Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case number: 18559/2016

Before: The Hon. Mr Justice Binns-Ward

Hearing: 13-15, 19-21, 26 October 2020

Judgment: 30 October 2020

In the matter between:

JW Plaintiff

and

CW Defendant

JUDGMENT

BINNS-WARD J:

[1] This is an action for divorce. As happens in many such matters when they are defended, the defendant spouse has made a claim in reconvention. It was not in dispute that the parties' marriage has broken down irretrievably. It is the relief ancillary to a divorce order that is in issue; principally, the nature and amount of the maintenance to be paid by the plaintiff in respect of the defendant and their dependent children. Although the parties might be regarded as relatively well off by South African standards, their available means were very modest in the context of the costs of a 7 day trial, preceded as it was by no less than three bouts of contested litigation in terms of rule 43.[1] This was a matter in which sound reason should have dictated a settlement.

[2] The parties were married out of community of property, with exclusion of the accrual system, on 25 April 2001. There are two dependent children of the marriage; N, born on 29 October 2002, and L, born on 16 September 2004, who is still a minor. The children have lived with their mother, who is the defendant in convention, since their father moved out of the common home at the defendant's request in May 2016. It is common ground that the defendant should remain as the children's primary caregiver.

[3] The plaintiff seeks to remain as the minor child's co-guardian and to have a say in major decisions concerning her welfare and upbringing. N, who is currently in her matriculation year at school, attained the age of majority on the day immediately preceding the date of this judgment. The younger daughter, L, is currently in grade 10. Both children are high achievers, performing well on the academic side and also in a range of extramural activities. It accordingly eminently foreseeable that they will in due course progress to further education at tertiary level.

[1] A further application by the defendant for a contribution was heard during the trial; see *V v V* [2020] ZAWCHC 126 (21 October 2020).

It is anticipated that N and L will remain as 'dependent children' within the meaning of s 6 of the Divorce Act 70 of 1979 until they have completed a course towards a primary degree or diploma.

[4] The plaintiff originally sought relief that would grant him regulated rights of access to the children, but by the time of the trial he abandoned his prayers in this regard. In a written open tender handed in at the commencement of the trial, the plaintiff consented to an order that '[t]*he children shall continue to reside primarily with Defendant, subject to Plaintiff's rights of reasonable contact, which shall be exercised by him in a phased in manner as recommended in writing by the children's mental health therapist and / or psychologist from time to time as provided in the Rule 43 order, alternatively and in any event, with due consideration of the children's wishes'*. It was clear from the evidence that his relations with his daughters were fractured, and he reluctantly accepted that any resumption of contact with them, something he said he longed for profoundly, could occur only if and when they became ready for it of their own volition.

[5] The children are at an age at which they can make their own decisions with regard to contact with their father. It is not necessary for me to make any definitive findings on the question, but the impression I formed on the evidence was that the breakdown of the plaintiff's relationship with his children may have been in consequence of an unfortunate combination of factors; viz. a failure by the plaintiff to appropriately adjust his manner of interacting with his daughters as they matured from young girls into puberty and early womanhood, and also an overly protective and possessive attitude towards the children by their mother. Whatever the reason, the children are currently fixed in their view that they do not wish to have contact with their father. Limited efforts at 'reunification' therapy have not been fruitful.

[6] The plaintiff is a certificated engineer with a university degree in mechanical engineering. He is currently 53 years of age, and has been employed for the past 20 years as a project engineer by ABC, a division of the world famous ABC mining company. His current net salary after deductions for income tax, medical aid and pension contributions, is approximately R72 800 per month.

[7] In recent years the plaintiff's employment has twice offered him the opportunity to undertake special assignment work abroad.[2] The first such assignment, for a 12-month period commencing in September 2015, involved him working intermittently in Norway during the construction there of a marine mining vessel for ABC. He is currently employed on a similar assignment in Romania. The overseas component of the project that has taken him to Romania is due to come to an end in February 2021. The plaintiff's uncontested evidence is that there is unlikely to be another special assignment contract in the offing for the foreseeable future.

[8] Whilst working abroad on such assignments, the plaintiff is paid a taxable dislocation allowance and a non-taxable living allowance. These allowances are paid on a *per diem* basis during the periods that he spends working outside this country. The arrangement in respect of the Romanian assignment is that he is abroad for four weeks at a time interposed with intervals of two weeks back in South Africa. On the current assignment his daily dislocation allowance is €65 and his living expense allowance is €85 per day (at current exchange rates approximately R1250 and R1650, respectively). Some of the living expense allowance was paid to the plaintiff in cash in advance of his departure for each stint abroad, and the balance was loaded on a E-wallet card that operated as a Euro denominated debit card. The evidence indicated that his current assignment allows him to boost his net monthly income by between R30 000 and

[2] At a much earlier stage of his employment he worked in New Zealand for six months, but that does not appear to have been considered relevant for present purposes.

R40 000. As I have described, the opportunity is transient and the plaintiff's income accordingly may be expected to revert to approximately R73 000 per month with effect from March 2021, a mere four months from now.

[9] The plaintiff testified initially that his expenses while abroad accounted for virtually the whole amount of his €85 per day allowance, but investigations by the defendant's attorneys turned up the relevant E- wallet card account statements showing that amounts varying between about €500 and €3400 remained in the account at the end of each period.

[10] I can understand that the plaintiff's expenses would be variable during any one-month period because he often spent time in different parts of Europe outside Romania with variable attendant costs because it is well known that the Euro goes further in some countries in Europe than it does in others. Accordingly, it does not surprise me that the extent to which he drew on the €85 per day allowance was not constant.

[11] I am sceptical, however, about the plaintiff's claim that he did not know from time to time what the balance was on his E-wallet card. On his most recent journey back to South Africa after an extended stay in Romania due to the global suspension of air travel due to the Covid-19 pandemic, he drew €4000 in cash at Schipol Airport. His explanation for these drawings was that he shared expenses with a number of fellow workers who lived on assignment in the same apartment complex in Romania that he did and they operated a cash kitty for shared expanses. He said that he was indebted to the kitty account in an amount of €3 800, and that the cash had been drawn to reimburse the kitty. I find it strange that he had not mentioned this earlier when testifying in some detail on how the €85 per day allowance was used by him and explaining, in the context thereof, that nothing of it was available for him to bring back to South Africa. His

failure to be forthcoming about the cash withdrawal of an amount which, in South African terms, would be close to R80 000 certainly detracted from his credibility.

[12] The plaintiff's salary income has traditionally been augmented by an annually granted discretionary bonus. In 2018, the bonus, after tax, was just over R190 000, and in 2019, R202 000 (received in March 2020). The plaintiff testified that he had been advised that he will be fortunate if his bonus this year amounts to anything more than a thirteenth cheque; and he considers that is likely to remain the position for the foreseeable future. Having regard to the currently lamentable state of the local and global economy that one reads about daily in the news media, his evidence in this regard was not at all implausible. It is all a question of just how long the current depressed economic conditions will last. History tells us that economic conditions are always cyclical; it is the timing of the turning and the extent of the recovery that are unpredictable.

[13] The plaintiff further testified that the security of his current employment was uncertain because of the prevailing severe downturn in economic conditions globally that has been due in large part to the restrictive effects of attempts by governments to contain the COVID-19 pandemic. He pointed out that his employer generates its revenue from the sale of diamonds and that the jewellery market, which accounts for a material segment of ABC's turnover, has been badly affected by the downturn. The company is in the process of organisational restructuring and he is uneasy whether his continued employment is assured. He described how he had been required to reapply for his position in a similar context in 2009 after the 2007/8 global economic crisis. He feels that at his current age he might be more vulnerable to retrenchment if that were to happen again now.

[14] I think the court is entitled to take judicial notice that the effect of the current crisis is notably worse than the one in the earlier part of the 21st century, but I have little doubt that a person with the plaintiff's qualifications and experience would, if necessary, be able to find alternative employment reasonably quickly. Should the plaintiff's financial position deteriorate materially for any reason in the future, the provisions of the Maintenance Act 99 of 1998 will be available to him to apply for an amendment of his maintenance obligations. For present purposes, I intend to assume that the plaintiff will remain in his current employment until the mandatory retirement age of 60. I accept, however, that his remuneration is unlikely to increase, even in nominal terms, for at least the next three to four years, which means that it will actually diminish in purchasing power over that time as the cost of living continues to increase. Sixty is a relatively youthful age for retirement in today's world in which many countries are legislating increases in the statutory retirement age to well over 65 because of increased longevity of their populations. I would therefore expect that the plaintiff will probably find alternative employment for a few more years after his retirement from ABC.

[15] Both of the parties were previously married, and the plaintiff has an adult son by his first marriage. The plaintiff's son is currently in his final year of study for an engineering degree at Stellenbosch University. The son grew up living with his mother, but he has reportedly recently restored a reasonably good relationship with his father, despite having had little to do with him for many years because, according to the plaintiff, he felt unwelcome at the home that the plaintiff shared with the defendant. The plaintiff said that this was because the defendant was paranoid that the boy might behave inappropriately in some or other way towards the parties' daughters, who were much younger than the boy.

[16] The plaintiff's son previously lived first in a hall of residence and later in student digs at University, but as from the middle of last year (2019) he agreed to move into the plaintiff's house as a cost-saving measure. The son reportedly intends to stay on to do his master's degree next year if he qualifies for admission to that course of study. The plaintiff indicated a willingness to assist financially in that regard if he is able to. It must be said, however, that the likelihood of the plaintiff's son being admitted to a master's degree class is uncertain to say the least because he has taken two years longer than the prescribed period to complete his primary degree.

[17] The plaintiff's evidence gave it to be believed that his son had a part-time job with an engineering firm that allowed him to earn some pin money. Investigations by the defendant's attorneys brought to light, however, that the son has held a fulltime position at the firm since the beginning of the year and has been earning a salary of R15 000 per month since April. The plaintiff professed surprise at this information. If his surprise is genuine, it means that his son has been misleading him. Whatever the position, I am satisfied on the evidence that latterly came to hand that there is no reason to treat the plaintiff's son as being financially dependent on him when it comes to calculating the plaintiff's ability to contribute to the maintenance of the defendant and the parties' daughters.

[18] On the contrary, whilst I consider that it might be reasonable for the plaintiff to provide his son with a rent-free place to live for the time being, the son should, in my view, actually be making a nominal contribution from his earnings to the plaintiff's household expenditure on food and other groceries. It also seems to me that the son should be able to fund his studies for a master's degree without financial assistance from his father should he indeed enrol for postgraduate study. The son's contract of employment indicates that he is able to do most of his

work from home, which sounds like an ideal situation for anyone undertaking postgraduate study. I am certainly not persuaded that the plaintiff owes his son an obligation to fund his studies towards a postgraduate degree. If he chooses to do so when he has other maintenance obligations, properly so called, he will have do so from his disposable income after he has satisfied any such other obligations.

[19] The defendant is currently 50 years of age. She has a B. Com degree from the University of Stellenbosch and a diploma in Food Services Management obtained at the then Cape Technicon (now known as the Cape Peninsula University of Technology). After graduating from Stellenbosch University, the defendant gained employment at the beginning of 1995 as the food services manager at a children's home in Tulbagh. The position gave her responsibility for budgeting, personnel management, drawing up menus and procuring the comestibles to provide the meals. From June 1995, she worked at the then newly opened Durbanville Mediclinic where, for most of the seven years she spent there, she was the food services manager.

[20] The defendant was still in her position at the Durbanville Clinic when the parties' firstborn daughter was born. She resigned after an extended seven-month maternity leave in order to take care of the child. The plaintiff confirmed that it was the parties' intention at the time that N was born that they should have another child. The plaintiff testified that the defendant resigned suddenly, without consulting him, on her first day back at work after her maternity break. The defendant, on the other hand, claimed that her resignation was in accordance with a joint decision made by the parties, and that she served out a month's notice before it came into effect. She confirmed, however, that the initial intention had been that she would return to work after the birth of the child, but said that she had informed the plaintiff on the very day that N was born that she felt that she should rather stay at home to bring up at the

children. It seems clear that forward planning arrangements had not been made for the baby's care when the mother was due to return to work. The plaintiff conceded that the child was looked after by her maternal grandparents when the defendant was unavailable. That suggests to me that the defendant's evidence that she worked out a month's notice period is probably correct, for it is unlikely that the plaintiff would recall the grandparents' role if the defendant went back to work for only one day.

[21] The plaintiff said that the agreement was that the defendant would return to work once the children started school. In the event that did not happen. It is, however, common ground that the defendant did consider taking a position at the Louis Leipoldt Hospital at some stage while the parties' daughters were still at primary school. It was apparently decided that the position would not be suitable as it involved shift work, which would make it difficult for the defendant to be able to continue to manage the domestic demands of the common household. I have gathered from the evidence that whilst he may have had other views about the need for the defendant to be a stay-at-home mother, the plaintiff did not put pressure on the defendant to go back to work. He spoke in his evidence about frequently having to 'reluctantly' accept various aspects of his domestic life with the defendant. She was apparently rigid in her views and not amenable to persuasion. This aspect of her character was independently confirmed by both of the industrial psychologists who gave expert opinion evidence at the trial.

[22] The arrival of the children and the fact that the family was having to live on a single income after the defendant stopped work imposed a degree of financial constraint. The parties had to sell the large house that they had jointly acquired in Durbanville soon after their marriage and move into a smaller house in PV Street, in another part of Durbanville. They remained at that address until their separation in 2016. The plaintiff said that although his income increased

over the years, he was unable to come out on his salary and only managed by encashing unused leave entitlements. He said that there were frequent arguments between himself and the defendant about her exceeding the budget for groceries. It seems, however, that the family was able to live comfortably. They took three overseas holidays for instance and the defendant was provided with a new vehicle in 2014. They also extended the house at PV Street.

[23] The defendant has not been employed since 2002. She has devoted her time and energy to looking after the home and the care and upbringing of the children. According to the plaintiff, the defendant devoted herself to the children to such an extent that he felt increasingly excluded by her and alienated from her affection. The plaintiff claimed that the defendant was obsessive about the children's wellbeing, to the extent that apart from her, only he or her parents were ever permitted to transport the children wherever they might require to go. I gained the impression from the plaintiff's evidence that the parties' marriage relationship started to deteriorate soon after the children were born and that he probably remained in the relationship as long as he did because of his attachment to his children, which appears to have been a very close one in their younger years.

[24] It was when the elder daughter 'went cold' on him, as he put it, when he returned from one of his sojourns abroad on the Norwegian assignment that the marriage relationship began to openly fracture. The plaintiff said that he was unable to ascertain from either the defendant or his daughter what the problem was. That the defendant considered that there was a problem was borne out by the fact that when the plaintiff returned to Norway she arranged for the children to consult with a psychologist. The plaintiff became aware of this when he was approached to give the consent apparently required for the consultations to take place.

[25] When the plaintiff returned from Norway at the end of that stint there, the defendant requested a trial separation, to which the plaintiff consented without being able to ascertain what would be required to end it. From the time he moved out of the common home, the defendant advised him that the children were fine. It is apparent that she stopped taking them for consultations with the psychologist.

[26] The plaintiff has been allowed virtually no contact with his daughters since he moved out of the common home. As I understood the evidence, he saw one of his daughters very briefly on her birthday in 2016, and he subsequently saw them both during one session of reunification therapy. The only other time he has seen them was when he had to meet them at the Department of Home Affairs in the first half of 2019 to assist in the submission of a travel document application needed to allow one of them to travel abroad on a school choir trip.

[27] He instituted proceedings in terms of rule 43 under case no. 8617/2017 to formalise contact with the children. That led to directions being given for various expert investigations and interventions that do not appear to have resulted in anything concrete. The costs of those rule 43 proceedings were stood over for determination by the court seized of the trial in the divorce proceedings.

[28] As mentioned, there were two other rounds of litigation in terms of rule 43 that concerned interim maintenance and a contribution towards the defendant's costs. It was not in dispute that the plaintiff has, to date, complied with his obligations under the orders made in those proceedings. It is evident that doing so has required him to draw on his mortgage bond account (a so-called 'access bond facility').

[29] The plaintiff has no savings apart from his pension interests and Professional Provident Society savings account in a total amount of approximately R8 million, which are not currently

accessible. He testified that he had been advised that these savings, which are intended to provide for his retirement, might be expected to provide him with a post-retirement income of approximately R35 000 per month before tax. The pension savings may, of course, be expected to grow between now and his date of retirement, but so too will the cost of living for which they are intended to make provision.

[30] At the time that the defendant asked for a trial separation she also indicated to the plaintiff that they should sell their house in PV Street and acquire a replacement that would be smaller and more manageable for her. The plaintiff said that he agreed because it was apparent to him that the marriage was probably at an end. The net proceeds of the realisation of the property were in the amount of approximately R2,5 million.

[31] While he was away working in Norway, the plaintiff was informed that the defendant had committed to the purchase for herself of a new house in VH in Brackenfell. He learned of this in an email from the transferring attorneys of the former common home requesting him to give permission for the allocation of R2,1 million of the R2,5 million net proceeds of the sale of the family home to pay the purchase price for the property acquired by the defendant. The plaintiff was concerned that this would leave him with very little to put towards the acquisition of a property for himself, but reluctantly, and allegedly against the advice of his legal representatives, he agreed. He said that he reasoned that paying for the house purchased by the defendant would assure her and his daughters of somewhere to live.

[32] In the result, the plaintiff received only R257 000 (i.e. approximately 10%) out of the net proceeds of the sale of the former common home. He was unable to afford to purchase a new property for himself and moved into a rented garden in Welgemoed. Using savings that he had

accumulated in a money market account for a deposit, the plaintiff subsequently purchased a townhouse in Brackenfell for R1,9 million, which is where he currently lives with his son.

[33] At the time of the hearing, the plaintiff's property was mortgaged. An amount of just over R1,1 million was outstanding on the bond. The mortgage bond account affords him the R1,3 million access bond facility referred to earlier. The plaintiff testified that he expected that borrowing limit would be reached once his outstanding legal fees and the R50 000 contribution he is still required to make towards the defendant's costs have been accounted for.

[34] The plaintiff testified that his mortgage bond repayments, which are currently in the amount of approximately R14 500 per month have been fixed by arrangement with the lending bank so as to achieve the redemption of the mortgage loan in full by the time he retires at age 60. He conceded that the repayments could be determined in a lower amount (the amount of R9 000 per month was mentioned), but pointed out that would impact adversely on his ability to maintain a reasonable standard of living on his anticipated retirement income. In my view, as already mentioned, it seems improbable that the plaintiff would not be able to continue in remunerated employment for some years after he reaches the ABC company retirement age of 60. As I understood his case, he expects that his wife should be able to obtain employment and continue working until at least age 65. In my judgment, he might reasonably be expected to work until a similar age. I therefore agree with the defendant's contention that the plaintiff should be able to adjust his mortgage bond repayments so as provide for the mortgage loan to be fully repaid when he reaches the age of 65, rather than 60. However, in the short term at least, much, if not all, of the liquidity created by such an adjustment will be absorbed by the still to be paid costs of this litigation, which according to the evidence adduced in the most recent

application by the defendant towards her costs have run at about R80 000 per day since the commencement of the 7-day trial.

[35] The plaintiff's evidence about his concerns about his ability to come out on his retirement savings led to him being taxed in cross-examination about the probable inability of the defendant in the comparatively short working life she would have before retirement between the ages of 60 and 65 to build up an adequate provision for her old age. The plaintiff acknowledged the constraints that the defendant would face in this regard, but said that that was something that she would have to accept as an inherent consequence of her insistence that their marriage should be out of community of property with an exclusion of the accrual system.

[36] In consequence of their contractually adopted matrimonial property regime the only patrimonial remedy available to the defendant on the termination of the marriage by divorce is a claim for maintenance; this by virtue of s 7(2) of the Divorce Act 70 of 1979, which, read with s 7(1), as it should be, provides:

> (1) A court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other.
>
> (2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.

(An order for a capital redistribution in terms of subsection 7(3) did not arise for consideration by virtue of the marriage having been contracted out of community of property with the exclusion of the accrual regime post the coming into operation of the Matrimonial Property Act 88 of 1984.)

[37] As the plaintiff's counsel was at pains to emphasise, there was no right in the common law by one spouse to maintenance from the other after the termination of the marriage, certainly not, in a fault-based system, by a guilty spouse against an innocent one; see *Strauss v Strauss* 1974 (3) SA 79 (A) at 93G. The existing orders as to inter-spousal maintenance made in terms of rule 43 therefore terminate with effect from the date of the divorce order; see *Ex parte Standard Bank Ltd and Others* 1978 (3) SA 323 (R) at 325.

[38] The fault-based system of divorce has been done away with in large measure. It is plain from the provisions of s 7(2), that the question of post-divorce maintenance is now determined on the basis of what the court considers to be just. As has been noted in the jurisprudence, s 7(2) does not create a right to maintenance, it vests a discretionary power in the court to make a maintenance order if it finds that it would be just to do so. As with any discretionary power vested in the courts, the power must be exercised judicially, not arbitrarily, capriciously or whimsically. The legislature has identified certain criteria to be taken into account, but those mentioned in s 7(2) do not constitute an all-inclusive list.

[39] The provisions of s 7(2) of the Divorce Act are in my view recognisably directed at social justice. They appear to be premised on an acknowledgment that, depending on the circumstances, marriage can result in patrimonial inequality that if not addressed could result in social injustice; cf. *EH v SH* 2012 (4) SA 164 (SCA) at para 12. The provision by the legislature of measures directed at avoiding such social injustice is in compliance with duty on the state to

respect, protect, promote and fulfil the rights in the Bill of Rights (s 7(2) of the Constitution). The right self-evidently implicated is the right to human dignity and arguably also the right to bodily and psychological integrity. The court is obliged in terms of s 39(2) of the Constitution to interpret s 7(2) of the Divorce Act in a manner that will promote 'the spirit, purport and objects of the Bill of Rights'. The enshrinement and affirmation of the democratic value of human dignity is expressly recognised as one of the principal objects of the Bill of Rights (s 7(1) of the Constitution). I agree, however, with the statement by Satchwell J in *Botha v Botha* 2009 (3) SA 89 (W) at para 49 that s 7(2) of the Divorce Act does not afford a claim to maintenance on a simple '*I need and you can pay*' basis.

[40] The defendant claims maintenance until the first occurring of her death or remarriage, whereas the plaintiff tenders only rehabilitative maintenance. The difference between the parties' respective positions is that the plaintiff contends that the defendant is able to obtain employment and take care of herself. He appears to acknowledge that the defendant will not be able to provide for herself on the scale at which the parties lived during the marriage, but maintains that that was a foreseeable consequence of the nature of the matrimonial property regime agreed upon when they entered into the marriage. The defendant does not contest that she is able to re-enter the labour market. She claims, however, that it would be unreasonable to expect her to do so until both of the parties' daughters have completed their schooling, which will be at the end of 2022, two years from now. The defendant bases her need for so-called 'lifelong' maintenance on her inability, even when in employment, to earn sufficient to be able to live at the standard she might reasonably expect to maintain and the fact that her remaining employable years will be insufficient to enable her to provide for her retirement.

The existing or prospective means of each of the parties

[41] I have already mentioned that each of the parties is currently the registered owner of residential property that provides each of them with a roof over their head. That of the plaintiff is quite heavily bonded, but I have little doubt that he will be able to obtain bond-free ownership of his townhouse before he retires. The defendant's mortgage loan is to a large extent, but not exclusively, related to her legal expenses in the current litigation. Her debt position will probably be mitigated to some extent by the costs that she will ultimately be able to recover on taxation from the plaintiff. Whilst it might be reasonable for the defendant to remain living in her current circumstances for the next few years until the children have completed their tertiary education, she cannot reasonably expect, in a post-matrimonial context, to continue living in a three-bedroomed suburban house. She will have to adapt her living expenses to fall within her anticipated income, which, as I shall discuss presently, might be expected to be in the range of R20 000 to R25 000 per month gross.

[42] The implication is that the defendant might be expected in a few years from now to sell her current property and substitute it with something more modest. The transaction should provide her with a modest amount to invest towards her eventual retirement. It seems unlikely, however, that the defendant would be able to build up sufficient savings to provide for her retirement years, even to provide for a pension reasonably commensurate with pre-retirement earnings of R20 000 to R25 000 per month, say in the amount of R10 000 to R12 000 per month in current values.

[43] As mentioned, the plaintiff has a comparatively substantial amount in pension savings. It may be anticipated that he should be able to enjoy a comfortable standard of living in retirement. The costs of the current litigation will impose significantly on the plaintiff in the short term, but I

expect that he will be able to recover from the effects of this quite quickly. It is evident that the plaintiff is very conscientious about living within his means, and notably debt averse.

[44] The plaintiff suggested in his evidence that the defendant might look forward to a generous inheritance from her parents in the years to come and asserted that this was a consideration that had moved her to insist on the marriage being out of community of property with exclusion of the accrual system. He alleged that the defendant had stipulated the patrimonial regime so that what was his would remain his and what was hers would be hers. The defendant denied having said anything of the sort and professed, rather unconvincingly it must be said, to have been largely ignorant of the implications of the parties' antenuptial contract. In any event it seems improbable that the attorney who attended to the antenuptial contract would not have explained to the parties that inheritances were excluded from any accrual unless otherwise expressly agreed in the contract (s 5(1) of the Matrimonial Property Act). The defendant conceded that the implications of their antenuptial contract were discussed with the parties by the attorney who had been jointly engaged by the parties to deal with it.

[45] It is established that the prospect of an inheritance is generally not a valid consideration on which a spouse might rely on to avoid a maintenance liability upon divorce. In principle to do so would imply ignoring or underplaying freedom of testation. There was in any event a lack of evidence as to what any inheritance to which the defendant might succeed might include. The only indication of it was the plaintiff's unchallenged statement that the defendant's parents owned two properties. There was no indication of the locality or value of the properties. It is evident from the expert witness summaries that the defendant's father was a diesel mechanic who later worked in some or other undefined capacity in an export company. It is also evident that she has three siblings, who presumably would share in any devolution of their parents'

estate(s). Nothing in all of this evidence gives me confidence that the plaintiff's suggestion that the defendant might be well provided for in later years is well founded. Suffice it to say this aspect of his evidence has played no role whatsoever in my assessment of the defendant's maintenance claim.

The respective earning capacities of the parties

[46] The evidence suggests that the plaintiff should be able to maintain his current earnings of at least R72 800 per month after tax and other usual deductions in real terms until at least the age of 60, and very probably for some years beyond that.

[47] The evidence given by the two industrial psychologists who testified at the trial suggests that the defendant should be able to obtain employment as an assistant food services manager at a salary of about R8 000 per month. It might be expected that she would progress within two to three years to the position of a food services manager (the role in which she was employed in the early years of the marriage). Her income as a food services manager might be expected to fall within the range of R15 000 to R25 000 per month in current terms. The evidence was that a food services manager could command a salary of up to R39 000 per month, but it was considered unlikely that the defendant would ever attain that scale of earnings. It was common ground between the expert witnesses that the defendant might reasonably be expected to work as a food services manager until the age of 65, and possibly even for a few more years after that on a fixed term contract basis.

[48] The defendant's ability to obtain employment was potentially compromised by the fact that she had not worked for many years and therefore lacked recent experience, and also by her age. It was felt by the industrial psychologists that the longer she deferred obtaining employment, the more compromised her chances of finding a position would become. The fact

that she has a university degree is regarded as a plus, indicative as it is of intellectual capacity and the potential to be trained or retrained.

[49] The defendant's position is that she feels obliged to refrain from seeking fulltime employment for a further two years until L finishes school. She points, in particular, to the need for her to be available to transport the children (from the end of this year effectively only L) to school and extramural activities. It is evident that a half-day position in the area of enterprise in which the defendant is most likely to seek and obtain employment is not a viable proposition.

[50] In my judgment the defendant's deferral of seeking fulltime employment is unrealistic and inimical to her own long-term best interests. I formed the impression that the defendant is unwilling to accept that both of her daughters are now of an age where they might be expected to develop and show an ever-increasing measure of independence and self-reliance. I have no doubt that alternative arrangements could be made for their transport to and from activities. Some of these arrangements might only be possible at a financial cost, but the plaintiff has tendered an amount of R3000 per month towards them if the defendant obtains employment. In my assessment it would be reasonable in the circumstances to expect the defendant to seek fulltime employment with immediate effect. She should probably have done so a year or two before now. The divorce proceedings have been pending for four years now, since October 2016.

[51] The applications that the defendant did make for employment in early 2019 were uninspiring. She made no effort whatsoever to market herself positively. It is no surprise to me in the circumstances that her applications elicited very little positive response. Even her replies to respondents who did react to her emails highlighted negative aspects such as her limited (ie

half-day) availability, her lengthy period out of employment and her need to give priority to raising her children.

[52] It was suggested that the manner in which the applications were formulated were a reflection of what the industrial psychologist, Ms Liza Hofmeyr, termed 'a lack of social intelligence'. I am sceptical. It does not escape notice that the flurry of applications was sent out during a period when the defendant was the focus of attention in the context of the preparation of industrial psychologist reports for the purpose of the trial. Ms Hofmeyr, who was engaged by the defendant's legal representatives, prepared a report at the end of November 2018, which for unexplained reasons was made available to the plaintiff and his representatives only in February 2019 notwithstanding their keenness to obtain a copy of it earlier. Ms Whitehead, who was engaged by the plaintiff's legal representatives was in the process at the time of pinning the defendant down for an assessment interview at the time – something that she achieved only after some perseverance. It is notable that there was no evidence that the defendant persisted in her supposed endeavours to obtain employment after the experts had completed their investigations. I am constrained to infer that she probably was not really interested.

[53] A factor that was identified by both psychologists as a negative in respect of the defendant's prospects of obtaining employment was her reported conservatism and rigidity. This was said to manifest in her being risk averse and lacking in any inclination to entrepreneurial endeavour. I accept that the defendant shows these characteristics. The rigidity of her mind-set was manifest at times during the course of her oral testimony. It was also confirmed by the plaintiff, who spoke of the near impossibility of persuading her to a different point of view on anything. I do not believe, however, that these personality characteristics disable her from achieving matters within her capabilities if she puts her mind to it. The celerity and efficiency

with which she applied herself to purchasing a home for herself after the sale of the former common home and thereafter traded up to a new house in Durbanville when she apprehended that the construction of apartments near the first purchased home would be prejudicial indicates to me that the defendant can be quite self-sufficient and assertive when she puts her mind to it.

[54] The industrial psychologists were agreed that the current Covid-19 crisis and its effect on the economy could complicate the defendant's prospects of employment. I have touched on the unpredictability of the effects of this factor above in relation to the plaintiff's position. I accept that it is something that needs to be taken into account, but justness between the parties impels me to balance the extent to which allowance should be made for it with my finding that the defendant should have been proactive before now in seeking and obtaining employment. The sort of institutional environments in which it seems to be considered that the defendant is most likely to seek and obtain employment, such as hospitals, old age homes and to a lesser extent schools, have to a greater or lesser extent continued in operation during the Covid-related lockdown and the anecdotal impression, which is all that I have to go on, is that such places have been far less adversely affected than places like restaurants and coffee shops which are unlikely to be environments in which the defendant might seek or find employment.

[55] In the circumstances I am of the view that it would be reasonable to allow a period of 18 months to two years from the date of the divorce within which the defendant might be expected to find employment at the level of an assistant manager, and to approach the estimation of her need for personal maintenance accordingly.

The financial needs and obligations of the parties

[56] It is obvious that the plaintiff is in a position to meet his financial needs and obligations. It is equally apparent that his ability to meet the needs of the defendant and his children will be

adversely affected in the short-term by the costs of the litigation, unfortunately disproportionate as they will be.

[57] The defendant is plainly not currently in a financial position to fend for herself and will therefore require maintenance for a period in order to enable herself to become self-sufficient. It is evident that she expects to be in a position to maintain her current lifestyle. During her oral testimony she acknowledged that it would be necessary for both her and the plaintiff to trim their expenses, but when pressed it became apparent that she considered that she had already made whatever sacrifices might be required in this regard.

[58] The defendant is not entitled to be kept in the style to which she has become accustomed. I say that without any suggestion that that style was extravagant or in any way immodest. This is not one of those cases where an ex-spouse is so abundantly wealthy that it might be considered reasonable for him or her to maintain two households on the scale of the erstwhile matrimonial one. As pointed out above, it would be reasonable to expect the defendant to live within her means determined broadly by her earning capacity. She must reconcile herself to the fact that the marriage is over and so too, absent a court order in terms of s 7(2) of the Divorce Act, the plaintiff's obligation to maintain her.

[59] It is nevertheless apparent, as already mentioned, that the defendant will not be able to provide adequately for her post retirement years. Having regard to the objects of s 7(2) of the Divorce Act, consideration has to be given, in the context of all the factors properly to be weighed under that provision, to whether it would not be just for the plaintiff to supplement her income by some measure of maintenance at that stage. The factors that weigh especially with me in this respect are the age of the defendant, the duration of the marriage and the important supportive role that the defendant played during it.

The age of the parties

[60] The relevance of the age of the parties bears entirely on the defendant's ability to re-enter the labour market and the limited time left to her to provide for her reasonable needs in retirement. I have already discussed these questions.

The duration of the marriage

[61] The effective duration of the marriage before the parties' separation in 2016 was 16 years. For 14 of those years the defendant was a housewife who devoted her time to the management of the domestic side of the common household and the raising of the parties' children. The plaintiff did not suggest that the defendant was other than faithful and conscientious in this role. The defendant also did not contend that the plaintiff did not make his own contribution to the extent that his work allowed him to.

[62] Whilst it was evident that the plaintiff thought that the defendant could have gone back to work when both the children attained school going age, it is also apparent that he did not place the defendant under any particular pressure to do so. The impression that I formed during the trial was that the plaintiff was essentially content with the role that his wife played as housewife and mother. In the result, for better or for worse, the defendant forewent what could have been the most financially productive period in her life and in consequence is undeniably materially less equipped to provide for her future than is the plaintiff. The role that the defendant played during the marriage is a compelling factor militating against the justness of her possibly having to face penury in old age through lack of access to any form of maintenance, while the plaintiff has every prospect of living relatively comfortably at that stage of his life.

The standard of living of the parties prior to the divorce

[63] The jurisprudence indicates that it is generally unrealistic for a divorced spouse to expect to be maintained at the same level as during the marriage, unless the party upon whom the obligation is imposed is particularly wealthy; cf. Clarke, *Family Law Service* (LexisNexis) at C32 and the authority cited there.

The parties' conduct in so far as it may be relevant to the break-down of the marriage

[64] In the circumstances of the current case, and despite the submissions to the contrary by the defendant's counsel, I do not consider that anything in either of the parties' conduct relevant to the breakdown of the marriage bears on the determination of whether the defendant should be awarded maintenance. The inclusion of the criterion in s 7(2) of the Divorce Act cannot have been intended to preserve a residuum of the fault principle in divorce. The evident intention was to make an assessment of the parties' conduct a relevant consideration in the determination of whether it might be just in a given case to award post-divorce maintenance in favour of one of the spouses. In this case I have been able to reach the conclusion that to do so would be appropriate treating the apparent causes of the breakdown of the marriage as a neutral factor in the exercise of my discretion.

Maintenance for the dependent children

[65] It is convenient to treat first of the maintenance to be provided for the dependent children. It goes almost without saying that the parents have a duty of support towards their dependent children commensurate with their respective means to provide it. In terms of s 6 of the Divorce Act a decree of divorce shall not be granted until the court is satisfied that the provisions made or

contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances.

[66] The terms of the financial maintenance for the children have essentially been agreed between the plaintiff and the defendant and will be reflected in the order to be made, so it is unnecessary to set them out in the body of the judgement. The children will continue to live with their mother. The plaintiff proposed that he should be directed to pay the maintenance to the children directly once they reached majority and finished at school. In my view, however, it would facilitate matters for all concerned that the maintenance in respect of the minor or dependent children be paid directly to the defendant for so long as the defendant's household remains the children's fixed and primary place of residence. It is after all during that time that the defendant might reasonably expect to be able to continue to live in a house that can comfortably accommodate the three of them. I have also calculated the amount of rehabilitative maintenance required monthly by the defendant with reference to the current domestic set-up in which the defendant and the two children live together in a common household. I do not overlook that the financial dynamics will be altered to some extent when the children commence their tertiary education, but to the extent that the children may incur different expenses whilst boarding away from home for a lot of the time while they are at college or university, the defendant will be able to achieve compensatory savings in the household expenditure when the children are not at home.

[67] The evidence suggests that the defendant and the two children currently have a close relationship. They may therefore be expected to be able to address the requirements of their respective budgets in a co-operative manner as members of what will in effect be a single

household until the children have completed their tertiary education and achieved self-sufficiency.

Maintenance for the defendant

[68] The defendant has claimed personal maintenance in the amount of R21 000 per month until her death or remarriage plus her medical costs. The plaintiff has tendered to pay the defendant rehabilitative maintenance of R7 000 per month for a period of 18 months after the date of divorce and to retain her as a beneficiary on his medical aid scheme during that period.

[69] It is clear that the plaintiff's tender has been calculated with regard to the amount that he will be paying in respect of maintenance for the dependent children; viz. R14 000 per month per child. The resultant total of R35 000 per month (R7 000 + R14 000 + R14 000) equates to the monetary maintenance he is currently paying in respect of the defendant and the children in terms of the order made in terms of rule 43 for their maintenance *pendente lite*. The total amount of R35 000 per month is intended to meet the requirements of a unitary household consisting of the defendant and the two children.

[70] The plaintiff submitted a breakdown of income and expenditure which showed that on his usual net income of R72 800 per month there was a deficit of more than R8 000 in the income that he had available to fund his interim maintenance obligation of R35 000 per month. He testified that he had funded the deficit from the additional income that he had been able to earn on his overseas assignments and the bonuses that he had received in previous years. As mentioned, he is pessimistic about any continuation of these income boosters. His calculations included provision for an expense of more than R5 000 per month in respect of his son by a previous son. As I have indicated, I do not consider the expenditure claimed in respect of the son

to be reasonably allowable. Indeed, in my view, as I have said, the son should be making a nominal contribution towards the plaintiff's household expenditure.

[71] The R21 000 per month claimed by the defendant is unaffordable in my view. I consider that the R35 000 that the plaintiff is currently paying towards the maintenance of the defendant and the children to be reasonable. It appears to me, having regard to the indications of the defendant's household expenditure, to be sufficient to enable the defendant and the children to maintain a reasonable standard of living in a joint household. It was certainly sufficient to permit the defendant to apply for and obtain mortgage bond finance of nearly R500 000 from a financial institution on the strength of it. I accept that it does not allow the defendant to live at the standard she did during the subsistence of the marriage, but that is unavoidable when a single income has to be spread to cover the costs of two separate households instead of a common one. I therefore intend to fix the amount of rehabilitative maintenance payable to the defendant in the amount that has been tendered so as to maintain the level of total household income currently received by the defendant for her and the children, i.e. in the amount of R7 000 per month. The order will also provide that the plaintiff will retain the defendant as a beneficiary on his medical aid scheme during the rehabilitative maintenance period.

[72] In my judgment, it would be reasonable for rehabilitative maintenance to be paid to the defendant on the scale that I have mentioned for a period of four years from the date of the divorce order. I envisage that the defendant's home will remain the primary base for the two dependent children, or at least the younger child, throughout that period. The period affords the defendant a generous opportunity, even in the context of the dislocation caused by the Covid-19 pandemic, to seek and obtain fulltime employment at the level and income of an assistant food service manager and to progress by the end of it to the level of a food services manager.

[73] As discussed, I am concerned that whilst the defendant will be able to provide for herself, albeit modestly, until she reaches retirement age, she will not be able to provide adequately in the time between now and then for her post-retirement years. In the circumstances, and for the reasons discussed above with reference to s 7(2) of the Divorce Act, I consider that it would be just for a safety net to be provided by way of ongoing token maintenance after the aforementioned period of four years' rehabilitative maintenance payments has elapsed.

[74] The plaintiff's counsel argued strongly against the idea that the defendant should be awarded any form of token maintenance. She emphasised the trend in favour of awards that give effect to the desirability of a 'clean break' upon divorce. I have no difficulty with the desirability of achieving that end. It clearly enjoys support in public policy, as evidenced by s 7(3) and 7(7) of the Divorce Act and the introduction, via the Matrimonial Property Act, of the accrual regime. A clean break might perhaps have been engineered in the current case had the plaintiff made some form of capital settlement on the defendant, but he would appear to have been resistant to any such idea on the grounds of what he considered to be the consequences of the patrimonial regime agreed upon in the parties' antenuptial contract. For the reasons I have discussed, however, I do not consider that it would be just to close the door on the defendant's possible need for maintenance in her post-retirement years; cf. *Swart v Swart* 1980 (4) SA 364 (O) at 376C-F and *Buttner v Buttner* 2006 (3) SA 23 (SCA) at para 38-40. I shall therefore provide in the order to be made for the plaintiff to pay ongoing token maintenance to the defendant after the expiry of the aforementioned four-year rehabilitative maintenance period in the sum of R100 per year, the first such payment to be effected on 1 December 2025 and annually thereafter on the same day in every succeeding year until the first occurring of the defendant's death or remarriage.

Costs of the action

[75] Section 10 of the Divorce Act provides that '[i]n a divorce action the court shall not be bound to make an order for costs in favour of the successful party, but the court may, having regard to the means of the parties, and their conduct in so far as it may be relevant, make such order as it considers just, and the court may order that the costs of the proceedings be apportioned between the parties'. Accordingly, as I discussed with the plaintiff's counsel during argument, there is a special dispensation in respect of the determination for liability for costs in this sort of case that distinguishes the position from the generally applicable principle that the successful party is awarded costs.

[76] In this case it might in any event be argued that the defendant has to a material degree been the successful party, although I would prefer to avoid any such categorisation. It has in point of fact been a most unfortunate case for all concerned, including the parties' children. Whatever the merits and demerits of the positions adopted by the protagonists in this litigation, it is abundantly evident that the defendant is not able to pay her own costs in full, never mind those of the plaintiff. The effect and intended purpose of the maintenance order to be made in the defendant's favour would be completely undone if the defendant were to be saddled with the costs of this litigation. That is a factor that must weigh heavily with me in the exercise of my discretion on the matter of costs.

[77] It is by no means an unusual situation in matrimonial proceedings that there is a stark disparity between the means of the contesting parties to pay for the litigation. Section 10 of the Divorce Act is on the statute book to meet that reality, as is the provision in rule 43 that one spouse may apply for a contribution towards his or her costs from the other in matrimonial proceedings pending between them. These factors should not, however, be allowed to give rise

to any misconception that the spouse with inadequate means can trade on the approach that the spouse with greater means will pay for the litigation whatever the result and no matter how the case is conducted. The risk of an adverse costs order plays an important role in any litigation to help keep the parties true on a focussed approach to the efficient and cost-effective disposal of the issues to be litigated. It is a factor which s 10 of the Divorce Act, with its reference to 'the conduct of the parties in so far as it may be relevant', expressly acknowledges as a pertinent consideration.

[78] In the current matter two industrial psychologists were appointed to assess the defendant's prospects of returning to the labour market. There was little difference between their respective opinions, either on paper or in their oral evidence. The plaintiff had proposed the use of a single jointly appointed expert for this purpose. The proposal was refused by the defendant. In my view the defendant's refusal was unreasonable. It is expected of witnesses engaged to provide opinion evidence as experts that they be objective and non-partisan in their approach. It is therefore no surprise to find that rules of procedure have been developed in other jurisdictions whereby the courts can direct the use of a joint expert and give directions on whom should be appointed as such if the parties cannot agree on that; see, for example, CPR 35.7 of the Civil Procedure Rules applicable in the County Court, the High Court and the Civil Division of the Court of Appeal in England and Wales. There are cases in which it might be reasonable for more than one expert to be engaged on a particular issue, but the issue of the defendant's employability was prima facie not one of them, as the two reports ultimately produced eventually confirmed. The defendant's attitude towards the engagement of an industrial psychologist for the trial was unreasonable having regard not only to the issue involved, but also what she should have appreciated were the limited means available to fund the litigation.

[79] I therefore consider that it would be reasonable for the defendant to bear the costs occasioned by her unreasonable refusal to consent to the appointment of a joint expert and indulgence in the luxury of calling her own expert, who, despite the fact that I direct no criticism whatsoever at the quality of her evidence, added nothing of substance to the evidence already adduced from the expert engaged by the plaintiff. It is true that the defendant's expert was subsequently briefed to provide a supplementary report on the effects of the Covid pandemic, whilst the plaintiff's had not been, but a single witness could also have been used for that purpose. As it was, both witnesses acknowledged the obvious; that is that the manifest economic effects of the Covid-related lockdowns cannot be ignored. Both acknowledged the difficulty of estimating what the precise effects of that might be on the facility with which the defendant might re-enter the job market. The 'crystal ball gazing' that the exercise unavoidably entails was admitted to by both witnesses. In my view, it is an obvious part of what is necessarily involved in making an appropriate award.

[80] In the result I intend to direct that the defendant shall bear her own costs in respect of the engagement of Ms Liza Hofmeyr as an expert witness. As it happens, I do not consider that the leading of Ms Hofmeyr's evidence prolonged the trial by an additional day as her evidence was completed on the same day that closing arguments were heard, but I leave the determination of the effect of the order to be made to the taxing master should a taxation of the bills of costs be necessary.

Costs in the rule 43 application in case no.s 8617/17 and 2195/18 that were stood over for later determination

[81] The plaintiff instituted proceedings in terms of rule 43 to obtain access to the children soon after the commencement of the divorce action. As described, the children had become

alienated from him by that stage. Appreciating that the issue required to be approached with sensitivity, the plaintiff sought directions for the professional assessment of the children with a view to an assisted reconciliation or 'reunification', as it was called. Directions were duly given, and a series of reports by various experts were produced which expressed opinions concerning the perceived causes of the breakdown in the relationship between the plaintiff and the children and about what might be done to rectify the situation. There was a solid body of opinion in the material produced that suggested that the rupture may have been attributable to conscious or unconscious parental alienation by the defendant. The commonly expressed concern was that whatever its causes, the situation of alienation held significant dangers for the long-term psychological welfare of the children.

[82] The rule 43 proceedings were set down on a number of occasions to deal with the developing situation arising from the series of reports that were produced in the process. On each occasion the costs were reserved for later determination. As will be clear from what has been recounted in this judgment, the exercise proved futile because the plaintiff did not succeed in achieving the desired access to the children, and now accepts that will happen only when the children agree to it.

[83] The plaintiff cannot be criticised for instituting the rule 43 application. I think it was done in a responsible manner, and that his concern was as much for the best interests of the children as for his own. They were not the sort of proceedings properly susceptible to assessment by success or the lack thereof, and did not lend themselves to judgment by that standard when it comes to the question of costs.

[84] In the circumstances I find no reason to depart from the conventional approach in respect of reserved costs in rule 43 applications, that is that they should be costs in the cause. That applies also to the costs reserved in case no. 2195/18.

Order

[85] The following order is made:

1. The bonds of marriage subsisting between the plaintiff and the defendant are hereby dissolved, and an order of divorce is granted.

2.1 The plaintiff and the defendant shall continue to act as a co-guardians of their minor child, L, born on 16 September 2004 and, consequently thereto, as co-holders of the parental rights and responsibilities referred to in s 18(2) of the Children's Act 38 of 2005.

2.2 The minor child shall continue to reside primarily with the defendant, subject to the plaintiff's rights of reasonable contact, which shall be exercised by him with due consideration of the child's wishes.

2.3 The parties shall make joint decisions about the following aspects of the minor child's life:

2.3.1 Decisions regard her schooling and tertiary education;

2.3.2 Decisions regarding her mental health care and medical care, which shall not include her routine medical care or any emergency medical treatment;

2.3.3 Decisions regarding any significant change in regard to her religious and spiritual up-bringing; and

2.3.4 Decisions that are objectively likely to impact significantly on the child's

living conditions or might have an adverse effect on her well-being.

3. The plaintiff is ordered to maintain the dependent children of the marriage until they become self-supporting as follows:

3.1 By payment to the defendant, free of deduction or set-off, of the sum of R14 000.00 per month per child on or before the 1st day of every month into such banking account as the defendant may nominate from time to time;

3.2 By retaining the children, at his cost, as beneficiaries on his current medical aid scheme or on a scheme with similar benefits;

3.3 By bearing the cost of all reasonable expenditure not indemnified by medical aid that is incurred in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the children, including any reasonable sums payable to a physiotherapist, occupational therapist, speech therapist, practitioner of holistic medicine, psychiatrist/psychologist and chiropractor, the cost of medication and the provision where necessary of spectacles and/or contact lenses.;

3.4 In the event that the defendant returns to fulltime employment and with effect from the date of such return, by payment of an additional amount of R3000.00 a month as a provision for the minor child’s transport costs until such time as the child completes her school education;

3.5 The maintenance payable in terms of paragraph 3.1 above shall be adjusted annually on the anniversary of the date of the order of divorce in line with the percentage change in the headline CPI as notified by Statistics SA in respect of

the Republic of South Africa for the preceding twelve months. For convenience, such percentage change shall be deemed to be that disclosed in the most recently published CPI information available from Statistics SA on the anniversary date.

4. The plaintiff is directed to provide for the maintenance of the defendant until the first occurring of her death or remarriage as follows:

4.1 By paying the sum of R7 000.00 per month, free of deduction or set-off, on or before the 1st day of every month into such banking account as the defendant may nominate from time to time, from 1 November 2020 until 1 November 2024 as rehabilitative maintenance, and thereafter, by way of token maintenance, the sum of R100 annually on 1 December of every succeeding year;

4.2 The rehabilitative maintenance payable in terms of paragraph 4.1 above shall be adjusted annually on the anniversary of the date of the order of divorce in line with the percentage change in the headline CPI as notified by Statistics SA in respect of the Republic of South Africa for the preceding twelve months. For convenience, such percentage change shall be deemed to be that disclosed in the most recently published CPI information available from Statistics SA on the anniversary date.

4.3 By retaining the defendant, at his cost, as a beneficiary on his current medical aid scheme or on a scheme with similar benefits during the period that he is liable to pay her rehabilitative maintenance in terms of paragraph 4.1 above.

4.4 By, during the period he is obliged to pay the aforesaid rehabilitative maintenance, bearing the cost of all reasonable expenditure not indemnified by

medical aid that is incurred in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the defendant, including any reasonable sums payable to a physiotherapist, occupational therapist, speech therapist, practitioner of holistic medicine, psychiatrist/psychologist and chiropractor, the cost of medication and the provision where necessary of spectacles and/or contact lenses.

5. The plaintiff is directed to pay the defendant's costs of suit in the divorce action on the scale as between party and party; save that the defendant shall bear her own costs incurred in the engagement of Ms Liza Hofmeyr, industrial psychologist, as an expert witness including the costs, if any, occasioned in the conduct of the trial by the leading of Ms Hofmeyr as a witness

6. The reserved costs in the rule 43 application brought by the plaintiff under case no. 8617/2017 and those in case no. 2195/18 shall be costs in the cause in the divorce action.

A.G. BINNS-WARD
Judge of the High Court