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

Case Number: Y69426/2019

- 1. REPORTABLE: NO
 - 2. OF INTEREST TO OTHER JUDGES: NO
 - 3. REVISED: NO
- DATE: 16 August 2023

In the matter between

S[....] T[....] N[....]

PLAINTIFF

O.B.O

S[....] T[....] M[....]

AND

THE MEMBER OF THE EXECUTIVE COUNCIL
FOR HEALTH AND SOCIAL DEVELOPMENT
OF THE GAUTENG PROVINCIAL GOVERNMENT

DEFENDANT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or her Secretary. The date of this judgment is deemed to be 16 AUGUST 2023.

JUDGMENT

COLLIS J

INTRODUCTION

[1] This is an action for damages instituted by the Plaintiff on behalf of her minor child, S[....] T[....] M[....] ("S[....]"), against the Defendant.

[2] On 6 September 2010 the Plaintiff, pregnant at the time with her unborn baby S[....], was admitted to Pholosong Hospital in Gauteng for the monitoring, assessment and management of her pregnancy.

[3] At the time of her admission she was in the latent phase of labour. During the active phase of labour and foetal monitoring which followed, foetal deterioration and distress was observed, which resulted in near total destruction of the baby's brain caused by partial prolonged hypoxic ischaemia, which probably occurred intrapartum.

[4] It is alleged by the plaintiff that the defendant breached her legal duty to the plaintiff and her baby by causing harm to the baby by the negligent conduct and or omissions of the medical and nursing staff of the defendant's hospital which resulted in the baby suffering severe brain damage and disablement in respect of which a damages claim has been instituted.

MERITS

[5] On 16 August 2021, Basson J separated the liability and quantum in terms of Rule 33(4) on the basis that the Defendant is liable for and shall compensate the Plaintiff for 90% of the proven or agreed damages of S[....].¹

¹ Trial Bundle 0001-4

[6] At the commencement of the proceedings before this Court, I was informed that the Defendant being liable for 90% of the Plaintiff's damages is not as a result of any liability apportionment, but rather a risk discount that was negotiated and agreed upon between the parties.

[7] This trial was set down for a ten (10) day period. Prior thereto this Court conducted a case management meeting, wherein the parties informed the Court as to how the proceedings will be conducted. In essence, it was agreed that they will prepare Joint Heads of Argument for the hearing, that the respective expert reports prepared by the parties, will be admitted into the record as exhibits and that they will admit the contents and the correctness of these reports. During such meeting further the Court was also informed that the defendant holds no instructions from client, albeit that the State Attorney has engaged client on several occasions. The plaintiff further informed the court that where the defendant and plaintiff's experts differed on the course of treatment and potential awards to be made by the Court, that the plaintiff has accepted the stance adopted by the defendant's expert in order to facilitate that finalization of the matter. Apparent from the above, it became clear to the Court that the parties had reached a settlement in toto of the plaintiff's claim but for the fact that the defendant held no instructions to settle the claim.

QUANTUM

[8] The quantum of the plaintiff's claim on behalf of S[...], is for damages in respect of future medical and related expenses, future loss of earnings, past loss of caregiving services and general damages.

[9] For the purposes of addressing the issue of quantum, counsel on either side referred the Court to the following documents namely:

9.1 Plaintiff's Quantum Schedule;

9.2 With regards to future medical expenses: Appendix A to the Quantum Schedule;

9.3 The Actuarial Report marked "GRS1", to be read with Appendix A;

9.4 With regards to future loss of earnings: Appendix B to the Quantum Schedule;

9.5 With regards to past caregiving services: Appendix C to the Quantum Schedule;

9.6 The Actuarial Report marked "GRS2", to be read with Appendices Band C;

9.7 With regards to general damages: Appendix D to the Quantum Schedule; and

9.8 With regards to the protection of the award, Appendix E to the Quantum Schedule.²

[10] These documents referred to in the Joint Heads of Argument were provided to the Defendant's legal representatives for their consideration of the quantum of the claim. At the Third- Pretrial Conference of 10 January 2023 the parties agreed that these documents be uploaded onto Caselines and used or referred to by counsel during arguments.

[11] At the hearing and by agreement between the parties this Court admitted into the record the following exhibits:

11.1 Plaintiff's Expert Reports-Exhibit A

11.2 Joint Minutes Bundle-Exhibit B

11.3 Actuarial Report by Plaintiff-Exhibit C

11.4 Affidavit deposed to by Actuary-Exhibit D

11.5 Schedule of Loss-Exhibit E

11.6 Defendant's Expert Reports-Exhibits F and G respectively.

EVIDENCE

[12] In anticipation of the presentation of the case, both parties appointed experts for purposes of the determination of all aspects of the quantum of the claim. The reports of these experts were all uploaded onto Caselines. Paragraph 3.1 to 3.3 of the Plaintiff's Quantum Schedule sets out the list of experts that were appointed by the Plaintiff and the Defendant. As mentioned, these reports were handed in as exhibits before this Court.

² 2 Joint Heads of Argument 0012

[13] As for the Joint Minutes, both parties agreed and accepted into evidence the contents of the Joint Minutes prepared by the respective experts and relied on the decision of *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA) in support thereof.

[14] The plaintiff submitted into evidence three actuarial reports in respect of S[....]'s future medical expenses and future loss of earnings. In this regard the Plaintiff appointed the actuarial firm, i.e GRS Actuarial Consultants. Three actuarial reports uploaded onto Caselines, i.e.:

- (a) GRS Actuarial Consulting - Future medical expenses, dated 30 November 2022 (item 1);
- (b) GRS Actuarial Consulting - Loss of Income, dated 9 November 2022 (item 2); and
- (c) Updated Actuarial Calculation in respect of future medical expenses, dated 10 January 2023 (item 3).

[15] The Defendant admits the actuarial assumptions and the correctness of all calculations in the mentioned reports, subject to the Defendant reserving the right to argue contingencies.³

[16] In respect of the actuarial calculations the parties agree to also refer the Court to the actuarial report dated 30 November 2022 regarding the claim for future medical expenses which is marked "GRS1" and is annexed to Appendix A, and (b) the actuarial report regarding the claims for loss of future earnings and past caregiving which is marked "GRS2" and which is annexed to Appendix B and is also relevant to Appendix C.

The significance of "GRS1" is that the report reflects the contingencies that were debated at each of the 276 cost items for future medical expenses.

VARIOUS ANTICIPATED EXPENDITURES

³ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 4.1, pp 0008-58

LIFE EXPECTANCY

[17] In respect of S[....]'s life expectancy the evidence of Dr. Rob Campbell was placed before this Court. This expert examined and assessed S[....] on 8 September 2021, and he prepared a full medico-legal report on the patient. The expert has experience in rehabilitation medicine and the care of brain damaged children suffering from cerebral palsy. In addition to this, the plaintiff also presented the evidence of Dr Pearce who examined S[....] on 7 March 2022.

[18] Based on their clinical findings, the two experts opined in their joint minute dated 1 November 2022, that S[....] profile of impairment and disability is associated with a significant reduction in long-term survival and life expectancy to the extent that his life expectancy is now 22% of that of his general population peers. This equates to an additional 12 years with total expected survival time to age 24.⁴

[19] In respect of the total expected survival time, the plaintiff's actuary assumed that S[....] future chance of survival is similar to Life table 2 (Males) Quantum Yearbook 2022. This implies a future life expectancy of 11,64 years (up to age 24) as opposed to 57,1 years for the unadjusted life table 2. The defendant agrees with the plaintiff that Koch's Life Table 2, is the correct table to use.

[20] S[....] life expectancy which was used by GRS Actuaries for purposes of calculating his claim, is thus common cause between the parties and no disputes arise therefrom.

FUTURE HOSPITAL, MEDICAL AND RELATED EXPENDITURE

[21] In this regard the Plaintiff relied and referred this Court to Appendix A to the Plaintiff's Quantum Schedule. In this regard paragraphs B3 to B11 contain the plaintiff's submissions regarding the approach to be adopted when upward - or downward contingencies are considered in the determination of the amounts to be

⁴ Caselines, Bundle 6: Joint Minutes, Item 7, pp 006-33.

awarded for the costs of each of the future medical and related recommendations made by the experts.

[22] The Defendant acknowledges the caselaw and approach referred to by the Plaintiff in paragraphs B3 and B11, and does not oppose same. Where the Defendant however do hold a different view on a specific contingency to be applied by the Plaintiff, the Defendant's stance and submissions will be traversed in what follows hereunder.

22.1 The Plaintiff's submissions regarding Mobility are discussed at Paragraph C13.

22.2 The Plaintiff's submissions regarding Adaptations and maintenance to S[....]'s accommodation are discussed at Paragraph C14;

22.3 The Plaintiff's submissions regarding dental expenditure are discussed at Paragraph C15;

22.4 The Plaintiff's submissions regarding urology expenditure are discussed at Paragraph C16;

22.5 The Plaintiff's submissions regarding pulmonology are discussed at Paragraph C17;

22.6 The Plaintiff's submissions regarding orthopaedic expenditure are discussed at Paragraph C18;

22.7 The Plaintiff's submissions regarding neurological and general medical expenditure are discussed at Paragraph C19;

22.8 The Plaintiff's submissions regarding physiotherapy are discussed at Paragraph C20;

22.9 The Plaintiff's submissions regarding speech therapy (and speech-assistive devices, etc.) are discussed at Paragraph C21;

22.10 The Plaintiff's submissions regarding dietary expenditure are discussed at Paragraph C22;

22.11 The Plaintiff's submissions regarding orthotic expenditure are discussed at Paragraph C23;

22.12 The Plaintiff's submissions regarding occupational therapy and related costs are discussed at Paragraph C24;

22.13 The Plaintiff's submissions regarding maxillofacial and oral surgery are discussed at Paragraph C25; and

22.14 The Plaintiff's submissions regarding biokinetic expenditure are discussed at Paragraph C26.

Mobility

[23] In this regard this Court was referred to the report of Mr. Rademeyer, the contents of which was admitted by the defendant. The Court was further referred to paragraph C13 on pages 15 to 18 of Appendix A.⁵

[24] In respect of the calculations in respect of this special head of damage this Court is referred to paragraph 4.1, items 1 to 7 of "GRS1" annexed to Appendix A (Caselines pp 0012-80 to 81).

[25] In respect of this calculation, counsel for the plaintiff had submitted to the Court, that the Defendant considered each of the items and recorded at the Third Pre-trial conference that the Defendant does not have a basis to oppose the recommendations as discussed in paragraph 13 of Appendix A to the Schedule of Loss.⁶

[26] As a result the amount for mobility costs that is thus not in dispute between the parties is an amount of R1'000'977.00. This much counsel for the defendant had conceded at the hearing and as result this court deems it fair and reasonable to award this amount in respect of this this special head of damage.

Adaptations to the home and maintenance thereof.

[27] In this regard, this Court was referred to the reports of Ms Eybers and Mr Sirmon, the contents of which were both admitted by the defendant. This court was also referred to paragraph C14 of Appendix A.⁷

⁵ See Bundle 0003: Plaintiff's Expert Reports, Item 31 pp 0003-87 TO 0003-97.

⁶ See Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.1, pp 0008-59 to 60.

⁷ See Bundle 0003: Plaintiff's Expert Reports, Item 1, pp 0003-1 to 5 8 AND ITEM 5,

[28] In respect of this calculation, counsel for the plaintiff had referred this court to paragraph 4.2, items 8 and 9 of "GRS1" annexed to Appendix A (Caselines pp 0012-81).

[29] In this regard, counsel for the plaintiff had submitted that the plaintiff had applied a 10% contingency to the costs of the adaptations at item 8 and a generous contingency of 20% to item 9, being the anticipation costs for the maintenance to the adaptations.

[30] Albeit, that counsel for the defendant had argued, that certain of the adaptations included by Mr. Eybers are not necessary and as a result had argues that an amount of R1'000'000.00 is a fair and reasonable award in respect of items 8 and 9.⁸

[31] This amount so argued by the defendant, the Plaintiff accepted and as such the amount for adaptations to the home and maintenance of the adaptations that is thus not in dispute between the parties, and which is considered fair and reasonable by this Court, is an award of R1'000'000.00.

Dental Expenditure

[32] In respect of this special head of damage, this Court was referred to the report of Dr Lofstedt, which was admitted by the defendant as well as the report of Dr. Mmako. This court was also referred to paragraph C15 of Appendix A.⁹

[33] In respect of the calculation of this expenditure, the plaintiff also referred this Court to paragraph 4.3, items 10 to 24 of "GRS1" annexed to Appendix A, on Caselines pp 0012-82 to 84. In addition, this Court was further referred to paragraph 4.15, items 295 to 317 of the updated actuarial calculation as it appears on Caselines pp 0007-86 to 88.

pp 0003-105 TO 0003-143

⁸ See Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.2, pp 0008-60.

⁹ See Bundle 0003: Plaintiff's Expert Reports, Item 2, pp 0003-59 to 86; and Caselines Bundle 0005: Defendant's Expert Reports Item 19, pp 0005-348 to 0005-358

[34] In respect of this expenditure, the defendant had filed its own expert report that of Dr. Mmako, on 6 January 2023 and noted that the costs of the recommendations by Dr. Mmako, as calculated by GRS Actuary in the updated actuarial report, amounts to R417'863.00, whereas the costs of the recommendations by Dr Lofstedt, amounts to R345'776.00. On this basis the plaintiff had argued that as a result thereof, the defendant therefore has no basis to oppose the amount of R328'640.00 as proposed by the plaintiff at paragraph C.15 of Appendix A, as this amount so claimed is even further than the defendant's own expert.

[35] In the circumstances this Court is satisfied to award an amount of R328'640.00 for the plaintiff's dental expenditure as this award is considered to be fair and reasonable.

Urology Expenditure

[36] In respect of the plaintiff's claim under this heading the Court was referred to the report of Prof Mutambirwa, which was admitted by the defendant, and paragraph C16 of Appendix A.¹⁰

[37] In respect of this expenditure's calculations the Court was referred to paragraph -4.4, Items 25 to 42 of "GRS1" annexed to Appendix A on Caselines pp 0012-85 to 86. In his report Prof Mutambirwa indicated that the percentage chance of S[...] requiring the various recommended treatment, interventions and equipment. In this regard, the actuary already had applied the necessary contingencies in the calculation to address the probabilities of the expenditure at each item being required in future and it is for this reason that counsel for the plaintiff had admitted it is therefore unnecessary to allow any further contingency deduction.

[38] In respect of this expenditure, the defendant accepted the recommendations and is satisfied with the contingencies already applied by Prof Mutambirwa and also

¹⁰ See Bundle 0003: Plaintiff's Expert Reports, Item 42, pp 0003-98 to 104; and Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-33 to 0012-34.

accepts the 25% contingency that is applied to the diapers at item 27, as discussed in paragraph C16.4 of Appendix A.

[39] As such the amount for urological expenditure that is thus not in dispute between the parties and therefore counsel submitted a reasonable award is an amount of R519'038.00.¹¹ This award this court also considers fair and reasonable under the circumstances.

Pulmonology

[40] In respect of this future medical expenditure, this Court was referred to the joint minute prepared by Prof Goussard and Dr. Roux.¹² In respect of the calculation in respect of this expenditure, the Court was referred to paragraph 4.15, items 277 to 294 of the updated Actuarial Report in respect of medical expenses.¹³

[41] Subsequent to Appendix A being finalized, the pulmonology joint minute became available. Dr A Roux on behalf of the defendant and Prof Goussard on behalf of the plaintiff agreed on all the recommendations and costs. These were calculated by GRS Actuaries and amounts to R212'135.00 in total. The Plaintiff counsel suggested that there is no room for contingencies and that this amount is fair and reasonable and should be awarded by this Court.

[42] Counsel appearing on behalf of the defendant accepted the recommendations and costs agreed upon in the joint minute but submits that a 10% contingency deduction should apply to the total amount, reducing it to R190'921.00.

[43] This stance adopted by the defendant, the plaintiff accepted and consequently this Court considers the amount of R190'921.00 as an award for future pulmonary expenses as fair and reasonable under the circumstances.¹⁴

¹¹ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial) paragraph 6.4, pp 0008-61 to 62

¹² Caselines: Bundle 0006: Joint Minutes, Item 10, pp 0006-55 to 56;

¹³ Caselines pp 007-85 to 86).

¹⁴ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.5, pp 0008-62 to 63.

Orthopaedic Expenditure

[44] For this expenditure, the Court was referred to the Joint Minute of Dr Potgieter and Dr Simmons.¹⁵ In respect of this calculations, the Court was referred to paragraph 4.6 and items 54 to 57 of the updated Actuarial Report. This updated report appears on Caselines pp 0007-56.

[45] In respect of this expenditure and subsequent to Appendix A being finalized and the costs of the recommendations by Dr Potgieter being calculated, the orthopaedic surgeons compiled a joint minute. During this meeting they agreed on the costs of the required surgeries and the present value of these costs were calculated by GRS Actuaries, rendering the total amount for orthopedic intervention of R241'068.00.

[46] In respect of the orthopedic interventions, the surgeons opined that S[...] should urgently undergo surgery to his lower limbs to be able to sit. This is so as he is spastic with shortened and spastic hamstrings and cannot be seated due to the constant extensor spastic reflex which results in him sliding out of the chair.

[47] Once undergone, he would benefit of the surgery in that he will be able to wear shoes after minimal soft tissue releases of the ankle muscles. It is important for a wheelchair ridden patient to be able to wear shoes with proper comfortable support on the footplate of the chair as well as for comfort during cold weather.

[48] All of the above could be addressed through single-event-multiple-level surgical releases of spastic and contracted muscles of the hips, (adductor releases), the knees (hamstring lengthening) and the feet (relevant lengthening of tendons), at an agreed cost of RS0'000.00.

[49] In respect of his upper limbs and due to the position of S[...]s arms almost being fixed against his body, the same principle of release of contracted muscles of his shoulders and elbows will improve his caregivers' ability to wash and dress him

¹⁵ Caselines Bundle 0006: Joint Minutes, Item 11, pp 0006-57 to 59;

as well as improving his sitting posture in a wheelchair with the necessary arm support.

[50] On his left wrist S[....]'s has a fixed flexion deformity and thumb-in-palm deformity which should ideally be corrected with soft tissue releases of the forearm muscles, a proximal row carpectomy and a wrist fusion. This procedure leads to an open hand, ease of dressing, especially long-sleeved garments, and maintaining hygiene of the hand. It is opined that this will be a single-event surgery at an agreed cost of R80'000.00. These above surgical interventions of S[....]'s upper and lower limbs should be performed as a matter of urgency after reasonable weight gain post the Mic Keytube insertion. With delay, the magnitude of surgery as well as the prognosis for a good result deteriorates. Dr Potgieter states that the deformities are relentless and constantly increasing in cerebral palsied patients.

[51] Although S[....]'s general condition will have to improve before he can undergo the surgery, it is foreseen that he will be ready for the surgery within 6 to 12 months of the funds from the claim becoming available. In this regard there is an 80% probability that S[....] would need surgical correction of his scoliosis due to the unbalanced nature of the deformity, and to facilitate a proper sitting posture in a wheelchair. The scoliosis also poses a risk for his lungs.

[52] Here the actuary already applied a 20% contingency to address the probability of the surgery being required and the agreed costs is again R80'000.00. In addition, S[....] should receive lifelong activated Vitamin D supplementation as a precaution against pathological fractures due to decreased bone density secondary to lack of sun exposure (institutionalization) and inactivity.

[53] Since the surgeries are required immediately and will probably be performed as soon as S[....] is strong enough to undergo surgery, the parties submit that there is no room for any contingency deduction. It is for this reason that it was submitted by the parties that an award of R241'068.00 for future orthopedic expenditure would be fair

and reasonable.¹⁶ This Court considers this award as fair and reasonable and will award same.

Neurological and General Medical expenditure

[54] For this expenditure, the Court was referred to the report of Dr Lombard, which was also admitted by the defendant as per paragraph C19 of Appendix A.¹⁷

[55] In respect of the calculations, the Court is referred to paragraph 4. 7, items 58 to 61 of "GRS1" annexed to Appendix A on Caselines pp 0012-89. The defendant in respect of this expenditure noted the Plaintiff's recommendations and has no basis to oppose same. The Defendant further noted that the actuary applied an 80% contingency to each of items 60 and 61 as discussed at paragraph 19.5 of Appendix A.

[56] The amount for neurological and general medical expenditure which counsel for the plaintiff submitted would be reasonable to award, is an amount of R74'953.00.¹⁸ The defendant took no issue with this award and consequently, this Court considers this award as fair and reasonable.

Physiotherapy

[57] In respect of this expenditure, this Court was referred to the joint minute of Ms. Churchill and Ms. Moele, and paragraph C20 of Appendix A.¹⁹ For the calculations, the Court is referred to paragraph 4.8, items 62 to 77 of "GRS1" annexed to Appendix A, on Caselines pp 0012-90 to 91.

¹⁶ Caselines Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.6, pp 0008-63 to 64.

¹⁷ Caselines Bundle 0003: Plaintiff's Expert Reports, Item 6, pp 0003-144 TO 147; Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-40 TO 0012-41.

¹⁸ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6, 71 pp 0008-64 to 65,

¹⁹ Caselines Bundle 0006: Joint Minutes, Item 1, pp 0006-1 to 4; Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-44 to 0012-44.

[58] Here to, the Defendant noted that all recommendations and expenditure were agreed by the experts and the Defendant has no basis to oppose any of these recommendations. The Defendant can also not oppose the contingencies as applied in paragraph 20 of Appendix A. It is on this basis that counsel jointly submitted that it would be fair and reasonable to award an amount of R522'835.00 for physiotherapy.²⁰ This award this Court also considers fair and reasonable and will therefore also be awarded by this Court.

Speech Therapy and Speech-Assistive Devices Etc.

[59] In this regard, this Court was referred to the joint minute of Ms Van der Merwe and Ms Dikobe, Speech and Language therapists and AAC interventionist therapists and paragraph C21 of Appendix A.²¹

[60] For the calculations in this regard, the Court was referred to paragraph 4.9, items 78 to 136 of "GRS1" annexed to Appendix A on Caselines pp 0012-92 to 99.

[61] Under this expenditure, there is a huge difference between the recommendations and costs estimates of the two experts and the Defendant's stance is that the difference should be fairly and reasonably dealt with to avoid the costs to proof same before this Court. To this end, the Defendant accepts the Plaintiff's submissions at paragraph 20 of Appendix A, but submits that a further 10% contingency should apply to the proposed total amount of R350'238.00, reducing it to R315'214.00.

[62] This position adopted by the defendant the Plaintiff accepts the Defendant's stance and on the above basis, counsel jointly submitted that it would be fair and reasonable to award the amount of R315'214.00 for speech and language therapy

²⁰ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.8, pp 0008-64 to 65.

²¹ Caselines Bundle 0006: Joint Minutes, Item 1, PP 0006-1 to 4 and Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-45 to 0012-56.

and AAC interventions.²² This award being agreed upon by the parties, this Court considers fair and reasonable to be awarded to the plaintiff.

Dietary Expenditure

[63] In this regard the Court was referred to the joint minute of the dieticians, Ms. Kloppers and Ms. Mojapelo and paragraph C22 of Appendix A.²³

[64] In respect of the calculations, the Court was referred to paragraph 4.10, items 137 to 180 of "GRS1" annexed to Appendix A on Caselines pp 0012-99 to 103. Here the defendant noted that the two experts agreed on all the recommendations and costs and as such, has no basis to oppose either and accepts same as agreed between the experts and discussed at paragraph 22 of Appendix A.

[65] It is on this basis that counsel requested the Court to award the amount of of R987'792.00 for dietary expenses. This award this Court considers fair and reasonable and as such same will be awarded by this Court.²⁴

Orthotics ANS Equipment

[66] In this regard this Court is referred to the joint minute of Mr. Grimsehl and Mr. Terry and paragraph C23 of Appendix A.²⁵ In respect of these calculations the Court was referred to paragraph 4.11, items 181 to 203 of "GRS1" annexed to Appendix A, Caselines pp 0012-104 to 107.

[68] The Defendant noted that all recommendations and expenditure were agreed by the experts. The Defendant's stance, as recorded in the Third Pre-trial minute, is nevertheless that items 192 and 193 of "GRS1", which allows for a lightweight travel

²² Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.9, pp 0008-65 to 66.

²³ Caselines Bundle 0006: Joint Minutes, Item 3, pp 0006-7 to 13 and Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-56 to 0012-59.

²⁴ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.10, pp 0008-66.

²⁵ Caselines Bundle 0006: Joint Minutes, Item 4, pp 0006-14 to 18 and Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-59 to 0012-63.

buggy and its maintenance, are unnecessary due to the costs of a vehicle and primary wheelchair included in the award.

[69] Counsel for the plaintiff had argued that a lightweight travel buggy would be required in circumstances where public transport is used and this will not be necessary for S[...]. The Defendant is of the view that the total costs of R102'684.00 for these two items should be deducted from the total of R1'737'505.00, reducing it to R1'634'821.00. Hereto the plaintiff accepted the defendant's stance and counsel requested that the Court awards the amount of R1'634'821.00 for orthotics and orthotic equipment and devices. This award this Court considers fair and reasonable under the circumstances and awards same.²⁶

Occupational Therapy and Related Costs

[70] In this regard the Court was referred to the joint minute of the occupational therapists, Ms. Greeff and Ms. Montwedi and paragraph C24 of Appendix A.²⁷ In respect of the calculations, the Court was referred to paragraph 4.12, items 204 to 243 of "GRS1" annexed to Appendix A on Caselines pp 0012-107 to 112.

[71] In respect of these costs the defendant noted that most items/recommendations were agreed between the experts and accepts the agreed recommendations by the experts.

[72] Where disagreements occurred between the experts such as items 209 and 210 (block therapy) which were only recommended by Ms Greeff, and item 210 where the Plaintiff applied 25% contingency. Considering the report of Dr Simmons, the Defendant's orthopedic surgeon, the Defendant accepts the need for immediate intervention (item 209) since S[...] has had no intervention to date and his condition is very poor, requiring immediate intensive therapy. The Defendant's stance is though that the cost of R506'625.00 that the Plaintiff allowed at item 210 should not

²⁶ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.11, pp 0008-67.

²⁷ Caselines Bundle 0006: Joint Minutes, Item 4, PP 0006-14 to 18 and Case/ines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-63 to 0012-69.

be allowed at all and should be deducted from the total of the occupational therapy costs.

[73] In respect of this expense the defendant also noted the difference regarding case management during the first year and that the plaintiff proposed that an average should be used for items 211 and 212 (case management in the first year), rendering an amount of R29'691.00. This approach was accepted by the defendant.

[74] In relation to item 237 (rocker chair), although the Plaintiff only allowed the amount of R5'378.00, the Defendant's stance is again that this item is unnecessary and should be discarded. Lastly, the Defendant considered that it is impossible to predict whether S[...] would receive space at Little Gems Facility by the time that his condition allows him to attend, and is therefore submits that it is reasonable to use the average between the two caregiving options.

[75] In this regard, the plaintiff accepts the defendant's stance which reduces the total amount for occupational therapy suggested by the plaintiff at paragraph 24 of Appendix A from R4'922'441.00 to R4'410'438.00. The request is that the Court to award the amount of R4'410'438.00 for occupational therapy, including future caregiving services.²⁸ This award this Court considers fair and reasonable and will award such in respect of this expenditure.

Maxillofacial And Oral Surgery Costs

[76] In this regard the Court was referred to the report of Dr Muthray, which report was admitted by the Plaintiff. See here paragraph C25 of Appendix A.²⁹ In respect of the calculations, the Court was referred to paragraph 4.13, items 243 to 261 of "GRS1" annexed to Appendix A on Caselines pp 0012-85 to114.

[77] Although Dr. Muthray was appointed by the Defendant, the Defendant submits that his recommendations are mostly not required and there is no basis therefore.

²⁸ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.12, pp 0008-67 to 69.

²⁹ Caselines Bundle 0005: Defendant's Expert Reports, Item 12, pp 0005-125 TO 148 and Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-70 TO 72.

[78] Hereto, the parties considered each item to determine which items are indeed necessary. After a lengthy discussion, the Defendant's stance was that only items 251 to 253 (management of apnoea), items 255 to 258 (control of Sialorrhea) and item 259 (chronic lip chewing) are required. The Defendant noted that the Plaintiff applied a 50% contingency to each of these items (except for item 259) and accepts these contingencies.

[79] As a result, in accordance with the defendant's mentioned stance, the plaintiff's proposed amount of R561'223.00 for Maxillofacial and oral surgery is therefore reduced to R241'150.00. As the plaintiff accepted the defendant's stance counsel submitted that it would be reasonable and fair if the Court awards the amount of R241'150.00 for maxillofacial expenditure.³⁰ This amount this Court considers fair and reasonable and is accordingly awarded by this Court.

Biokinetic Expenditure

[80] Under this expenditure the Court was referred to the joint minute of the orthotists, Mr. Grimsehl and Ms. Bloemhof and paragraph C26 of Appendix A.³¹ For the calculations in this regard, the Court was referred to paragraph 4.14, items 262 to 276 of "GRS1" annexed to Appendix A on Caselines pp 0012-114 to 116.

[81] In respect of this expenditure, the plaintiff applied very liberal contingencies of 25% to all exercise sessions as well as further contingencies to other items. The defendant noted that the experts agreed on all recommendations and costs and as such the defendant has no basis to dispute the agreements that were reached or the contingencies that were applied by the Plaintiff at paragraph 26 of Appendix A.

[82] It is on this basis that counsel thus jointly submitted that it would be fair and reasonable for the Court to award an amount of R633'422.00 for biokinetics.³² This

³⁰ Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial), paragraph 6.13, pp 0008-69 to 70.

³¹ Caselines Bundle 0006: Joint Minutes, Item 9, pp 0006-49 to 54 and Caselines Bundle 0012: Joint Heads of Argument, Item 2, pp 0012-72 to 0012-76.

³² Caselines: Bundle 8: Pretrial minutes, Item 3 (Third Quantum Pretrial),

amount to be awarded this Court considers fair and reasonable and it will be awarded by this Court.

Past Medical Expenses and Future Dietary Expenses

[83] During the hearing the plaintiff, Ms Nyathi, testified that S[...] was admitted to the Parkland hospital on 22 December 2022 for the treatment of his constipation. This treatment included the placement of a feeding tube (PEG).

[84] As at the commencement of the trial, the cost for the initial placement of the PEG was claimed as a future medical expense in the total amount of R29'232.00 as the parties were not aware of S[...]’s hospital admission as testified to by Ms. Nyathi.

[85] In respect of this calculation, parties referred this Court to paragraph 4.10, items 158 to 166 of "GRS1" annexed to Appendix A Caselines pp 0012-102.

[86] As past and future medical expenses were claimed under one heading in the Particulars of Claim, constituting one total, given the evidence of Ms Nyathi on point it became clear that the costs for the placement of the PEG is actually a past medical expense and not a future medical expense.

[87] Ms Nyathi provided the parties with a POLMED statement reflecting the costs of the placement of the PEG at the Parkland hospital in the total amount of R22'213.00. By agreement between the parties, this statement together with a short summary (schedule) was uploaded onto caselines for consideration by the Court. This amount is not in dispute by the parties.

[88] Consequently, the parties deducted the amount of R29'232.00 from the total of the future medical expenses recommended by the dieticians (items 158 to 166 of "GRS1" and number 4.10 in the table at paragraph 26 above), and instead added number 4.15 (past medical expenses) with the amount of R22'213.00 in the mentioned table.

[89] As a result the plaintiff moved for an amendment to the totals in the table at paragraph 26 above under the heading "Future medical and related expenses" to read "Past and Future medical and related expenses" with the total being reduced from R12'101'269.00 to R12'094'250.00.

[90] Therefore, the sub-total of the claim before deducting the 10% liability discount, is reduced from R15'178'180.00 to R15'171'161.00 and the sub-total of the claim after deducting the 10% liability discount, is reduced from R13'660'362 to R13'654'045.00. The costs of the trust is as a result reduced from R897'774.00 to R897'348.00 and the total amount of the claim is reduced from R14'558'136.00 to R14'551'393.00.

Future Loss of Earnings

[91] In turning then to the future loss of earnings the Court was firstly referred to the joint minutes of the educational -and the industrial psychologists.³³ In addition the Court was referred to "GRS 2" - the actuarial report of GRS Actuarial Consultants that is annexed to Appendix B.

[92] The Court was further referred to Appendix B to the Plaintiff's Quantum Schedule. Herein paragraphs B3 to B8 contain the plaintiff's submissions regarding contingencies and in paragraph 9 thereof counsel submitted that the reasonable amount to be awarded for future loss of earnings, is R827'098.00.

[93] In their joint minute, the educational psychologists differed in that Ms De Rooster opined that S[....]would have been able to complete Grade 12 (NQF4) with at least higher certificate endorsement. Taking the socio-economic circumstances of the family into account, S[....]would probably have entered the labour market with a Grade 12 qualification and then have progressed with occupationally focused modules, accumulating credits and ultimately functioning with an NQFS qualification in the labour market whereas Dr. Ngonyama-Ndou opined that had it not been but because of the traumatic event, S[....]could have been an average child and could

³³ Caselines Bundle 0006: Joint Minutes, Item 2, pp 0006-5 to 6 and Caselines Bundle 0006: Joint Minutes, Item 6, pp 0006-26 to 32;

complete Matric and achieve at least a Diploma i.e. NQF Level 6. This opinion is based on the birth history, the family's educational levels and the socio-economic circumstances of the family.

[94] On that basis, the industrial psychologists agreed on seven pre-morbid career and earnings scenarios for S[...]. In this regard the industrial psychologists have not indicated that one of the seven scenarios is more probable than the rest. As the incident occurred at birth there is therefore no pre-morbid history of S[...], other than the family history and circumstances that the educational- and industrial psychologists already considered.

[95] In Appendix 8, the plaintiff suggested that the best manner to address the multiple scenarios, is to allow for the average between them, which calculated the amount of R827'098.00. to be awarded.

[96] In contrast the defendant's stance is that the two most probable scenarios are scenarios 18 (NQFS with employment after school) and 2C (NQF6 with employment after school). In this regard, counsel for the plaintiff had argued that it is not realistic that S[...] would have had the funds to study full-time immediately after school or that he would have become an artisan. In addition

the defendant argued that it would be reasonable to use the average between the probable scenarios 18 and 2C and to apply a 10% contingency to the total. This approach will reduce the proposed amount of R827'098.00 to R676'911.

[97] The Plaintiff accepts the Defendant's stance and counsel submits that it would be reasonable and fair for the Court to award the amount of R676'911.00 to the Plaintiff for S[...]s loss of future earnings. This amount this Court considers fair and reasonable under the circumstances and it will be awarded by this Court.

Past Caregiving Services

[98] In respect of this expense, this Court was firstly referred to Appendix C to the Plaintiff's Quantum Schedule. In this regard paragraphs 1 and 2 contains the

plaintiff's submissions regarding the principle underlying a claim by S[...] for fair compensation to the plaintiff for her past caregiving of S[...]; and paragraphs 3 to 5 deal with the amount to be awarded.

[99] In this regard Mr. Potgieter from GRS .Actuaries was requested to calculate a fair figure for compensation based on the following two scenarios:

Scenario 1:

- (i) The minimum hourly rate of a domestic worker, working 24 hours a day, 7 days a week from when S[...] was 12 months of age until February 2021; and
- (ii) From March 2021 (when he started to attend Sibusisu), working 24hours a day on weekends only from 16h00 on Friday until 06h00 on Monday mornings and on public holidays and

Scenario 2:

- (iii) A monthly salary of R6'500 in current terms from the age of 12months to February 2021; and
- (iv) From March 2021 (when he started to attend Sibusisu) to date, a salary of R2'500 per month in current terms.³⁴

[100]With reference to "GRS2", page 3, the actuary calculated a figure for fair compensation for past caregiving based on Scenario 1 of R1'097'586 and based on Scenario 2 of R603'835.00. Herein the defendant considered the caselaw in Appendix B and cannot oppose the claim in principle but does not agree to the amount of R543'452.00 as proposed by the plaintiff and adopts the stance that in view of the disability grant that was paid to the plaintiff since 2016, an amount of R400'000.00 is reasonable.

[101]The position so adopted by the defendant the plaintiff accepted and counsel submitted that the amount of is a fair award by the Court for compensation to the

³⁴ Caselines Bundle 0012: Joint Heads of Argument,Item 6, pp 0012-151.

Plaintiff for past caregiving and should be awarded. The amount this Court considers as fair and reasonable and will be awarded by this Court.

General Damages

[102] In this regard this Court is referred to Appendix D to the Plaintiff's Quantum Schedule. In this regard paragraphs B1 to BS deal with the disabilities and sequelae as a consequence of S[...]'s severe brain damage.³⁵

[103] In this regard S[...]'s injuries and sequelae as discussed at paragraphs 1 to 5 of Appendix D are admitted as common cause between the parties. With reference to paragraphs B8 to B10 of Appendix D, and considering the caselaw discussed in Appendix D, the Plaintiff suggested the award of R2'000'000.00 for general damages.

[104] The Defendant considered the authority referred to in Appendix D and accepts that the proposed amount is in accordance with the caselaw and cannot oppose the amount. It is on this basis that counsel therefore jointly submitted that it would be appropriate and reasonable for the Court to award an amount of R2'000'000.00 for general damages. This award this Court considers fair and reasonable having regard to the appropriate caselaw and accordingly, same is awarded to the Plaintiff.

Protection of the Award

[105] S[...] it is common cause is still at a young age and given the quantification of the award it is practice that this award should be protected once paid out.

[106] In this regard the parties referred the Court to Appendix E to the Plaintiff's Quantum Schedule. On point it was submitted that there can be no doubt about the need for protection of the award, and in fact, the parties agreed at the third pre-trial conference that, subject to the Court's approval, a Trust should be established for S[...].

³⁵ Caselines Bundle 0012: Joint Heads of Argument, Item 7, pp 0012-152 to 163.

[107] In this regard the parties jointly submitted that a more flexible and more investment-friendly alternative to a curator bonis, i.e. a professional trust, is preferable and is better crafted to serve the interests of S[...].³⁶

[108] It is common for Courts to award 7.5% of the total amount of the claim to cater for the costs of the administration of the trust. This was also already agreed between the parties at the third pretrial conference.

[109] From the final award made by the Court the parties, requested that the Court deduct the amount for past caregiving services and not include same when the cost for the administration of the trust is determined. This amount should then be paid directly to Ms. Nyathi, S[...]'s mother, and does not form part of the trust. This Court will accede to this request.

Award

[110] Consequently the following award is made to the plaintiff:

CLAIM AMOUNT

1. General damages	R2'000'000.00
2. Future loss of earnings	R676'911.00
3. Past caregiving services	R400'000.00
4. Past and Future medical and related expenses	R12'094'250.00.
4.1. Mobility	RI'000'977.00
4.2. Home Adaptations and Maintenance	R1'000'000.00
4.3. Dental expenditure	R328'640.00
4.4. Urology	R519'038.00
4.5. Pulmonology	R190'921.00

³⁶ Caselines Bundle 0012: Joint Heads of Argument, Item 8, pp 0012-164 to 171

4.6. Orthopaedic expenditure	R241'068.00
4.7. Paediatric and Neurological expenditure	R74'953.00
4.8. Physiotherapy	R522'835.00
4.9. Speech and language therapy And assistive devices	R315'214.00
4.10. Dietary expenditure	R958'560.00
4.11. Orthotic expenditure	R1'634'821.00
4.12. Occupational therapy and Related costs	R4'410'438.00
4.13. Maxillofacial and oral surgery	R241'150.00
4.14. Biokinetic expenditure	R633'422.00
4.15 Past medical expenses (PEG)	R22'213.00
<u>SUB-TOTAL</u>	<u>R15'171'161.00</u>
Minus 10% liability discount	R1'517'116.00
<u>SUB-TOTAL AFTER 10%</u>	<u>R13'654'045.00</u>
<u>DEDUCTION</u>	
Costs of protection of the award	R997'053.00
(7.5% of the sub-total, excluding	-10%
R360'000 (R400'000 - 10%) for	= <u>R897'348.00</u>
past caregiving) = R13'294'045.00	
TOTAL AMOUNT OF CLAIM	R14'551'393.00
	=====

[111] The parties further addressed this Court on the establishment of a trust and presented before this Court. the proposed trust deed and the consent of the trustee. The court was also referred to the Contingency Fee Agreement concluded between the plaintiff and the instructing attorney and is satisfied that same applies with the Contingency Fee Act.

ORDER

[112] Consequently the following order is made:

112.1 The Defendant is ordered to pay the amount of R 14 551 393. 00 to the Plaintiffs attorneys of record. Joubert Attorney, in final settlement of the Plaintiff's claim on behalf of S[....] T[....] M[....] ('S[....]').

112.2 The Defendant is ordered to pay the capital amount of R 14 551 393.00 by direct transfer into the trust account of O Joubert Attorney, details of which are as follows:

Bank:	First National
Bank Account number:	6[....]9
Branch number:	22 20 26
Branch name:	Pretoria
Ref:	O JOUBERT/ JN0389

112.3 The aforesaid amount in paragraph 112.1 and 112.2 will not bear interest unless the Defendant fails to effect payment thereof within thirty calendar days of the date of this Order, in which event the capital amount will bear interest at the legally prescribed rate of interest per annum in accordance with the provisions of the Prescribed Rate of Interest Act, 55 of 1975, as amended by the Judicial Matters Amendment Act, 24 of 2015, and which rate of interest will be referred to hereinafter as "the mora rate"), calculated from and including the thirty-first calendar day after the date of this Order to and including the date of payment thereof.

112.4 The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs in respect of the quantum of the claim and the quantum trial from 16 to 25 January 2023, including the following costs:

112.4.1 The costs of employing counsel;

112.4.2 The costs consequent upon obtaining the medico legal quantum reports and actuarial reports, as well as any addendum reports that were provided to and/or served on the Defendant in terms of Rule 36(9)(b), and the costs of counsel's consultations with these experts relating to the quantum trial;

112.4.3 The reasonable preparation/qualifying and reservation fees (if any) of the experts of whom notice were given in terms of Rule 36(9)(a) and (b), including the costs of consultations (if any) with the legal team, relating to the trial of 16 to 24 January 2023;

112.5 The costs of obtaining the following expert joint minutes:

112.5.1 Ms Churchill and Ms Moele - physiotherapists;

112.5.2 Ms De Rooster and Ms Nontsikelelo - educational psychologists;

112.5.3 Ms Kloppers and Ms Mojapelo - dieticians;

112.5.4 Mr Grimsehl and Mr Terry - orthotists;

112.5.5 Ms Greeff and Ms Montwedi - occupational therapists.

112.5.6 Mr Moodie and Mr Hopkins - industrial psychologists;

112.5.7 Dr. Campbell and Dr. Pearce - life expectancy experts;

112.5.8 Ms Vd Merwe and Ms Dikobe - speech language therapists and AAC interventionists;

112.5.9 Mr Herbst and Ms Bloemhof - biokineticists;

112.5.10 Prof Goussard and Dr. Roux - pulmonologists; and

112.5.11 Dr. Potgieter and Dr. Simmons - orthopedic surgeons.

113. The Court attendance fees for Mer Ben Moodie for 23 January 2023;

114. The reasonable costs and expenses of accommodation and of transporting the Plaintiff, S[...], and a family member or helper, in attending all medico-legal examinations by the Plaintiff's experts, at a fee equivalent to that of a candidate attorney, subject to the discretion of the Taxing Master.

115. The costs of making up and distributing the trial bundles, if any, and uploading the bundles onto Caselines;

116. Counsel's and attorney's reasonable fees relating to the preparation for and attendance of any pre-trial conferences as well as counsel's fees for the drafting of the pre-trial agendas and minutes, the special trial note and all practice notes;

117. The costs of Counsel for drawing up the Schedule of Loss together with its various appendices and for drafting instructions to the actuary for the calculation of the claim; and

118. The costs attendant upon the obtaining of payment of the amounts referred to in this Order.

119. The following provisions will apply with regards to the determination of the aforementioned taxed or agreed party and party costs:

119.1 The Plaintiff's Attorneys shall serve the Notice of Taxation on the Defendant's Attorneys of Record;

119.2 The Defendant shall be allowed thirty calendar days from date of settlement or of taxation within which to effect payment of the agreed or taxed costs; and

119.3 Should payment not be effected within the aforementioned period, the Plaintiff will be entitled to recover interest on the taxed or agreed costs at the mora rate calculated from and including the thirty-first calendar day after the date of settlement of the costs or of taxation, to and including the date of final payment thereof.

120. The costs referred to in paragraphs 112.4 and 112.5 shall be paid into the trust account of the Plaintiff's attorneys, O Joubert Attorney, referred to in paragraph 112.2 above.

121. The nett proceeds of the payments referred to above, after deduction of the amount of R 360 000.00 (which is intended as compensation to Ms Nyathi for S[....]'s caregiving to date) and of unrecoverable attorney and own client costs (i.e. the excess of attorney and own client costs over party and party costs) (which nett proceeds will be referred to hereinafter as "the capital amount"), shall be payable by the Plaintiff's Attorneys to a Trust, to be created within 3 (three) months of receipt of the amount referred to in paragraph 1 above, which Trust will:

122. Be created on the basis of the provisions as more fully set out in the draft Trust Deed attached hereto marked "A";

123. Have, as its main objective, the controlling and administering of the capital amount on behalf of S[...]; and

124. Have, as its professional Trustee, Nazneem Parker from SANLAM TRUST, with the powers, duties and functions as set out in the draft Trust Deed attached hereto marked "A".

125. Should the aforementioned Trust not be created within the aforementioned period of 3 (THREE) months after receipt of the amount in paragraph 1 above, the Plaintiff is directed to approach this Court within 1 (one) month thereafter in order to obtain further directives in respect of the manner in which the capital amount is to be utilized in favour of S[...].

126. Until such time as the professional Trustee is able to take control of the capital sum and to deal with same in terms of the Trust Deed, the Plaintiff's Attorneysof Record:

126.1 Are authorised to invest the capital amount in an interest- bearing account with a registered banking institution in terms of Section 86(4) of the Legal Practice Act, 28 of 2014, to the benefit of S[...], pending the finalisation of the Trust;

126.2 Shall be prohibited from dealing with the capital in any other manner unless specifically authorised thereto by the Court, subject to paragraph 9.3 hereunder; and

126.3 Are authorised and ordered to make any reasonable payments to satisfy any of S[...]'s needs that may arise and that are required in order to satisfy any reasonable need for treatment, care, aids or equipment that may arise in the interim.

127. The appointment of the professional Trustees is subject thereto that the professional Trustee furnish security to the satisfaction of the Master of the High

Court, and that the Trustee's conduct is also subject to the supervision of the said Master.

**CJ COLLIS
JUDGE OF THE HIGH COURT
SOUTH AFRICA**

APPEARANCES

Counsel for Plaintiff: ADV. F PAUER
Instructed by: O JOUBERT ATTORNEYS

Counsel for Defendant: ADV NR NGOEPE assisted by ADV AH MOSHE
Instructed by: OFFICE OF THE STATE ATTORNEY

Date of hearing: 26 JANUARY 2023

Date of judgment: 16 AUGUST 2023

ANNEXURE A

DEED OF TRUST of the S[....] T[....] M[....] TRUST

WHEREAS S[....] T[....] M[....] (hereinafter "Se/lo" or "the Beneficiary") is a disabled minor suffering from a severe physical and mental disability, as a result of which he is severely hindered in his ability to function and perform the daily activities of life, incapable of maintaining himself, and incapable of managing his own financial

affairs, as contemplated in section 1 read with section 68 of the Income Tax Act, 58 of 1962;

AND WHEREAS the Beneficiary is entitled to an award of damages (hereinafter "the Beneficiary's award") in the action instituted against the Gauteng Provincial Government referred to below;

AND WHEREAS there is agreement between the parties to the said action that the net balance of the capital amount awarded to the Beneficiary, that is the gross amount awarded less such fees and disbursements attributable to the litigation undertaken and which in accordance with the court order may be deductible from such award, should be held and administered in accordance with the provisions of this Deed of Trust, thereby to protect and manage it and for purposes of the future administration thereof;

AND WHEREAS the Founder intends to create a Trust for the sole benefit of the Beneficiary upon the terms and conditions set out below;

AND WHEREAS the Trustee to be appointed, is willing to act as such, to accept the donation of the Founder referred to hereinbelow, to administer the Trust and to accept and administer 0013-8 any other funds which may in future accrue to the Beneficiary and/or the Trust on behalf of and for the benefit of the Beneficiary and to utilise it as it in its sole discretion may see fit, provided that such utilisation does not impugn the terms and conditions set out below;

AND WHEREAS the Court has approved the terms of this Deed of Trust and has ordered that the said net balance of the capital award be paid to the Trust, on behalf of and for the benefit of the Beneficiary, to be dealt with as specified herein, thereby ensuring that the purpose of the award, the maintenance and support of the Beneficiary for the rest of his life, be attained;

NOW THEEFORE the parties to this Deed of Trust agree as follows:

1. THE PARTIES

The parties are

1.1. "The Founder" is the Beneficiary's biological mother, S[....] T[....] N[....], with ID number 8[....]5; and

1.2. "**The Trustee**" is Naaznien Parker from SANLAM TRUST as represented by its nominee from time to time if such nominee has been appointed.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Deed of Trust, unless it is stated otherwise or the contrary appears from the context, the following words or expressions shall bear the meanings set out contra-positively below:

2.1.1. "**The ACTION**" - Is the action for damages under case number Y69426/2019 between the said biological mother of the Beneficiary, 0013-9 as Plaintiff in her representative capacity, and the Member of the Executive Committee for Health, Gauteng Provincial Government, in his nominal capacity as Defendant, in the High Court of South Africa, Gauteng Division, Pretoria;

2.1.2. "**The AWARD**" - Is the damages awarded to or for the benefit of the Beneficiary in terms of the court order granted in the action, excluding the amount awarded in respect of the trustee's remuneration in terms of fees, disbursements and other expenses provided for herein;

2.1.3. "**An APPLICATION**" - If the context indicates same, a formal application or action brought in a court of law, or, if the context indicates this, an informal application;

2.1.4. "**The BENEFICIARY**" - Is S[....] T[....] M[....], a minor male born on 7 September 2010 (also referred to as "S[....]" herein);

2.1.5. **"The CASE MANAGER"** - Is an appropriately experienced and knowledgeable individual who is not affected by actual or potential conflict of interest and who is suitably qualified and able to diligently perform his or her obligations, in particular the duties of a case manager, who is appointed at the discretion of the trustee, and whose duties include but are not limited to -

2.1.5.1. investigating the type or nature of the therapies and equipment reasonably required by the Beneficiary;

2.1.5.2. coordinating, overseeing and monitoring the implementation and use thereof from time to time;

2.1.5.3. identifying appropriate and available therapists, service providers and/or caregivers to be engaged or employed by the Trustee for the benefit of the Beneficiary;

2.1.5.4. obtaining prior approval and/or facilitating the process of obtaining prior approval from the Trustee for the incurring of fees, the costs of equipment, and caregivers' remuneration for the sole benefit of the Beneficiary from time to time;

2.1.5.5. providing advice to and reporting with appropriate regularity to the Trustee on any aspect falling within the ambit of his or her duties, obligations and expertise;

2.1.5.6. ensuring that the duties borne by any person towards the Beneficiary are as diligently and comprehensively performed as circumstances may require; and

2.1.5.7. performing any act he or she may be required to perform in the discharge of his or her duties diligently and with dispatch;

2.1.6. **"The COURT"** - The Gauteng Division, Pretoria of the High Court of South Africa, and only in the event that the Gauteng Division, Pretoria of the High Court does not have jurisdiction, any other division of the High Court of South Africa that has competent jurisdiction.

2.1.7. **"The COURT ORDER"** - Is the court order or orders issued or to be issued in the action, a copy/copies whereof will be annexed hereto;

2.1.8. "The DEFENDANT" - Is the Member of the Executive Council for Health of the Gauteng Provincial Government or his or her successor in title, or the designated representative of the said Member;

2.1.9. "**The DISABILITY**" or "**The BENEFICIARY'S DISABILITY**"- Is the cerebral palsy from which the Beneficiary suffers and all physical, neurophysical, neurodevelopmental, neurocognitive, psychological, psychiatric and medical consequences thereof of whatsoever nature, whether temporary, intermittent or permanent;

2.1.10. "The FOUNDER" - Is S[....] T[....] N[....], the Beneficiary's biological mother, also referred to as "the Plaintiff" herein;

2.1.11. "**The FUNDS**" - Are all amounts accruing to the Trust and its assets from any source of whatsoever nature, whether payments of capital, recovered costs including any party and party costs that may be recovered, investment income or accrued interest;

2.1.12. "**The INTERESTED PARTIES**" - Are the Plaintiff, S[....] T[....] N[....], and (if she be unavailable) the next of kin, as defined herein, and includes any duly appointed curator ad personam or /item to S[....];

2.1.13. "**The MASTER**" - Is the Master of the High Court in Pretoria;

2.1.14. "**A MEDICAL EXPENSE**" - Is any expense which flows from or is incurred in consequence of the Beneficiary's disability and which would not have been incurred but for the Beneficiary's disability and which is directly or indirectly related to hospitalisation, medical treatment and services, therapeutic services, caregiving services, case management services, the adaptation of accommodation, specialised education, transport, the costs of acquisition of any and all aids, devices or equipment as well as the maintenance costs thereof: Provided that any such expense incurred outside of the Republic of South Africa (save disability-related emergency treatment and services required whilst the Beneficiary is

travelling outside the Republic) shall be quantified as an expense for the purposes of depletion of the Medical Fund, as being equal to the reasonable cost thereof within Gauteng, Republic of South Africa;

2.1.15. "**MEDICAL FUND**" - The amount of any award made in the action in respect of future medical expenses (constituting the head of damages relating to future hospital, medical and related expenses) excluding any lawful deductions from such amount for the pro-rated quantum of legal fees and disbursements in the action, plus the proportional costs recovered from the action, paid into the Trust and the remaining balance thereof, from time to time, including any supplementary payment to such fund, as invested and managed by the trustee and as calculated upon termination of the Trust;

2.1.16. "**The NET CAPITAL AWARD**" - Is the total amount awarded as damages to or for S[...], after deduction of lawfully deductible fees and disbursements arising from the litigation, plus such legal costs as are recoverable from the Defendant in the action;

2.1.17. "**The NEXT of KIN**" - Is the closest living family member of the Beneficiary or, if such person is not his closest living family member, the person most closely involved in the Beneficiary's daily care: Provided that no person employed as a salaried caregiver or facilitator is to be regarded as "next of kin";

2.1.18. "**A NOTICE**" - Is any written notice delivered by either physical or electronic means to an interested party or the Defendant when the person who is obliged to give notice of a particular fact or circumstance to such interested party or the Defendant and who bears the onus of establishing that reasonable steps were taken to bring that fact or circumstance as contained in the Notice to that party's or the Defendant's attention;

2.1.19. "**The OBJECT**" - Is the object of the Trust as set out in clause 6 below;

2.1.20. "**The PLAINTIFF**" - Is the said S[...] T[...], S[...]'s biological mother;

2.1.21. "**The PROPERTY**" - Any immovable residential property which will constitute the primary residence for the Beneficiary, and which is purchased by the case manager and/or plaintiff (or the Beneficiary's legal guardian who has legal custody of the Beneficiary) fully or partially from the Funds, and over which a bond in favour of the Trust shall be registered to the extent that Funds are utilised in such purchase. The value of such property shall not form part of the Trust assets for purposes of either calculating the trustee's fees;

2.1.22. "**RENOVATIONS**" - Any renovations to be made to the property referred to in clause 2.1.21 above, or any property occupied by the Beneficiary as his/her primary residence in the event of it not being necessary for a property to be purchased as contemplated in clause 0013-14

2.1.21 for the benefit of the Beneficiary;

2.1.23. "**SECURITY**" - Is the security to be furnished to the satisfaction of the Master as envisaged in section 77 of the Administration of Estates Act, 66 of 1965;

2.1.24. "**The TRUST**" - Is a "Special Trust" as defined in section 1 of the Income Tax Act, 58 of 1962, created in terms of this Deed of Trust to protect and manage the award made in respect of his disability and its consequences to S[....];

2.1.25. "**The TRUSTEE**" - Is the original Trustee appointed and endorsed in accordance with the provisions of sections 6(1) and 6(4) of the Trust Property Control Act, 57 of 1988 as well as where contextually appropriate, any successor in title;

2.1.26. "**The TRUST ASSETS**"- Shall include the net capital award (including such costs as are recovered from the Defendant in the action) and all assets and investment property of whatsoever nature howsoever acquired, as well as all moneys making up the gross income, net income and/or increases in capital, irrespective of source;

2.1.27. **"The TRUSTEE'S REMUNERATION"** - Is the Trustee's fee referred to in clause 10 below and which is paid into the Trustee Remuneration Fund;

2.2. Unless stated otherwise or the contrary appears from the context -

2.2.1 words importing the singular shall include the plural and vice versa;

2.2.2. reference to one gender shall include all other genders; and

2.2.3. reference to a "person" shall include references to a natural person, a juristic person or a body corporate.

2.3. The headings of individual clauses in this Deed of Trust are for convenience only and shall not be used for purposes of interpretation of this Deed of Trust.

3. **NAME OF THE TRUST**

The name of the Trust is the S[....] T[....] M[....] TRUST.

4. **ESTABLISHMENT OF THE TRUST**

The Founder and the Trustee herewith establish the Trust in accordance with that which is contained in this Deed of Trust, it being specifically recorded that none of the Founder's Common Law and Statutory rights and obligations as the biological mother of S[....](particularly, without derogating from the generality of those words, the rights and obligations referred to in section 129(4) of the Children's Act No 38 of 2005), are by virtue of anything contained in this Deed of Trust abrogated, waived, renounced or diminished, save as expressly or by necessary implication provided for herein.

5. **DONATION**

The Founder donates to the Trust the sum of R250.00 (Two hundred and fifty Rand), for the administration of the Trust in accordance with the provisions of this Deed of Trust.

6. OBJECT OF THE TRUST

6.1. The object of the Trust is

6.1.1. to safeguard and administer the funds awarded as damages to the Beneficiary in such a manner as to benefit him by providing solely for his general day-to-day maintenance and/or living expenses and/or wellbeing, as was intended by the Court when it made the award;

6.1.2. to receive and manage the award.

6.2. The Trust is a discretionary Trust insofar as the application, allocation and appropriation of its assets are concerned and the Trust assets shall not vest in the Beneficiary save to the extent that the Trustee may in its absolute discretion deem appropriate.

7. DURATION OF THE TRUST

The Trust commences on the date that the Master of the High Court issues the Letters of Authority, having regard to the court order endorsing this Deed of Trust, and shall terminate as provided for in clause 18 below. This does not derogate in any way from the court order and the rights and obligations arising therefrom.

8. NUMBER, APPOINTMENT AND DISQUALIFICATION OF TRUSTEES

8.1. The Trustee shall accept its appointment as the original Trustee by signing this Deed of Trust and shall upon its appointment being confirmed by the Master of the High Court assume office as such.

8.2 No more than one trustee shall at any one time be appointed.

8.3. A Trustee shall cease to be a trustee

8.3.1. On resignation, provided that prior notice of no less than two (2) calendar months shall be given in writing to the Master, all interested parties, and the Defendant in order to clothe such resignation with validity;

8.3.2. In the event of the trustee becoming insolvent or is liquidated;

8.3.3. In the event of being disqualified in terms of section 69 of the Companies Act, 71 of 2008 (excluding the provisions of sub-section (6) thereof) to act as a director of any registered company;

8.3.4. In the event of being so removed from office by the Master or by the Court;

8.3.5. In the event of being placed under curatorship or is declared by a court to be incapable of managing his, her or its own affairs or is diagnosed as suffering from a mental illness, as contemplated in the Mental Health Care Act, 17 of 2002;

8.3.6. In the event of being found guilty of a criminal offence of which dishonesty is an element or is removed from an office of trust due to misconduct or dishonesty;

8.3.7. On death or deregistration;

8.3.8 One being absent from the Republic of South Africa ("the Republic") for more than three months without having been granted any leave of absence by the Master and without obtaining the consent of all interested parties capable of furnishing such consent;

8.3.9. In the event of being absent from office and not readily contactable by telephone or another effective method of contemporaneous communication for a period exceeding thirty (30) calendar days without having duly appointed a nominee to perform his, her or its duties and execute his, her or its authority.

8.4. In the event the Trustee intends to resign, the Trustee shall simultaneously with his, her or its notice of resignation nominate a willing successor who is able to act as Trustee.

8.5. Every appointment as Trustee shall be subject to confirmation by the Master and to such conditions as the Master may deem fit to impose, as well as the approval of all interested parties as far as is practical, provided that such approval shall not to be unreasonably withheld: Provided further that if a successor

nominated to be the Trustee is not able to assume the duties of Trustee for any reason whatsoever, the Master may appoint a Trustee after consultation with the interested parties;

9. DUTIES AND POWERS OF THE TRUSTEE

Without derogating from the generality of the duties imposed and powers conferred upon the Trustee elsewhere in this Deed of Trust:

9.1. The Trustee shall

9.1.1. perform all of the duties, discharge all of the obligations and exercise all of the powers so imposed or granted with the care and skill reasonably to be expected of a person who manages the affairs of another;

9.1.2. so perform his, her or its duties and exercise its powers in the sole interests of S[....]and solely for the attainment of the objects of the Trust;

9.1.3. keep proper records of all of the affairs of the Trust, including -

9.1.3.1. minutes of all meetings held;

9.1.3.2. recordals of decisions taken by the Trustee;

9.1.3.3. minutes of meetings with the case manager, where applicable; and

9.1.3.4. recordals of instructions to the case manager, where applicable;

9.1.4. ensure that proper records of all financial transactions and affairs of the Trust are kept, so that it is practically possible to establish with dispatch whether there has been compliance with this Deed of Trust and if such compliance is ongoing;

9.1.5. appoint a case manager, if necessary; timeously submit 1such information, reports, financial statements and any other documentation or information requested or required by the Master and comply with any valid request of the Master pertaining to the affairs of the Trust;

9.1.7. comply with and ensure compliance with the terms of any Court order or orders;

9.1.8. apply for the appointment of a curator ad persona for S[....] if and when it becomes necessary after consulting with the case manager if one has been appointed, the Plaintiff or, failing her, S[....]'s next of kin and inform the Defendant of such appointment;

9.1.9. record the current address and contact details of and maintain contact with S[....]and the Plaintiff or, failing her, S[....]'s next of kin;

9.1.10. subject to receiving prior payment of the reasonable costs of complying with any such request, if so requested furnish the Defendant and any interested party with a copy of the annual financial statements of the Trust Funds and/or the updated record of the expenses paid by the Trust Fund and the accounting in relation to the Trustee Remuneration Fund: provided that the Trustee shall not be obliged to comply with more than two such requests in any cycle of twelve (12) months and any decision whether to comply with any further requests in such a cycle shall fall entirely within the Trustee's discretion;

9.1.11. subject to clause 9.1.12 below, grant access to any interested party or the Defendant in electronic or other format to such documentation and information as relates to the affairs of the Trust at any reasonable time upon request by such interested party or the Defendant;

9.1.12. grant access to the Defendant only in electronic or other format to such documentation and information as relates to the affairs of the Trust Fund and expenses incurred by the Trust Fund at any reasonable time upon request by him or her;

9.1.13. having regard to the time limits and procedures involved in the taxation of the party-and-party and attorney-and-own-client bills of costs, within 90 days of the payment of the net capital award into the Trust or alternatively, within the time required for the taxation of the party-and- party and attorney-and-own-client bills of costs:

9.1.13.1. assess the accounts rendered by the Plaintiffs attorney of record in the action for compliance with the terms of any fee agreement and any applicable statutory provision (including the Contingency Fees Act, 66 of 1997);

9.1.13.2. take steps including formal taxation and/or approaching the Legal Practice Council to ensure that any amount deducted from the award which does not comply with such fee agreement or which offends against any

applicable statutory provision, and is accordingly owing to the Beneficiary, is identified and repaid and/or recovered;

9.1.13.3. inform the Defendant of the amount constituting the net capital award as paid into the Trust account within seven days of such amount having been paid into the Trust account, as well as inform the Defendant of the subsequent payment of the party and party costs, the two amounts constituting the net capital award as finalised in order;

9.1.13.4. subject to clauses 9.1.13.1, 9.1.13.2 and 9.1.13.3 above, ensure compliance with any enforceable contractual arrangement between the Plaintiff, S[...] (duly represented by the Plaintiff) and her attorney(s) and which may lawfully be deductible from any award to the beneficiary;

9.1.14. comply with any valid request of the Master relating to the affairs of the Trust;

9.1.15. identify all assets of the Trust and make an inventory thereof, ensuring that all such assets are kept separate from any trustee's assets;

9.1.16. take due cognisance of, but not be bound to give effect to the reasonable requests, wishes, views or preferences of interested parties and the Defendant concerning S[...] care and well-being; irrespective whether such are made directly or through the case manager;

9.1.17. invest all monies in the possession of and/or paid to the Trust in profit-generating and/or interest-bearing investments and deposit all monies which have yet to be so invested in a bank account opened and held in the name of the Trust;

9.1.18. give prior notice of at least two calendar months in writing to all interested parties, the Defendant and the Master if he, she or it intends to resign-or if he, she or it anticipates that he, she or it may become disqualified to act as Trustee by reason of a fact or circumstance referred to in paragraphs 8.3.2 to 8.3.9 above;

9.1.19. where required or appropriate, employ the services of

9.1.19.1. financial and investment advisers and/or brokers to advise on appropriate investment and employment of the Trust funds and assets; and

9.1.19.2. any professional service provider to render a service or advice to S[...]or to himself, herself or itself concerning any asset of the Trust;

9.1.20. on the advice of the case manager, where applicable, appoint medical attendants, and/or caregivers, where necessary taking due cognisance of the available funds and S[...]'s future and ongoing care;

9.1.21. timeously pay any expenses incurred by the Trust, including any medical expense, from its capital or income;

9.1.22. receive and retain contributions, donations and inheritances due to S[...], or to the Trust;

9.1.23. pay the costs of the administration of the Trust;

9.1.24. ensure that all financial transactions and transactions with financial implications are conducted in accordance with good business practises and on terms which are as beneficial as possible to the Trust and solely in S[...]'s best interests;

9.1.25. do everything which is required to institute and/or defend legal proceedings on behalf of the Trust;

9.1.26. attend meetings of the creditors of any person indebted to S[...], or to the Trust;

9.1.27. exercise a voting right or any other right attaching to a Trust asset or Trust business;

9.1.28. take out appropriate short and/or long term insurance;

9.1.29. upon the death of S[...], attend to payment of the Trust's liabilities and the distribution of the Trust's assets in accordance with this Deed of Trust; and

9.1.30. perform any act and execute any documents necessary for the successful performance of the duties related to his office.

9.2. May from the Trust funds -

9.2.1. provide the funds to purchase a residential property to serve as S[...]'s primary place of residence provided that the residential property sought to be purchased is suitable for S[...]'s needs and makes commercial sense to purchase, regard being had to the proposed purchase price of the property, S[...]'s needs, the extent of renovations that may be required in order to render the residential property suitable for S[...]'s needs; the monthly rates and taxes leviable in respect of the property; the maintenance and upkeep of the property and such other considerations as may have a bearing on whether the residential

property sought to be purchased will best serve S[....]'s physical and financial needs in the foreseeable future; and

9.2.2. subject to clause 9.2.1 above, provide the funds for any renovations and maintenance required to the residential property purchased for S[....]'s benefit, solely where such renovation is to make the property suitable for the Beneficiary, to the extent necessary;

9.2.3. and in doing so shall -

9.2.3.1. ensure the registration of a bond in favour of the Trust over the property, and conclude a loan agreement with the person/s in whose name/s the property is to be registered for purposes of ensuring the protection of the funds from the Trust used to purchase and renovate the property and to do so on such terms and conditions as the trustee deems fit to protect the Beneficiary's future interests;

9.3. In the event that the aforementioned property is to be sold, ensure that -

9.3.1. the Defendant is notified of the intended sale of such property;

9.3.2. all required legal procedures and protocols related to such sale, particularly (but not limited to) the cancellation of the bond and reversion of the Trust funds as utilised for the purchase of the property, reverting to the Trust on such terms and conditions as embodied in the agreement concluded between the trustee and the plaintiff or the Beneficiary's legal guardian; and

9.3.3. the cost of the registration of any bond over any other property, subsequent to the first bond, shall be defrayed from the proceeds of the sale of the property;

9.3.4. at the time of the sale, the Beneficiary has a suitable place to reside at;

9.4. Save for the purpose of exercising the powers, duties and functions of a Trustee, the Trustee shall not enter into any other contract with the Trust.

10. REMUNERATION OF THE TRUSTEE

10.1. The Trustee shall be paid an annual remuneration equal to one percent (1%) plus VAT per annum taken monthly of the value of the assets of the Trust, such value to exclude the capitalised amount of the Trustee's total remuneration which had been paid by the Defendant and which is retained in a separate account.

10.2. Each such payment of remuneration to be calculated and paid monthly in arrears from such account.

10.3. The value of the assets of the Trust shall for purposes of calculating the remuneration payable by the Defendant exclude the value of the Property and funds used from the Trust to purchase the Property or the amount of Bond registered over the Property, regardless of the value thereof and the date on which it was acquired as well as the cost of adaptations, alterations and improvements to the Property which may have been paid by the Trust.

10.4. In the event that a bond is registered in favour of the Trust over the property, the trustee would be entitled to include that value of the amount invested in the property in the calculation of its fees only in the first year in which the transaction has been concluded, then only in a year where any subsequent bond is registered over any other property.

10.5. It is recorded that the cost of the registration of the first bond shall be borne by the Defendant as an additional cost to the trustee's fees, as reflected in the court order, but any further and/or subsequent bonds shall be paid for from the proceeds of such property as returned to the Trust on sale of the property.

10.6. The Trustee shall receive no fees (including an acceptance fee and capital reduction fee) other than that for which provision is made in this Deed of Trust for acting as the Trustee of the Trust.

10.7. That portion of the award constituting the projected costs of administering the Trust, duly capitalised, shall be held by the Trust account separately and referred to as "the Trustee's Remuneration Fund", which funds, together with any

interest earned in respect thereof, is to be used only to pay the remuneration due to the Trustee quarterly in arrears: Provided that when the value of the Trust's assets is established for purposes of calculating the Trustee's annual remuneration, any amount in the Trustee's Remuneration Fund shall not be included, for purposes of such calculation.

10.8. Should the funds in the Trustee's Remuneration Fund become exhausted, the Trustee may employ the other assets of the Trust to pay the annual remuneration payable in terms of clause 10.1.

10.9. A nominee shall be regarded as the Trustee for purposes of remuneration and if remuneration is due to or has been paid to a Trustee no additional remuneration shall be payable to him, her or it.

11. FURNISHING OF SECURITY BY THE TRUSTEE

11.1. The Trustee shall not be obliged to furnish security to the Master or to any other public officer in respect of his appointment, provided that he, she or it, to the satisfaction of the Master, is at all material times covered by adequate professional indemnity insurance, proof of which shall be furnished to the Master annually on the anniversary of the Trustee's acceptance of his, her or its appointment.

11.2. In the event of the Trustee failing to maintain such indemnity cover during the currency of his, her or its appointment, or causing or permitting such cover to lapse and/or be rendered ineffective for whatever reason, then

11.2.1. the Trustee shall be liable to make good any loss sustained in consequences of any claim, if such loss would have been recoverable in terms of such insurance cover, including loss arising from a claim against it; and

11.2.2. the Trustee shall become liable to be dismissed from his, her or its office.

12. LIABILITY OF THE TRUSTEE

In accordance with the provisions of section 9 of the Trust Property Control Act, 57 of 1988 the Trustee shall only be exempted from or indemnified against liability for the consequences of his, her or its act/or omissions if he, she or it has acted in the performance of his, her or its duties and the exercise of his, her or its powers with the care and skill which can reasonably be expected of a person who manages the affairs of another.

13. ALLOCATION, PAYMENT OR TRANSFER OF TRUST ASSETS

Any payment, allocation or transfer of a Trust asset may at the discretion of the Trustee be effected in cash or in kind, either directly to S[....], or to his parent or guardian, or directly to a service provider, medical professional or therapist and, where appropriate and reasonably possible, shall be effected in consultation with a case manager, where applicable.

14. FINANCIAL YEAR

The financial year of the Trust shall end on the last day of February of each year unless the Trustee with the approval of its auditors determines otherwise, in which event the interested parties and the Defendant shall be notified thereof within one month of the Trustee so determining.

15. FINANCIAL RECORDS AND ACCOUNTS

15.1. The following financial and/or accounting records shall be kept:

15.1.1. All source documents (e.g. invoices, statements of accounts, delivery notes, etc.) and at least one electronic copy of each, adequately backed-up for safekeeping elsewhere than on the premises occupied by the Trustee;

15.1.2. Detailed books of account reflecting all income, expenditure, assets and liabilities

15.1.3. Detailed records and books of account relating to the affairs of the Trust Fund, setting out in respect of each respective expense the date on

which it was incurred, the name and address of the service provider or practitioner, the amount expended and if appropriate the relevant invoice number, as well as such other information as is reasonably required; and

15.1.4. Any other accounting records or books of account not listed above which the Trustee is ordinarily to be kept;

15.1.5. Annual financial statements which comply with generally accepted accounting practices, shall be drawn up within six months of the end of each of the Trust's financial years, including at least

15.1.5.1. a statement of income and expenditure; and

15.1.5.2. a balance sheet, in respect of that financial year.

15.2. All source documents, books of account, statements of income and expenditure, balance sheets, auditor's reports and other accounting records shall be kept for at least five years in the original and in an electronic format (the latter adequately backed-up and stored on premises separate from those occupied by the Trustee);

15.3. The original Trustee shall ensure that the Trust is audited during its own general, internal annual audit and may, in addition and at its discretion, appoint an external auditor to conduct an external audit of the books and records of the Trust at the Trustee's expense, whilst any Trustee other than the original shall cause this Trust to be audited when taking over as Trustee, by a duly qualified external auditor according to generally accepted accounting practices;

15.4. An interested party or the Defendant may require an independent external audit to be conducted, provided that the party requiring such audit shall bear the costs thereof.

16. APPOINTMENT OF THE CASE MANAGER

The appointment of a case manager lies solely in the discretion of the Trustee.

17. TERMINATION OF THE TRUST

17.1. The Trust shall terminate

17.1.1. upon the death of S[....], after all its liabilities have been settled and all its remaining funds and assets have been distributed in terms of this Deed of Trust; or

17.1.2. upon an order of the Court terminating it and ordering its winding up.

17.2. Upon termination of the Trust after the death of S[....]

17.2.1. the Medical Fund (which will not include any motor vehicle acquired or immoveable property, notwithstanding any expenditure in respect of adaptations thereto) and any and all moveable aids, equipment and devices remaining at that time shall be paid and be transferred to the defendant without undue delay provided that any costs or fees associated with such payment or transfer or any taxes levied thereon, shall first be deducted by the trustee and the balance remaining of the Medical Fund so paid over;

17.2.2. any funds not utilised in the Trustee Remuneration Fund shall be transferred to the Defendant without undue delay, any costs, or fees associated with such transfer and/or taxes levied thereon first being deducted by the Trustee; and

17.2.3. the balance of the capital and all other assets not falling within the remit of clause 17.2.1 and 17.2.2 above shall, after deduction of any costs or fees associated with such payment or transfer or any taxes levied thereon, be paid and/or transferred to the heirs of S[....], either in terms of any valid will made by him or, failing such will, in terms of the law of intestate succession;

17.3. In effecting distribution of the assets held by the Trust as provided herein, the Trustee shall be entitled to a distribution fee of 2% (two per cent) plus VAT calculated on the value of the assets so distributed.

18. DISPUTE RESOLUTION

18.1. In the event of a dispute arising of whatsoever nature the party wishing to have the dispute resolved:

18.1.1. In the event of a legal dispute shall be entitled to approach the incumbent Chairman of the Pretoria Bar Council (or his/her deputy) who shall nominate a practising member of the Pretoria Bar with the requisite experience to firstly, mediate, and if unable to reach resolution, to arbitrate the issues in dispute.

18.1.2. In the event of a dispute relating to a treatment modality make representations to the National Chairperson of the Occupational Therapy Association of South Africa, who shall decide, upon consideration of the representations, as to treatment and such chairperson would be entitled to consult with the requisite medical professionals involved.

18.2. The question of who bears the costs of mediating a dispute lies with the mediator/arbitrator.

19. **AMENDMENT OF THE DEED OF TRUST**

19.1. This Deed of Trust may only be amended by an order of the Court on application by the Trustee, an interested party, the Defendant, or another party with locus standi, after proper notice having been given to all interested parties and the Defendant as the case may be.

SIGNED at on this the day of 2023

Name of Signatory
Founder

Designation of Signatory

SIGNED at on this the day of 2023

Signature

Name of Signatory

On behalf of Trustee

Designation of Signatory