

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

Case No.: 3238/2014

In the matter between:

A[...]-M[...] J[...]

Applicant

and

J[...] F[...] J[...]

Respondent

HEARD ON: 14 AUGUST 2014

JUDGMENT BY: E.K. TSATSI, AJ

DELIVERED ON: 4 SEPTEMBER 2014

- [1] This is an opposed application for payment of maintenance *pendente lite* and contribution towards costs in terms of Rule 43 of the Uniform Rules of the High Court (“the Rules”).

- [2] The applicant instituted divorce proceedings against the respondent under Case No 1028/2014, which action is still pending before this court.
- [3] The parties are married out of community of property on 18 December 2004. There are two minor boy children born from the union aged 6 years and 8 months old at the time of hearing of this matter.
- [4] The respondent got involved in an adulterous relationship with a certain Ms. L[...] J[...] v[...] R[...]. As a result the respondent moved out of the marital home in October 2013 to cohabit with Ms V[...] R[...]. At the time the applicant was pregnant with their youngest son.
- [5] The applicant earns a salary of about R16 721.53 whilst the respondent earns a salary of about R31 189.55.
- [6] The applicant is living with the minor children at the moment and she is presently taking care of them. They live in the matrimonial home.
- [7] It has been alleged that the respondent is at liberty to visit the minor children whenever he is willing and able to do so. The last time the respondent saw his children was on father's day in 2014.

ISSUES

- [8] The main issue in this Rule 43 application is whether or not the respondent will be able to pay maintenance *pendent lite* and other contributions toward costs.
- [9] The applicant indicated that the respondent abuses alcohol, as a result he was involved in two motor vehicle accidents. But for the alleged abuse of alcohol the applicant wants to be present every time the respondent visits the minor children or have them under his control. Basically the applicant wants the respondent to see the minor children under supervision.
- [10] The respondent denied the allegations that he abuses alcohol. He challenged the applicant to provide proof of such, and submit any criminal charges laid against the respondent. The respondent wants to have access and control of the minor children without any supervision. According to the respondent this arrangement of having the applicant present all the time when he is visiting the minor children will not work. The reason being that the applicant and respondent are always arguing. This will not be good for the children. The respondent indicated that he will not be able to continue to pay the mortgage bond for their marital home. He is of the view that the marital home should be sold and the applicant and the minor children secure accommodation that is more affordable.
- [11] The applicant estimated her monthly expenses in the amount of R22 378. 76 and she alleged that she has a shortfall of about R7827.23, which the respondent denied. The

respondent estimated his monthly expenses in the amount of R46 797.76, including a debt of about R40 000.00 of Wheathermakers, which the applicant denied.

SUBMISSIONS

The Applicant

[12] The following submissions were made on behalf of the applicant.

- The applicant earns half of what the respondent earns.
- The respondent failed to disclose that he earns a bonus of about R10 000.00 in addition to his salary.

[13] Counsel for the applicant added that the respondent offered to pay the school fees and other related costs for the minor children. Further submissions on behalf of the applicant were that the respondent should continue paying for the Volkswagen Citi Golf which is in the respondent's name in the amount of R1 500.00 per month. The respondent recently bought an Isuzu "bakkie" which he is paying R5 700.00 per month for.

[14] The respondent should further continue to pay the mortgage of R13 300.00 per month for the marital home, including security thereof. According to the applicant the respondent has been paying for insurance for their motor vehicles,

household contents and children's school fees. Further submissions on behalf of the applicant were that the respondent should contribute an amount of R5 000.00 towards the applicant's legal costs. Counsel for the applicant submitted that the respondent should keep the applicant and their minor children on his medical aid.

The Respondent

[15] The following submissions were made on behalf of the respondent:

[16] The respondent is prepared to cut his own children's hair to save money. The respondent is prepared to contribute as follows:

- (a) R1 500.00 for each child per month.
- (b) R800.00 for the domestic helper and R400.00 for the gardener.
- (c) R200.00 for unforeseen medical expenses.
- (d) School fees for the minor children and related costs, including extramural activities.

[17] In addition the respondent is willing to keep the children on his medical aid. The respondent will not afford to pay for the applicant's hair, applicant's maintenance, including her legal costs.

THE LAW

[18] Rule 43 prescribes a simplified streamlined and inexpensive procedure to obtain the same interim relief as provided by common law in matrimonial litigation (see **Zaphiriou v Zaphiriou** 1967 (1) SA 342 (W)). The procedure together with the stipulated time limits has been designed to enable the court to deal expeditiously with the interlocutory applications (see **De Villiers v De Villiers (1)** 1965 (2) SA 882 (C)). This means that the court may make findings, albeit not binding on a trial court, on incomplete or inferences drawn from them (**Levin v Levin** 1962 (3) SA 330 (W)).

[19] It suffices to consider what the court said in the case of **Nilsson v Nilsson** 1984 (2) 294 (C) at 295 (F):

“Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up careers or potential careers for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence maintenance claims and, if children had been born, custody claims could be properly determined. It was not created to give an interim meal-ticket to women who quite clearly at the trial would not be able to establish a right to maintenance. The grey area between the two extremes causes problems.”

[20] In **Kroon v Kroon** 1986 (4) SA 616 E, the court stated three principles, first being that no maintenance will be awarded to a woman who can support herself, secondly the aim of the court should be to award a “clean break” between the parties. The third principle that the court looked at in the

Kroon case, *supra*, is rehabilitative maintenance to be awarded for a certain period of time, to support a person while they are being trained for a job.

APPLICATION OF THE LAW

[21] In this application the applicant alleges that although she earns a salary it is not enough to pay for her expenses. The respondent is of the view that the applicant must reduce her expenses, specifically items he labelled “luxurious”, like hair services, DSTV, gym for her. The applicant agreed to abandon some of the expenses she thought the respondent could not pay for.

[22] I am inclined to grant the applicant some of the contributions towards costs that she is seeking, except maintenance for herself. (**Kroon v Kroon**, *supra*. In order to succeed for legal costs the applicant must demonstrate that she has little or no means of her own to pay for the legal costs and the amount sought is reasonably necessary to help pursue her defence (see **Nicholson v Nicholson** 1998 (1) SA 48 (W).

[23] The applicant has already indicated that due to the fact that she has to devote most of her time taking care of the minor children, she may have to give up any potential promotion at work. I am mindful of the fact that the respondent himself has his own debts to pay with the salary that he is earning.

- [24] I am prepared to order that the minor children's visit with the respondent be under supervision particularly that the youngest son is still an infant. I am satisfied that the applicant has set out sufficient facts before me which entitles her to be granted some of the relief sought.
- [25] In respect of the Rule 43 application, I make the following order *pendente lite*:

25.1 The respondent is ordered to pay the mortgage bond, insurance and security thereof until finalisation of their divorce action. The said amount, including arrears to be paid with effect from 1 October 2014, and every month thereafter on or before the 7th day of each succeeding month.

25.2 The applicant is awarded custody of the minor children subject to the respondent right of reasonable access which shall include but not limited to the right to have the minor children visit him, under supervision as follows:

- (a) Every first and last Saturday of the month from 9h00am up to 17h00pm,
- (b) Every second and third Sunday of the month from 9h00am up to 15h00pm.
- (c) Every father's day from 9h00am to 17h00pm,
- (d) On respondent's birthday from 9h00am to 17h00pm.
- (e) Respondent is expected to fetch the minor children at the matrimonial home. Respondent

shall return the minor children to the matrimonial home at the times stipulated above.

25.3 The respondent is directed to pay R1500.00 maintenance per child, per month, with effect from 1 October 2014 and every month thereafter on or before the 7th day of each succeeding month.

25.4 The respondent is ordered to put the couple's two minor children and the applicant on his medical aid.

25.5 The respondent is ordered to pay school fees for the minor children and all related costs, including extramural activities.

25.6 The respondent is ordered to pay for the Volkswagen Citi Golf with effect from 1 October 2014 and every month thereafter on or before the 7th day of each succeeding month.

25.7 Parties can approach the court on the same papers, duly amplified as soon as the family advocate's report is available.

25.8 The costs of this application are to be costs in the divorce action.

E.K. TSATSI, AJ

On behalf of the applicant:

Adv C. Reinders
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of the respondent:

Ms B. Smal
Instructed by:
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