal as required by s 18(3)(c)(iii) read together with s 18(5) of the Children's Act is dispensed with.
4. The Respondent's consent and/or signature in respect of any travel documents required for the minor children to leave the Republic of South Africa is dispensed with. The Applicant is authorised to be the sole signatory in respect of any such travel documents. The parties retain their co-parental responsibilities and rights in respect of the minor children as referred to in s 18(1), (2), (3), (4) and (5) of the Children's Act 38 of 2005.
5. The parties' rights of care in respect of the minor children as referred to in s 18(2)(a) of the Children's Act are as follow:
  - 5.1. The minor children shall reside with the Applicant, who shall be their primary caregiver;
  - 5.2. Any decisions regarding the minor children shall be made per the provisions of the Children's Act, particularly sections 30 and 31.
6. The Respondent shall be entitled to contact with the minor children in Belgium and South Africa:
  - 6.1. The Respondent is entitled to spend every short school holiday with the minor children in Belgium.
  - 6.2. Additionally, the Respondent may spend time with the minor children whenever he decides to travel abroad, and any other time as arranged between the parties. The Respondent is to make such arrangements with the Applicant within a reasonable period before flying to Belgium.

- 6.3. The long school holidays will be shared between the parties equally and rotated yearly in that the minor children will spend the first half of the holiday with one party and the other half of the holiday with the other party. The minor children will spend Christmas Day with one party, and New Year's Day with the other party.
  - 6.4. The Applicant will ensure that the minor children travel at least once a year to South Africa to spend time with the Respondent. The Applicant is responsible for the costs of this travel.
  - 6.5. The annual scout camp that the minor children attend is considered neutral and does not count as contact of any parent with the minor children.
  - 6.6. The Applicant is to pay the flight ticket of the Respondent for one short holiday per year for the next five years to ensure that the Respondent can exercise his right of contact with the children.
  - 6.7. The Respondent is entitled to contact via telephone, WhatsApp, FaceTime and whatever other means at reasonable times.
  - 6.8. If there is disagreement as per contact, the parties are to appoint an independent family mediator from the list of court mediators of the division of this court or an advocate from the Family Advocates. If the parties cannot agree on such a person, their legal representatives will appoint an independent mediator or family advocate for them.
7. Until the Applicant and the children relocate, the Respondent is allowed to exercise his right of contact until 24 hours before the flight, after which time they must be left in the care of the Applicant. The Respondent must greet the children 24 hours before the flight to Belgium and is not to prevent them from flying to Belgium.

8. The Applicant shall within 6 (six) months of her arrival in Belgium, at her own cost, take all steps necessary to cause this order to be made an order of a court of competent jurisdiction to ensure that this order is enforceable in Belgium.

8.1. If the Applicant fails to take such steps within a reasonable period, the Respondent shall be entitled to take the necessary steps and recover the costs thereof from the Applicant, including any travel costs to Belgium if necessary.

9. Should the Respondent relocate to Belgium, contact arrangements in terms of this order may be reconsidered by a competent court.

10. The counter-application is dismissed with costs.

11. Each party must pay their own costs in the main application.

**WJ DU PLESSIS**

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines, and is sent to the parties/their legal representatives by email.

Counsel for the Applicant:	Ms Riani Ferreira
Instructed by:	Susan van Rooyen Attorney
For the for Respondent:	Mr Mark Haskins SC
Instructed by:	Mundt Attorneys
Date of the hearing:	05 July 2023
Date of judgment:	08 July 2023

**Addendum to the judgment: A letter to the children**

Dear S[...], M[...] and E[...],

I know you are going through a difficult time, which might become a little more difficult in the next few days. Your *maman* or *papa* has asked me whether you should move to Belgium, because they could not agree. I think you know that they are having difficulty agreeing on many things at the moment.

The Children's Act states that as the upper guardian of all children in South Africa, including you three, I must decide if they cannot agree. This letter is to tell you what I decided, and why, as this will have a big impact on your future. I think it is important that I explain what I have decided because you said you want to stay with your *papa* in South Africa. In the end, I decided that you must go. I want you to know I thought about what you said, and need to explain why I did not follow your wishes.

When I make these decisions, I am guided by our Constitution and other laws that say I must do what is in your best interest. I do not merely guess what that would be. The Children's Act in section 7, if you want to google it, tells me everything I must consider when deciding. Then I had the help of your *maman* and *papa* who told me what they think, and the psychologist Dr Duchen (remember her?) that took a lot of time to write a very long report and tell me what she thinks will be in your best interest.

That report taught me a lot about you and your mom and dad. It was clear from the report that you wanted to stay with your dad and your reasons for it. After all the talking and the tests and looking at many other things that you might not know about at the moment, Dr Duchen said it would be best for you to go with your mom to Belgium, that you should see your dad often, and that both your mom and dad should support whatever I decide as that would make things a bit easier for you.

Your dad did not agree with Dr Duchen because he said you clearly said you want to stay with him, so he got another woman, Prof Pretorius, who is also a psychologist to look at what Dr Duchen wrote and to write to me about what she thinks is in your best interest. She said a lawyer must come and tell the court what you want.

You will not know her as she did not speak to you. She also did not speak to your mom. She only had Dr Duchen's report and what your dad told her. So I thought about what she

wrote, but I thought more about what Dr Duchen wrote because she met with all of you over a longer time.

I got the impression from everything we all heard that you want to stay. I also read that you sometimes have difficulty with your mom and that things are generally easier and more fun with your dad.

Even if things are sometimes difficult with your mom, I still think it is in your best interest to go with her to Belgium. I am going to tell you why.

Firstly, I thought about what you wanted, and why. I read in the papers that you do all these fun things with your dad while your mom is working. This is good, *and* this is also something that worried me a bit. Should you stay with your dad in South Africa, you will have to go to school, have a routine and do all these everyday things. From what was told to me by all the people in court, I was not convinced that your dad can do that.

Your dad did not have many plans about what might happen when you stay. Your mom made many plans for you in Belgium, and she has been taking care of these things the past few years, so I know she can do it. This is based on information you might not have when making decisions.

Then Dr Duchen wrote that she is a bit worried at times that your dad influences what you decide. If your dad is happy, you are happy, and if he is unhappy, you are unhappy too, and this has a big impact on your decision to stay. Dr Duchen also talked about the different personalities of your mom and dad, and that you must have the support of both your mom and dad, even if they cannot agree with one another. I cannot make them do it, but I hope that they read that too.

Then I also thought about the fact that you have been to Belgium many times, that you are Belgium citizens, that you have family there, and that you have moved (and survived moving) before. I thought about how far that is from your dad. I also thought about how your mom suggested he can see you during certain holidays and how you will come to South Africa for some holidays. I thought that since you do so many fun things with him,

seeing him during holidays you will get to spend a lot of time doing the things you like doing with him.

I hope that once you have felt all the anger, sadness, and other emotions, you will understand how I came to this difficult decision. So my order, which both mom and dad must follow, says that your mom is allowed to move with you, even if your dad does not agree. You will have the rest of the time until 24 hours before flying to spend with him, then you must go to your mom's house to prepare for the flight. You can talk to your dad in whatever way you talk (WhatsApp, Zoom etc) once you are in Belgium.

Your dad can see you during every short school holiday in Belgium (your mom must pay for one trip every year, for five years). He can also see you if he travels to Europe at other times, but he must let your mom know. The long holidays will be shared between your mom and dad. Your mom will make sure that you come to South Africa at least once a year.

If your mom and dad cannot agree on any of this, then a Family Advocate or mediator will help decide.

Your dad also asked that I appoint you your own lawyer to tell the court what you want. I think it is clear what you want, and I did not want you to go through any more turmoil, so I did not agree.

I know this is not what you wanted, but I think this is best for you. I hope your parents can support you during what must be a sad time for you.

Good luck with your move and bon voyage.

Judge Elmien (WJ) du Plessis  
Acting Judge of the High Court, Pretoria