

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 099818/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>11/04/2025</u>	
DATE	SIGNATURE

In the matter between:

E.V.D.M

Applicant

and

S.R.V.D.M

Respondent

JUDGMENT

DOMINGO, AJ

Introduction

- [1] The applicant (wife) approached this court for interim relief in terms of Rule 43 of the Uniform Rules of Court, pending the finalisation of divorce proceedings instituted by the respondent (husband) against the applicant.

- [2] This is an opposed Rule 43 application seeking the regulation of contact and maintenance in respect of two minor children. The applicant also seeks contribution toward her legal costs.
- [3] Following an incident on the 15 February 2025 between the respondent's long - term partner and the elder minor child during the minor children's contact weekend, the applicant filed a supplementary affidavit dealing with this event.
- [4] Based on the facts contained in the applicant's supplementary affidavit, the applicant filed a notice in terms of Rule 28 for leave to amend the prayers regarding contact in her Rule 43 notice, to provide for, inter alia, contact between the minor children and the respondent from 09h00 to 17h00 at a public venue on Saturdays and Sundays of each alternate weekend, pending further investigation by the Family Advocate and a supplementary, alternatively new, recommendation regarding contact.
- [5] The applicant's supplementary affidavit also dealt with compliance regarding the issues of mediation as stipulated in the Judge President's Revised Consolidated Practice Directive 1 of 2024 issued on the 12 June 2024.

Condonation

Late filing of opposing papers

- [6] The respondent filed his answering affidavit on the 20 February 2025. His reply was out of time, and on attendance at court he sought leave for condonation of the late filing of these papers.
- [7] Counsel for the applicant submitted that the application in terms of Rule 43 was filed on the 13 December 2024. Despite the fact that *dies non* shall not apply to applications brought under Rule 43¹ the applicant provided the respondent with an indulgence until 15 January 2025 to file his answering affidavit, considering that most law firms were closed for the festive period. The respondent only filed his answering affidavit on the 20 February 2025, after receiving a letter which dealt with the contents of the the applicant's supplementary affidavit, without

¹ Uniform Rule 6(5)(b)(iii)(c).

addressing the incident with the elder minor child mentioned in the letter or seeking condonation for the later filing of his answering affidavit.

- [8] In *S.K v M.N*² in dealing with a condonation of late filing of opposing papers where minor children are involved, the court stated:

“Whereas some of the submissions in opposition to condonation being granted are not without merit, the respondent’s explanation is on certain aspects inadequate. Regardless it is in the interests of justice that condonation be allowed. Primarily on the grounds that the matter concerns the best interests of three minor children. His application raises important issues pertaining to their well-being. The prejudice to the applicant was, in my view, insufficient to warrant the refusal of condonation. In all litigation involving or concerning children, the best interest of the children affected are paramount and must be properly ventilated and considered.”

- [9] In this matter, it is in the interest of justice that the condonation be allowed. The best interest and the well-being of the two minor children would be negatively impacted if the condonation is not allowed. There is no prejudice to the applicant that warrants the refusal of the condonation. It is for these reasons that I granted the condonation.

Postponement

- [10] The respondent sought a postponement to deal with the relief sought by the applicant in her supplementary affidavit, primarily that his contact rights are limited in order to place his version before court and to place the report of Dr Olivier the children’s therapist before court which dealt with recommendations related to the 15 February 2025 incident.
- [11] The respondent also requested the applicant through correspondence to consider the appointment of a social worker or parenting coordinator to investigate the contact, consult with the parties, the children’s therapist and the children and make recommendations as to contact in future. The respondent was also in agreement that the matter in the interim be referred back to the office of the Family Advocate.

² (D3532/24) [2024] ZAKZDHC 43 (20 June 2024) para 11.

[12] On attendance at court the parties agreed to the appointment of a parenting coordinator, Ms Irma Schutte and the parties worked out interim contact arrangements, however, the parties differed on the insertion of phased in contact time frames. Despite this difference, substantively the parties were *ad idem* with the contact arrangements.

[13] Having agreed on the appointment of a parenting coordinator the respondent undertook to be liable for the payments of the parenting coordinator. In the premises, the respondent contended that the appointment of the parenting coordinator would have financial implications for the respondent, which has to be considered in light of the cost contributions sought by the applicant and therefore sought a postponement of the interim maintenance claims and costs towards the legal contribution of the applicant.

[14] In *MGM v MJM*³ the court held:

"The purpose of Uniform Rule 43 applications is to ensure that no party is substantially prejudiced and lacks resources to maintain a reasonable standard of living enjoyed by the parties during the marriage when pursuing their cases in the main divorce action. Courts are required to consider the applicant's reasonable needs and the respondent's ability to meet them."

[15] The rule 43 application is meant to be an expeditious process, the reason sought for the postponement based on the payment of a parenting coordinator was in my view insufficient to warrant a postponement.

[16] The respondent uploaded a letter sent to the applicant's attorney's written by the respondent's life-partner setting out her version of events that took place on 15 February 2025. The report by Dr Olivier, the children's therapist was also uploaded which set out his recommendations. In regard to the respondent seeking a postponement to allow him an opportunity to file an answering affidavit in response to the applicant's supplementary affidavit, in my view in light of the information provided above, it was sufficient to proceed with the application and not grant the postponement as there was written evidence setting out another

³ [2023] ZAGPJHC 405 para 9.

version of the 15 January 2025 incident as well as recommendations from the children's therapist.

- [17] Furthermore, the respondent was informed about the 15 February 2025 incident and the relief sought by the applicant regarding the amended contact arrangements and interim maintenance for the children through an urgent letter sent to the respondent's attorneys on the 19 February 2025. At that point in time the respondent had not yet filed his answering affidavit. In my view, the respondent suffers no prejudice in the matter proceeding, as he chose not to deal with the relief sought in the urgent letter which included the 15 February 2025 incident in his answering affidavit.
- [18] It was submitted by Counsel on behalf of the applicant, that a party who wishes to adduce further evidence is entitled to ask the court to exercise its powers under the provision of Uniform Rule 43(5).⁴ The court may also receive additional affidavits under the sub-rule provided they are shown to be necessary for a just and speedy resolution of the case. Where an applicant is obliged for the necessary protection of minor children to apply urgently for their interim custody, the court may make the necessary adaptations to the procedures.⁵ The procedure together with the stipulated time limits has been designed to enable the court to deal expeditiously with these interlocutory applications.⁶ This means that the court may make findings, although not binding on the trial court, on incomplete or untested facts or inferences drawn from them.⁷
- [19] Thus, in the interest of justice and primarily in the best interests of the two minor children, the postponement sought by the respondent was not granted.

Background

- [20] The applicant and respondent were married on 23 August 2014, out of community of property with the inclusion of the accrual system, which marriage still subsists.

⁴ See *Verster v Verster* 1975 (3) SA 493 (W) and *Dodo v Dodo* 1990 (2) SA 77 (W).

⁵ See *Henning v Henning* 1975 (2) SA 787 (O).

⁶ See *De Villiers v De Villiers* (1) 1965 (2) SA 882 (C).

⁷ See *Levin v Levin* 1962 (3) SA 330 (W).

- [21] From their marriage relationship two minor children were born, namely a boy, born on 9 March 2016 and currently 9 years old and a boy born on 2 March 2018, currently 7 years old.
- [22] It is common cause between the parties, that their marriage relationship has broken down irretrievably and no reasonable prospects exist for restoration thereof.
- [23] The respondent initiated divorce proceedings against the applicant on or about 3 October 2023 and the applicant has defended the action and delivered a counterclaim.
- [24] For the duration of their marriage the applicant and respondent resided together at their co-owned property, until the minor children and the applicant moved out during December 2022.
- [25] The minor children are in the primary care of the applicant. Prior to the incident on the 15 February 2025, the minor children exercised contact with the respondent on alternate weekends from Friday at 18h00 until Sunday at 18h00 at which time the respondent returns the minor children to the applicants care, and on a Wednesday weekly from after school until 18h00 at which time the respondent returns the minor children to the care of the applicant. This position has been the *status quo* since the parties were interviewed by the Family Advocate in January 2024, and both parties believed that it would be in the best interests of the minor children to exercise contact in terms of the Family Advocate's recommendation.
- [26] Since the separation of the parties, the respondent has contributed the following towards the children's maintenance:
- a) The school and after-school fees of both children, including PTA and registration fees and book levies of about R17 664, 34 per month;
 - b) The costs for both children to participate in karate at a cost of R800.00 per month, including their grading exam fees of R106, 67 per month;

c) The applicant's car instalment and car insurance of R4 512.00 per month; and

d) In addition, the respondent pay's the applicant's life insurance policy of about R939.11 per month.

[27] The respondent's payment of the above-mentioned expenses amounts to a contribution of approximately R24 022, 12 per month.

[28] The respondent contends that the school fees amount has increased, and he pays an amount of R18 980 per month for the two minor children. Thus, the respondent contends that his payment of the above-mentioned expenses amounts to a contribution of approximately R27 317.

[29] The respondent admits that during the period 2021-2022, he on a monthly basis provided an extra amount to the applicant for the minor children's extramural and maintenance expenses as the applicant at that stage earned substantially less than what she currently earns.

Interim care and contact of the minor children

[30] On attendance at court, I am grateful to the counsels who were able to get the parties to reach an agreement on the contact and care arrangements.

[31] The applicant agreed to the appointment of a parenting coordinator and the recommendation of the respondent on the appointment of Mrs Irma Schutte as a parenting coordinator to monitor and implement the agreed upon contact arrangements.

[32] The respondent has agreed to pay the full cost of the parenting coordinator.

[33] In regard to the agreed upon contact arrangement plan, the parties differed on the inclusion of specific time frames for the phasing in of contact, in particular the phasing in of contact between the eldest minor child and the respondent. The applicant contended that time frames were important in delineating the powers and functions of the parenting coordinator, while the respondent's contention was

that it should be left in the discretion of the parenting coordinator together with the children's therapist to decide the phased in contact time periods or frames.

- [34] In *T.C v S.C*⁸ the court set out three factors that provides a useful starting point or roadmap for a consideration of the limitations which should be placed on a parenting coordinator's powers:

"First, the AFCC [the Association of Family and Conciliation Courts] definition of parenting coordination envisions the role of the PC as assisting high-conflict parents to implement their parenting plans, and, to that end, with the consent of the parties or the authority of the court, making decisions within the scope of the court order or appointment contract. This definition of parenting coordination, which I endorse, contemplates the existence of a parenting plan in which the parties' parental rights and obligations have already been agreed or fixed by an order of court.

Second, the Act sets out the substantive matters which lie within the exclusive preserve of a court to decide, having regard to the standard of the best interest of the child. These matters include care and contact, guardianship, and the termination, extension, suspension or restriction of parental responsibilities and rights. Any purported delegation to a PC of the power to decide these matters would be unlawful. Thus, for example, it would be unlawful and invalid to confer on a PC the power to change the primary residence of a child, or to alter the allocation of contact between the parents, or to determine whether or not a parent's contact with a child should be supervised.

Third, section 34(5) of the [Children's] Act prescribes that parenting plans which have been made an order of court may only be amended or terminated by an order of court on application, while section 22(7) provides that only the High Court may confirm, amend or terminate a parental responsibilities and rights agreement which relates to guardianship of a child. These provisions make it clear that a PC cannot make a valid directive which has the affect of amending a court ordered parenting plan".

- [35] Having regard to the three factors stated in the case above, it is important to provide a structured parenting plan for the parenting coordinator to implement inclusive of time frames. It is for this reason that I have opted for the applicant's phased in time frame contact arrangements which forms part of my order. The contact arrangements include bonding therapy, phased in contact after therapy,

⁸ 2018 (4) SA 530 (WCC) para 51.

extension of contact after one month and phased in contact after the expiry of the one month.

- [36] The parties also included in the contact agreement a clause whereby “if the therapist is not satisfied with the elder minor child’s progress, the parenting coordinator is mandated to direct alternative contact arrangements which is binding upon the parties, until and unless a court has ordered otherwise”.
- [37] The inclusion of such a clause in my view is a purported delegation of the power of the court to a parental coordinator; this type of decision-making power by the parenting coordinator constitutes an improper delegation of judicial authority despite the fact that the clause allows for judicial oversight. It would be unlawful and invalid for this court to delegate power to a parenting coordinator that mandates the parenting coordinator to direct alternative contact arrangements which is binding on the parties.
- [38] It is of utmost importance that parenting coordination be appropriately limited and practiced in a manner that does not violate the prescripts of the Constitution⁹, in particular section 2, which deals with the supremacy of the Constitution, section 28(2), which deals with the best interests of children, section 34 which deals with the right to access to courts and section 165 of the Constitution which deals with judicial authority.
- [39] The boundaries must be clearly set that no parenting coordinator should ever be allowed to determine or amend the parental responsibilities and rights of parents. Decisions about parental responsibilities and rights can only be made by the parents themselves and if they cannot agree on the aspects thereof, only the courts would have the judicial authority to determine or amend the parents’ parental responsibilities and rights.
- [40] While the contact arrangements set out in this court order is interim, it is important that the trial court be provided feedback on these interim arrangements. I have therefore, included as part of the parenting coordinator’s mandate in this court

⁹ Constitution of the Republic of South Africa, Act 108 of 1996.

order, that Mrs Irma Schutte provide the trial court with written feedback. The written feedback may assist the trial court in its final decision-making process.

Maintenance for the minor children pendent lite

Applicant and Respondent's submissions

- [41] The applicant submits that the parties contribute to *pro rata* their respective incomes to the maintenance of the minor children, whereof 63% is to be paid by the respondent and the applicant to contribute 37%.
- [42] The respondent consents to the maintenance obligation but disputes the applicant's version of expenses and that he is liable for 63% thereof *pro rata* of his income. The respondent claims that the parties' *pro rata* contribution in accordance with their respective incomes amounts to 56% liability incurred by him and holds that he should only be liable for maintenance in accordance with his affordability.
- [43] The applicant contends that the respondent pays a cash amount of R7 729, 51 per month per child in respect of maintenance.
- [44] The respondent tenders R2 000 per month per child as a cash contribution for maintenance of the minor children, subject to the respondent no longer being responsible for the car instalment, car insurance and life policy of the applicant.
- [45] The parties are in agreement that the applicant retain the minor children on her medical aid scheme and pay the monthly premiums thereof, together with any increase that may be imposed.
- [46] In regard to the medical aid, the respondent contends that all claims shall be submitted to the medical aid scheme for any medical expenses allowed by the rules of the medical aid and service providers.
- [47] The applicant seeks that both parties be liable for the payment of the children's medical expenses not covered by the medical aid scheme in accordance with their *pro rata* means.

- [48] The respondent contends that only in the event that the savings plan is depleted and/or service providers are not registered to be paid by the medical aid, will parties be liable to pay medical aid excess. He will only be liable for 60% of payment of medical expenses not covered by the medical aid, and the applicant liable for 40% of such payments.
- [49] The parties are in agreement that payments not covered by the medical aid scheme is to be paid directly to the service providers, unless the party who pays said expense in full, in which event the non-paying party shall reimburse the paying party within 7 days after receipt of proof of payment.
- [50] The applicant contends that the respondent remains liable for payment of the minor children's school and after-school fees, including registration fees, PTA fees and book levies.
- [51] The respondent tenders to continue to make payment of the minor children's school and after school fees, including registration and PTA fees and book levies on a monthly basis directly to the school, despite objection thereof that the minor children attend a private school.
- [52] The applicant contends that she and the respondent be liable in accordance with their *pro rata* means for the payment of the minor children's scholastic expenses, including but not limited to school uniforms, school shoes, stationary, prescribed books not including the book levies, school camps and extra classes, which payments be made directly to the service providers.
- [53] The respondent disputes the above scholastic expenses based upon the allegation that the applicant insists on keeping the minor children in a private school despite the parties not being able to afford this. Therefore, the applicant should be held responsible for the scholastic costs.
- [54] The respondent contends that she and the respondent be liable in accordance with their *pro rata* means for the minor children's extra-mural activities, and fees and equipment associated therewith, including but not limited to uniforms, clothing, participation fees, camps or tours.

[55] The respondent tender's full payment of one extra-mural activity per child, being karate, including participation fees, equipment, uniforms, tours and camps. To date the applicant makes payment of R800.00 for the minor children's participation in karate, including the payment of R106. 67 for their karate grading exam fee.

[56] Counsel for the applicant has contended that the total reasonable maintenance needs of the minor children per month amounts to R60 265 while the respondent submits that the reasonable expenses of the children amount to R42 076.99.

Contribution to legal costs

[57] The applicant seeks a contribution to her legal costs in the initial amount of R30 000, payable in instalments of R5 000 per month.

[58] The applicant in her founding affidavit states that she has been advised by her attorneys of record that a conservative estimation of the legal costs associated with a divorce with all it entails is between R150 000 and R250 000.

[59] The respondent disputes the payment of contribution to the legal costs of the applicant, claiming that the applicant has significant assets which can be utilised towards payment of her legal fees.

Costs of the Rule 43 application

[60] The applicant avers that costs of the application be paid by the respondent, alternatively to be costs in the pending divorce action.

[61] The respondent contends that costs of the application to be costs in the divorce action.

Financial disclosures

[62] The applicant's net income is R48 285.04 and the respondent has a net income of R85 659.36.

- [63] The respondent receives a 13th cheque annually and he also engages in work that attracts additional income. In the last 12-month period he did training and earned an amount of R30 000.
- [64] The applicant on the other hand also receives additional income in the form of a 13th cheque, bonus and share dividends in April and August/September which after tax approximately amounts to R100 000. This is evidenced from the applicant's September 2024 salary payslip in which she received dividends in the amount of R34 164, 70 and her net income for that month was R57 089.06.
- [65] Both the applicant and the respondent's monthly expenses exceed their net income.
- [66] It is common cause that the outstanding bond is over R1 000 000 and the respondent continues to pay the bond.
- [67] The respondent disputes the fact that the applicant pays for rental as nowhere in her bank statements is it reflected that she does pay rental to her parents.
- [68] The applicant in her founding affidavit states that since she has moved out of the marital home in December 2022, she does not have the financial means to litigate against the respondent and she has borrowed a total amount of R331 465 from family and friends, to meet the minor children's needs and pay her legal fees.
- [69] The applicant's loans from family and friends are at the lender's discretion payable on demand.
- [70] The applicant notes that her family and friends are no longer able to come to her assistance thus she has now resorted to applying for a personal loan in the amount of R400 000.
- [71] Three of the loan agreements referred to by the applicant in her affidavit were entered into prior to the parties' separation and the institution of divorce proceedings during September/October 2023. The respondent denies that that these loans were entered into to sustain the applicant in caring for their children or for legal costs. The total amount borrowed in terms of these three loans is R190 000.

- [72] It is submitted by the respondent that the applicant to date has failed to provide proof of the payment of the loan of 17 January 2024 in the amount of R36 265. Furthermore, in respect of the loan dated 22 November 2024 in the amount of R105, 200, the applicant attaches bank statements for the said period which shows internet bank transfers respectively on 21 November of R35 000 and on the 22 November 2024 in the amount of R21 000, totalling an amount of R56 000. No further credits for the period are reflected in the bank statements.
- [73] The respondent submits that the only logical conclusion is that the applicant either has another account which she did not disclose in which these amounts were paid from and or she is untruthful in her version that these amounts were borrowed to her, and she initiated these amounts to increase the liability in her estate.
- [74] The respondent also submits that the applicant has failed to attach the application for the personal loan of R400 000 and questions why she would apply for such a loan while still having a substantial credit amount.
- [75] In regard to the issue of contribution to legal costs, the respondent contends that after the payment of an attorney's fees on 30 October 2024 in the amount of R55 065.43, the applicant still had a credit balance in her FNB Premier Current Account in the amount of R78 898,34 on the 2 December 2024. It is submitted by the respondent that it is clear that the applicant's financial position is not as dire as she attempts to illustrate in this application and after payment of all her months disbursements, she has a substantial amount in her bank account.
- [76] The respondent in his answering affidavit refers the court to his bank statements for the period 16 November 2024 to 2 December 2024 and to the two credits respectively on 22 November 2024 being the respondent's salary paid in and a further credit on 20 November 2024 of R44 500. The latter amount was a loan from the respondent's mother to him in order for him to pay his legal fees, which was paid from the deposit on 21 November 2024 in the amount of R33, 313,90.
- [77] The respondent submits that the principles of accrual is trite, currently the applicant owes the respondent an amount in accrual in her estate, she refuses to pay this and is trying her level best to prevent payment to the respondent, by

either increasing her liabilities and or continuing with litigation such as bringing a Rule 43 application to seek in essence more maintenance and a cost contribution in order to pay for her litigation in the accrual. The respondent states that he has been willing to settle the matter with the applicant by accepting a payment of a substantial lesser amount than what he is entitled to from the accrual, but this was rejected by the applicant.

Discussion

- [78] Having regard to the net income of applicant and respondent, the *pro rata* ratio submitted by the applicant is correct. The *pro rata* ratio of the applicant and the respondent is in the ratio of 37% and 63% respectively. This *pro rata* ratio is calculated by combining the net incomes of the the applicant and the respondent and then dividing each of the parties' net income by their total combined net income.
- [79] Regarding the three loans taken out by the applicant, dated 1 June 2022, 3 November 2022 and 1 December 2022, it is disingenuous of the applicant to under oath state that she took out these loans to pay for her legal costs when the respondent only instituted legal proceedings against the applicant in September/October 2023. Furthermore, the applicant only moved out of the marital home in December 2022. Thus, these three loans were taken out before her separation from the respondent.
- [80] In respect of the loans dated 17 January 2024 and 22 November 2024, as per paragraph 72 above, I am wary of the veracity of the loan as the full amount of these loans as contended by the respondent are not reflected in the applicant's bank account. It is unknown whether the applicant received part of these loan payments in cash. The applicant has not under oath taken the court into her confidence and stated that she received some of these loan payment amounts in cash.
- [81] The November 2024 loan agreement contract is dated at the top of the contract as the 22 November 2024, but the first line in the contract sets out the loan date as 17 January 2024. This may have been an error, but it does cast doubt on the authenticity of the loan agreement, particularly where there is no evidence

reflecting the full payment of this loan being made to the applicant. There are two credit payments reflected in the applicant's November 2024 bank statements which *prima facie* may be the partial payment of the loan to the applicant. However, what is rather odd is that the first *prima facie* payment is made on the 21 November 2024 a day before the conclusion and signing of the loan contract.

[82] I have perused the bank statements of the applicant and there is no rental payment reflecting in the applicant's bank statements as contended by the respondent. Once again, the applicant has not taken the court into her confidence by disclosing that she pays the rental amount in cash.

[83] Maintenance *pendente lite* is dependent upon the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet those requirements.¹⁰

[84] Having taken into account all the financial information provided by the parties, I am not entirely convinced that the actual and reasonable maintenance needs of the two minor children totals an amount of R60 265 and that the respondent should pay a cash amount of R7 729, 51 per child per month in respect of maintenance. I am also not entirely convinced that the payment of an extra R2 000 per child, per month tendered by the respondent will suffice to cover the reasonable costs of the two minor children. It is for this reason that I have decided on a cash payment amount of R3 500 per child per month.

[85] The court when considering a contribution to legal costs, it takes into account several factors. These include the financial means of both parties, the complexity of the divorce case, the overarching aim of the principle of "equality of arms" which aims to ensure that both parties can engage competent legal counsel and that the proceedings are conducted on an equal footing.¹¹

[86] In respect of the contribution to legal costs, an applicant in a Rule 43 application is entitled to recover a contribution towards past costs. The court is entitled to take into account legal costs incurred, including debts incurred to fund legal

¹⁰ See *Nilsson v Nilsson* 1984 (2) SA 294 (C) and *JK v ESK* [2024] 1 SA 775 (WCC).

¹¹ *EVG v AJJV* [2023] ZAGPJHC 1473 (22 December 2023).

costs, in the assessment of an appropriate contribution to costs in terms of Rule 43.¹²

[87] In *AF v MF*¹³ the court held:

“[A] person’s dignity is impaired when she has to go cap in hand to family and friends to borrow for legal costs,...The primary duty of support is owed between spouses, and a wife who is without means should be entitled to look to the husband, if he has sufficient means, to fund her reasonable litigation costs. (The same of course applies if the husband is indigent and the wife is affluent).”

[88] In the present matter both the applicant and respondent state in their affidavits that they have incurred debt by taking out loans to pay for their legal costs. The applicant states that she has taken loans from family and friends, while the respondent states in his affidavit that he has taken a loan from his mother to pay for his legal fees. It may be inferred that both the applicant and the respondent are experiencing financial strain in meeting the payment of their legal fees.

[89] Taking into account the totality of information regarding the respondent and applicant’s financial disclosures and in particular that the applicant may receive dividend payments in April 2025 and then again in August/September 2025 before the pending divorce hearing set down for 13 October 2025, I find the applicant’s request for contribution to legal costs premature. Furthermore, the applicant has not taken the court into her confidence by providing the court with pro forma invoice(s) of her legal fees to date, past payments and future legal expenses.

Costs

[90] In light of the circumstances and context of this application, it is fair and just to both parties that costs are costs in the cause.

Pendente Lite Order

[91] I accordingly make the following order:

¹² *AF v MF* [2020] 1 All SA 79 (WCC); 2019 (6) SA 422 (WC).

¹³ *Supra* para 42.

1. Both parties shall retain full parental responsibilities and rights with regard to the care and maintenance of the minor children as contemplated in section 18(2)(a) of the Children's Act 38 of 2005 ("the Children's Act").
2. Both parties shall retain guardianship of the minor children in accordance with the provisions of sections 18(2)(c) of the Children's Act.
3. The parental responsibility and right of primary residence of the minor children is vested with the applicant.
4. Specific parental responsibilities and rights in respect of contact with the minor children as contemplated in section 18(2)(b) of the Children's Act be awarded to the respondent, which specific parental responsibilities and rights be exercised as follows:

4.1 BONDING THERAPY

4.1.1 The parties agree that the respondent's contact be reinstated with the assistance of the children's therapist and the parenting coordinator.

4.1.2 The contact will be reinstated after the following has taken place:

4.1.2.1 The respondent and the elder minor child has attended at least one individual parent-child relationship-therapy session (attachment therapy) with Dr N Olivier.

4.1.2.2 The appointed parenting coordinator has consulted with Dr Olivier, the children's therapist and is satisfied that contact may be reintroduced between the elder minor child and the respondent.

4.1.2.3 The respondent will be responsible for all other costs relating to the bonding therapy.

4.2 CONTACT AFTER THERAPY AND FOR A PERIOD OF ONE MONTH

4.2.1. After completion of at least one session attachment therapy the respondent will exercise contact with the minor children as follows:

4.2.1.1 Every weekend on Saturday or Sunday, the first contact will take place on Sunday, 9 March from 09h00 until 12h00 at a public venue under the supervision of a social worker nominated by Mrs Irma Schutte, if deemed necessary and so prescribed by Mrs Irma Schutte after she has consulted with Dr Olivier.

4.2.1.2 Thereafter every Saturday or Sunday, from 9h00 until 15h00 at a public venue, subject to the children's social, school and cultural responsibilities.

4.2.2. The aforesaid contact is subject to the following:

4.2.2.1 Dr Olivier and Mrs Schutte is satisfied that the elder minor child is ready to exercise the contact.

4.2.2.2 The minor children must continue with the therapy with Dr Olivier or as prescribed by the parenting coordinator at least once a month to enable the therapist to monitor the elder minor son's progress and to consider his views during the reinstatement period.

4.2.2.3 The contact will be exercised without the partner of the respondent, Mrs TMcN being present, until such time as the parenting coordinator makes a recommendation that Mrs TMcN may be reintroduced to the children.

4.2.2.5 The contact will be exercised for a month.

4.3 EXTENSION OF CONTACT FOR ONE MONTH

4.3.1. For a period of one month, the respondent will exercise contact with the minor children every Saturday from 09h00 until 18h00 and Sunday from 09h00 until 18h00 (without sleepover). The respondent will collect the minor children from the applicant's residence and return them to the applicant.

4.3.2 The aforesaid contact is subject to the following:

4.3.2.1 Dr Oliver and Mrs Schutte is satisfied that the elder minor son is ready to exercise the contact.

4.3.2.2 The minor children must continue with therapy with Dr Olivier or as prescribed by the parenting coordinator at least once a month to enable the therapist to monitor the elder minor son's progress and to consider his views during the reinstatement period.

4.3.2.3 The contact will be exercised without the partner of the respondent, Mrs TMcN being present, until such time as the parenting coordinator makes a recommendation that Mrs TMcN may be reintroduced to the children.

4.3.2.5 The contact will be exercised for a period of one month.

4.4 AFTER EXPIRY OF THE ONE MONTH PERIOD

4.4.1 After the completion of the period set out in paragraph 4.3 the respondent will exercise contact with the minor children as follows, subject to the following:

4.4.1.1 The children's therapist and the parenting coordinator is satisfied that the elder minor son is ready to exercise the contact as set out hereinafter.

- 4.4.1.2 The contact will be exercised without the partner of the respondent, Mrs TMcN being present, until such time as the appointed parenting coordinator makes a recommendation that Mrs TMcN may be reintroduced to the children.
- 4.4.1.3 Every alternative Friday from after school until Sunday 18h00 whereafter the respondent will return the minor children to the applicant's residence, taking into account the minor children's scholastic and extra-mural activities.
- 4.4.1.4 Every alternate public holiday which does not form part of a long weekend or a school holiday, from 09h00 until 17h00, and every alternate long weekend that does not form part of a school holiday.
- 4.4.1.5 Short school holiday (March/April and September/October) to alternate between the parties, with the understanding that Easter weekend shall rotate between the parties.
- 4.4.2. The minor children shall spend half of every long school holiday (June/July and December/January) with each party, with the understanding that Christmas and New Year shall rotate annually between the parties and

the children shall not spend the same holiday with one parent for two consecutive years.

4.4.2.1 The party in whose care the minor children ought to be for a holiday period will be responsible for the costs to arrange alternative care arrangements if that parent is not able to care for the children during a holiday.

4.4.3. The respondent shall be responsible in the case of short holidays and long school holidays, to return the minor children at least two (2) days prior to re-opening of the school.

4.4.4. On Mother's Day the applicant shall have contact with the minor children from 08h00 to 17h00, if such a day does not form part of her contact weekend.

4.4.5. On Father's Day the respondent shall have contact with the minor children from 08h00 to 17h00, if such a day does not form part of his contact weekend. The parties shall accommodate each other insofar as it may be necessary to exchange their weekend contact to ensure that they are able to enjoy the contact envisaged in said paragraph.

4.4.6. On the parties' respective birthdays or on a day as close as practically possible thereto, the parties shall each have contact with the minor children, from after school until 17h00 should the parties' birthday fall on a weekday, and from 09h00 to 17h00 in the

event of either of the parties' birthday falling over a weekend irrespective of with whom the minor children were to have spent the weekend, subject thereto that the contact shall not interfere with the minor children's scholastic and extra-mural activities.

4.4.7. On the minor children's respective birthdays or on a day as close thereto as practically possible, both parties shall have contact with the minor children for a period of at least three (3) hours, alternatively as agreed to between the parties, subject thereto that such contact shall not interfere with the minor children's scholastic and extra-mural activities, and irrespective of with whom the minor children were to have spent the weekend if either minor child's birthday fall over a weekend.

4.4.8 Both parties shall exercise unmonitored telephonic or electronic contact through video call on platforms such as WhatsApp, when the minor children are not in his/her care, subject thereto that such contact does not unduly interfere with the contact time of the other party and considering the scholastic and extramural activities of the minor children as well as their daily routine.

4.4.9 The party in whose care the minor children are, shall ensure that the minor children attend their individual scholastic activities and fulfil their scholastic obligations including homework and test or exam preparation, and

will ensure that the minor children participate in their extramural activities.

4.4.10 The contact as set out supra will be exercised with the respondent without the partner of the respondent, Mrs TMcN being present, until such time as the appointed parenting coordinator makes a recommendation that Mrs TMcN may be re-introduced with the contact between the respondent and minor children.

5. Mrs Irma Schutte is appointed as parenting coordinator with the following mandate:

5.1 To implement and facilitate the contact as set out in this court order, between the respondent and the minor children.

5.2 To educate the parties, if necessary, about the minor children's needs and to provide parenting guidance therapy to both parties.

5.3 To mediate disputes between the parties relating to the exercise of their parental responsibilities and rights in respect of the minor children.

5.4 To issue directives in the event of a dispute arising and the parties being unable to resolve the dispute in a timely manner.

5.5 To consult or interview any party, their legal representative, the minor children, a therapist, a teacher or expert and anyone else whom the parenting coordinator

determines to have a significant role in contributing to or resolving the conflict and to enable the parenting coordinator to make written recommendations or issue directives within the best interests of the minor children.

5.6 To report to the court as soon as the parenting coordinator considers it within the best interests of the minor children to revert to the residency and care arrangements and/or when the parenting coordinator considers the progress made by the respondent and the eldest minor child as being unsatisfying and the current contact arrangements in terms of this order to not be within the best interests of the minor children.

5.7 To ensure and monitor that the minor children continue and/or attend their occupational therapy and/or psychiatric therapy at a suitable therapist.

5.8 To provide the trial court in the pending divorce proceedings with a written feedback report on the *pende lite* contact and care arrangements set out in this court order.

6. The respondent will be responsible for the costs of the parenting coordinator.

7. The parties shall contribute towards the maintenance of the minor children as follows:

7.1 The parties shall contribute *pro rata* towards the maintenance needs of the minor children, that is, 63% to be paid by the respondent and

37% to be paid by the applicant. The parties to revise the *pro rata* contribution in January of each year by making their salary advices for the immediate preceding six (6) months available to each other.

- 7.2. The respondent to pay a cash component in an amount of R3 500.00 per month per child, which payment shall be made into the applicant's nominated bank account free from any surcharges or deductions and which amount shall escalate annually, at the end of the month in which this order is granted a rate equal to the average consumer price index published by the Department of Statistics for the immediate twelve (12) preceding months.
- 7.3. The applicant to retain the minor children on her medical aid scheme and pay for the monthly premiums thereof, together with annual increases which may be imposed by the medical aid scheme.
- 7.4. The parties to be liable for payment of any medical expenses (including therapy) regarding the minor children not covered by the medical aid scheme in accordance with their *pro rata* means. Payment of any medical surcharges to be made directly to the service providers, unless the respondent or applicant paid the said expenses in full, in which event the non-paying party shall reimburse the paying party within seven (7) days from receipt of proof of payment.

- 7.5 The respondent remains liable and responsible for the minor children's karate fees, school and after-school fees, including registration fees, PTA fees, and book levies.
- 7.6 The parties to be liable and responsible, in accordance with their *pro rata* means, for the payment of the minor children's prescribed books not included in the book levy, school camps and extra classes, which payments are to be made directly to the service providers, to allow the minor children to reach their full potential.
8. The applicant's application for contribution towards her legal cost by the respondent is dismissed.
9. That the costs of this application be the costs in the pending divorce action.


W DOMINGO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant: Adv. K Fitzroy instructed by Sanet De Lange INC.
For the Respondent: Adv. S Strauss instructed by Rautenbach Attorneys

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. This matter was heard in open court on 3 March 2025. The date for the hand-down is deemed to be 11 April 2025.