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

Reportable / Not reportable

Case no: 5244/2024

In the matter between:

F[...] V[...] N[...]

APPLICANT

And

J[...] W[...] S[...] V[...] N[...]

RESPONDENT

Neutral citation: *F[...] V[...] N[...] v J[...] W[...] V[...] N[...] (5244/2024)*

Coram: MPAMA, AJ

Heard: 17 OCTOBER 2024

Delivered: 25 OCTOBER 2024

ORDER

1. The respondent is ordered to keep the minor child as a dependant in his medical aid scheme and to pay in addition all extra medical costs of the minor child not covered by the medical aid scheme.

2. The respondent is ordered to pay maintenance to the applicant for the minor child in the sum of two thousand five hundred rand (R2500.00) effective from the 31st of October 2024 and thereafter on the last day of each and every succeeding month.
3. The respondent is to pay all the reasonable costs relating to the minor child's day care facility.
4. The status quo in respect of the rights of care and contact concerning the minor child shall prevail and the matter is referred to the Family Advocate in order for the rights regarding care and contact of the minor child to be investigated and the report to be filed in court.
5. The respondent is to pay all municipal rates and taxes, water and electricity in respect of the common home.
6. The application for the maintenance of the applicant is dismissed.
7. The application for contribution towards costs is dismissed.
8. The costs of this application are reserved for adjudication during the main trial.

JUDGMENT

Mpama AJ

INTRODUCTION

[1] This is an application for payment of maintenance *pendente lite*, interim care and contact of the minor child and contribution towards legal costs in terms of rule 43 of the Uniform Rules of the Court (the Rules).

[2] The applicant and respondent are embroiled in divorce proceedings. They were married on 20 February 2021 out of community of property with the application of accrual system and the marriage still subsists. The applicant approached the court seeking relief in respect of her maintenance, the minor child's maintenance, rights of care and contact of the minor child and contribution towards the legal costs.

[3] In her sworn statement in support of the application, the applicant averred that she is currently employed and earning a monthly salary of a sum of R18153.10 plus R1600.00 as commission. Before her current employment, she worked for SARS as a clerk for the Tax Board. When she left this employment, she received her pension funds and is in the process of securing an immovable property with these funds at Atlantic Waves Estate, Laaiplek, Velddrift. She has also secured a mortgage loan for this purpose.

[4] The applicant currently resides at the common home owned by the respondent with the children (a child from a previous relationship and the two-year old minor she shares with the respondent) at Bloemfontein whilst the respondent relocated to Senekal. The respondent is demanding that she relocates to Senekal with the children and has put the common home up for sale.

[5] She estimated her monthly expenses to be between R24000.00 and R26000.00, excluding the provisions for holidays, birthday gifts and expenses. Appended to her affidavit is a breakdown of her monthly expenses. These expenses total an amount of about R33000.00. Her plea is for the payment of her maintenance by the respondent in the sum of R6500.00 monthly. The applicant also requests a contribution of R50000.00 towards her legal costs in order to enable her to litigate on an equal footing with the respondent.

[6] Regarding their minor child, she is seeking primary residence and that the respondent be afforded contact with the child as follows: to have contact in Bloemfontein every alternative Saturday between 10:00 and 13:00 and every alternative Sunday between 10:00 and 13:00. In addition, the respondent is to pay maintenance in the sum of R3500.00 for the child, to keep him as a dependant in his medical aid scheme, to pay all other medical costs not covered by the medical aid scheme and all the reasonable costs relating to the child's day care and further education. There was a claim for the child's school fees, school uniform, sporting activities, stationery and extra-mural sporting activities which was later abandoned by the applicant.

[7] The respondent is vehemently opposed to the application. In his opposing affidavit he averred that he cannot meet the demands of the applicant due to his dire financial situation. To unpack this, he stated that his monthly financial commitments are R54924.54 and his monthly salary is R28703.00. Every month he suffers a shortfall of R26 221.54. He has an amount of R124980.00 in his FNB money maximiser account and he supplements his income with these funds. He owns the communal home and due to his financial constraints, he is selling the house in order to pay off his debt and to buy property at Senekal where he works and currently resides.

[8] In respect of the child, he averred that the child is a dependant in his medical aid scheme and he buys him nappies and milk. He does not believe that the applicant has the best interest of the child and this issue should be investigated by the Office of the Family Advocate and pending the Family Advocate's report, he should be granted contact with the child as follows: Contact on alternative weeks. He will collect the child on Saturday at 8:00 and return him on Sunday at 18h00, public holidays and short school holidays are to alternate between them, long holidays to be shared equally and Christmas to alternate between them. On the child's birthday, he requires at least four hours of contact from 08:00 to 18:00, contact on the Father's Day from 08:00 to 18:00 if this day does not coincide with a normal access weekend and reasonable telephone contact with the child.

[9] He tendered to pay the following expenses: rates and taxes for the communal home, garden services, prepaid electricity, water and WIFI. For the child he tendered to pay his aftercare fees, to buy milk and nappies to contribute towards a policy for the child's benefit, to keep the child as a dependant in his medical aid scheme and to pay 50% of the child's medical costs not covered by the medical aid scheme.

[10] With regard to the contribution towards costs he lamented the exorbitant amount claimed by the applicant. He contended that the applicant failed to attach an invoice in support of her claim for costs.

[11] Rule 43 of the Rules shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

- a) Maintenance *pendete lite*;
- b) A contribution towards the costs of a pending matrimonial action; pending or about to be instituted;
- c) Interim care of any child;
- d) Interim contact with any child.

[12] An invariable consequence of civil marriage is the reciprocal duty of support between spouses. The general approach is that the applicant is entitled to reasonable maintenance pending the finalisation of divorce. However, the applicant must establish a need to be supported. This in turn is dependent upon the marital standard of living, her actual and reasonable requirements and the capacity of the respondent to meet her requirements.

[13] In *Taute v Taute*¹ it was determined that the interim maintenance will be determined according to the 'marital standard of living, her actual and reasonable requirements and the capacity of her husband to meet such requirements.'²

[14] Our courts have always emphasized the need for utmost good faith by both parties and the need to disclose fully all material information regarding their financial affairs in these applications and that failure to carry out this duty would justify refusal of the relief sought.³

[15] The applicant and the respondent did not come with clean hands before court. There are discrepancies on what their monthly incomes are; the applicant did not give an average amount she makes from commission. In addition, she did not disclose the value of her pension amount. Equally, the respondent did not take this court into his confidence regarding his earning capacity. This has left the court none-wiser regarding his financial position and whether he could meet the financial obligation as prayed for by the applicant.

[16] In order to succeed with a claim for contribution towards costs the Applicant must establish that she has insufficient means of her own to pay legal costs and that the amount sought is reasonably necessary to enable her to pursue the matter. There is no evidence presented by the applicant to support this claim.

[17] On the issues relating to the child the Family Advocate, if so requested by any party to divorce proceedings or court shall institute an enquiry to enable him to furnish the court with a report and recommendations on any matter concerning the welfare of the children. See: s 4 of Mediation in Certain Divorce Matters Act of 1987. The parties have made damning accusations against each other on their

¹ *Taute v Taute* 1974 (2) SA 675.

² *Ibid* at 676D.

³ *Du Preez v Du Preez* ZAGPHC 334; 2009 (6) SA 28 (T) para 13.

suitability to reside with the child. The rights of contact by the respondent have also been challenged.

Order

[18] In the result, I make the following order *pendete lite*:

1. The respondent is ordered to keep the minor child as a dependant in his medical aid scheme and to pay in addition all extra medical costs of the minor child not covered by the medical aid scheme.
2. The respondent is ordered to pay maintenance to the applicant for the minor child in the sum of two thousand five hundred rand (R2500.00) effective from the 31st of October 2024 and thereafter on the last day of each and every succeeding month.
3. The respondent is to pay all the reasonable costs relating to the minor child's day care facility.
4. The status quo in respect of the rights of care and contact concerning the minor child shall prevail and the matter is referred to the Family Advocate in order for the rights regarding care and contact of the minor child to be investigated and the report to be filed in court.
5. The respondent is to pay all municipal rates and taxes, water and electricity in respect of the common home.
6. The application for the maintenance of the applicant is dismissed.
7. The application for contribution towards costs is dismissed.

8. The costs of this application are reserved for adjudication during the main trial.

L MPAMA, AJ

APPEARANCES

For the Applicant:

Advocate Groenewald

Instructed by:

Muller Gonsior Inc.
BLOEMFONTEIN

For the Respondent:

Advocate Coetzer

Instructed by:

Honey Attorneys
BLOEMFONTEIN