



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – GQEBERHA)**

CASE NO.: 3051/2020

Matter heard on: 14 January 2025

Order delivered on: 15 January 2025

Reasons delivered: 03 February 2025

In the matter between: -

M[...] D[...]

Applicant

and

L[...] N[...]

First Respondent

CHRISTELIKE-MAATSKAPLIKE RAAD (GQEBERHA)

Second Respondent

JUDGMENT – REASONS FOR ORDER

Rossi AJ:

Introduction and background

[1] This urgent application concerns the primary care and contact of two children , a daughter C[...] born on 20 April 2015 (currently 8 years of age) and G[...], a son, born on 29 November 2016 (currently 7 years of age). It served before me on the return date being 14 January 2025, a rule nisi in terms of Part B of the notice of motion having been granted on 17 December 2024. On 15 January 2025 I confirmed the rule nisi and indicated that my reasons would follow. Accordingly, these are my reasons.

[2] In terms of the rule nisi the first respondent was called upon to show cause why a final order in the following terms should not be granted:

‘3.1 That the recommendations of the office of the Family Advocate contained in their report dated 19 November 2024, in respect of the minor children...be and are hereby made an order of court as follows:

PARENTAL RESPONSIBILITIES AND RIGHTS

3.1.1 The applicant and first respondent shall remain the co-holders of parental responsibilities and rights in respect of the children as contemplated in section 18 of the Children’s Act 38 of 2005.

CARE AND CONTACT

3.1.2 The children shall primarily reside with the applicant, subject to the applicant appointing a suitably qualified professional (therapist or psychologist) to provide therapeutic support to the children during the transition process.

3.1.3 That Elise Fourie be appointed to provide therapeutic support to the children through the transition process, as required in paragraph 3.1.2 above.

3.1.4 That the change in [primary] residence take place on Tuesday the 14th of January 2025.

3.1.5 That the first respondent engage the services of a psychologist to develop her insights into the needs of the children.

3.1.6 The first respondent shall have the right to exercise contact with the children subject to the following:

3.1.6.1 Commencing from the date of the court order, that contact for the first three months be limited to one voice note per week, the contents of which is to be screened by the appointed parenting coordinator;

3.1.6.2 After a period of three months as envisaged above, the contact will be under supervision for a period and at a venue identified by the parenting coordinator appointed herein;

3.1.6.3 Supervised contact to be extended gradually and in accordance with the recommendations made by the appointed parenting coordinator.

3.1.7 That Ani Grobbelaar of Family Reconnect, Pretoria be appointed as the parenting coordinator to facilitate communication between the parties and to assist the parties with the implementation of the care and contact arrangements incorporated in any court order, including the phasing in of contact arrangements at a place as recommended by the parenting coordinator.

3.1.8 That a copy of the Family Advocate's report and Dr Le Roux's report shall be made available to the appointed [parenting] coordinator and appointed therapists of the children and the first respondent.

3.1.9 In the event of a dispute arising between the parties relating to the implementation of the court order (including the first respondent's contact), that the parenting coordinator be authorised to mediate the dispute and failing

any agreement between the parties, to have the authority to issue directives pertaining to the implementation of the court order, where necessary and regarding structure (i.e duration of contact, place of contact) and supervision of the first respondent's contact with the children and in doing so the parental coordinator shall have the right to do the following:

3.1.9.1 Consult with the parties, any family member or extended family or stepfamily member or carer involved with the children, school teachers and personnel, and such persons authorised to provide relevant information to the [parenting] coordinator.

3.1.9.2 The directive issued by the [parenting] coordinator shall be binding on the parties until varied by a court.

3.1.10 The first respondent shall provide proof of her therapeutic process to the [parenting] coordinator and the [parenting] coordinator is authorised to liaise with the first respondent's therapist and the children's therapist to enable the [parenting] coordinator to issue informed directives regarding the first respondent's contact with the children.

3.1.11 That the first respondent shall pay the costs of Part B of the application.'

[3] In terms of Part A of the notice of motion, which was granted on 12 December 2023, the Family Advocate's offices were directed to re-open their investigation into the best interests of the children and provide a report and recommendations specifically regarding the applicant's care and contact. In addition, Dr Le Roux¹ was directed to furnish written recommendations in respect of the structure of parental rights and responsibilities, with specific reference to the children's wishes, care and residency and to make findings on whether the first respondent has alienated the

¹ The court order in Part A which provides for Dr Le Roux's appointment makes provision for the appointment of an alternative independent child psychologist agreed upon by the parties, and failing such agreement, one to be appointed by the Health Professions Council of South Africa.

children from the applicant and if it is found to be case to propose therapeutic interventions to remedy the situation and to prevent further alienation.

[4] The applicant and first respondent were directed in terms of Part A to co-operate with the investigations of the child psychologist, and although not specifically mentioned, such direction would, by application of logic and implication, also include an obligation to co-operate with the Family Advocate.

[5] The report by Dr Le Roux was finalised on 10 October 2024. This report was duly considered by the offices of the Family Advocate, whose report inclusive of the report by social worker, Ms Gans, is dated 19 November 2024. I shall return to these reports in due course.

[6] A brief summary of the historical landscape follows. The applicant, a businessman currently residing in Pretoria, Gauteng, is the biological father of the children. The first respondent, a local radio personality, is the biological mother. She resides in Gqeberha and until the interim order of 17 December 2024,² the children have primarily resided with her. The parties were involved in a romantic relationship during 2012 to 2018, during which time the children were born. Both parties are co-holders of full parental rights and responsibilities.

[7] The second respondent was cited in the proceedings to facilitate the appointment of a social worker to act as parenting coordinator.³

[8] In terms of an earlier court order dated 19 January 2021,⁴ the offices of the Family Advocate were directed to urgently investigate and report on the best interests of the children specifically with regard to primary residence, care and contact. Pending the investigations and report by the Family Advocate, an interim order was granted in the following material terms:

² Which order was granted by Eksteen J.

³ A consent letter signed by Ms Ani Grobbelaar a social worker employed by Family Reconnect forms part of the application papers.

⁴ Which order was granted by Potgieter AJ.

- (a) The children would continue to reside with the first respondent.
- (b) The applicant would be permitted to exercise telephonic/video contact with the children every Tuesday and Friday from 17h00 until 18h00.
- (c) In the first week of every month, the applicant would be permitted to exercise contact with the children from a Monday at 10h00 until the following Monday at 10h00.
- (d) Provision was also made for holiday contact; contact on the applicant's birthday; the children's birthdays and on religious holidays (rotating between Christmas and Easter).
- (e) The applicant was directed to pay R1 000.00 per month as a cash contribution towards the children's maintenance and to purchase clothing for the children twice a year.

[9] For several months after the order of January 2021, the applicant exercised contact with the children. In October 2021, the first respondent terminated his contact. According to the applicant, his contact was frustrated due to the first respondent changing residences and her cell phone number on several occasions. The first respondent disputes that she has frustrated contact. The report by the Family Advocate was finalised on 6 December 2021. In terms of this report, it was recommended that the applicant would have contact with the children, however, owing to financial constraints and not knowing the first respondent's whereabouts, the applicant did not approach the court to have these recommendations made an order of court.

[10] According to the applicant he was financially in a position to instruct his attorneys in March 2023. In August 2023, the first respondent was located and in November 2023 this application comprising of Parts A and B (in its unamended form) was launched. I have already mentioned that Part A was granted on 12 December 2023. Part A served two purposes. Firstly, it directed the Family Advocate to

reinvestigate and file a report, and secondly, it granted the applicant interim contact with the children for a period of one week in December 2023.

[11] Prior to this, the applicant had no contact (physical or telephonic) with the children since October 2021. Following the one week contact in December 2023, the applicant again had no physical contact with the children until 10 August 2024, when he met with them during Dr Le Roux's assessment. There has been some telephonic contact with the children, but such contact has been far from ideal. These encounters are either cut short by the children or the applicant is scorned by them for his lack of financial support.⁵

[12] The applicant contends that the first respondent frustrates his contact, whereas the first respondent says he is estranged from the children and has made no effort to connect with them. A significant issue for the first respondent is the applicant's failure to adequately financially provide for the children contending that the paltry sum of R1 000.00 is wholly insufficient.

Dr Le Roux's report

[13] I now turn to the report of Dr Le Roux, who is a registered clinical psychologist with inter alia a PhD in psycho-analytic psychotherapy and a PhD in child and forensic psychology.⁶ She explains the ambit of her appointment thus:

'The examiner was appointed on 28 November 2023...to investigate the circumstances of the minor children and to furnish written recommendations in respect of the structures of parental rights and responsibilities. The order stated that (i) the investigation should focus on the minor children's wishes, care and residency; (ii) make findings on whether the [first] respondent has alienated the minor children from the applicant; and, if it is found that the [first] respondent has alienated the minor children, propose therapeutic interventions to remedy the situation and prevent further alienation in future.'

⁵ Dr Le Roux captures the contents of several telephonic discussions in her report.

⁶ Dr Le Roux's qualifications do not appear to be in dispute.

[14] In terms of her assessment procedure, Dr Le Roux undertook psychometric assessment of both parties by means of the Million Clinical Multiaxial Inventory-IV (MCMI-IV). These results were in turn independently verified by an off-site independent bureau licensed to process psychometric results and provide a comprehensive assessment report. She conducted detailed clinical interviews with the parties to assess personality functioning, coping mechanisms, typical defence mechanisms and possible underlying psychopathology. She undertook clinical assessment of the children by way of structured clinical interviews as well as clinical observations of the children and their interactions with the parties and obtained collateral information from various sources.

[15] The psychometric assessments and clinical interviews of the first respondent and applicant were conducted on 5 July 2024 and 9 August 2024 respectively. The forensic assessment of the children and the children with the applicant on 12 July 2024 and 10 August 2024 respectively.

[16] The personality assessment of both parties are comprehensively detailed in the report. I do not intend to deal with this at great length, save and only to the extent that such findings inform the ultimate relief granted.

[17] Dr Le Roux notes that she initially established a good rapport with the first respondent, but that she expressed a reluctance for the children to see the applicant for the investigation process. Ultimately, she agreed. Following the applicant's interaction with the children, the first respondent stopped communicating with Dr Le Roux.

[18] The first respondent's participation in the investigation falls short of what is expected of a parent acting in accordance with the best interests-standard. This has served as a repeating theme and will be returned to momentarily. Dr Le Roux noted that on clinical assessment the first respondent was 'extremely evasive and passive aggressive to the point of exhaustion'. She displayed reluctance to meet with Dr Le Roux citing that she did not want to disrupt the children's routine, although it had been explained to her on three occasions that the children were not required at the

initial assessment. She failed to attend the first scheduled meeting again citing the same reason. This was at a time when she already knew that they children were not required to attend. She ultimately met with Dr Le Roux in July 2024.

[19] She failed to provide a detailed timeline of her life and collateral information regarding the children's developmental histories. Requests for a home visit were ignored. Following the children meeting with their father on 10 August 2024, Dr Le Roux sought a further assessment of the children. Several telephonic, email and WhatsApp messages were left unanswered. However, on 14 August 2024 she asked Dr Le Roux to intervene and approach the applicant in regard to outstanding school fees.

[20] According to Dr Le Roux the first respondent presents as psychologically distressed and displays a significant personality dysfunction. First respondent displayed several aspects of a narcissistic/turbulent personality disorder. She presented with a lack of capacity for mentalisation, which is a lack of capacity for mirroring the feelings of others and a general lack of playfulness and a lack of reflective capacity. Individuals with this type of personality constellation present with great difficulty in parenting. Children are typically viewed as objects for emotional gratification and the loneliness, depression and despair experienced by these parents typically know no boundaries, resulting in children frequently expressing sympathy and concern for what is typically perceived as the victimised parent. The first respondent displayed very little insight into the destructive impact of embroiling the children in adult concerns and this, according to Dr Le Roux, contributed significantly to the children's perception of their father. Dr Le Roux states '(T)he overall narrative of victimising has resulted in a lack of balance in the [first] respondent's narrative and in essence germinated the seeds for parental alienation. The result is that the children have internalised the three pillars of parental alienation i.e (1) their mother is a victim of their abusive and sadistic father who withholds money from them and makes her (and them) suffer as a result; (2) that their father cannot protect them; and (3) that their father does not provide for them.'

[21] According to the results of the applicant's MCMI-IV profile he presented as a well-functioning adult with no clinical disorders or personality traits of concern. On

clinical scrutiny, there was some evidence of a conscientious/compulsive personality type, but he ultimately presented as 'probably more capable to respond empathically and appropriately to the minor children's emotional needs for nurturing and growing independence.'

[22] The salient features of Dr Le Roux's assessment of the children are:

- (a) C[...] conveyed to Dr Le Roux that her father does not love her and her brother, since he does not provide for them and makes their mother struggle with money.
- (b) C[...] was party to information contained in court orders, financial affairs and details of the first respondent's struggles with her own mother and other family members. C[...] displayed protection of her mother and brother and a tendency to distort information to support the narrative of maternal victimisation. These signs typically attest to the presence of parental alienation which 'presents in families in themes of complete rejection of the one parent by the children, a lack of finding anything to say about the alienated parent and no longer presenting mixed feelings towards the parent. It is further described as the programming of children to distance themselves emotionally from one parent and to learn to despise the target parent. In most cases, parental alienation presents as passive-aggressive comments by the one parent about the other parent in the presence of the children, blocking some forms of communication, or ensuring periodic unavailability of the children to visit with the alienated parent. Children also get caught up in arguments between the parents, is often guilted into taking sides with the alienated parent and there is great pressure on the children to reject the other parent entirely and demand allegiance...All these dynamics were evident on clinical assessment of this family and the interaction between the [first] respondent and the children.'
- (c) Upon the children's arrival at the assessment with the applicant (whom they had not seen in months): '(T)hey both immediately indicated to him

that the police were coming to arrest him for not paying money towards them and their mother. C[...] immediately started interrogating her father about money...After the initial reprimands by C[...], both children relaxed and enjoyed the interaction with their father. C[...] noted that they were informed by their mother that they only had to stay for five (05) minutes and could leave when they wanted to.' Ultimately the children settled into the applicant's company and interacted normally with him. C[...] remained weary and continued to remind Dr Le Roux and her brother that they had to leave to attend a family birthday.

- (d) Following what Dr Le Roux describes as a positive interaction between the children and applicant, the children were not interviewed again as the first respondent did not respond to requests for a further interview. This, according to Dr Le Roux, is probably because the positive interaction was perceived by the first respondent as a betrayal.
- (e) There is evidence that the children have been alienated from the applicant which has resulted in the co-creation of the pre-existing dynamics between the parties. At present given the strained relationship between the parties, the lack of contact with other family members, and the perception that the applicant is a sadistic and depriving figure, the alienation has become an entrenched dynamic of the family. There is no ameliorating and/or supportive encouragement of the relationship between the applicant and the children, as the first respondent supports the view that they will be better off with another father figure.⁷
- (f) The children have internalised beliefs that they are not loved and are abandoned by their father.

[23] In her discussion section, Dr Le Roux states that there is evidence of parental alienation, and problematic family dynamics, which are not adequately

⁷ G[...] he conveyed the following to Dr Le Roux 'My dad does not care for us. He does not love us. A father cares for his children and he will never forget about his children. He is a freak. He is a goat. I will get myself a better father. He forgets about me and he leaves me and my mother and my sister.'

addressed in the Family Advocate's report of 2021. The recommendation 'exacerbated [the first respondent's] already entrenched personality dynamics of viewing the children as property and embroiling them in adult conflicts. This conduct has significantly contributed to the current situation where the minor children and psychologically in crisis.'⁸

[24] According to Dr Le Roux the current arrangement is detrimental to the psychological health and adjustment of the children and remedies should be placed in action as a matter of urgency. She goes on to analyse maintaining the status quo (i.e the children remaining with their mother) which she suggests is inappropriate given the historical difficulties in the exercise of contact and the children displaying significant symptoms of parental alienation.⁹ Furthermore, and for similar reasons, she suggests that share residency is not a viable option.

[25] In regard to the children primarily residing with the applicant, Dr Le Roux states that the applicant has displayed the parental capacity to act as primary carer and will be able to foster an on-going relationship between the first respondent and the children. He has also displayed a more balanced and reasonable alternative in viewing life and a psychological space to foster individualism without the children being left responsible for the emotional needs of either parent. It was also opined that he would be more likely to foster a healthy relationship between the children and the first respondent.

[26] Dr Le Roux concludes that the focus 'should be on the developmental and emotional needs of the children, who are clearly not coping with the current situation and display symptoms of children who are alienated from their father' and that her recommendations should be viewed as possible remedies to be considered by the Family Advocate and the court.

⁸ My own emphasis.

⁹ And being at risk of developing complex posttraumatic disorder.

[27] Dr Le Roux recommended that both parties maintain their status as co-holders of parental rights and responsibilities¹⁰ but that the children's 'current emotional and developmental needs will be better served by primary residence with the applicant. The complex history does not bode well for future parental co-operation and it is the examiner's respectful view that should the children remain in the care of the [first] respondent they will become completely alienated from their father and psychologically develop very serious psychopathology in the long run. The children are the unfortunate victims here of a failed parental system. It is reasonable to assume that the [first] respondent will not accept this recommendation. Being mindful of the historical position in this matter, the change in primary care is, in the examiner's view, the only possible remedy to ensure that the children are provided with an opportunity to have a reasonably stable and normal upbringing. This will understandably be upsetting to the minor children and they will require psychotherapy to assist them with the changes in primary care and schooling. The only benefit for the children at present [is] that they are young and both present as intelligent and resilient and will, likely, thrive when given the psychological tools to manage their feelings of loss and understand the importance of them being allowed to be children and not little adults who are responsible for managing the conflict between their parents.'

¹¹

[28] To ameliorate any hardships that the children will face during this transition, Dr Le Roux suggests the appointment of a parenting co-ordinator. Dr Le Roux also recommends limited contact between the children and the first respondent for the first three months following this order to ensure that the children are not exposed to further psychological harm and/or interrogation by the first respondent.

[29] Dr Le Roux concludes that the importance of providing both children with a structured, predictable, disciplined and loving home environment cannot be over-emphasised and that the first respondent will have to undergo a period of psychotherapy to equip her in understanding the devastating impact of parental alienation on the children.

¹⁰ In terms of s 18 of the Children's Act.

¹¹ My own emphasis.

Family Advocate's report

[30] The Family Advocate's report by Mr Mgobozi incorporates a social investigation report by Ms Gans, a family counsellor and registered social worker.

[31] In the preparation of her report, Mr Mgobozi and Ms Gans consulted with the first respondent but were unable to assess the children due to the first respondent's non-cooperation in their efforts at arranging an assessment and a follow-up consultation.¹² A repeating theme by the first respondent. Despite being unable to assess the children, Mr Mgobozi concludes that he is satisfied that child participation was achieved in accordance with s 10 of the Children's Act by Dr Le Roux in her assessments and by adequately capturing their voices. He states 'any further delays in finalising the matter may negatively impact on the children, as the assessment denotes areas of concern which require the issue of care and contact to be resolved as speedily as possible...Dr Le Roux makes findings of parental alienation which require the court's immediate intervention.'¹³

[32] Additionally, collateral sources were consulted, such as the children's class teachers, the school secretary and the principal. It was noted that there had been no improvement in the relationship between the children and the applicant despite positive signs of development when contact was exercised in December 2023 and that efforts at contact in April and August 2024 were unsuccessful as the first respondent could not be reached. Mr Mgobozi states '(W)hat is clear from the reporting, however, is that the relationship between the applicant and the children seems to improve during times of physical contact and sour when non-physical contact is exercised. Ms Gans opines that this change speaks to the conflicting emotions that the children are experiencing which is indicative of them being influenced by the personal views of the [first] respondent and according to Dr Le

¹² The unsuccessful efforts at making contact with the first respondent are detailed in paragraph 2.5 of the report by Ms Gans.

¹³ My own emphasis.

Roux is a cause for serious concern regarding the [first] respondent's capacity to [meet] the needs of the children.'¹⁴

[33] Mr Mgobozi took note of the financial struggles experienced by the first respondent, which according to her were due to the applicant's failure to sufficiently support the children but stated that the current environment was contrary to the need for the children to be brought up in a stable environment which also takes into account their physical, psychological and emotional well-being.

[34] Mr Mgobozi assessed the likely effect of the change of circumstances on the children (s 7(1)(d)¹⁵ of the Children's Act) against the other factors contained in s 7(1) and emphasised that one should be careful not to place too much emphasis on the children's current emotional attachment with the first respondent, as doing so, may be detrimental to their future wellbeing. He concludes that '(W)hile it can be expected in these circumstances that the children will want to remain with the [first] respondent [with] whom they lived their entire life; it is further a natural consequence when children change primary residence to expect that some emotional challenges may have to be endured by the children while undergoing the adjustment. However as upper guardian, the court should intervene where the alternative far outweighs the immediate harm the children may experience as a result of the change in primary residency.'¹⁶

[35] In the result the Family Advocate recommends that primary residency be awarded to the applicant in order to avoid the risk of further damage to the children's emotional well-being. The recommendation largely mirrors the interim order set out in my opening paragraphs.¹⁷

Opposition by the first respondent

¹⁴ My own emphasis.

¹⁵ Section 7(1)(d) of the Children's Act concerns the likely effect of the child of any change in the circumstances, including the likely effect on the child of any separation from both or either of the parents.

¹⁶ My own emphasis added.

¹⁷ Save for the identification by the applicant of the parenting co-ordinator (Ani Grobbelaar at par 2.2.2) and Elise Fourie as the suitably qualified professional to provide therapeutic support to the children (at par 2.3).

[36] I turn to the first respondent's opposition. In terms of the interim order the first respondent was directed to file her answering affidavit by 7 January 2025, which she duly did. At the time of filing her answering affidavit, she did not have the benefit of legal representation. Subsequent to instructing her attorney on 8 January 2025, a supplementary answering affidavit was prepared on her behalf. On 13 January 2025, this supplementary answering affidavit made its way to me. The admission of the supplementary affidavit was opposed by applicant.

[37] According to the first respondent's supplementary answering affidavit, she consulted telephonically with her attorney Mr Lazarus on 8 January 2025. He called for a financial instruction and required time to acquaint himself with the matter, which has a lengthy history. His view was that her answering affidavit failed to address material aspects, which aspects inform the best interests of the children. I agree with Mr Lazarus, having regard to the principles of the interests of justice and the best interests of the children, that this supplementary affidavit should be allowed. For this reason, and the extremely wide powers afforded to courts as the upper guardians in establishing what is in the best interests of the children.¹⁸ In **AD and DD v DW and Others**¹⁹ the Constitutional Court endorsed the view of the minority in the Supreme Court of Appeal that the interests of the minors should not be 'held to ransom for the sake of legal niceties' and that the best interests principle 'should not be mechanically sacrificed on the altar of jurisdictional formalism'. Accordingly, I allow the admission of the first respondent's supplementary answering affidavit.

[38] At the hearing of the matter, I was presented with a notice of motion in which the first respondent sought a variety of relief, to wit, the introduction of her supplementary answering affidavit (which is dealt with above); dismissal of the application and costs on an attorney and own client scale; that the Family Advocate be directed to reopen its investigation and not to have any regard to the report of Dr

¹⁸ DM v CHP [2024] ZAGPPHC 76 (4 January 2024) par 42.

¹⁹ AD and DD v DW and Others (Centre for Child Law as amicus curiae: Department for Social Development as Intervening party) 2008 (6) SA 33 (CC) par 10 and 30. See also Du Toit and Another v Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae) 2003 (2) SA 198 (CC) par 3.

Le Roux; that the parties be ordered to co-operate with the Family Advocate in the investigation; that a clinical psychologist be appointed, if it is found to be necessary and that pending the outcome of the further recommendations that the children reside with the first respondent.²⁰

[39] Holistically viewed, the first respondent alleges that:

- (a) The children have not been alienated from the applicant but have in fact become estranged due to the applicant's failure to make any serious attempts at exercising contact.
- (b) The applicant's failure to adequately provide financially for the children²¹ has caused the household to suffer. As the children are aware of the financial struggles, this has caused them to feel abandoned and neglected. The children have taken it upon themselves to raise this issue with their father.
- (c) The findings of Dr Le Roux should be rejected. Her report evinces a lack of due diligence due to inaccuracies²² and is incomplete as she did not conduct a follow-up assessment with the children. Dr Le Roux failed to act impartially, was biased and acted as an agent/representative of the applicant.²³
- (d) In the result, the Family Advocate's report was (incorrectly) influenced by the report of Dr Le Roux.

Analysis and discussion

²⁰ Additionally, relief was sought for maintenance and the referral of Dr Le Roux to the HPCSA. These prayers were ultimately disavowed by the first respondent in argument before me.

²¹ She contends that he has failed to purchase clothing for the children and is in fact in contempt of that order.

²² The first respondent takes issue with the following inaccuracies; namely that the applicant is a business owner, whereas he is referred to as self-employed and that Zilwa AJ granted the order of 28 November 2023 when in fact it was granted by Eksteen J.

²³ Reference is made to a remark by Dr Le Roux that the applicant was attractive, which conveyed her bias.

[40] It is well accepted that in matters such as these, the enquiry turns on what is in the best interests of the children. This is not only encapsulated in s 9 of the Children's Act²⁴ but also comprises a Constitutional imperative. In terms of s 28(2) of the Constitution²⁵ the best interests of the children standard is raised to a principle of paramountcy.

[41] The answer to the question of what exactly is in a child's best interests entails a factual enquiry according to the circumstances and merits of each case. Section 7 of the Children's Act gives content to the best interests-standard. Section 10 of the Children's Act explicitly recognises the child's inherent rights in any matter in which that child is affected.

[42] The wide formulation of s 28(2) has been described as 'ostensibly so all-embracing that the interests of the child would override all other legitimate interests of parents, siblings and third parties.'²⁶ The plain meaning of the words indicate that the reach of s 28(2) extends beyond those mentioned in s 28(1) and the 'best interests principle has never been given exhaustive content, but it is necessary that the standard should be flexible as individual circumstances will determine which factors secure the best interests of a particular child.'²⁷

[43] Prior to analysing the merits of the first respondent's opposition, a few opening remarks stand to be made. There is no dispute that Dr Le Roux is suitably qualified to undertake the assessment and report to this court. She is a highly qualified and respected clinical psychologist. The first respondent took no issue with her appointment pursuant to the order of 12 December 2023.

²⁴ Section 9 reads 'In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied.'

²⁵ The Constitution of the Republic of South Africa, 1996. Section 28(2) reads 'A child's best interests are of paramount importance in every matter concerning the child.' See also *P v P* 2007 (5) SA 94 (SCA) par 13.

²⁶ *Jooste v Botha* 2000 (2) SA 199 (T).

²⁷ *Minister of Welfare and Population Development v Fitzpatrick and Others* 2000 (3) SA 422 (CC) par 18.

[44] My impression of Dr Le Roux's report is that it has been prepared in a careful and considered manner. The report is comprehensive. Although there are minor factual inaccuracies,²⁸ none of which indicate a lack of due diligence and in any event, such inaccuracies played no role in her ultimate recommendations.

[45] Although Dr Le Roux wanted a follow-up consultation with the children, due to the first respondent's lack of co-operation this did not take place. Dr Le Roux was able to meaningfully engage the children and gauge their views as mandated by s 10 of the Children's Act. The children's views are recorded.²⁹ Dr Le Roux assessed that there was evidence of parental alienation and that the children were currently in psychological crisis. Whilst a further consultation may have been preferable, the current situation and the best interests of the children call for urgent intervention without further delay. I am not persuaded that her investigations were incomplete.

[46] The first respondent alleges that Dr Le Roux is biased. Such allegations are not taken lightly. The duties of an expert witness, which, derived from English law have been adopted into our jurisprudence,³⁰ are adumbrated in **National Justice Compania Naviera SA v Prudential Assurance Co Ltd ("The Ikarian Reefer")**.³¹ An expert's evidence must be uninfluenced by the exigencies of litigation either in its form or content. An expert must not assume the role of an advocate and must give an unbiased opinion on matters falling within his/her expertise; he/she should state the facts or assumptions upon which the opinion is based; he/she should not omit to consider matter that would detract from the opinion; he/she should make it clear when a particular question is outside of his/her expertise; if he/she has not fully researched his/her opinion, it must be stated that the opinion is provisional; and if something stated in his/her opinion requires clarification, this must be disclosed.³²

²⁸ See fn 22 supra.

²⁹ These appear from paragraph 4.2 of her report.

³⁰ See for example *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative Ltd* [2015] ZASCA 2; [2015] 2 All SA 403 (SCA) par 98.

³¹ [1993] Lloyd's Rep 68.

³² Ibid.

[47] In order to assess the value of an expert's opinion, it is necessary for the expert to disclose the process of reasoning which led to the conclusion reached.³³ An expert's bald statement of opinion is of no assistance to a court.³⁴ When experts' opinions are in conflict, a court must determine to what extent their opinions are founded on logical reasoning.³⁵ This is so because an expert's opinion must represent their reasoned conclusion based on certain facts or data which are either common cause or established by his/her own evidence or that of some other competent witness.³⁶

[48] The first respondent contends that Dr Le Roux is biased because she inter alia states that she had no further communication with the first respondent after 10 August 2024, whereas they in fact communicated after this date. In the words of Dr Le Roux 'numerous requests (email and telephonic) were sent for a follow-up consult which [were] ignored by the [first] respondent after the consult between the children and their father on 10 August 2024.' This statement conveys that the consultation took place on 10 August 2024, and that following this event, her requests for a follow-up were unsuccessful.³⁷ Communication, to a limited extent, did continue³⁸ but it did not progress her requests to consult. The first respondent does not contend that she facilitated a follow-up consultation. Elsewhere in Dr Le Roux's report she specifically records an exchange with the first respondent on 14 August 2024 regarding arrear school fees.³⁹ If Dr Le Roux was indeed biased, one would not have expected her to mention this exchange. Additionally, Dr Le Roux talks to the financial struggles of the first respondent, compounded by the applicant's failure to adequately support the children. This shows Dr Le Roux's objectivity and impartiality; essential elements of an expert's duty.⁴⁰

³³ *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung MBH* 1976 (3) SA 352 (A) at 371F-H.

³⁴ *Louwrens v Oldwage* 2006 (2) SA 161 (SCA) par 27.

³⁵ *Ibid.*

³⁶ *Roman's Transport v Zihwele* [2015] ZASCA 13 (SCA) par 9.

³⁷ This trend was also experienced by the offices of the Family Advocate as well, who experienced difficulties in arranging a meeting with the first respondent.

³⁸ Relevant to service of a maintenance subpoena and arrear school fees.

³⁹ Page 24 of Dr Le Roux's report (unnumbered paragraph).

⁴⁰ *Van Niekerk v Kruger and others* [2016] ZASCA 55 (SCA) par 16.

[49] My observations of Dr Le Roux's report have, to some extent, been set out above. My impression of her report is that it has been prepared in a conscientious, fair and objective manner. She was aware of her mandate, and this is set out in her introductory paragraphs. She would have no cause to unfairly favour one party over the other or act as one's agent or representative. But in any event, I do not find that she has done so. I express my gratitude to Dr Le Roux. Her report has been of appreciable help to the court. Accordingly, the criticism is found to hold no merit.

[50] What we are left with are several critical observations by Dr Le Roux, which she arrives at by reason of her special knowledge and skill. None of her findings are countered by expert opinion. These observations are:

- (a) The first respondent presents as psychologically distressed with a lack of insight into her own behaviour.⁴¹
- (b) Evidence of parental alienation was found to be present.⁴²
- (c) As result of the 2021 Family Advocate's report failing to sufficiently address the problematic family dynamic, the first respondent's personality dynamics of viewing the children as property and embroiling them in adult conflicts has been entrenched. This has significantly contributed to the current situation where the children are psychologically in crisis.⁴³
- (d) The applicant has the parental capacity to act as the primary carer and will be able to foster an on-going relationship with their mother.
- (e) The children's emotional and developmental needs will be better served by primary residence with the applicant.

⁴¹ Elsewhere in the report Dr Le Roux states '(T)he [first] respondent further displays very limited insight into the destructive impact of embroiling the children in adult concerns.'

⁴² This has been detailed above and will not be repeated.

⁴³ According to Dr Le Roux the children are not coping with their current situation.

[51] Dr Le Roux has set out the process of her reasoning and her reasoned conclusions are set out in her report. Her opinions are genuinely held by her and based on logical reasoning. I accept her findings.

[52] The alleged insufficient financial support by the applicant is a significant catalyst for the disharmony between the parties. It is repeatedly raised by both the first respondent and the children. Although I am not called upon to make any findings regarding the sufficiency of the contribution, it does permeate into the best interests enquiry. I question why the first respondent took no active steps⁴⁴ at seeking an increase in maintenance, either informally or by way of legal proceedings. This of course does not excuse the applicant from adequately supporting his children. He has a duty to do so. A monthly contribution of R1 000.00 does, to my mind, seem strikingly low. Having said that, what is clearly unacceptable is that the first respondent continues to embroil these young children in a financial tug of war with their father and discloses sensitive information to them which they lack the maturity to process. There can be no question, such behaviour is not in their best interests.

[53] I am similarly disinclined to accept that the applicant has only become estranged from his children due to a lack of effort on his part. Given the lengthy litigation background,⁴⁵ the historical landscape, and the modus operandi adopted by the first respondent in failing to engage with both Dr Le Roux and the Family Advocate's office, it is far more probable that she played an active role in frustrating contact.

[54] It is also important to remind ourselves that in cases where a child's welfare is a stake, a court should be slow to determine the facts by way of the usual opposed motion approach.⁴⁶ The best interests of the child principle is a flexible standard and should not be approached in a formalistic manner.⁴⁷ These principles have guided me in arriving at the conclusions encapsulated in the preceding two paragraphs.

⁴⁴ Prior to her efforts during her engagement with Dr Le Roux, who offered to pass on the maintenance documents to the applicant.

⁴⁵ As evidenced by the case number, proceedings were first commenced by the applicant in 2020.

⁴⁶ RC v HSC [2023] ZAGPJHC 219; 2023 (4) SA 231 (GP).

⁴⁷ Ibid.

[55] I am of the view that the appointment of a parenting co-ordinator to assist in establishing calm and stability is appropriate. So too is the necessity for limiting the first respondent's contact with her children, at least initially, to ensure that further psychological harm is not caused. I agree that there is value in the provision of therapeutic support to the children during the transition process, and to direct the first respondent to engage a psychologist to develop her insights. To my mind these additional safeguards will help ameliorate any further harm to the children.

[56] Accordingly, and after carefully weighing the statutory and common imperatives relevant to this matter and these against the facts in the papers and the reports referred to above, I confirm the rule nisi granted on 17 December 2024, which includes an order that the first respondent pay for the costs of the Part B application. Awarding a cost order in matter such as these are not the norm. This is based on the premise that the parents in their litigation endeavours are assumed to be acting in the children's best interests. Sadly, this has not been my impression of the first respondent's conduct in this matter. In the result, I depart from the ordinary principle.

[57] Lastly, I find that no case has been made out for the first respondent's remaining relief set out in her notice of motion, and which, in any event do not serve the children's best interests. The relief sought in paragraphs 2 to 7 are dismissed.

[58] In conclusion I express my gratitude to the representatives of the Family Advocate's office for their conscientious efforts in approaching this deeply emotional matter. Additionally, the submissions made in argument before me by Mr Mgobozi were persuasive and of significant value to the court.

The Order

In the result, I make the following order:

1. Leave is granted to the first respondent to file her supplementary answering affidavit.

2. The remaining relief sought by the first respondent in paragraphs 2 to 7 of her notice of motion dated 12 January 2025 is dismissed.
3. The rule nisi granted by this Honourable Court on 17 December 2024 is hereby confirmed.

T ROSSI
ACTING JUDGE OF THE HIGH COURT

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