



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: **2243/2017**

In the application between:

C. B.

Applicant

and

H. B.

Respondent

HEARD ON: 8 JUNE 2017

JUDGMENT BY: RAMDEYAL, AJ

DELIVERED ON: 15 JUNE 2017

- [1] The Applicant approaches this court in terms of Rule 43 of the Uniform Rules for interim relief pending divorce.

- [2] The parties are married and are currently engaged in a divorce action which is pending in this Court.
- [3] It is common cause that the Applicant and the minor child, of both parties, are currently living in the matrimonial home and are also using the Respondent's Toyota Hilux motor vehicle.
- [4] The Respondent pays for the house and vehicle.
- [5] It is further common cause that the Respondent pays for the taxes, rates and water bill for the house, a Vodacom bill for his laptop used by the Applicant, school fees and other related expenses for the child, maintenance for the child and pays for the Applicant and the child as registered members on his Discovery Medical Aid.
- [6] He is willing to continue to do so. The Respondent opposes the application for maintenance for the Applicant and the child in the amount of R14 000.00, being R10 000.00 for the Applicant and R4000.00 for the child respectively. He opposes any further financial payments required by the Applicant as he claims that he is not in a financial position to do so.
- [7] He further opposes the application on the grounds that the Applicant's financial disclosure is not a true reflection of her earning, that she actually earns more than him as contemplated in his opposing affidavit and that her application is unreasonable.

- [8] In **Botha v Botha 2009 (3) SA 89 (WLD) at 106 C** it was held that the purpose of interim maintenance is to supplement expenses which the Applicant cannot meet however, in terms of Rule 43, such maintenance must be reasonable in the circumstances; depending upon the marital standard of living of the parties, the Applicant's actual and reasonable requirements and the capacity of the Respondent to meet the requirements.
- [9] In doing so, the court must establish whether the Respondent can further supplement the expenses of the Applicant which she apparently cannot meet.
- [10] Indeed there has been co-operation and willingness on the part of the Respondent. The Court must determine whether he has the capacity to make further financial contributions to the Applicant's expenses.
- [11] It is so that the Applicant and Respondent lived a comfortable life style when they lived together on a combined income.
- [12] The Respondent no longer lives at the matrimonial home. He lives with his parents at their home. According to his salary advice, which is not specifically in dispute, he earns a nett salary of R29,288.81. Counsel for the Applicant contends that the Respondent's expenses as disclosed in his opposing affidavit is not a correct reflection as it makes no room for his personal expenses.

- [13] The Respondent, in paragraph 7 of his affidavit sets out that he cannot even make a contribution towards his parents expenses where he currently resides.
- [14] In light of common cause factors, such as almost two-thirds of his salary being used for the Applicant and child, together with expenses he has incurred and must pay, it is apparent that there are no surplus funds.
- [15] In fact, it leaves him in a dire financial state with an incapacity to meet any further financial expenses of the Applicant.
- [16] Some of the Applicant's expenses in my view does appear to be unreasonable.
- [17] In **Taute v Taute 1974 (2) SA at 675** it was held that:
“...A claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands— similarly more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them...”
- [18] In Taute's case the court dismissed the Rule 43 application with costs and found 'no reasons for the Applicant to have come to court.'

The Court further held that her action in doing so incurred further and unwarranted costs and found no reason to depart from the ordinary rule that the unsuccessful party should bear the costs.

- [19] In spite of the Respondent's dire financial state, he is still willing to continue to pay as he is and does not seek a dismissal of the application with costs.
- [20] The court now turns to the aspects concerning the custody and access of the minor child. The ordinary principles apply, namely the best interest of the child concerned. The matter may be referred to the Family Advocate for a report for the purpose of disposing of the application.

See **Willies v Willies 1973 (3) SA 257 (D)**.

- [21] It is not in dispute thus far that the minor child reside with the Applicant. Contact and access rights of the Respondent with the said minor child is also not in dispute; but restricted.
- [22] The Applicant seeks an interim order for the Respondent to have visitation rights only on a Saturday with the said minor child at his parents home under the supervision of the Respondent's mother.
- [23] The Respondent disputes this and wants more unsupervised contact during the week as well.
- [24] It is common cause that the Respondent abused alcohol and had related incidents as a result of same.

There are also allegations of drug usage and the Applicant is concerned about the minor child's safety.

Visitation during the course of the week could also be disruptive to a 4 year old who also attends extra murals.

- [25] The court as the Upper Guardian of all children must rule in the best interests of the minor child taking into consideration all the information it has.
- [26] Since contact with the minor child and the Respondent has continued since he left the matrimonial home, the court finds no reason to prevent same at this stage, especially if it is at his parents home and under the supervision of the Respondent's mother.
- [27] However, this is only interim and an enquiry and report from the Family Advocate pertaining to all aspects in terms of Section 18(2) of the Children's Act 38 of 2005 is imperative before finalization of this Divorce matter in order for the court to further determine the best interests of the said minor child.

Accordingly, the court makes the following interim orders:

- i) Primary care of the minor child is awarded to the Applicant; whereby the minor child is to reside with her.
- ii) The Respondent is allowed reasonable telephonic contact during the week and visitation with the child at his parents home every Saturday between 10h00 and 17h00 to be supervised by his mother (as is currently in place).
- iii) A Family Advocate Report is to be requested and compiled to determine the best interests of the child hereafter.

- iv) The Applicant and the minor child are to continue to live at [...] B. R., Westdene, Bloemfontein and to use and keep the Toyota Hilux LDV; payments in respect of the house and vehicle are to be paid for by the Respondent.
- v) The Respondent is to pay all other reasonable medical expenses for the Applicant and child and to continue to keep both of them on his Discovery Medical Aid and to pay their contributory portions.
- vi) The Respondent is to pay the rates, taxes and water bill for the said house.
- vii) The Respondent is to pay schools fees and extra murals for the child.
- viii) The Respondent is to pay maintenance for the child in the amount of R1125.00.
- ix) Costs of this application to be costs in the cause.

T. RAMDEYAL, AJ

On behalf of the Applicant:
Instructed by:

Honey Attorneys
Adv. J.C Coetzer
BLOEMFONTEIN

On behalf of the Respondent:
Instructed by:

Spangenberg Zietsman & Bloem
Adv. W.A van Aswegen
BLOEMFONTEIN