IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D8141/2022

In the matter between:

W[...] B[...] **APPLICANT**

and

R[...] B[...] **FIRST RESPONDENT**

RIVERVIEW MANOR SPECIALIST CLINIC **SECOND RESPONDENT**

ORDER

The following order is issued:

1. The manager of Riverview Manor is required to provide a medical report to either a clinical or forensic psychologist appointed by the applicant, which discloses the following information:

1.1 the dates of admission and discharge of the first respondent at its facility;

1.2 the diagnosis and treatment plan, as proposed and implemented for the first respondent whilst at the facility, including the number of therapy sessions;

1.3 the results of any drug or alcohol testing;

1.4 the medication prescribed for the first respondent as a result of the diagnosis and treatment plan and whether the first respondent is compliant therewith; and

1.5 the prognosis and recommendations of the second respondent in respect of the continued treatment of the first respondent.

2. Each party is directed to pay their own costs occasioned by the application.

JUDGMENT

HENRIQUES J

Introduction

[1] This opposed interlocutory application, in terms of s 14 of the National Health Act 61 of 2003 (the NHA), concerns two competing constitutionally entrenched rights, namely s 28(2)[1] and s 14*(d)* of the Constitution.[2]

Nature of the application

[2] The applicant seeks a costs order and an order directing the respondents to 'make available all medical records of the first respondent in its possession relating to her treatment including the results of any drug tests, psychological or psychometric testing, copies of any medical reports submitted to the second respondent by medical practitioners, copies of all medical and psychological notes relating to the treatment of and findings or recommendations of medical practitioners [employed by the second respondent relating to the first respondent's treatment at its facility in April / May 2023].'

[3] The application is opposed by the first respondent. The second respondent abides the decision of the court, as it has been agreed with the applicant that no costs order will be pursued against it.

Grounds of opposition

[4] The first respondent opposes the grant of such order on the basis that:

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[1] Which requires that the best interests of the child are of paramount importance.
[2] Which recognises the right not to have the privacy of one's communications infringed.

(a) the court lacks jurisdiction to deal with the application as the second respondent operates its business in the Underberg area, which is outside the area of this court's jurisdiction;

(b) the disclosure will constitute an invasion of her constitutional right to privacy as such medical records are confidential and privileged, and specifically protected by doctor-patient privilege; and

(c) she, in addition, alleges that the documents are being sought for an ulterior motive and not for *bona fide* reasons as the applicant intends using this information for ulterior purposes in the pending applications.

Issues

[5] Given the issue for determination in the two pending applications, being the primary residence of the minor children, this court is required to determine whether:

(a) a blanket privilege exists which prevents the second respondent from disclosing and making available the medical records and such additional documents requested in the notice of motion; alternatively

(b) the best interests of the minor children dictate that the medical records and such additional documents requested in the notice of motion are made available, without restriction, to determine the suitability of the first respondent to be awarded primary residence of the minor children and to determine any appropriate contact arrangements;

(c) this court has jurisdiction; and

(d) the medical records and such additional documents requested are relevant to the proceedings.

[6] To contextualise the application, a brief background is necessary. The parties, who are married to each other and who are separated, are engaged in litigation relating to the primary residence of their minor children, namely J and B. For purposes of the application, it is not necessary to delve into the history of the litigation between the

parties nor the allegations each of them makes against the other in relation to their suitability for being awarded primary residence, save to say that the issue which the court has to determine in relation to the pending two applications relates to whom the primary residence of the minor children ought to be awarded.

[7] It is common cause that the first respondent was admitted to and treated at the second respondent in April/May 2023 and diagnosed with a bipolar disorder. Although the parties differ on how it came to be that she was admitted and treated at the second respondent's facility, what cannot be disputed and what is evident from the medical information provided by the second respondent, is that at present, she has been diagnosed as suffering from a bipolar mood disorder and depression relating thereto. The applicant indicates that apart from such diagnosis, she also has 'anger issues' and was treated for drug and alcohol misuse.

[8] Having perused the papers in the pending main applications in which they both seek primary residence of the minor children as well as the other court file placed before me in case number D5267/2022, it would appear that the *de facto* position has been that the parties had agreed that the primary residence of the minor children be awarded to the applicant and that the first respondent would enjoy unsupervised contact. The parties have made allegations and counter allegations in relation to their respective suitability to be awarded primary residence of the minor children.

[9] A settlement agreement and parenting plan had been concluded to settle the divorce proceedings, and the first respondent's attorneys of record had filed a notice of withdrawal of her plea and counterclaim, which resulted in the divorce proceedings being enrolled for hearing on an unopposed basis on 12 October 2023. Subsequent events have presumably resulted in the divorce proceedings being placed on hold. It would appear that the 19-year relationship between the parties has been tumultuous, to say the least, and that they have over such period of time separated and reunited and attempted to resolve their marital issues with no success.

[10] The applicant issued a subpoena *duces tecum*[3] on 14 June 2023 and served it on the second respondent. The subpoena *duces tecum* was handed up at the hearing of the opposed interlocutory application, as it was not annexed to the application papers. The second respondent refused to comply with the subpoena on the basis

[3] The documents requested in the notice of motion differ from those requested in terms of the subpoena *duces tecum.*

that it is statutorily obliged to refuse to comply, based on the provisions of s 14 of the NHA, in the absence of the first respondent's consent, alternatively an order of court.

[11] It warrants mentioning that the subpoena *duces tecum* required the manager of the second respondent to produce the following documents, namely: 'a copy of his entire file relating to the abovementioned matter' unless he claimed privilege therefor; and 'to produce to Court all notes, documents, text, correspondence, reports and other records in his possession or under his control' relating to the first respondent, including 'his entire file relating to the defendant **R[...] B[...]**, with Identity Number 8[...], including but not limited to, all recordings, documents & texts, correspondence, reports, case notes, test results and any other records in his possession or under his control'.

The respective submissions

[12] Ms Law, who appeared for the applicant, submitted that what the applicant firstly has to establish is that the medical records and additional documents requested were relevant, and secondly that he is entitled to all of them, given the nature of the issues between the parties. She indicated that the reason why the notice of motion was drafted in such a broad terms is that it would not be sufficient to merely know of the first respondent's diagnosis of suffering from a bipolar disorder. One would need to know what she had disclosed during the consultations and therapy sessions to understand her underlying behaviour and possible future behaviour, as her condition was not restricted to that of a bipolar disorder as there may be other related psychological issues. It would be necessary to allow a 'carte blanche' disclosure of the therapy notes, file notes and all medical notes submitted to obtain the full background and to obtain all necessary collateral information. This information would be necessary to verify what has been disclosed in the application papers.

[13] Although Ms Law indicated that she appreciated the first respondent's fear that what would be disclosed could be 'used as ammunition' by the applicant, to allay these concerns, she suggested that these notes could be handed over to another medical professional. She indicated that because the first respondent has not in her affidavit set out what harm she would suffer from the release of the medical records, additional documentation and notes of the therapy sessions, the applicant is entitled to all of them, having regard to *MEC for Health, Gauteng v Solomons.*[4]

[4] *MEC for Health, Gauteng v Solomons* 2023 (6) SA 601 (GJ) ('*Solomons*').

[14] She boldly suggested that where one has children, one has limited rights and dared to say that one gives up all one's rights, having regard to the best interests of the minor children. In other words, the best interests of the children trumped one's right to privacy. In support of her submissions, she relied on *Botha v Botha*[5] and *Solomons,* although conceding that *Botha* was decided prior to the Constitution.

[15] Ms Lennard, on the other hand, submitted that one must contextualise this interlocutory application based on the relief sought in the two main pending applications. Both parties have sought primary residence and neither one of them has asked for supervised contact. She submitted that although the best interests of the child are recognised, this cannot be seen to trump all rights to privacy. She submitted that the information requested would by implication be handed over to the applicant and would not be restricted to health professionals. As a compromise, she indicated that a report containing the necessary information would suffice and indicated that the first respondent has undertaken and agreed to be assessed by a professional appointed by the applicant.

[16] She indicated that the potential prejudice to the first respondent must be seen in the context of the reason why people undergo therapy and seek treatment. Disclosures are made in the context of a therapy session being regarded as 'a safe space' and if this court were to allow the therapy notes to be disclosed as well as what the first respondent disclosed to the therapists during the course of the therapy sessions, it would result in a party being reluctant to seek the necessary therapy and professional help knowing that at some stage this could be disclosed for litigation purposes.

Analysis

[17] Section 14 of the NHA deals with the confidentiality of medical information and prohibits the disclosure of such information[6] subject to the exclusions contained in s 14(2).[7] The rules of the Health Professions Council also contain similar provisions which bar a medical practitioner from releasing such information, unless there is

[5] *Botha v Botha* 1972 (2) SA 559 (N) ('*Botha*').
[6] Section 14(1) provides as follows: 'All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment, is confidential.'
[7] The subsection makes provision for disclosure of information in circumstances where the user consents to that disclosure in writing, a court order or any law requires such disclosure or non-disclosure of the information would pose a serious threat to public health.

consent thereto or an order of court, which provisions aim to give effect to the ethos of the medical profession to maintain the privacy, dignity and confidentiality of patients.[8] A useful summary of the provisions of s 14 of the NHA has been provided by Modiba J in *Thabela v Nedgroup Medical Aid Scheme and another.*[9]

[18] In *Jansen Van Vuuren and another NNO v Kruger*[10] the court held as follows:

'The duty of a physician to respect the confidentiality of his patient is not merely ethical but is also a legal duty recognised by the common law . . . As far as present-day law is concerned, the legal nature of the duty is accepted as axiomatic . . . However, the right of the patient and the duty of the doctor are not absolute but relative . . . One is, as always, weighing up conflicting interests and, as *Melius de Villiers (loc cit* n 29) indicated, a doctor may be justified in disclosing his knowledge "where his obligations to society would be of greater weight than his obligations to the individual" because "*(t)*he action of injury is one which *pro publica utilitate exercetur*". To determine whether a *prima facie* invasion of the right of privacy is justified, it appears that, in general, the principles formulated in the context of a defence of justification in the law of defamation ought to apply.'

[19] The court emphasised that the Hippocratic Oath still applies and requires medical practitioners to keep quiet about information acquired in their professional capacity relating to a patient, 'counting such things to be as sacred secrets'.[11]

[20] In *Parkes v Parkes*[12] and *Botha*, both decided before the advent of the Constitution, medical practitioners were compelled to disclose patient information in divorce proceedings. *Parkes* concerned a medical practitioner who was compelled by a court order to disclose that he had treated the defendant for a venereal disease, and in *Botha,* medical practitioners were compelled to answer all relevant questions in relation to who was best suited to have custody of a minor child.

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[8] Booklet 5 of the HPCSA's Guidelines for Good Practice in the Health Care Professions sets out the ethical guidelines relating to confidentiality. Rule 13 of the Ethical Rules of Conduct for Practitioners registered under the Health Professions Act, 1974 (GN R717, *GG* 29079, 4 August 2006) mirrors the provisions of section 14 of the NHA.
[9] *Thabela v Nedgroup Medical Aid Scheme and another* 2020 (1) SA 318 (GJ) paras 12-24.
[10] *Jansen Van Vuuren and another NNO v Kruger* 1993 (4) SA 842 (A) at 850E-H.
[11] Ibid at 849G-H.
[12] *Parkes v Parkes* 1916 CPD 702 ('*Parkes*').

[21] In *S v Zuma and another,*[13] in dealing with the right to privacy in relation to confidential medical information, Koen J held the following:

'Finally, the right to privacy, like most fundamental rights, except the right to life, is not an absolute right and is subject to limitations, having regard to what is reasonable and justifiable in an open and democratic society, based on human dignity, equality and freedom. Competing rights and interests must also be considered. In the present enquiry, it is not only Mr Zuma's right to privacy that is at stake. As has been remarked earlier in this judgment, the constitutional court has held that fairness is not a one-way street. There are also the rights of members of the public, the proper administration of justice and the interests of justice generally, which must be considered in a prosecution where the medical condition of the accused is made an issue. These are all considerations, which a court will still have to consider once fully ventilated and after all medical reports relating to Mr Zuma's treatment, medical parole, and the like, have been produced, should the medical condition of Mr Zuma be or remain a material issue for determination in further legal proceedings. I am not persuaded that the disclosure of the contents of the letter constituted an actionable violation of Mr Zuma's rights.' (Footnote omitted.)

[22] In *Botha,*[14] the court had the following to say in relation to confidential information, and the duty of a court, as the upper guardian of children, when medical privilege is claimed:

'I am doubtful whether a discretion exists at all in the circumstances with which I am concerned. I am disposed to think that once the evidence is material and relevant it ought to be admitted without further ado. But if it is correct to hold that there exists a residual discretion in a Court to refuse to allow such evidence to be given, even in circumstances such as those with which I am concerned, I am firmly of the opinion that such discretion should in this case be exercised in holding that the evidence must be given. It is in the public interest that justice must be done. The confidential relationship between doctor and patient must yield to the requirement of public policy that justice must be done and must be seen to be done. This is particularly so in this sort of case where a minor child is concerned and where the Court as Upper Guardian of such child has a duty to ensure, as far as it is within its power to do so, that the future of such child will best be served by that child being placed in the

[13] *S v Zuma and another* [2022] 1 All SA 533 (KZP) para 266 ('*Zuma*').
[14] *Botha* at 560B-D.

custody of the parent who is most fitted to take care of him. That question can only properly be decided by a consideration of all the evidence which is relevant and material to such decision.'

[23] In contrast, in *Tshabalala-Msimang and another v Makhanya and others,*[15] the court dealt with the reason why the right to privacy in respect of medical records is of paramount importance:

'The reason for treating the information concerning a user, including information relating to his/her health status, treatment or stay in a health establishment, as confidential is not difficult to understand. The confidential medical information invariably contains sensitive and personal information about the user. This personal and intimate information concerning the individual's health reflects sensitive decisions and the choices that relate to issues pertaining to bodily and psychological integrity as well as personal autonomy. Section 14(1) of the National Health Act imposes a duty of confidence in respect of information that is contained in a user's health record. This is simply because the information contained in the health records is information that is private:

> "Individuals value the privacy of confidential medical information because of the vast number of people who could have access to the information and the potential harmful effects that may result from disclosure. The lack of respect for private medical information and its subsequent disclosure may result in fear of jeopardising an individual's right to make certain fundamental choices that he/she has a right to make. There is therefore strong privacy interest in maintaining confidentiality."

Section 14(1) of the National Health Act deems it imperative and mandatory to afford the information recorded on the health records protection against unauthorised disclosure. Here, the right to the user's privacy is paramount. The unlawful disclosure of the information contained in the health record will cause extreme trauma as well as pain to the user. This information is confidential because it is the user who has control over the information about himself or herself. It is also the user who can decide to keep it confidential from others. In the National Health Act the legislature considered the confidentiality of the information important enough to impose certain

[15] *Tshabalala-Msimang and another v Makhanya and others* 2008 (6) SA 102 (W) para 27 ('*Shabalala-Msimang*').

criminal sanctions in the event of the breach of the confidentiality. In terms of the Constitution, as well as the National Health Act, the private information contained in the health records of a user relating to the health status, treatment or stay in a health establishment of that user is worth protecting as an aspect of human autonomy and dignity. This in turn includes the right to control the dissemination of information relating to one's private medical health records that will definitely impact on an individual's private life, as well as the right to the esteem and respect of other people.' (Footnote omitted.)

[24] The Constitutional Court has recognised, as asserted by the first respondent, in *NM and others v Smith and others*,[16] that the disclosure of medical records is not just a question of privacy but also one of dignity. The court explained as follows:

'[40] Private and confidential medical information contains highly sensitive and personal information about individuals. The personal and intimate nature of an individual's health information, unlike other forms of documentation, reflects delicate decisions and choices relating to issues pertaining to bodily and psychological integrity and personal autonomy.

[41] Individuals value the privacy of confidential medical information because of the vast number of people who could have access to the information and the potential harmful effects that may result from disclosure. The lack of respect for private medical information and its subsequent disclosure may result in fear jeopardising an individual's right to make certain fundamental choices that he/she has a right to make. There is therefore a strong privacy interest in maintaining confidentiality.

[42] . . .

[43] As a result, it is imperative and necessary that all private and confidential medical information should receive protection against unauthorised disclosure. The involved parties should weigh the need for access against the privacy interest in every instance and not only when there is an implication of another fundamental right, in this case the right to freedom of expression.' (emphasis added)

[16] *NM and others v Smith and others (Freedom of Expression Institute as amicus curiae)* [2007] ZACC 6; 2007 (5) SA 250 (CC) paras 40-43 ('*NM*').

[25] In emphasizing the right to dignity, the court said that:[17]

'[49] . . . While it is not suggested that there is a hierarchy of rights it cannot be gainsaid that dignity occupies a central position. . .

[50] If human dignity is regarded as foundational in our Constitution, a corollary thereto must be that it must be jealously guarded and protected. As this Court held in *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others*:

> "The value of dignity in our constitutional framework cannot therefore be doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitations analysis. Section 10, however, makes it plain that dignity is not only a *value* fundamental to our Constitution, it is a justiciable and enforceable *right* that must be respected and protected."' (Footnote omitted.)

[26] In *Divine Inspiration Trading 205 (Pty) Ltd and another v Gordon and others*[18] the court held the following:

'In any event, our law encourages full disclosure of documents for purposes of litigation, with the understanding that such documentation would be used for the purpose of litigation only and not for any other purpose. In this regard, it has been held in *Cape Town City v South African National Roads Authority and Others* 2015 (3) SA 386 (SCA) ([2015] ZASCA 58) para 37:

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[17] Ibid paras 49-50.
[18] *Divine Inspiration Trading 205 (Pty) Ltd and another v Gordon and others* 2021 (4) SA 206 (WCC) para 60 ('*Divine Inspiration*').

> "Discovery impinges upon the right to privacy of the party required to make discovery. According to Lord Denning MR, "compulsion is an invasion of a private right to keep one's documents private". But while there is an interest in protecting privacy there is also the public interest in discovering the truth. The purpose of the rule therefore is to protect, insofar as may be consistent with the proper conduct of the action, the confidentiality of the disclosure. Litigants must accordingly be encouraged to make full discovery on the assurance that their information will only be used for the purpose of the litigation and not for any other purpose. In that sense, so the thinking goes, the interests of the proper administration of justice require that there should be no disincentive to full and frank discovery."'

[27] The court ordered that the medical records should be disclosed in terms of the subpoenas issued in terms of Uniform rule 38 and that same was permitted in terms of s 14(1)*(b)* of the NHA as the medical records were for the purposes of litigation.[19]

[28] The distinguishing feature between the current matter and *Shabalala-Msimang* and *NM* is that the medical records are sought for purposes of litigation and not for other purposes, such as general publication.

[29] *Solomons*[20] dealt with the disclosure of medical information to third parties. Certain guidelines and principles were summarised as follows:

'[42.1] Medical records inherently affect the rights to dignity and privacy of individuals. Those rights must, by default, be respected and protected.

[42.2] There is a strong privacy interest in maintaining confidentiality over medical records.

[42.3] The need for access to medical records must be weighed against the patient's privacy interest in every instance.

[42.4] A court must therefore carefully consider whether there is a genuine need for access to medical records sought. This would perforce entail a consideration of the

[19] Ibid para 59.
[20] *Solomons* para 42.

relevance of the documentation sought in each case, the potential harmful effects that may result from disclosure, and whether the benefits of the principle of openness outweigh the dangers inherent in the disclosure of private information, amongst others, the conceivable violation of the dignity and psychological integrity of the patient/s. If the records are not genuinely necessary, then, by default, the court ought to protect the individual's rights to dignity and privacy.'

[30] *Solomons* disagreed in part with *Divine Inspiration* but this was limited to what procedure ought to be utilised to obtain the records, being either an application in terms of s 14 of the NHA or a subpoena *duces tecum* in terms of Uniform rule 38.

Findings

[31] Having considered the line of cases and applying the principles to the facts of this matter, I am of the considered view that an order for disclosure is warranted, albeit not in the form sought in the notice of motion.

[32] Section 14 of the NHA, as well as the rules of the Health Professions Council, bar the second respondent from making disclosure and providing the documents requested pursuant to the subpoena *duces tecum*. Consequently, the second respondent correctly withheld releasing such information without the consent of the first respondent or an order of court.

[33] In reaching the conclusion that I have, I have considered the specific facts of this matter and have had regard to the various principles. I hope that the order I issue will not be seen as a carte blanche order to be issued in matters of this nature and must stress that each application must be determined on its own set of facts. I have had to consider the effect of the order and its implication for other litigants in forthcoming and pending litigation and balance the competing constitutionally entrenched rights.

[34] During the course of the hearing, I debated both with Ms Law and Ms Lennard the nature of the relief and the form of the order. The order I have resolved to issue is an attempt to strike a balance, recognising the right to privacy, dignity as well as the best interests of the children. It follows that I do not agree with the submission of Ms Law that the constitutional right recognised in s 28(2) of the Constitution trumps that of the right to privacy, dignity and issues of medical privilege. On the other hand, it

does not necessarily mean that another court faced with a similar situation may decide differently.

[35] Having regard to the grounds of opposition advanced and the issues raised, it must follow that I disagree with the first respondent that this court does not have jurisdiction. This ground of opposition was not seriously advanced by Ms Lennard at the hearing, rightfully so in my view. This interlocutory application relates to two pending applications before the court and, consequently, in my view, this court has jurisdiction to deal with this interlocutory application, irrespective of the fact that the second respondent conducts its business in Underberg.

[36] As regards the procedural requirements, it would appear, having regard to *Solomons* and *Divine Inspiration,* that the applicant has complied with the procedural requirements, as it served a subpoena *duces tecum* in terms of the provisions of Uniform rule 38 and then instituted the application in terms of s 14 of the NHA.

[37] Having regard to all the authorities I have been referred to, as well as the specific facts of this matter, and being mindful of the nature of the disclosures which had been made during the course of therapy, I agree with the submission of Ms Lennard that persons who need treatment and who seek treatment may be reluctant to submit to therapy owing to the threat of disclosure. I disagree that a blanket privilege exists against disclosure, mindful of the remarks in *Zuma* and *Botha.* This court retains a residual discretion once the relevance of the information is established.

[38] While all the authorities recognise that the medical records of persons contain sensitive information, which is both private and confidential, most if not all the authorities, order disclosure in terms of the exception provided for in s 14 of the NHA and in terms of Uniform rule 38. The overarching factor is whether the records are relevant for purposes of the issues before the court. That the documents are relevant is not disputed in this matter.[21] What is disputed is the extent of the disclosure required.

[39] I am also mindful that each medical professional, specifically any clinical or forensic psychologist, will have their own consultations and will also administer their

[21] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and others* 1999 (2) SA 279 (T) at 316E-317B, relying on Brett L J in *Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55.

own psychological and psychometric testing. There, consequently, does not appear to be a need for me to include as part of the order that the results of any psychological testing and psychometric testing which had been done be made available, although Ms Lennard indicated at the hearing that there would be no difficulty with this being provided. I believe that some form of privacy must be accorded to the first respondent, as she sought help and treatment which has resulted in her diagnosis.

[40] I am aware that she fears that any disclosures she has made during the course of therapy may be disclosed to the applicant and may well be used ‘negatively’ in any forthcoming court applications. Given my experience in matters, specifically family matters, I think that it would be naïve to assume that some of this information, should it fall into the hands of the applicant, will not be used in the course of the coming proceedings. To prevent this and to allay the first respondent's legitimate fears in this regard, I am of the view that some sort of restriction has to be in place to protect her privacy and the disclosures that she has made during the course of therapy. I have to put safeguards in place to protect the privacy and dignity of the first respondent.

[41] I am fortified in this view, given the concession made by Ms Lennard that the first respondent would not have any difficulty submitting to any consultations with an expert appointed by the applicant for purposes of assessing her suitability as a parent wanting primary residence of the minor children and also any exploration as to whether there ought to be some sort of supervised contact in place.

[42] In issuing the orders I also have to ensure that the best interests of the minor children are protected and the disclosure that I have ordered aims to potentially achieve this.

Costs

[43] Ms Law submitted that the applicant, if successful or even partially successful, would be entitled to the costs of the interlocutory application. It was submitted that the best interests of the children dictated that the first respondent ought to have agreed to the order sought if she had nothing to hide.

[44] Ms Lennard, on the other hand, submitted that as the first respondent was asserting her constitutional rights, specifically her right to dignity, privacy and privilege, it would be appropriate for the court not to make any order as to costs.

[45] In relation to family matters, courts are normally reluctant to make any costs orders where parents assert their rights and are acting in what they deem to be in the best interests of the child. This matter, in my view, was one in which the first respondent asserted her constitutional rights. In my view, the most appropriate order would be for each party to pay their own costs. Consequently, I make no order as to costs.

Order

[46] In the result, the following order is issued:

1. The manager of Riverview Manor is required to provide a medical report to either a clinical or forensic psychologist appointed by the applicant, which discloses the following information:

1.1 the dates of admission and discharge of the first respondent at its facility;

1.2 the diagnosis and treatment plan, as proposed and implemented for the first respondent whilst at the facility, including the number of therapy sessions;

1.3 the results of any drug or alcohol testing;

1.4 the medication prescribed for the first respondent as a result of the diagnosis and treatment plan and whether the first respondent is compliant therewith; and

1.5 the prognosis and recommendations of the second respondent in respect of the continued treatment of the first respondent.

2. Each party is directed to pay their own costs occasioned by the application.

HENRIQUES J

Case Information

Date of Argument	:	05 October 2023
Date of Judgement	:	18 December 2023
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This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 09h30 on 18 December 2023