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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 24999/25

In the matter between

A[...] V[...] S[...]

APPLICANT

AND

H[...] W[...] V[...] S[...]

RESPONDENT

Date of Hearing: 03 March 2025

Date of Judgment: 17 March 2025 (to be delivered via email to the respective
counsel)

JUDGMENT

THULARE J

[1] This is an opposed urgent application for a rule nisi for the respondent to show cause why the court should not make an order giving the applicant primary care of the

parties' minor child pending the return date and an investigation by a private social worker, subject to some terms regulating the respondent's rights to reasonable contact with the minor child and for the rule nisi to operate as an interim order with immediate effect and the respondent being ordered to pay the costs in the event of opposition. The rule nisi was granted. The court, however, ordered an investigation by the Family Advocate and not by a private social worker.

[2] The parties are the biological parents of the minor child who was 21 months old. The parties met at a rehabilitation centre in 2015 whilst both independently underwent treatment for drug abuse. They married in 2018. They were now estranged and viewed their marriage as having irretrievably broken down. The respondent holds the view that whilst he is fully recovered from drug abuse, the applicant was not. The child ordinarily lived with the mother. Both parties resided and were employed within the City of Cape Town. The respondent's mother resided in Bredasdorp. On 24 January 2025 the applicant was involved in a motor vehicle accident. Without any basis, the respondent alleged that this happened whilst she was under the influence of substances. On that day after the collision, the applicant voluntarily booked herself into a psychiatric hospital for observation. During her hospitalization, she agreed for the minor child to be taken care of by its paternal grandmother in Bredasdorp. From the papers, It seems to me that the respondent confused the psychiatric help which the applicant sought, for drug abuse help. The respondent on his own took a decision that the applicant was not able to look after the child and that she shall not have unsupervised contact with the child until his own conditions were met. He did not return the child to the applicant upon her discharge. Instead, he retained the child in Bredasdorp with his mother, and the applicant could only see the child if she met his conditions.

[3] The applicant had a traumatic, painful and scary caesarean and afterbirth complications, at and after the birth of the child. This resulted in her having mood, anxiety, trauma and depression. Amongst the medicine prescribed were Lexamil, Alzam and Tremadol. The applicant suffered Post Traumatic Stress Disorder and Port-Partum depression. This explained why she needed assistance from both a psychologist and a

psychiatrist. The applicant's case, which the respondent denied, was that the respondent preferred prayers and church counselling by people with no qualifications for counselling, and not professional and expert intervention. The respondent's case was that he recommended that the applicant see a church counsellor because of his strong faith. According to the applicant, the respondent told her that the only medication she needed was the gospel. The respondent admitted that the applicant had told him that she needed to see a professional for her anxiety, which persisted. The applicant saw a psychiatrist and a psychologist in August 2024. She was diagnosed with a General Anxiety Disorder with a depressed mood which was linked to the trauma related to the minor child's birth experience.

[4] The respondent controlled every major aspect of the applicant's life. For instance, although her salary was paid into her own personal account, the respondent held the bank card and internet banking code. She rarely had access to her own money. She could not make any decision on what to spend with her own salary. In the unlikely event that the respondent would allow her to buy bread and milk for the house, she had to present him with a slip as he insisted to see whether she did not purchase anything he did not consent to her buying. She also had to hand back the bank card to the respondent after such purchases. The respondent did not deny the control. According to him, he had to exercise control over the applicant as a result of her substance and prescription medication abuse. The respondent did not deny the economic control. According to him he controlled her economically because she was bad with her finances. This is the man who was himself sequestered. It was the man who could not take out credit in his own name. The respondent had insisted that the applicant took credit in her own name for his and their purchases and did not pay the debts with the result that the applicant went into debt review. The minor child became sick whilst being breast-fed. Whilst medical professionals confirmed that the medication that the applicant was taking had no effect, the respondent blamed the applicant for her prescribed medication as the reason the child was sick.

[5] In my view, the respondent contributed to the emotional and psychological challenges which the applicant suffered, from which he now sought to gain an advantage. About 7 days before the applicant booked herself for psychiatric help, that is on 17 January 2024, without any discussions the respondent simply told the applicant that he had taken the child to his mother and that the child will be in Bredasdorp until the applicant got her emotions and well-being in order. The applicant in quoting the respondent verbatim partly, said the respondent used the terms: “*to get my shit together*”. According to the applicant he asked the respondent that they go for counselling. The respondent declined, claiming that there was nothing wrong with him and that the applicant was the problem and the reason their marriage was taking strain. Although the respondent’s case was that this was by agreement, this is not persuasive. In his answer to the 17 January discussion, among other things, he indicated that he had to go to work on 20 January 2025 and could not supervise the applicant with the minor child, which supervision according to him was extremely necessary. His case was that he was still afraid that if the applicant was left alone with the child, she may be under the influence of substance, pain medication or alcohol. The respondent took the child to Bredasdorp without the consent of the applicant.

[6] The respondent’s case was based on speculative opinions which were irrelevant. He relied on his own conclusions with no evidential basis to conclude that the applicant was under the influence of alcohol or drugs when she was involved in the collision. He was not on the scene and did not observe what happened. Similarly, he has his own reconstruction of an incident where the applicant injured her wrist in the bathroom. His own opinion was that the applicant was suicidal and had attempted to kill herself that day. Similarly, he was not present and did not observe anything and his conclusions are without any evidential support and founded by a fertile, highly creative, self-assured, creative and biased mindset. Whilst the evidence showed that the applicant struggled with anxiety, depression and stress disorders, her marriage to the respondent seems to me to be a contributory factor, and not the child. In other words, on a simple scale, the respondent is one of her primary problems, and not the child. There was no iota of objective evidence that the applicant had ever threatened the life of the child, or that she

was a risk to the child, outside the irrelevant speculative opinions of the respondent. The respondent's suppositions and conjecture on alleged medical and drug abuse were simply not sufficient to meet the case that the applicant placed before the court.

[7] The *rule nisi* is explained in *Member of the Executive Council for the Department of Health. Eastern Cape v M* [213/2021] [2022] ZASCA 140 (24 October 2022) at para 12 to 14. At para 14 it was said:

“[14] Since those observations were made, the practice relating to rules nisi has been used in various contexts. The essential character and purpose of the procedure, however, remains to ensure that (a) notice is given to an affected party; (b) a *prima facie* case is made out for the relief sought, and (c) such relief may be granted unless cause is shown why it should not be granted.”

The respondent was a man who through his controlling behaviour meant that the applicant was denied enjoying her salary and choose her own colour, time and shop to buy her own lingerie unless the respondent agreed, which are deep and personal choices. The controlling behaviour meant as a new mother she was denied the memorable excursion, with her newborn, to walk around a shopping mall to choose and buy food and clothing for her infant, and she did not have the painful pleasure of choosing and shopping for groceries for her own household. The irony does not illuminate for the respondent when he took refuge in the gospel and claimed a God-fearing Christlike life in court papers. Unless the court intervened the controlling behaviour of the respondent meant that there was a real risk that the respondent would deny the applicant the opportunity and pleasure of raising her own child. It was one thing to control her access to the child who was moved to another town without her consent. It was another thing to move the child from that known address to elsewhere and then refuse to disclose the whereabouts of the child to its mother. It was cruelty. No one who cared would deny a caring mother to know where her 21-month-old child was and expected the mother to have a peaceful sleep and good days and restful nights. The respondent did not care about the welfare of the applicant and was reckless about

her emotional and psychological health. The respondent was a law unto himself. The cruelty was not innocent. It was calculated to drive the applicant up the psychiatric and psychological hill, for her struggles to get at the top to be used against her in the care of the child.

[8] I was persuaded that there was sufficient justification in the evidence placed before the court to grant the *rule nisi*. The applicant sought interim relief to adequately protect her interests. The applicant's parental rights were infringed, and it was clear that she would suffer a disadvantage if the court did not intervene.¹ The rule is flexible and can act as an interim order.² The applicant would not gain any advantage on the return date which she would not otherwise have had.³ It seemed to me that the applicant might be a victim of domestic abuse who developed panic symptoms when traumatic experiences of her marriage were triggered. It also appeared to me that the applicant may have been exposed to severe and ongoing threats to her integrity and now her care and contact with the child were being not only threatened but also infringed by the respondent's extra-judicial orders and conditions.

[9] For these reasons the *rule nisi* granted and the respondent was ordered to pay the costs.

DM THULARE
JUDGE OF THE HIGH COURT

¹ *Safcor Forwarding (Pty) Ltd v NTC* 1982 (3) SA 654 AD at 674H -675A.

² *National Director of Public Prosecutions v Mohamed* NO 2003 (4) SA 1 CC at para 29.

³ *Du Randt v Du Randt* 1992 (3) SA 281 SA ECD at 289D-E.