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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED:

**8 August 2024**

DATE

.....

SIGNATURE

**CASE NO: 25548/2019**

In the matter between:

**R[...]: R[...]**

Applicant

and

**R[...]: E[...]**

Respondent

In Re:

**R[...]: E[...]**

Applicant

and

**R[...]: R[...]**

Respondent

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## JUDGMENT

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### **SEGAL AJ:**

[1] This is an application in terms of Rule 43(6) in which the Applicant seeks an order varying the original Rule 43 order granted on 10 October 2019 in three respects:-

1.1 that the primary residence of the children be shared between the parties (this is common cause and has factually been in place since February 2023);

1.2 that the parenting plan compiled by Ms Davis-Shulman be made an order of court (this too is common cause);

1.3 that the maintenance order of R20 000.00 per month be set aside and that the Applicant make payment of maintenance for the minor children by paying 50% of their school fees and 50% of the medical aid contributions for the children.

[2] From the papers it appears that this matter has a long and acrimonious history which has resulted in this matter dragging on for some five years. The acrimony between the parties is documented in the various expert reports and although the experts have all implored the parties to desist from their negative behaviour to one another which occurs in the presence of the children and which is a source of ongoing emotional damage and distress to the children, they will not do so.

[3] The issues in relation to the children, the allocation of parental responsibilities and rights, their residence and contact to the respective parties have now been agreed between the parties. What remains to be determined is the extent of the respective parties' contributions towards the children's maintenance.

[4] The Applicant contends that at the time that the initial Rule 43 order was made, the children were residing primarily with the Respondent and that he was exercising limited contact to them.

[5] Consequent upon the receipt of the report by Dr Robyn Fasser and the involvement of Davis-Shulman as the parenting coordinator, and by agreement between the parties, the residential arrangement has changed to one of shared residence.

[6] In other words, the children now spend an equal amount of time in the homes of the respective parties.

[7] The Applicant contends that by virtue of the shared residence regime, the Respondent's costs for the children have reduced and he no longer wishes to pay maintenance to the Respondent but, rather to pay directly to the third-party creditors namely the children's respective schools and the medical aid scheme upon which the children are dependents. He considers the change in residence to comprise a material change in circumstances as contemplated in Rule 43(6).

[8] The Respondent on the other hand, contends that the expenses which she incurs for the children in fact exceed the sum of R20 000.00 which the Applicant pays and that the tender to pay 50% of school fees and 50% of the medical aid premium is far below 50% of the actual cost of maintaining the children.

[9] The Respondent raises two issues of concern to the court:-

9.1 the Applicant has not complied with the initial Rule 43 court order as a result of which the Respondent was constrained to obtain a garnishee order against the Applicant's salary;

9.2 secondly, the Applicant has failed to disclose whether or not he receives an annual bonus, he has undervalued his pension interest by almost a million rand and mis-stated his monthly expenses.

[10] It appears that the Respondent makes payment of all of the children's expenses which include school fees, schoolbooks, school uniforms, school stationery, extra-murals, extra lessons, outfitting and equipment in respect thereof, medical aid premium, medical excess expenses not covered by the medical aid as well as all of their day to day living costs when they are in her care.

[11] The Respondent also makes payment of the holding costs of the former matrimonial home where she resides, which includes a mortgage bond of R18 002.66 per month and which is an asset in the joint estate in which the Applicant will ultimately share.

[12] The Respondent contends that the Applicant removed the children from his medical aid and advised her to place them on her medical aid as dependents which she did. The Respondent also indicates that the children's school fees have increased annually and that the children's medical excess expenses are vast.

[13] The Respondent avers that in the last six months alone, she has, in addition to making payment of the children's monthly medical aid premiums, spent an amount of R40 669.67 on medical excess expenses in respect of which she has provided details. This equates to R6 783.16 per month.

[14] A further obstruction reported by the Respondent on the Applicant's part, is that he has reported a number of professionals involved in the divorce action to their respective governing bodies, when (she contends), they do not acquiesce to his demands. These include:-

- 14.1 a Remax estate agent / property broker;
- 14.2 a Jawitz estate agent / property broker;
- 14.3 social worker, Vanessa Richards;
- 14.4 Dr Muller, the children's general practitioner; and
- 14.5 most recently Ms Davis-Shulman, the erstwhile parenting coordinator.

[15] The Applicant has apparently also lodged complaints against the children's respective schools. This is unfortunate and will only redound to the children's

detriment.

[16] The Respondent contends that the Applicant must not only continue to pay the R20 000.00 per month which includes 50% of the school fees and 50% of the medical aid contribution, but now claims that he must also pay 50% of all additional expenses relating to the children, which include extra-mural activities and medical expenses not paid by the medical aid scheme, within seven days of presentation of an invoice by her and 50% of the mortgage bond. I can see no legal basis or factual justification for this increased claim, and I am not willing to entertain it.

[17] Insofar as the payment of direct expenses for the children is concerned, the Respondent's principal objection is that the Applicant cannot be trusted to pay service providers directly. The Respondent wishes for the Applicant to continue to pay cash maintenance to her and that she pays the respective creditors as she has historically done.

[18] In circumstances where the Applicant is prone to conducting himself in default of court orders and reporting professionals / organisations to their professional bodies when he is dissatisfied, I am concerned that he will not pay third party service providers of the children in the event that they displease him, which would naturally compromise the interests of the children. This occurred when he called upon Crossroads School to re-pay to him the deposit which the Respondent had paid to secure a place as he did not agree to the child's attendance at the school.

[19] I would not want a situation to unfold where the Applicant for instance refuses to pay his 50% share of the school fees to the school if he is unhappy with the school for any reason or, where he would refuse to pay his 50% share of the costs of either children's therapy if he is unhappy with the therapist and so on.

[20] As matters stand, the Respondent competently and diligently pays for all of the children's expenses and there is no good reason to interfere with this arrangement. This is so particularly in circumstances where it would open the door for additional litigation, arguments, combative behaviour and increased disputes between the parties.

[21] During the course of her argument, the Applicant's counsel indicated that if I was not inclined to grant the order which the Applicant seeks, that I should grant an order which had the effect of reducing the quantum of maintenance that the Applicant pays to the Respondent. She argued that I should order the Applicant to pay:-

21.1 50% of various direct expenses (school fees, stationery and books, medical aid premium); and

21.2 a cash amount of R4 000.00 per month to the Respondent to cover medical excess expenses not paid for by the medical aid scheme.

[22] I do not think that this is adequate or that it in fact covers 50% of the children's actual direct expenses which the Respondent incurs. Over the past 5 years since the grant of the original order the Respondent's costs have increased exponentially. School fees continue to increase (for Zaynah at the rate of 9% per annum) as have all other related educational, medical and extra-curricular expenses for the children. I have computed the children's direct expenses as they appear on schedule AA6 (B43) which amount to a sum in excess of R39 500.00 per month.

[23] The sum of R20 000.00 per month thus comprises 50% of the children's direct expenses for the remainder of this year but these expenses will increase next year. In the circumstances the Applicant's fears that his maintenance payments are covering the children's indirect expenses at the Respondent's home and which he too incurs in the children residing with him, should be allayed.

[24] I have perused the Applicant's list of monthly expenses and notice *inter alia* that:

24.1 he allocates 50% to certain of his monthly expenses to himself and 50% to the children whereas the Respondent consistently allocates a more modest 33.3% of her monthly expenses to the children and 66.6% of such expenses to herself;

24.2 he allocates R9 100.00 towards payment of school fees, but these are factually paid upfront by the Respondent to secure a more favourable price;

24.3 he allocates the amount of R13 000.00 to his accommodation costs, but his residence is unencumbered and owned by him;

24.4 he includes the amount of R20 000.00 which he pays to the Respondent.

[25] As such his alleged monthly shortfall is far less than what is contended for by him. Notably, the Respondent too has a monthly shortfall.

[26] I do not believe that the changed circumstances advanced by the Applicant warrant a change in the order. As set out herein the R20 000.00 per month does not in fact cover the Respondent's personal costs or the indirect expenses of the children in her home.

In all the circumstances, I grant an order *pendente lite* in the following terms:-

1. That the primary residence of the children be shared between the parties.
2. That the parenting plan concluded by Marilyn Davis-Shulman dated 5 April 2022 is made an order of court.
3. The Applicant shall make payment of the sum of R20 000.00 per month to the Respondent on or before 1 September 2024 and monthly thereafter on or before the 1<sup>st</sup> day of each successive month.
4. In the event that the Applicant has not made payment of maintenance for the month of August 2024, he is ordered to do so within three days of the date of the grant of this order.
5. That the sum of R20 000.00 referred to in paragraph 3 above shall

increase annually and with effect from the first anniversary of the date of this order, by a percentage equivalent to the percentage increase in the Consumer Price Index, as published from time to time for the Republic of South Africa.

6. That the remaining relief sought by the Applicant is dismissed.

7. The Applicant is ordered to pay the party and party costs of this application on Scale B.

SEGAL AJ

**ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

*Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 8<sup>th</sup> August 2024*

Heard on: 31 July 2024

Delivered on: 8 August 2024

**Appearances:**

Adv H Patel: for the Applicant

Adv Eichner-Visser: for the Respondent