

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 3710/2013

In the matter between:

SYBIL POTGIETER

Applicant

and

ALBERT POTGIETER

Respondent

JUDGMENT BY: SESELE, AJ

HEARD ON: 17 OCTOBER 2013

DELIVERED ON: 24 OCTOBER 2013

- [1] This is an application in terms of Rule 43 of the Uniform Rules of Court for:
- 1.1 maintenance *pendentelite* in respect of the minor child;
 - 1.2 interim order in respect of the parental rights and responsibilities for the care and contact with the minor child as contemplated in section 18(2)(a) of the Children's Act 38 of 2005;
 - 1.3 contribution towards costs of a pending divorce action.
- [2] Mr Tsangarakis for the applicant applied for condonation in that the applicant's affidavit was not properly attested in terms of the

regulations made in terms of section 10 of the Justices of Peace and Commissioners Act 16 of 1963.

- [3] Mr Bloem was in agreement that non-compliance with that the regulations should be condoned.
- [4] I accordingly condoned non-compliance with the regulations as refusal to do so would only result in extra costs for the parties because a new application will have to be launched again. Furthermore, the rule governing matters of this nature requires same to be dealt with inexpensively and expeditiously. (See **Wingaardt v Grobler** 2010 (6) SA 148 (ECG) at 150.
- [5] The applicant was a housewife at the time she lived together with the respondent and they were dependent on the respondent's gross salary of about R11 500,00 per month.
- [6] There is a pending divorce action between the parties under case number 3377/2013.
- [7] Subsequent to her moving out of the common home the applicant secured employment at Stevens Petroleum CC where she earns a gross salary of R18 000,00 per month.
- [8] The applicant uses her income to support herself, Shanté Stevens, and Michelle, a minor child who was born between the applicant and the respondent.

- [9] The total expenses for the applicant and the two minor children is R21 649,88 per month. The applicant receives financial assistance from her parents.
- [10] The respondent's income is the basic salary of R4 000,00 per month. The amount was confirmed under oath and is reflected as such on exhibit "A". The respondent's mother assists him to cover his expenses which exceed his monthly salary.
- [11] It is apparent from the above that the parties are living beyond their means.
- [12] The parties were joint owners of the immovable property which was subsequently sold and the proceeds thereof being R219 666,82 were deposited into the respondent's bank account. The balance in the account as at the date of this application was R4 170,00 as reflected on the bank statement.
- [13] Both parties have at various stages used the money for themselves. The respondent has also made payments to Dodona Trust which is administered by his parents.
- [14] The applicant seems to suggest that payment of her claims can be made from the proceeds of the sale of the immovable property referred to above.
- [15] The apparent dispute pertaining to the proceeds of the sale of the immovable property or how same may be utilised is a matter

beyond the provisions of Rule 43 and cannot therefore be entertained.

- [16] The respondent tendered maintenance *pendentelite* for the minor child in the amount of R400,00 per month, which I consider to be too little. I am of the view that the amount of R900,00 per month is reasonable under the circumstances.

ORDER

- [17] I accordingly order that:

- 17.1 That the parental rights and responsibilities in respect of care of the minor child, Michelle, inclusive of Michelle's primary residence in terms of section 18(2) of the Children's Act 38 of 2005 is awarded to the applicant *pendentelite*.
- 17.2 That the respondent, *pendentelite*, shall have the right to maintain contact with the minor child, Michelle, which shall include having Michelle with the respondent for two weekends per month from Friday, 17:00 until Sunday at 17:00.
- 17.3 That the respondent shall pay R900,00 per month in respect of maintenance *pendentelite* for the minor child, Michelle.
- 17.4 That payment of contribution to costs is refused.
- 17.5 That payment of the amount in paragraph 17.3 above shall be made on 1 November 2013 and thereafter on the 1st day of each and every succeeding month.
- 17.6 That the costs hereof shall be costs in the main action.

L. M. S. SESELE, AJ

On behalf of the applicant:

Adv. Tsangarakis
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of the respondent:

Mr Bloem
Instructed by:
Spangenberg Zietsman & Bloem
BLOEMFONTEIN

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