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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1. REPORTABLE: **YES**/NO
2. OF INTEREST TO OTHER JUDGES: **YES**/NO
3. REVISED: **YES**/NO

DATE: 10 October 2024

SIGNATURE OF JUDGE:

CASE NO: 047502/2024

In the matter between:

PB VZ **PLAINTIFF**

and

L VZ **DEFENDANT**

CASE NO: 36830/2022

In the matter between:

L DK **PLAINTIFF**

and

J-P DK **DEFENDANT**

CASE NO: 064524/2023

In the matter between:

WJ S **PLAINTIFF**

and

R S **DEFENDANT**

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date for the hand down is deemed to be 10 October 2024.

JUDGMENT

HAUPT AJ:

Introduction

[1] This judgment deals with the reasons for the orders granted in three of the unopposed divorces that came before me in the Family Court were the parties agreed to shared residency in respect of the minor children involved. These three matters provide a snapshot of the growing trend where parents, agree to shared residency, assuming that co-parenting can only be accomplished by way of equal sharing of the care and residency of children and that the only way the non-residential parent can remain involved in a minor child's life, is if the child commutes backwards and forwards each week between the parents' respective homes.

[2] Furthermore, shared residency is becoming a mechanism whereby one parent (usually the financially stronger party), effectively restricts the other parent's (usually the primary caregiver during the marriage) freedom of movement by ensuring that the other parent cannot move away with the minor children. This residency arrangement is also used in support of the argument that no cash maintenance is payable to the financially weaker parent as residency is shared equally and that no decision in respect of the minor child can be taken except if both parties agree thereto.

[3] The **Children's Act**[1] does not require joint decision making in respect of decisions in respect of a child except in very specific circumstances such as for example when the child is removed from the borders of the Republic.[2] Section 30 of the **Children's Act**, provides that co-holders of parental rights and responsibilities may act without the consent of the other co-holder except where the Act, any other law or a court order provides otherwise. In amplification, section 31 only requires that due consideration be given to the views and wishes expressed by the other co-holder of parental rights and responsibilities and the child[3] before a major decision is taken that affects the child or has an adverse effect on the exercise of parental responsibilities of rights by the other co-holder. Section 31 does not provide for joint decision-making.

[4] As both parents are vested with parental rights and responsibilities, legal representatives and their clients assume, incorrectly so, that shared, or co-parenting requires that each parent must have equal time with the minor child. No authorities were presented to the Court to support the assumption that shared residency is automatically the default position when both parties are vested with full parental rights and responsibilities.[4] The Full Court in **B v M**,[5] dealing with a matter where the parents had a shared residency

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[1] 38 of 2005
[2] Section 18(3)
[3] Bearing in mind the child's age, maturity and stage of development
[4] Section 18 (1) and (2) of the ***Children's Act***
[5] [2006] 3 All SA 109 (W)

arrangement in place and the mother wanted to relocate to another province as the father, remarked that:

> *"..[I]t is a myth that shared parenting necessarily involves a fifty per cent time share in raising children. Shared parenting means 'the active involvement of both parents in the daily lives of their children over periods of time which promote the children's development*.' ".[6]

[5] There is no presumption that a shared residency agreement, or for that matter any agreement relating to primary residency, contact and maintenance, is in a child's best interest simply because the parents agreed thereto and have implemented it for a period.

[6] In the unopposed divorce of ***PB VZ v L VZ*** *(the* ***"VZ"*** *matter)*,[7] the children were respectively 10 and, 8 years of age and the shared residency was in place for approximately a month. In ***L DK v L-P DK*** (the ***"DK"*** matter),[8] the parties implemented shared residency since their separation at the end of 2021. When the matter came before me, the minor daughter M was 8 and her brother D, 6 years old. The children resided one week, with each parent, rotating every Sunday at 17h00. In the unopposed divorce of ***WJ S v R S*** (the "***S*** *matter*")[9] the parties implemented a shared residency arrangement since July 2023 in respect of the two minor daughters M and L. The Family Advocate investigated the residency arrangement upon request of the parties and conducted interviews with the minor daughters during August 2023. At the time of the interview M was 10 and her sister L, 8 years of age.

[7] The three matters corresponded in respect of the following:

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[6] *Supra* at para 185. Where I quote from authorities, legislation or the papers filed such emphasis is my own
[7] Case no: 047502/2024
[8] Case no: 36830/2022
[9] Case no: 064524/2023

[7.1] The minor children rotated each week between the homes of the parents and the minor children apparently chose alternatively agreed with this residency arrangement.

[7.2] No cash maintenance component was paid to the parent with the lesser income capacity. The agreements only provided for the payment of direct expenses such as school and medical expenses and that each parent is to assume responsibility for maintaining the children when they are with the respective parent. The parents assumed that as the residency of the children is shared on a 50/50 basis, no cash maintenance is payable irrespective of the parties' respective income and the trite principle that each parent contributes to maintenance pro-rata his/her income.

[7.3] The Family Advocate raised concerns that shared residency may not be in the interests of the minor children involved. Consequently, the Office of the Family Advocate did not endorse these agreements. I had the benefit of a representative from the Office of the Family Advocate being present in Court whilst the parties gave oral evidence in support of shared residency. After hearing oral evidence and the comments from the Family Advocate, the matters stood down for the Family Advocate to consult with the parties and the minor children and to provide a recommendation.

[7.4] The parents argued that because shared residency had been in place for some time and they had agreed thereupon, it in essence automatically was in the best interest of their children and that the Court should not disrupt the status *quo*.

[7.5] Like in most divorces, one of the reasons for the breakdown of the marriage was a lack of meaningful communication, frequent arguments and/or irreconcilable differences between the parties. However, the parties testified that an utopian state exists where they

have put all their differences aside, and are getting along and communicate effectively.

[7.6] The particulars of claim simply contained the averment that the parties entered into a settlement agreement and that the settlement agreement is attached to the summons. No facts were pleaded to substantiate the relief sought.

[7.7] The evidence affidavits filed in accordance with the Practice Directive for the hearing of unopposed divorces in the Gauteng Division, either lacked sufficient detail regarding the arrangements in respect of the child and/or was inconsistent with the oral evidence provided to the Court, and/or the information the Family Advocate obtained from the parties, the minor children, and/or the children's schools. In the ***VZ*** and the ***DK*** matters the parties, and their attorneys were provided with the opportunity to explain either the contradictory evidence placed before the Court and/or their failure to either provide or comply with the Annexure "A" form filed in terms of Regulation 2 of the ***Mediation of Certain Divorce Matters Act****,* 24 of 1987.[10]

[7.8] If this Court had not called for oral evidence, and the urgent assistance of the Family Advocate and merely accepted the evidence affidavits on face value, the Court would not have been in a position to fulfil its legislative and constitutional duties towards the minor children involved.[11] In the ***VZ*** and **S** matters the oral evidence of the Defendant and the Plaintiff, and the averments in the Plaintiff's evidence affidavit filed in compliance with the Practice Directive and the subsequent interview with the Office of the Family Advocate were irreconcilable.

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[10] Annexure A substituted by GN R 1123 of 2001

[11] Section 7 of the ***Children's Act***; Section 28(2) of the ***Constitution***; Section 6 of the ***Divorce*** *Act* 70 of 1979

[7.9] An order without the benefit of oral evidence and the assistance of the Family Advocate would have *inter alia* had the consequences of the integrity of the functions and/or obligations of the Office of the Family Advocate in terms of the relevant legislator framework being compromised. This would have led to the integrity of this Court and its processes being compromised, and the emotional and/or physical well-being of the minor children involved may have been jeopardised.

[7.10] Shared residency was used as a mechanism to ensure that one parent (i.e. the mother) doesn't move away with the minor children and/or that all decisions regarding the children can only be taken by mutual agreement.

[8] Section 6 of the ***Divorce Act*** compels a Court before granting a decree of divorce to satisfy itself that the best interests of a minor child, or major dependent child in respect of maintenance, is served by the agreement reached between the parents as far as it relates to the minor child's residency, the exercise of contact and the payment of maintenance.[12] This may include that the Court must consider a report and recommendation from the Family Advocate or refer the matter for an investigation and make any

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[12] *Section 6. Safeguarding of interests of dependent and minor children.-*
(1) A decree of divorce shall not be granted until the Court-
(a) is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances; and
(b) if an enquiry is instituted by the Family Advocate in terms of section 4 (1) (a) or (2) (a) of the Mediation in Certain Divorce Matters Act, 1987, has considered the report and recommendations referred to in the said section 4 (1).
(2) For the purposes of subsection (1) the Court may cause any investigation which it may deem necessary, to be carried out and may order any person to appear before it and may order the parties or anyone of them to pay the costs of the investigation and appearance.
(3) A Court granting a decree of divorce may, in regard to the maintenance of a dependent child of the marriage or the custody or guardianship of, or access to, a minor child of the marriage, make any order which it may deem fit, and may in particular, if in its opinion it would be in the interests of such minor child to do so, grant to either parent the sole guardianship (which shall include the power to consent to the marriage of the child) or the sole custody of the minor, and the Court may order that, on the predecease of the parent to whom the sole guardianship of the minor is granted, a person other than the surviving parent shall be the guardian of the minor, either jointly with or to the exclusion of the surviving parent.
(4) For the purposes of this section the Court may appoint a legal practitioner to represent a child at the proceedings and may order the parties or anyone of them to pay the costs of the representation."

order it may deem fit including the appointment of a legal practitioner to represent the child in the proceedings.[13]

[9] The provisions of Section 6 thus place a duty on the Court when considering the granting of a divorce, irrespective of whether it is an opposed or unopposed divorce. The ***Divorce Act*** does not provide the Court with the discretion where the interests of minor and dependent children are affected to simply grant a decree of divorce, and for example defer outstanding care and/or contact issues to the Children's Court or maintenance to the maintenance Court for determination. The legislative duty on the Court is to satisfying itself that the relief the parents are seeking, indeed serves the interests of the relevant child. When establishing the best interests of minor children, the Court as upper guardian has a wide and unfettered discretion.

[10] Unfortunately, these three unopposed divorces are the proverbial tip of the iceberg in the ever-increasing challenge Judges face when sitting in the Family Court and hearing unopposed divorces on affidavit and without the benefit of input from the Office of the Family Advocate.

Rubberstamping settlements, evidence affidavits and placing relevant evidence before the Divorce Court

[11] The *Consolidated Practice Directive 1/2024 for Court Operations in the Gauteng Division* provides for the hearing of unopposed divorces.[14] Unopposed divorces involving minor children are dealt with in paragraph 30.6 of the Practice Directive as category B divorces. The Practice Directive provides that in such matters, similar to matters where no minor children are involved, evidence is to be adduced on affidavit and that no party shall testify in person save where the Judge orders otherwise.[15] These divorces shall be disposed of at the discretion of the allocated Judge, which may include disposal without oral evidence, disposal during a video conference and/or a

[13] Sections 6(1)(b), (3) and (4)
[14] The directive came into operation on 12 June 2024
[15] Para 30.6.1 of the Practice Directive

physical hearing.[16] The Practice Directive clearly specifies what should be included in the affidavit as follows:[17]

- *an affidavit from the Plaintiff setting out the relevant evidence, which must address in detail the arrangements contemplated for the minor children and the views or endorsement of the Family Advocate, if any,*
- *a certified copy of the settlement agreement,*
- *a certified copy of the marriage certificate …"*

[12] As highlighted in ***AR v BMR***[18] the hearing of unopposed divorces by way of adducing evidence on affidavit is open to abuse. Unfortunately, many legal practitioners continue to fail in their duty towards the Court by inadequately advising their clients regarding what evidence needs to be placed before the Court as upper guardian.[19] More often than not the evidence of the parties, as set out in the evidence affidavits, and the subsequent oral evidence and/or information provided during an interview with the Office of the Family Advocate, is mutually destructive.

[13] It is trite that when the interests of minor children are concerned, each matter must be decided on its own merits and the Court does not function as a rubberstamp merely because parents have reached an agreement. In the three matters, as in many of the other unopposed divorces that come before me, the evidence affidavits provided the barest of detail to satisfy the requirements of Section 6 of the **Divorce Act** and the Practice Directive. The evidence affidavits failed to address the required "detail" in relation to the arrangements in respect of the children, and to place the Court in a position to ascertain why the settlement agreement is in the interest of the children concerned including the payment of an adequate and reasonable maintenance contribution.

[14] In drafting these evidence affidavits many practitioners seem to ignore the

[16] Para 30.6.6 of the Practice Directive
[17] Para 30.6.3 of the Practice Directive
[18] Case no: 060704/2023; 001200/2023 [2023] ZAGPPHC 2035 (2023) para 5
[19] Para 5

legislative duty imposed on the Court by the provisions of Section 6(1) and (3) of the **Divorce Act** or that there should be compliance with Regulation 2 of the **Mediation in Certain Divorce Matters Regulations,** *1990* in respect of the completion of the Annexure "A" form. The Annexure "A" form provides relevant information regarding care and contact arrangements and the parties' financial position.[20]

[15] In my view, to comply with the requirements for an evidence affidavit in accordance with the Practice Directive, a parent must address the factors listed in section 7 of the **Children's Act** that are relevant to the factual context of the particular matter.[21] This includes sufficient, but concise, facts regarding which parent(s) the child resides with primarily (i.e. the primary caregiver), whether the caregiver works and if so who cares for the child when the caregiver parent is at work, the child's relationship and contact with the other parent, any special needs of the child, whether adequate maintenance has been provided for the child in accordance with the parties' standard of living and respective earning capacities and any other factor listed in section 7 which may be applicable.

[16] As upper guardian, the Court's function in fulfilling its constitutional and legislative duties in respect of minor children is frustrated and compromised when parties provide selective or incomplete information.[22] This was particularly evident when the ***VZ*** *matter*, came before me. The particulars of

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[20] The Regulations in terms of Section 5 of the ***Mediation in Certain Divorce Matters Act****, 24 of 1987*, specifically provide as follows in Regulation 2:
2(1) …
a plaintiff in any divorce action in which any relief is claimed in relation to the custody or guardianship of, or access to, a minor or dependent child of the marriage concerned; …
(a) …
which action is instituted or application is made on or after such coming into operation, shall, together with the summons or notice of motion whereby such action is instituted or application is made, deliver or cause to be delivered to the defendant or respondent, as the case may be, a completed form, duly sworn or affirmed, corresponding substantially to annexure A, and file with the Registrar of the Court two copies thereof."

[21] Section 7 provides a list of factors that must be taken into consideration where relevant whenever the best interests of the child standard is applied. In addition, section 9 provides that in all matters concerning the care, protection and well-being of a child, the best interest is of paramount importance and must be applied.

[22] Section 28(2) of the ***Constitution*** of the Republic of South Africa, 108 of 1996, Sections 7 and 9 of the ***Children's Act*** and Sections 6(1) and (3) of the ***Divorce Act***

claim dated 3 April 2024 merely states that the parties reached a settlement regarding the minor children. No attempt is made to even provide the barest of facts on the pleadings to substantiate the unspecified relief sought so that the requirements of Section 6(1) and (3) of the ***Divorce Act*** are met.

[17] The parenting plan attached to the settlement agreement in the **VZ** matter, only refers to “contact” on a week / week basis, joint decision making and that no cash maintenance will be payable by the one parent to the other. The parenting plan records that the father (the Plaintiff in the divorce action) tenders to pay all school fees and school-related expenses of the minor children and the medical excesses not covered by the Defendant ’s (the mother) medical aid.

[18] The Annexure “A” deposed to under oath by the Plaintiff on 25 April 2024, also did not “substantially” correspond with the Annexure “A” form in terms of Regulation 2 of the ***Mediation in Certain Divorce Matters Regulations.*** The prescribed form was amended by omitting any reference to the parties’ gross monthly income and the extent of their monthly financial commitments.

[19] In the **DK** matter, the parties signed two settlement agreements. The first settlement was signed during May 2022, and the second during April 2024. The minor daughter M was 5 and her brother D, barely 3 years of age, when the parties decided to implement a shared residency arrangement when they separated at the end of 2021. When the matter came before me, M was 8 and D, 6 years old.

[20] Both the 2022 and 2024 settlement agreements provide in principle for the same arrangement regarding the rotation of residency every Sunday at 17h00 and no payment of a cash maintenance component by one parent to the other. In both settlements the parties assume liability for payment of the children's school fees and other school related expenses as well as the agreed reasonable extramural activities. In addition, the father (the Defendant in the divorce action) undertook to keep M and D registered as dependents on his medical aid.

[21] The difference between the two settlements relates to the mother's (the Plaintiff in the divorce action) *pro rata* contribution towards school and extra mural expenses. In the May 2022 settlement[23] the parties agreed that the Plaintiff would pay 1/3 and the Defendant 2/3's of the reasonable and necessary shortfalls not covered by the medical aid. The settlement records the total estimated monthly expenses of the two minor children as R12,153.75, which includes school fees, extra mural activities, food and clothing. The Plaintiff was to pay R4,059.35 of these expenses, which is equal to 1/3 of the expenses and the Defendant R8,094.40, being 2/3 of the expenses. In the event of any additional expenses or increases of expenses, the Plaintiff was to contribute 1/3 and the Defendant 2/3's towards such expenses.

[22] In the April 2024 settlement, the parties record that they are now liable on a 50/50 basis for medical excesses not covered by the Defendant 's medical aid. The Defendant is now liable for the payment of the school fees and the Plaintiff for the payment of after-care fees. The remainder of the expenses are to be shared equally between the parties. Although the Plaintiff deposed to the Annexure "A" form under oath on 29 April 2024, the form was not uploaded onto CaseLines, when the matter came before me. In addition, no explanation was provided in the evidence affidavit regarding the difference between the two settlements and why the parties only approached the Court more than two years after agreeing to shared residency.

[23] In the **S** matter the parties implemented a shared residency arrangement since July 2023 in respect of the two minor daughters M and L. The Family Advocate filed a report during May 2024 expressing concerns that M and L were not adjusting to the shared residency arrangement. In particular M was not coping emotionally. Consequently, the Office of the Family Advocate recommended that the primary residence of the minor children vests with the mother (the Defendant in the divorce action) as she was the children's

[23] Clause 2.2 thereof

primary attachment figure. The father (the Plaintiff) was to exercise contact on alternative weekends and school holidays. Despite the recommendation, both parents persisted that shared residency was in the best interest of M and L.

Compliance with the Practice Directive and basic principles in relation to pleadings

[24] High Court Rule 18(4) provides that a pleading must contain clear and concise statements of all the material facts on which the party relies for a cause of action, defense or response to any other pleading.[24]

[25] In divorce proceedings the pleadings, even if the action is settled, must contain sufficient particulars to allow the party, and in the present circumstances the Court hearing the unopposed divorce, to understand the basis for the relief sought in so far as it relates to the minor, or dependent major children involved.

[26] Unfortunately, in most unopposed divorces the particulars of claim merely confirm that the parties have reached a settlement agreement without providing sufficient facts to support the relief sought and the evidence affidavit filed usually contains the barest of details. Such an approach does not serve the interest of justice nor does it assist the Court in fulfilling its duty as upper guardian.

[27] In the ***VZ*** matter, the particulars of claim dated 30 April 2024 and the evidence affidavit deposed to by the Plaintiff on 31 May 2024 make no reference to the fact that the parties have agreed in essence to shared residency or even “contact” as referred to in the parenting plan. No factual basis is provided why the settlement agreement and parenting plan serves the interests of the children. The only reference to the best interest of A and R is contained in paragraph 3.11 of the Plaintiff’s affidavit where he states as follows:

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[24] Theophilopoulos C, Van Heerden CM, Borraine A: ***Fundamental Principles of Civil Procedure*** (2nd Ed) LexisNexis at para 9.4.3 regarding the pleading of material facts only

"3.11 The arrangements made in the settlement agreement in the parenting plan which is attached thereto as Annexure "KLM" are and will continue to be in the minor children's best interest."

[28] The failure to comply with the Practice Directive is one of the factors I considered when I granted an order disallowing the fees of the attorney in the **VZ** matter

[29] In the ***DK*** matter the particulars of claim dated 5 July 2022 makes no reference to why the agreement regarding the care of the children is in the best interest of M and D. No reference is made that the parties have agreed on and implemented shared residency since the end of 2021. However, the evidence affidavit deposed to by the Plaintiff on 27 June 2024 attempted to addresses not only the endorsement by the Family Advocate but also why shared residency should be granted as follows:

"3.17 I note, though, the comment by the Family Advocate indicating that the parties are to satisfy the Court that shared residency is in the minor children's best interest. To this end, I wish to state the following:

3.17.1 I am of the opinion that shared residency should be granted for the minor children for the following reasons:

3.17.2 The parties have had an arrangement for shared residency in place since December 2021, which arrangement is still ongoing;

3.17.3 Both parties are of the belief that the minor children are happy with this arrangement, and are well adjusted to it;

3.17.4 The Defendant and I have a great understanding when it comes to the needs of the minor children; and

3.17.5 All decisions are taken in consultation with each other and in the best interests of the minor children;

3.17.6 Removing the current arrangement may lead to unnecessary upheaval and distress for the minor children."

[30] In the ***S*** matter the particulars of claim dated 3 July 2023 states that the parties entered into a settlement agreement before the summons was issued and merely refers to the attached settlement. In the evidence affidavit deposed to by the Plaintiff on 2 July 2024, supported by a confirmatory affidavit from the Defendant, the Plaintiff addresses the remarks of the Office of the Family Advocate and motivates shared residency as follows:

"7.3 I am advised by my attorney of record that the settlement agreement has not been endorsed by the Family Advocate, as we are requesting shared residency. A report was issued by the Family Advocate to provide reasons for the outcome, same is attached under Caselines section 03-1.

7.4 Despite the aforementioned recommendations, we firmly believe that the shared residency arrangement that has been the status quo for a period of more than 12 (twelve) months is in the best interest of the minor children for the following reasons:

7.4.1 It is our submission as the parents that the Family Advocate's reports are based on numerous inaccuracies and out-dated information which was

sourced during consultations held more than 10 (ten) months ago.

7.4.2 *The main concern issued by the social worker relates to the sharing of school uniforms between households and a few times where stationary/glasses etc were forgotten at one parent.*

74.3 *Lastly, the social worker has flagged the issue of the minor children sleeping in the same bed as the mother when residing with the Defendant but in their own room when at the father and that this is purportedly pointing to regression.*

7.5 *In addressing the aforementioned, it is submitted that in the beginning there was a few growing pains and things got forgotten by the minor children, however, this is not the case any longer.*

7.6 *Each parent now has all the necessary items for each minor child at their own premise, accordingly, there is no sharing of school uniforms, stationary, clothing between the two households. This means that no major disruption takes place during the handover period.*

7.7 *Furthermore, both parents live in close proximity of each other and to the school and if by any chance a child requires something from the non-resident parent during that week, a quick exchange can take place, however, this has not been necessary for some time.*

7.8 *The aspect of the minor children's routine, it is submitted that both parents ensure that a similar routine is enforced at both households. The aspect that the minor children were*

sleeping with the mother, and that this points to emotional regression is completely unfounded and untrue. The reason for same merely related to the mother living in a 1 (one) bedroom residence during that time and that the minor children had nowhere else to sleep but in the mother's bed.

7.9 *The minor children have a stable environment, they get dropped off at school in the morning by the parent with which the reside during that week, after school they attend to their extramural activities and aftercare. At aftercare, the children are strictly required to attend to all homework. The minor children are then collected from aftercare and they then have a few minutes of free time at home, whereafter, the routine of homework being checked by the parent, signing of any school forms, dinner and, bath time starts. Both parents ensure the minor children are in bed at a similar time.*

7.10 *The routine is followed strictly by both parents and the weekly rotation is also strictly enforced by the parties, no deviation from the specified arrangements take place.*

7.11 *It is clear from the school reports that the minor children are doing well academically, socially and emotionally.*

7.12 *As mentioned, the shared residency arrangement as set out in the settlement agreement is strictly followed, and have seen positive results.*

7.13 *My relationship with the Defendant has since our separation been communicative, cooperative and positive in facilitating arrangements around the minor children. We have exhibited to this Court that over the past 12 (twelve) months that we have the ability to maintain a cooperative co-parenting relationship serving the best interests of the minor children*

over an extended period.

7.14 Both minor children are above the age of 9 (nine) years and have an extremely good relationship with both parents. Both minor children also made it clear to the Family Advocate that they prefer the current rotation and do not wish to stay with one parent primarily.

7.15 It is advised by my attorney of record that it is well known in the industry that the Family Advocate 's office favours that residency vests with one parent, however, it is submitted that from the aforementioned that this is not in the best interest of the minor children.

7.16 In light of the aforementioned we seek the above Honourable Court to make the settlement agreement in its current form an order of Court."

[31] None of the parties in any of the three matters attempted to motivate in either the particulars of claim, the evidence affidavit or during oral evidence why the arrangement with regards to maintenance for the minor children is in their best interest. It is settled law that each parent has an obligation to contribute towards the maintenance of children *pro-rata* their respective incomes. The Legislature acknowledges the importance of *pro rata* maintenance contributions as financial information is required in the Annexure "A" form that must be completed in all divorce actions.

[32] A child is entitled to reasonable maintenance and what is reasonable depends on circumstances such as the standard of living the family enjoys, the parents' respective income or income potential, the child's needs and the parents' ability to pay. [25]

[25] Van Zyl L : **Handbook of the South African Law of Maintenance** (4th Edition) LexisNexis, and the discussion in para 1.2.4 and 1.2,7.

[33] A misperception exists that because the children are residing on an equal basis with each parent, the parents automatically contribute equally irrespective of what their respective incomes are. I have not been referred to any authorities during the argument before judgement was reserved and thereafter in the subsequent heads of argument filed, to support the notion that where parties share residency, the entrenched principle of each party making a pro-rata contribution no longer applies.

***S** matter: Evaluation of oral evidence and the information obtained by the Office of the Family Advocate*

[34] In the ***S*** matter both the Plaintiff and the Defendant testified. Their testimony merely confirmed what was stated in the evidence affidavit. Regarding the maintenance of the children, the parties agreed that the Plaintiff would be liable for the scholastic and extramural expenses of their minor daughter, L, and the Defendant of all these expenses in respect of the minor daughter, M. All other costs, including costs for clothing and excess medical expenses would be split equally between the parties. The Plaintiff would continue to keep the children as registered beneficiaries on his medical aid.

[35] No Annexure A form was filed, however, from the oral evidence before the Court it was apparent that the Plaintiff earned a higher income than the Defendant. Neither of the parties could provide the Court with a reasonable explanation why the Plaintiff is not contributing pro-rata more to the children's expenses, including an additional cash component to the Defendant.

[36] Both parties during their evidence attempted to downplay the valid concerns raised by the Family Advocate in the May 2023 report. Advocate Langeveldt of the Office of the Family Advocate was present in Court and made submissions after the parties testified in support of the concerns raised in their report.

[37] The Family Advocate had a subsequent meeting with the parties and the

minor children and reported back to the Court that the concerns expressed in the 2023 report remain relevant. Contrary to the parents' conviction that the shared residency arrangement "… *have seen positive results*"[26] the Family Advocate found that both daughters are still struggling emotionally to adapt.

[38] Although the parties testified that shared residency is the expressed wish of the children, the Family Advocate 's investigation revealed the contrary. The children were initially informed of the shared residency arrangement by their parents. According to M she was not given a choice regarding the residency option. Both children cry, particularly the youngest daughter L, after every rotation on a Monday. It takes some time for the children to adjust and stabilise emotionally after each rotation.

[39] Although the parties testified that their relationship improved and that they communicate effectively, the Family Advocate 's investigation uncovered a different situation. An altercation between the parents took place in front of the children at a school sport event which led to the parents being reprimanded by the school. The school gave the parents a warning that they would not be allowed on the school premises if their disruptive behavior continued. The school also reported difficulty regarding getting paperwork back from the parents due to the shared residency arrangement.

[40] Although the minor daughters have started to sleep in their own beds, in the room that they share at their father's home, they continue to sleep in the same bed as their mother during the week when they reside with her despite the Defendant no longer residing in a 1-bedroom residence.[27] The Family Advocate motivated their concerns regarding the regressive behavior displayed and why this is age inappropriate given the ages and developmental stages of M and L.

[41] Although M and L were performing well academically, the Family Advocate reported that the emotional functioning of the children have deteriorated. M

[26] Para 7.12 of the Plaintiff's evidence affidavit
[27] Para 7.8 of the Plaintiff's evidence affidavit

and L are not coping with the disruptive effect caused by the shared residency. Despite shared residency being in place for the past 12 months the children have not adapted and their primary attachment remained with the Defendant.

[42] The importance of the objective insight and assistance that the Office of the Family Advocate provide in matters regarding the interests of minor children, as highlighted in ***Terblanche v Terblanche***[28] have been endorsed over and over by our Courts. Unfortunately, the parties in the **S** matter refuse to consider any negative fallout caused by the shared residency. Despite the Family Advocate's further investigation and report, the parents persisted that a divorce be granted providing for shared residency.

[43] As upper guardian this Court, when determining the best care, residency and contact arrangements in the interest of minor children, the Court is not looking for the perfect parent, but rather the least detrimental alternative available for safeguarding the children's growth and development.[29]

[44] To consider the best interests of M and L, the Court cannot look at a set of circumstances in isolation. Regard should be had to not only what has happened in the past but also after the close of pleadings and even right up to the day when the Court considers the evidence including the possibility of what might happen in the future if the Court makes a specific order.[30]

[45] When considering the oral evidence provided by both parents as well as the comprehensive report and the further information provided by the Office of the Family Advocate, within the context of the legislative duty imposed by the provisions of the **Divorce Act**, I was not satisfied that the *status quo* of shared residency for the past year served the interests of M and L. In addition, this Court cannot ignore the different standard of living that the children enjoy between the two respective homes of the parents and that the

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[28] 1992 (1) SA 501 (W) at 503C-H
[29] ***P v P*** 2007 (5) SA 94 (A) at para 24
[30] ***P v P and Another*** 2002 (6) SA 105 (N) at 110 C-D

Defendant is not in the same financial position as the Plaintiff to provide in the maintenance needs of the children when they are in her care. Consequently, a decree of divorce could not be granted.

[46] With the evidence at my disposal, and in particular the concerns raised by the Family Advocate of the continuing disruptive effect of the shared residency on the emotional well-being M and L, an order was granted in accordance with section 6(2) of the **Divorce Act** to safeguard the children's emotional well-being in the interim pending a further forensic investigation. As upper guardian the Court can only hope that the parties will put their own convenience and interests aside for the sake of the emotional wellbeing of their daughters, and implement the interim order pending the finalisation of the forensic investigation.

***DK** matter: Evaluation of oral evidence and the information obtained by the Office of the Family Advocate*

[47] During oral evidence the Plaintiff repeated the reasons why she and the Defendant are of the view that the shared residency agreement which has been in place since December 2021, is in the interest of the two minor children. This includes the fact that it is been the *status quo* for a long period of time, that the children are happy and well adjusted, that the parties communicate effectively when it comes to the needs of the children, that all decisions are taken together, and that changing the *status quo* may have a negative impact on the children.

[48] According to the Plaintiff 's evidence on 8 July 2024 they discussed their separation with the minor child A, who was at that stage, approximately 5½ years old. Apparently, A indicated that she wanted a shared residency arrangement. I find it improbable that a child of 5½ years of age was of such maturity to comprehend the advantages and disadvantages of a shared residency arrangement when our Courts, experts and the Family Advocate are still grappling on a case-by-case basis with the question of whether shared residency will serve the interest of the child.

[49] The concerns regarding the possible disruptive effect of shared residency and whether the granting of shared or joint residency serves the interests of a minor child in a particular set of circumstances, is not new. As far back as 1987, Mullins J in ***Schlebusch v Schlebusch***[31] remarked regarding the Court's concern in relation to a trend towards granting joint residency orders:

> ***"****...(I) view with concern any trend towards the granting of joint custody orders.*
>
> *While there may in rare cases be a continuing situation where joined decision-making is possible and where the children continue, even years after divorce, to regard their parents with equal affection and loyalty, such an Utopian state of affairs rarely in practice exists. While 'parents are forever' (to use professor Schafer's phrase) in a purely biological sense, I cannot agree that the awarding of joined custody will, or is even likely to, ensure 'a continuing relationship between the child and both its parents, so that it need not feel disserted, abandoned or rejected by the absent (sic) parent'. .....*
>
> *Any sensible child today, even while retaining undiminished affection and loyalty for both parents, would appreciate that their divorce necessarily involves change in domestic control and discipline. If after divorce disputes arise as to matters such as maintenance, access and control, a joint custody order is not likely to avoid such a situation ..." (own emphasis).*

[50] A few years later in ***Pinion v Pinion***[32] it was remarked that although parties may firmly be convinced that they will be able to jointly discharge the function of custodian parents without any friction or deadlock, the Court remained concerned about the risk that in the future, irresoluble disagreements between them will have a detrimental effect on the minor

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[31] 1988 (4) SA 548 (ECD) at 551I to 552B
[32] 1994 (2) SA 725 (D) at 730 G-J

child and may place the child in the opportunity of playing one parent off against the other.

[51] Subsequent judgments have in the particular circumstances of the matter and with the benefit of expert evidence and/or reports from the Family Advocate on the one hand granted shared residency orders where such orders served the interests of the minor children involved,[33] and on the other hand refused shared residency for various reasons.[34] Reasons for refusal include the acrimony between the parents, the inability to communicate effectively as parents, the disruptive effective on children being constantly hurled backwards and forwards, children continuously having to adapt to changing homes and living arrangements/environments and that children have to accommodate the separation of their parents by being expected to adjust to different parenting styles and often socio-economic circumstances as they move from one parent's home to the other.

[52] According to the Plaintiff 's evidence, even though the reasons for the breakdown of the marriage relationship include a lack of meaningful communication, regular quarrels and the Defendant's unreasonable jealousness, she and the Defendant have apparently since their separation put all their differences aside. Not only do they effectively communicate regarding the children, they usually take the children out together, and they also attend school related functions together. This utopian situation begs the question why are the parties getting divorced at all?

[53] The Plaintiff's explanation for the difference between the May 2022 and 2024 settlement agreements is that she is now earning more and that is why the maintenance apportionment was adjusted. She now earns a commission which results therein that she and the Defendant earn approximately the same income.

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[33] ***Kastan v Kastan*** 1995 (3) SA 235 (C) at 236 D-F; ***Corris v Corris*** 1997 (2) SA 930 (W); **V v V** 1998 (4) SA 169 (C); ***Krugel v Krugel*** 2003 (6) SA 220 (TPD)

[34] PJG v NR (22608/2020) [2022] ZAGPPHC 96 (21 February 2022); RMD v KD (16995/22P) [2023] ZAKZPHC 2 (13 January 2023); LB v LAE (8551/2022) [2023] ZAGPPHC 1915 (21 November 2023)

[54] The Plaintiff could not explain why the Annexure “A” form was not part of the papers before the Court. However, her attorney of record satisfactorily explained the oversight in the subsequent affidavit filed.

[55] However, according to the information provided by the Plaintiff’s attorney and as recorded in the Annexure “A” form deposed to by the Plaintiff on 29 April 2024, the Plaintiff’s gross monthly income is R28,069.00 and her monthly financial commitments R27,526.03. The Defendant 's gross monthly income is indicated as R47,287.21 and his monthly financial commitments total R30,954.73.

[56] The Plaintiff’s attorney, in the subsequent affidavit filed, elaborated on the calculation that she made to assist the parties in reaching the settlement as far as it relates to their respective maintenance contributions towards the minor children. However, the attorney’s calculations do not factor in the Defendant’s annual bonus which increases his monthly income as calculated over a 12-month period whilst on the papers before me, the Plaintiff does not receive an annual bonus. On the figures as deposed under oath during April 2024, the factual position remains that the Defendant earns a higher income than the Plaintiff and has a substantial monthly excess available to contribute to the children’s maintenance, and the Plaintiff does not.

[57] The Plaintiff was also not able to testify why the Office of the Family Advocate was not approached for an investigation after the Family Advocate indicated that they are not prepared to endorse the settlement agreement. I am however satisfied with the explanation provided by the Plaintiff 's attorney in her subsequent affidavit. The Court was provided with copies of the emails exchanged between the Plaintiff 's attorney and Office of the Family Advocate dating back to 2022, when enquiries were made regarding an investigation. Despite follow-ups by the Plaintiff 's attorney, logistical challenges in the Office of the Family Advocate, including inability to access emails, resulted in no date being provided for the investigation to commence.

[58] The Plaintiff testified that the children received therapy especially the

daughter M to assist with adjustments, and the therapy stopped at the beginning of 2023.

[59] The Plaintiff testified on 8 July 2024 and the Family Advocate interviewed the parties the day after the Court proceedings. The information provided by the Family Advocate differs substantially from the idyllic situation, as testified by the Plaintiff. The content of the report is summarised as follows:

[59.1] According to the Plaintiff, the children have a strong bond with the Defendant and they will be emotionally "*destabilised*" if they do not rotate weekly between their two parents. According to the Defendant both parents *"want maximum time with the children"*. The Plaintiff confirmed that it was M's choice during 2021 to reside with each parent on a weekly basis.

[59.2] The Defendant (the father) does not want a divorce. Neither parties are currently in a new relationship and both parents confirmed that the D expresses reconciliation wishes for his parents. Neither the Defendant nor the minor children have come to terms with the separation of the parties and still hold on to the wish of reconciliation.

[59.3] The minor children attended therapy since 2022 with a therapist, Ms Mulder and the last session was during February 2023. The Family Advocate was however not able to consult with the therapist as she was on holiday.

[59.4] During the individual interviews with each of the children, the daughter M indicated that both the parents are equally involved in her life. M also said that she and D sleep at the maternal grandmother's home every Friday evening and that they have a close relationship with the maternal grandmother and the maternal

aunt.[35]

[59.5] D was initially not prepared to separate from his parents for purposes of the interview and displayed separation anxiety. Both parents had to accompany him to his interview and his father had to carry him. D also expressed the wish that his parents would reconcile. The question is raised to what extent the father's unwillingness to acknowledge the divorce contributes to D's family reunification wishes and his lack of reaching closure regarding the divorce of his parents.

[59.6] Regarding the separation anxiety D exhibited, both parties admitted that D suffers from separation anxiety. The Family Advocate and Family Counsellor both expressed concerns that D's separation anxiety was severe and that this raises concerns regarding the child's emotional security and stability. D's behavior is not age appropriate and justifies the need for a further investigation to determine whether the shared residency regime is indeed serving his interests.

[59.7] M throughout her interview consciously and consistently placed both her parents on the same level regarding physical and emotional care. This is unusual. According to the Family Advocate the question is raised whether there is a possibility that M was prepared for purposes of the interview, and this should be further investigated.

[59.8] The Family Advocate advised that for purposes of the investigation they require further information regarding the children's school progress, feedback from the children's therapist, a forensic evaluation from a psychologist regarding the emotional functioning of the children and their bond with each parent, as well as an interview with the maternal grandmother.

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[35] This relevant fact was omitted by the Plaintiff during her oral evidence as well as in her evidence affidavit.

[60] After the filing of the Family Advocate's report the matter was further argued.[36] The Court was provided with two letters from the school which M and D attend, Laerskool R[...]. The parties were not able to obtain these reports earlier due to the July school holiday. The school reported that both children find it difficult to separate from their mother the mornings when she brings them to school. However, once the children are in class they become adjusted. The school confirms that both parents are involved with the children's academic progress and the children's emotional well-being is of importance to both parents.

[61] The Plaintiff's counsel argued that the Family Advocate made certain assumptions regarding the children such as that M may have been influenced and regarding D's separation anxiety after seeing the children only once and that they may not have the necessary expertise to draw such inferences. The expertise and valuable assistance provided by the Office of the Family Advocate has been acknowledged in a plethora of judgements. In ***Soller v G***,[37] Satchell J remarked, on the role and assistance of the Office of the Family Advocate:

> "*[23] The Family Advocate is not appointed the representative of any party to a dispute – neither the mother, father or any child. In a sense, the Family Advocate is required to be neutral in approach in order that the wishes and desires of disputing parties can be more closely examined and the true facts and circumstances ascertained.*
>
> *[24] The function of the Family Advocate has been described 'to be of assistance to a Court by placing facts and considerations before the Court. The Family Advocate should make a balanced recommendation and should not take sides against*

[36] Further submissions were made on 11 July 2024 and counsel was provided with the opportunity to file heads of argument by no later than the first week of August 2024
[37] 2003 (5) SA 430 (W) at 435 – 438, paragraphs 23, 24 and 27

one party in favour of the other.' (Whitehead v Whitehead 1993 (3) SA 72 (SE).

.....

[27] On this analysis, it would seem that the Family Advocate and the s28 legal practitioner occupy dissimilar positions. The Family Advocate provides a professional and neutral channel of communication between the conflicting parents (and perhaps the child) and the judicial officer."

[62] The Family Advocate and Family counsellor raise valid concerns in relation to the children's emotional stability. D was three years old when his parent's separated. It is nearly 2½ years later, and on face value he still lacks emotional security, stability and closure with regards to the fact that his parents are no longer together. I share the concern expressed by the Family Advocate that the parents are keeping the idea of an intact family unit alive which is confusing for not only the children but also the parents, particularly the Defendant.

[63] It is an inevitable consequence of a divorce that parents separate, and go on with their lives which may include new relationships and relocation. This clearly has not happened since the Plaintiff and Defendant 's separation in December 2021, as the Defendant and the minor child D still express the wish of family reconciliation.

[64] As upper guardian, I am concerned about the fact that two independent sources, the Office of the Family Advocate and the children's school, both observe separation anxiety. The Court requires further evidence to reconcile the children's separation anxiety, with the Plaintiff's evidence that the children are stabilised, well-adjusted and secure as a result of the shared residency arrangement.

[65] The Family Advocate also addressed the Court regarding the negative impact that a shared residency arrangement can have, in certain circumstances on minor children. The Court was referred to various matters

in which the Office of the Family Advocate was involved over the years where children when entering their teenage years, start to display regressive or dysfunctional behavior stemming from the disruption, lack of stability and security which many children experience when there is shared residency.

[66] The Family Advocate voiced the concern that in many matters, the parents attempt to address the need to still have the same physical contact with the child, after the separation than during the marriage by insisting on 50/50 residency. This places the needs of the parent before the needs of the child, thereby ignoring the child's stage of development, and the need for security, stability and predictability with regards to a child's home environment.

[67] I agree with the view expressed by the Family Advocate that the minor child M would have been too young and emotionally immature to make a choice at the age of 5, regarding a shared residency arrangement.

[68] Having regard to the evidence before me, as upper guardian, I am concerned that A and D may have been placed in a position where they are aware that their parents (or a parent) will be sad or miss them when they are not with them, causing the children to feel responsible for the adults' emotional wellbeing.

[69] It is not a child's responsibility to ensure a parent's emotional happiness. This is a terrible burden to place on a child and this concern needs to be further investigated before a final order is granted in terms of the **Divorce Act**. It is also not the children's responsibility to adopt their lifes and forfeit the stability and security of their established home environment to accommodate shared residency to address a parent's fear of missing out. This places the emphasis on the interests of the parent and not on the child.

[70] In accordance with the provisions of section 6(1)(b) of the **Divorce Act**, this Court cannot ignore the well-reasoned concerns raised by the Office of the Family Advocate. Although it is so that it is in the interest of the parties as well as the minor children that there is closure regarding this matter and that

finality is brought by way of a decree of divorce, this Court cannot be held ransom by the *status quo* which the parents have orchestrated.

[71] The **Children's Act** provides that in any matter concerning a child a delay in any action or decision to be taken must be avoided as far as possible.[38] Section 7(1)(n) provides for a similar approach when applying the best interest of the child standard. To ensure that the matter is not dragged out unnecessarily my order makes provision that the Office of the Family Advocate finalises their investigation and report on an urgent basis and that the matter is before me in the Family Court for the week of 4 November 2024 for final determination.

***VZ** matter: Oral evidence provided and the information conveyed to the Family Advocate*

[72] In the ***VZ*** matter, the Court had the benefit of both the oral evidence of the Plaintiff and the Defendant. The evidence of both parties was that the residency rotates on a week/week basis every Sunday at 17h00 as set out in the parenting plan they signed on 25 April 2024, that the children are doing well, and that they are equally involved with the care of the children.

[73] According to the Plaintiff the shared residency arrangement has been in place for an approximately a month. The only expert guidance they received was from a play therapist when the children attended play therapy to assist them with their parents' separation.

[74] During the Plaintiff 's testimony[39] he described an idyllic situation, where he and the Defendant have been and remain equally involved in the care of the children. He provided detailed evidence on how the children rotate from the one week to the other week between their parents' respective homes. He also testified that this was not disruptive for the children as they had their own personal belongings at each home and no books, clothes or toys were

[38] Section 6(4)(b)
[39] On 8 July 2024

ever forgotten at one parent's home. He further testified that the parties enjoyed the support of an *au pair* that supports both parties when the children are in their care. He testified that he assisted with the sporting and academic needs of the children during the week when they are in his care. He was adamant that he and the Defendant are equally involved in the care of the children.

[75] The Plaintiff testified that the parties do not earn the same income. The Plaintiff could not explain why his attorney had omitted the portion in the Annexure A form he deposed to under oath which refers to the parties' income and expenses. He is a businessman and the Defendant is a chemical engineer. When deciding on his contribution towards the children's maintenance, they considered their respective nett incomes and calculated the maintenance contributions so that each party would have a have similar amount excess cash available that they can save or use however they want at the end of the month.

[76] According to the Plaintiff the 50-50 split of the children keeps them both "honest" and ensures that neither of them moves away and do what is not in the best interests of the children. This arrangement will give the children a stable foundation at least for their primary school years.

[77] The Defendant 's oral evidence is summarised as follows and painted a similar idyllic set of circumstances:

[77.1] She is of the view that the children need to see them equally and spend equal time with both parents. The role of a mother and the role of the father is equally important and the Plaintiff is a good father and she is also good with the children. The children are happy with the arrangement and it is in their best interest.

[77.2] The children did not react well when she and the Plaintiff informed them a few months ago about the divorce. M and R were sad and because of their reaction she and the Plaintiff attempted to save the

marriage. After a few months they realised that their marriage relationship cannot be saved. They then decided that this time they are going to do things right. Consequently, they took the children to a play therapist and she provided them with advice. The children were emotionally more stabilised after the play therapy.

[77.3] The Plaintiff has now stepped up to the plate and is the best father that he has ever been. She thinks that M and R are happy and she does not see any disruption for the children. The children are still doing well at school.

[77.4] There is no disruptive effect for the children when commuting between the two homes situated approximately 500m apart. She plans everything and she and the Plaintiff sit down every week and discuss the children's needs. There is also an *au pair* that is provided with the Defendant 's plan for the week and as well as the Plaintiff.

[77.5] Regarding a lack of a cash component for maintenance, she is satisfied with the maintenance contribution of the Plaintiff as set out in the settlement agreement, but provided no evidence why the maintenance is sufficient.

[78] The Family Advocate was present in Court during the testimony of the parties. The Family Advocate did not endorse the settlement agreement as they are concerned about the young ages of the children and the shared residency. When the matter was heard, the minor daughter A was 9 and the son, 8 years old.[40] The Family Advocate requested an opportunity to interview the parties and the minor children and to provide the Court with a report and recommendation.

[79] In the subsequent report filed by the Family Advocate, dated 11 July 2024 it

[40] A turned 10 on 28 September 2024

is recommended that the residency of the minor children be awarded to the Defendant, subject to the Plaintiff's contact every alternative weekend as this is what the parties had agreed to at the Office of the Family Advocate. The further information received from the Office of the Family Advocate is summarised as follows:

[79.1] The parties have been separated since 1 May 2024. The Plaintiff obtained his own residence, and the Defendant and the minor children remained in the former matrimonial home.

[79.2] According to the schedule that the Defendant provided during the consultation the children slept over at the Plaintiff 's home from the Sunday to the Tuesday whereafter they resided with her on the Wednesday and the Thursday and again returned to their father on the Friday evening. The Monday of the following week the children would be with the Defendant. However, the Plaintiff also indicated that the minor children are primarily in the care of the Defendant and he exercises contact on alternative weekends from Friday to Sunday at 17h00. The Plaintiff confirmed that the Defendant is the primary caregiver of M and R.

[79.3] Due to the academic demands of the minor daughter A, the children do not sleep over at the Plaintiff's residence on Wednesdays. The Plaintiff catches up for any lost time with the children over weekends and during the school holidays.

[79.4] The Plaintiff indicated that he earns R200,000.00 nett per month, whilst the Defendant earns R70,000.00. The Plaintiff takes full responsibility for the children's school fees and school expenses and medical excesses. The Defendant is responsible for the children's medical aid.

[79.5] The Plaintiff motivated his request for a shared residency regime as he feared that the Defendant will enter into a new relationship and

move away or relocate abroad with the minor children. Presently, neither of the parties are in a new relationship and they reside approximately 500m from each other.

[79.6] The parties and the children enjoy supper together almost every Monday at the home of the Defendant. In addition, the parents have coffee together once a week to discuss the children's activities. Their level of communication is positive.

[79.7] Both children attend M[...] College. They are cared for after school by an *au pair* and a live-in domestic. The domestic and the *au pair* perform the same duties at the home of each parent when the children are with the specific parent.

[79.8] The children indicated during their discussion with the Family Counsellor that they have a good relationship with each parent.

[79.9] The Defendant mostly assists the children with their academic needs and the Plaintiff assists the children with their sporting needs.

[79.10] The parties agreed that the primary residence of the children will vest with the Defendant and that the Plaintiff shall exercise contact on alternative weekends from Friday 17h00 to the Sunday 17h00, during school holidays and telephonic and/or electronic contact as arranged between the parties. The parties impressed as mature parents who were able to focus on the best interests of the minor children. They reached an agreement which places the focus on the interest of their children.

[80] After receipt of the Family Advocate's report, counsel on behalf of the Plaintiff as well as the Family Advocate were provided with an opportunity to further address the Court.[41] During argument it became apparent that there

[41] Argument was heard in open court on 12 July 2024

was some tension between the Plaintiff's legal representatives and the Family Advocate.

[81] Counsel on behalf of the Plaintiff confirmed that the parties reached a settlement agreement but that the Family Advocate was not prepared to have regard to the settlement. The Family Advocate's response was that she already recorded the agreement in her report. The Family Advocate further confirmed that she was provided with a schedule which indicated the children's activities and that the Defendant had showed her the children's program on her cellphone. The children's schedule was the reason why the midweek sleepovers on a Wednesday was not practical for the children. The Family Advocate informed the Court that she did not approve of the fact that the Plaintiff's attorney, Mr du Toit, kept on contacting her on her personal cell phone and even insisted that the Family Advocate comes to his offices to consult with the children and the parties.

[82] As the parties' new settlement agreement also did not provide for a cash component and the Court did not have the benefit of a fully completed Annexure "A" in accordance with the relevant regulations, the parties were requested to file Financial Disclosure Forms ("FDF") in terms of the Practice Directive. Both parties were assisted by the same junior professional assistant (Mr du Toit) in the drafting and completion of the FDF.

[83] After hearing argument an order was granted regarding the filing of FDF's and providings the parties with the opportunity to address under oath the conflicting evidence and information provided, to this Court on 8 July 2024, as compared to the Family Advocate on 10 July 2024 pertaining to the *status quo* regarding the minor children's primary care, residence, and contact. The Plaintiff's attorney and/or the parties were further afforded the opportunity to address the Court's concern that the parties have perjured themselves and whether the matter should be referred for further investigation in respect of perjury, and whether the attorney knew that *de facto* his client was not implementing shared residency.

Further affidavits and FDF's filed - VZ matter:

[84] In the affidavits deposed by the Plaintiff and the Defendant on 31 July 2024, the factual accuracy of the Family Advocate's report was placed in dispute.

[84.1] According to the Defendant, they never indicated to the Family Advocate or Family Counsellor that the children remained in the former matrimonial home after the Plaintiff obtained his own residence and that the children are primarily in the Defendant's care and the Plaintiff only has contact every second weekend.

[84.2] The Defendant further clarified that although she indicated to the Family Advocate that she earns an estimate income of R72,000.00 (not R70,000.00) she had forgotten about her annual increase in January 2024. According to the Defendant she now receives a monthly average salary of R77,756.58.

[84.3] According to the schedule of the children's activities showed to the Family Advocate, the children spent 51% of their time with the Defendant and 49% of the time with the Plaintiff. Consequently, they share the care of the children equally.

[84.4] They deny that they expressed to the Family Advocate that they enjoy dinner together almost every Monday. According to the Defendant they indicated that they would often eat together. She and the Plaintiff enjoy dinner together on other nights of the week or on the weekends.

[84.5] They deny that they informed to the Family Advocate that due to A's academic demands the children do not sleep over at the Plaintiff on Wednesdays. If A has academic responsibilities such as class or term tests during the week when the children are supposed to stay with their father, the children will not sleep over on the Wednesday. The "lost time" is then caught up during weekends or holidays. The

reality is that the children often stay with the Plaintiff on Wednesdays during weeks when A does not write tests or if the Defendant is away.

[84.6] According to the minor children they were asked by the Family Advocate and the Family Counsellor what their names are, in which grade they are and whether they are happy. The children did not express that they were informed about the contact arrangements by their parents.

[84.7] Although they expressed to the Family Advocate that they can agree that the minor children will reside with the Defendant and that the Plaintiff will enjoy contact on alternative weekends, they did not discuss specific times.

[84.8] The Plaintiff confirmed that he indicated that his estimate income was R200,000.00 but this amount is not definite and may fluctuate from month to month.

[84.9] Although the Plaintiff admits that he shared his fear that the Defendant would meet a new partner and possibly move away with the children, he indicated that this must be contextualised. The following extract from the Plaintiff's affidavit which refers to his consultation with the Family Counsellor, Mr Hattingh, illustrates the Plaintiff's confusion regarding what parental rights and responsibilities actually ential:

> *"3.2.9.1 I expressed to Mr Hattingh that an unequal care and contact arrangement would deprive me of my parental rights and responsibilities, where the same relates to the administration of the minor children's affairs, in favour of the Defendant. For example, that it would be easier for the Defendant to move with the minor children if she had entered into a new*

relationship.

3.2.9.2 To illustrate my query to Mr Hattingh I also used the example that the Defendant would have unilateral say in where the minor children should go to high school.

3.2.9.3 <u>During this conversation Mr Hattingh explained to me that if primary care and contact vested with the Defendant it would not have the effect of derogating my other parental rights and responsibilities in favour of the Defendant</u>."

[85] From the FDF's filed it is evident that the Plaintiff enjoys a much higher standard of living than the Defendant. To illustrate, he provides R22 500.00 per month for toiletries and groceries for himself and the children (which are only with him on his version on alternative weekends). The Defendant's expense in this regard for her and the children (that are primarily in her care) amounts to R17,213.50. In addition, the Plaintiff provides R5,000.00 per month for his lunches whilst the Defendant and the minor children have no expense in this regard.

[86] Neither of the parties provided any amount for the children's clothing, except the Plaintiff, who provides for their school and sport clothing. The Plaintiff provides R4 000.00 per month for his clothing whilst the Defendant only provides for R1,000.00 for herself.

[87] The Defendant disclosed in her FDF that the parties enjoyed numerous holidays locally and abroad. The last holiday they enjoyed without the children was in the French Alps during March 2024. The Plaintiff did not disclose this holiday in his FDF.

[88] The Plaintiff's total monthly expenses amount to R155,664.00. His personal expenses, are R93,140.00 and for the children R62,524.00. The Defendant's

total expenditure for her and the minor children amount to R52,601.50. However, there are many expenses that are not included in her expenditure list.

[89] The Plaintiff's is the master of his own destiny and income, whilst the Defendant is a salaried employee. Not only is the Plaintiff the CEO of a private company but also the founder trustee and discretionary beneficiary of the VZ Family Trust. In terms of the settlement agreement the Defendant had to resign from this Family Trust. The Plaintiff is also a trustee of another family trust and the founder and discretionary beneficiary of the VZ Global Family Trust, which is registered in Guernsey. From perusing the Plaintiff's bank statements, I could not ascertain his income of R200,000.00, as confirmed to the Family Advocate on 10 July 2024. What is however evident is that money flows in and out of the Plaintiff 's account under the auspices of a “loan” from one of the trusts. This also includes money that is transferred to Guernsey.

[90] The difference in the lifestyle the children are exposed to whilst in the care of the Plaintiff compared to when they are in the Defendant’s care is evident from the FDF’s. The children are exposed to a lifestyle with the Plaintiff that is on a much more luxurious scale than when they are in the care of the Defendant. The Plaintiff can afford this as he earns nearly three times more than the Defendant. Consequently, the children are entitled to the same standard of living at the Defendants home. Having regard to the parties’ respective earning potential, their standard of living, and the extent of the monthly expense the children’s interest will be served if the Plaintiff makes an additional cash maintenance payment towards the children’s expenses. The cash maintenance amount was also calculated having regard to the same principles as considered by the parties and as confirmed by the Plaintiff’s during his oral evidence.

Explanation regarding the conflicting evidence in the VZ matter and further affidavits filed

[91] During argument before me the Family Advocate confirmed that the Plaintiff informed her that his attorney knew what the *status quo* was in that the children were primarily resident with the Defendant and only visiting the Plaintiff over weekends with a midweek sleepover depending on the children's scholastic schedule.

[92] The parties attached transcripts of their testimony on 8 July 2024 to the further affidavits deposed to on 31 July 2024. They submitted that their testimony presented to the Court did not materially differ from the information provided to the Family Advocate. This submission is not supported by the facts. There is a material difference in the evidence provided. The discrepancies between the oral evidence on 8 July 2024 and the information provided to the Family Advocate, 2 days later, on 10 July 2024 is glaringly obvious.

[93] On 8 July 2024 the parties testified regarding a utopian situation where they both equally care for the children and the children rotate between the two homes every Sunday without any interruption, whereas the *de facto* position was quite different: the Plaintiff exercises contact on alternative weekends and the children do not stay for an uninterrupted period of a week with their father as testified on 8 July 2024. The evidence about shared residency was therefore misleading but appears to have been motivated by the Plaintiff's fear that the Defendant may relocate with the children and an apparent misunderstanding by the Plaintiff of his parental rights and responsibilities.

[94] Although the parties dispute that certain information was provided to the Office of the Family Advocate, I have no reason to doubt the integrity of the Family Advocate. The Family Advocate is independent and objective. The Family Advocate has nothing to gain or to lose by placing factual inaccuracies before this Court. However, the Plaintiff and Defendant have much to lose as they provided a version during their oral testimony of an idyllic state of 50/50 residency, whilst this was not the true position.

[95] When a party confirms facts under oath either on affidavit or in the witness

box the party swears that the evidence provided is true and correct. Perjury is the unlawful and intentional making of a false statement during judicial proceeding by a person who has taken the oath or made an affirmation before, someone competent to administer or accept the oath or affirmation.[42] Perjury has serious consequences. Perjury is a criminal offence and party who is guilty of perjury may be fined or committed to prison.[43]

[96] The Plaintiff and the Defendant requested that the matter should not be further referred for investigation regarding perjury and that they had not, during the proceedings, made any false statements under oath, and that they never had the intention to mislead the Court. However, this Court was indeed misled on 8 July 2024 regarding the true situation as far as it relates to care of and contact to A and R. I am not persuaded by the explanation provided by the Plaintiff and the Defendant.

[97] The only reason why this Court is not referring this matter for further investigation, is due to the potential risk of the parents being found guilty of perjury, which may result in a fine and/or suspended sentence. This may have a further detrimental effect on the minor children as A and R are still adjusting to the fact that their parents have separated. As upper guardian the children's emotional wellbeing at this stage weighs more than the Court's displeasure in the tailoring of evidence to achieve a specific result. However, the time may have come for Courts to start showing its displeasure with parties who make a mockery of the oath, thereby compromising the integrity of Court processes where the interests of minor children are at stake.

Conduct of the attorney in the VZ matter

[98] During the proceedings before me, as well as in the communications between the Plaintiff's attorney and the Office of the Family Advocate the Plaintiff was represented by Mr du Toit, a junior professional assistant at

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[42] https://www.saps.gov.za/faqdetail.php?fid=9

[43] Section 101 of the ***Criminal Procedure Act***, 51 of 1977; **Snyman's Criminal Law** LexisNexis (7th Edition) SV Hoctor (Editor), pp 296 to 299

Couzyn, Hertzog and Horak Incorporated.

[99] The Court was informed by the Office of the Family Advocate during argument on 12 July 2024 that the Plaintiff's attorney sent numerous WhatsApp messages to the Family Advocate's personal cell phone number, including requests that the Family Advocate consult with the parties and the minor children at the attorney's offices.

[100] It is not for an attorney to prescribe to the Office of the Family Advocate when, where and how they are to conduct their consultations and investigations. It is inappropriate that an attorney would attempt to enforce his and/or his client's will and/or convenience on the Office of the Family Advocate.

[101] The Plaintiff's attorney, Mr du Toit, was provided with the opportunity to explain under oath his version of events. Two affidavits were filed, the first from Mr Oosthuizen, a director of the firm Couzyn, Hertzog and Horak Incorporated and the other from Mr du Toit.

[102] Mr Oosthuizen confirms the following in his affidavit deposed to on 1 August 2024:

[102.1] When he first consulted with the parties on 12 April 2024 he immediately after the consultation dictated his notes. His notes reflect that *"the children will be shared on a 7 days on/7 days off basis between the parties."*

[102.2] As the parties were highly qualified and intelligent people, it was clear to him that they reached an agreement on shared residency and that they were comfortable with such a regime. He did advise them that the Family Advocate normally are not in favour of such a regime, but where the parties are resident close to each other and get along well before and after the divorce the Family Advocate is more amenable to approve such arrangement.

[102.3] The only contact he had with the parties before he handed the matter over to his assistant Mr du Toit was on 19 April 2024 when he telephoned the Plaintiff to obtain clarity on some of the patrimonial aspects of the settlement agreement.

[102.4] Since he had first consulted with the parties until date of deposing to his affidavit neither the Plaintiff nor the Defendant created the impression or expressed to him that the Plaintiff only enjoyed contact with the minor children on alternative weekends. Consequently, his consultation notes, conversations and correspondence between him and the parties support the evidence provided to the Court on 8 July 2024. However, Mr Oosthuizen was not present in Court when the parties testified nor does he indicate in his affidavit that he had regard to the transcript of the proceedings.

[102.5] The gross income and the monthly expenses of the parties as provided for in the Annexure "A" form, was removed by Mr Oosthuizen and he provides the following explanation:

> *"4.2 I have in the past experience difficulties with the completion of the sub paragraphs dealing with income, especially of the defendant, since the plaintiff normally on many occasions has no knowledge of the income of the defendant.*
>
> *4.3 In order not to leave blank spaces in the affidavit, and since I was of the opinion that the family advocate only concerns itself with the choice of primary residence of the minor children and not with the maintenance payable by the parties in respect of the children, that information could be omitted.*
>
> *4.4 I have therefore instructed my secretary to retype Annexure A and omit the reference to the income of the parties. I have never before encountered any difficulties with the many*

Annexures A being completed by my clients under oath, but now realise that it would be better if I had not admitted that information from the sworn affidavits and will in future use the correct template."

[102.6] Regarding the communication sent by Mr du Toit to the Family Advocate requesting that the consultation be held at their offices, Mr Oosthuizen responds as follows:

> *"5.2 I have since become aware of the rather cavalier communication by my professional assistant, Andre du Toit, with the Family Advocate. Had I become aware of his conduct, I would have put an earlier stop to that. Perhaps it is a sign of the times that younger practitioners do not act towards organs of the State with the deference that we as older members are used to. That, obviously, does not justify his actions in this regard and I wish, as his supervisor, to apologize on his behalf. I respectfully submit that he has learned his lesson."*

[103] Mr du Toit's affidavit deposed to on 1 August 2024 confirms the content of Mr Oosthuizen's affidavit and further confirms that during his correspondence with the Plaintiff it was pressed upon him that the parties were implementing a shared care and contact arrangement as contemplated in the settlement agreement *"as far as was reasonably practical."* Like Mr Oosthuizen, Mr du Toit also confirms that since his first correspondence with the Plaintiff until date of the deposing to his affidavit, neither of the parties created the impression or expressed to him that the Plaintiff only enjoyed contact over alternative weekends.

[104] The WhatsApp communications on 8 and 9 July 2024 attached to Mr du Toit's affidavit confirms that the Family Advocate took the initiative to contact the attorney from her private cell phone number immediately after the Court

proceedings on 8 July 2024 only to arrange a consultation date with the parties and the minor children. However, the Family Advocate's communications began and ended with expediting the arrangement of a consultation date. However, the attorney took it upon himself to inform the Family Advocate of his concerns about the children's safety and unsuitable available parking near to the Office of the Family Advocate in further WhatsApp's. This included proposing that the Family Advocate should rather consult at his offices as his clients are not well acquainted with the inner-city and he is very uncomfortable that an 8- and 9-year-old must walk around in the city center of Pretoria.

[105] When the Family Advocate's responded "no" to his proposal and that there are rules that must be respected, the attorney then indicated that he had spoken to his client and that the Plaintiff understands that they must amend the agreement. He then requested an indication of what should be amended so that everything can run smoothly on the Friday when the matter is again before this Court. Despite Mr du Toit's attempts to, in my view, manipulate the process, the consultation proceeded at the Office of the Family Advocate on 10 July 2024, and the parties reached an agreement during the consultation.

[106] Later on that day and after the consultation was concluded Mr du Toit was informed by the Plaintiff that the settlement agreement would need to be amended. He however wanted to discuss this with the Family Advocate to make sure which part of the agreements had to be amended. That was the reason for him again attempting to contact the Family Advocate directly on her personal cell phone number. The Family Advocate declined to take his call, whereupon Mr du Toit proceeded to send a WhatsApp message requesting the Family Advocate to indicate how the agreement must be amended considering the investigation. The Family Advocate, correctly in my view, did not respond.

[107] According to Mr du Toit at no point during the correspondence between himself and the Family Advocate was he informed that he should rather

contact the Family Advocate on her office number and that he may not correspond with her via WhatsApp, or that he may not call on her private cell phone. One would think that common sense dictates that it is inappropriate to contact the Family Advocate on her private cellphone or to propose alternative consultation venues as this may compromise the integrity of the process, but unfortunately common sense was lost of the attorney. Mr du Toit, however, confirmed that a senior attorney at the firm has reprimanded him for communicating with the Family Advocate in this manner and that he now realises that such communication is inappropriate.

Compliance with the Practice Directive in the VZ matter:

[108] Regarding whether there was compliance with the Practice Directive as far as it relates to the evidence affidavit, Mr du Toit explains that at the time that the evidence affidavit was deposed to the settlement agreement was delivered to the Office of the Family Advocate but they had not yet endorsed or raised any queries in relation to the settlement. According to the attorney he does not believe it was necessary for the Plaintiff to restate all the arrangements regarding the children in his evidence affidavit as they are elucidated in the Annexure to the settlement, which is attached to the evidence affidavit. This Court does not share his views. Mr du Toit's approach is indicative of a lack of insight regarding the duty of an attorney towards the Court.

[109] The overriding duty of a legal practitioner is to the Court and not to the clients.[44] This duty extends even when adherence to such duty may create an unfavorable result for legal representative's clients. The duty includes to disclose to the Court or factors and matters relevant to the matter in issue in

[44] LAWSA Vol 14: Legal Practitioners at para 257 at p 250 to 251: "Advocates and attorneys are as much a part of the courts in which the practice as the judges who preside over them. Their duty is not only to the clients but also to the court. Although there are not court employees and practice independently in private practice, they are often loosely referred to as officers of the court, to emphasise their duty to the administration of justice and the court's discipline relationship with its practitioners." Also compare ***Kekana v Society of Advocates of South Africa*** 1998 (4) SA 649 (SCA) at 6551- 656B

order that a fair and just result is obtained.[45] The important role that legal representatives play in the functioning of the Court and administration of justice, even more so when the interests if minor children are at stake needs no further elaboration.

[110] It is unfortunate that the attorney still holds the view that the evidence affidavit he prepared contained sufficient evidence. He fails to address how this Court was to grant an order on the scant evidence provided in the evidence affidavit. The evidence affidavit the attorney drafted does not comply with the Practice Directive and was of no assistance to the Court. The amended Annexure "A" form was of no assistance to the Court.

[111] The explanation provided why the Annexure A form omitted financial information, speaks to attorneys conducting themselves to suit the convenience of their clients, rather than to assist of the Court and the Office of the Family Advocate.

[112] It is not for legal practitioners to tailor the prescribed form to suit their clients' convenience. The explanation that in many matters, parties do not even know what the expenses and income of the other party is unconvincing. In all matters where a settlement agreement has been reached, alternatively, where the divorce is unopposed and there is no settlement agreement, the parties must have some idea of their respective income and expenses to agree upon or request a maintenance amount payable on behalf of the minor children. Alternatively, if no settlement agreement has been reached, the Plaintiff still must provide evidence on why the maintenance amount proposed is sufficient, having regard to the standard of living, the parties' respective income and the reasonable maintenance needs of the minor children.

[113] The Annexure "A" form is not only for the assistance of the Family Advocate. It is also for the assistance of the Court. Divorces that have become settled,

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[45] ***Lawsa*** Vol 14, para 451 at p 406 - 407

differ procedurally from matters where there is either a Rule 43 order in place and/or the parties have exchanged FDF's in terms of the Practice Directive. The Annexure "A" form provides the Court with relevant evidence also in relation to the financial position of the parties.

[114] Therefore, in my view there is no reason why the Plaintiff, who is a lay person and seeking the advice of his legal representative, should be required to pay the attorney's costs and expenses in this regard. A further consideration for the disallowance of the attorney's fees is that the attorney's conduct did not meet that of what is expected of an Officer of the Court.

Orders granted

[115] The following order was granted in the **VZ** matter (case no: 047502/2024):[46]

1. A decree of divorce is granted, incorporating the settlement agreement signed on 11 July 2024, a copy which is attached hereto as "X".

2. The Plaintiff is ordered to contribute a cash component to the Defendant in respect of the minor children in the amount of R10,000.00 per month per child, payable on or before the last day of each consecutive month. The cash component shall increase annually, with 10% on the date of the granting of the divorce.

3. Any party may approach the appropriate maintenance court for an increase, alternatively, reduction in the cash maintenance component payable by the Plaintiff, without having to indicate a change in circumstances.

4. The Plaintiff's attorneys are disallowed any fees for consultations, drafting and filing of the affidavits and evidence affidavits in terms of the Practice Directive and enrolment of the matter in accordance

[46] On 13 September 2024

with the Practice Directive for unopposed divorces and the further affidavits filed as directed by the Court."

[116] In the **DK** matter (case number 36830/2022) the following order was granted:[47]

1. The matter is postponed to 4 November 2024 before Haupt AJ in the Family Court.

2. The Office of the Family Advocate is requested to urgently investigate the best interest of the minor children M DK (born on 13 June 2016) and D DK (born on 17 January 2018) and file a report and recommendation in respect of the exercise of parental rights and responsibility and the shared residency arrangement between the parties.

3. The Family Advocate is to provide a final report and recommendation on or before 28 October 2024.

[117] In the **S** matter (case number 064524/2023) the following order was granted:[48]

1. The matter is postponed *sine die*, pending a forensic evaluation and investigation by a suitably qualified psychologist regarding the best interest of the two minor children M and L born from the marriage between the parties and a further report from the Office of the Family Advocate.

2. The Family Advocate is requested to nominate within 7 (seven) days from date of this order a suitable qualified expert to conduct the investigation and evaluation as referred to in 1 above.

[47] On 13 September 2024
[48] Granted on 10 July 2024

3. The expert is to investigate the best interest of the minor children in relation to the exercise of parental rights and responsibilities and in particular the joint residency arrangement and to consider the concerns raised by the Family Advocate in the reports filed during August 2023 and May 2024 and to make a recommendation regarding the residency and the exercise of contact in respect of the minor children.

4. Upon completion of the forensic investigation as referred to in 3 above, the expert's report is to be delivered to the Office of Family Advocate for consideration. The Office of Family Advocate is requested to file an updated report and recommendation after receiving the expert's report.

5. Pending the finalisation of the investigation by the expert and the Family Advocate as referred to above and subject to 6 hereunder, the recommendation of the Office of the Family Advocate is made an order in the interim, and the Defendant is awarded interim primary residency in respect of the minor children subject to the following interim contact of the Plaintiff:

    5.1 Alternative weekend contact from after school on the Friday until 17h00 on the Sunday when the children are to be returned to the Defendant. The weekend contact is to be exercised in such a manner that the children are with the Plaintiff on the weekend of Father's Day and with the Defendant on the weekend of Mother's Day.

    5.2 Alternate short school holidays.

    5.3 Alternated public holidays from 8h00 to 17h00.

    5.4 Half of every long school holiday, Christmas, and New Year to rotate between the parties.

5.5 Regular telephonic contact.

5.6 Contact on the minor children's birthdays and the birthday of the Plaintiff on such times as arranged between the parties.

5.7 Such additional contact as arranged between the parties.

6. This order does not influence any party's right to approach the Court *pendente lite* for appropriate relief in accordance with the provisions of Rule 43.

7. The Plaintiff is liable for all costs in relation to the forensic evaluation and investigation.

HAUPT AJ
ACTING JUDGE OF THE HIGH COURT

Appearances

PB v Z v L v Z (case no: 047502/2024)

Counsel for the Plaintiff:	ADV JA VAN WYK
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	EMAIL: oosthuizen@couzyn.co.za

L dK v J-P dK (case no: 36830/2022)

Counsel for Plaintiff:	ADV LB VAN STADE
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Instructed by	GRIESEL VAN ZANTEN ATTORNEYS
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EJ S v R S (case no: 064524/2023)

Counsel for Plaintiff:	ADV D WEYERS
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Instructed by	NAUDE DAWSON
	EMAIL: xander@ndinc.co.za

Date of orders:	PB v Z v L v Z (case no: 047502/2024) – 12 July 2024 and 13 September 2024
	L dK v J-P dK (case no: 36830/2022) – 11 July 2024 and 13 September 2024
	WJ S v R S (case no: 064524/2023) – 10 July 2024
Date of Judgment:	10 October 2024