



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

CASE NO: 2025-095199

In the matter between:

1. Reportable – No
2. Of interest to other Judges – No
3. Revised – No

Date of the Order: 31.07.2025

S.A.H.

Applicant

and

S.B.H.

Respondent

JUDGMENT

PRETORIUS AJ

Introduction and Relevant Factual Matrix

- [1] The minor child who is at the heart of this matter is an 11 year old girl, born on **25 March 2014**, being the youngest child born from the former marriage between the Applicant, her father and the Respondent, her mother.¹
- [2] The parties were divorced from one another by Order of this Court on **17 March 2023**, with the decree of divorce incorporating the terms of a Settlement Agreement entered into between the parties (*collectively* “**the divorce order**”). In terms of **the divorce order**, primary residence and care of **ZH** was awarded to the Respondent, subject to the the Applicant’s right of reasonable contact to **ZH**, as provided for in **the divorce order**. Both parties have subsequently remarried.²
- [3] Approximately a year post their divorce, a dispute arose between the parties stemming from the Respondent’s intended relocation with **ZH**, initially to Dubai, and then to Durban, and resulting in the Applicant launching proceedings in the Children’s Court, Randburg, on **31 May 2024**, and the Respondent instituting a counter-application thereto in and during **June 2024**.³ The Respondent unilaterally removed **ZH** from Gauteng to Durban on **06 September 2024**, which gave rise to the litigation spilling over into this Court, and when the the Applicant launched an urgent Application for, *inter alia*, **ZH’s** return. An Order was granted on **26 September 2024** for **ZH’s** return to Gauteng within 48 (*forty-eight*) hours of the granting of said Order.⁴
- [4] Since then, the parties have continued to be embroiled in litigation pertaining to **ZH** in the Children’s Court, Randburg and in this Court, and which litigation has included, *inter alia*, urgent applications, an application for leave to appeal, an application in terms of Section 18(3) of the Superior Courts Act, 10 of 2013 for the immediate enforcement of an Order of this Court granted on **08 April 2025**

¹ Founding Affidavit: paras 5 and 6, CaseLines 001-15

² Founding Affidavit: paras 15 and 22.1, CaseLines 001-18 and 001-20, read together with annexure “FA6” thereto, being the Report of the Family Advocate, par 11.4, CaseLines 001-136

³ Founding Affidavit: paras 15 to 19, CaseLines 001-18 to 001-19

⁴ Founding Affidavit: paras 20, 23 and 24, CaseLines 001-19 to 001-21, read together with Annexure “FA4” thereto, being the Order of Marcandonatos AJ, CaseLines 001-97 to 001-124

irrespective of the outcome of the application for leave to appeal, a counter-application thereto for the rescission of the *08 April 2025* Order, and an application in terms of Section 18(4) of the Superior Courts Act, 10 of 2013 to the Full Bench of this Division.⁵

- [5] The current matter is yet another in the sequence of the on-going litigation between the parties in relation to *ZH*. Having said that, it is beyond the purview of the matter before me and of this judgment, to traverse all of the nooks and crannies of the litigation preceding this matter. Accordingly, I will focus on the facts insofar as they are relevant and pertinent to the issues to be determined in the matter before me.
- [6] From the papers before me, it appears that the Respondent returned to Durban with *ZH* on the evening of *29 April 2025*, being the same day when:-
- 6.1. the Applicant was granted leave to appeal the judgment which had been granted on *08 April 2025* by van der Merwe AJ;⁶
 - 6.2. the Respondent was granted relief in terms of her application in terms of Section 18(3) of the Superior Courts Act, permitting her to relocate to Durban with *ZH*, pending the outcome of the appeal;⁷
 - 6.3. the Respondent had earlier that morning given birth to her fourth child at the Sunninghill Hospital in Sandton;⁸
 - 6.4. the Respondent apparently discharged herself and her new born baby from hospital on the evening of *29 April 2025* at around 21h00 and drove to Durban by car with her husband ("*Mr F.A.*"), *ZH*, and the newborn baby.⁹

⁵ Founding Affidavit: paras 25 to 48, CaseLines 001-21 to 001-26

⁶ Founding Affidavit: paras 27, 39 and 41, CaseLines 001-22, 001-24 and 001-25

⁷ Founding Affidavit: par 39.2, CaseLines 001-24

⁸ Founding Affidavit: par 41, CaseLines 001-25

⁹ Founding Affidavit: par 42, CaseLines 001-25

- [7] It further appears that **ZH** was traumatised by the manner in which she was taken to Durban on *29 April 2025*, and by the events surrounding same.¹⁰
- [8] Upon **ZH's** return to Durban, she was not enrolled in school.¹¹ The Respondent had requested the Applicant to consent to **ZH's** transfer from Crawford, Sandton in order to enroll **ZH** at Crawford, La Lucia.¹² The Applicant refused his consent as he was of the view that it would not be in **ZH's** best interests to start a new school if his appeal in terms of section 18(4) was successful.¹³ The Respondent proceeded to enroll **ZH**, without a transfer card and without the Applicant's consent, at Curro Heritage House, Durban, and **ZH** commenced attendance at this school on *09 May 2025*.¹⁴ By virtue of what transpired from *09 May 2025*, as dealt with further hereinbelow, **ZH** only attended school for one day at Curro Heritage House.
- [9] The Applicant requested to exercise contact to **ZH** over the weekend, commencing Friday, *09 May 2025*.¹⁵ The Respondent agreed to the Applicant exercising such contact subject thereto that the Applicant was to provide her with an undertaking that he would return **ZH** to the Respondent at 10h00 on Sunday, *11 May 2025*, being Mother's Day.¹⁶ The Applicant provided the undertaking to the Respondent.¹⁷
- [10] The Applicant avers that he became extremely concerned about **ZH** during the weekend,¹⁸ in that:-

10.1. it appeared that **ZH** had been threatened and intimidated by the Respondent.¹⁹ **ZH** informed the Applicant that the Respondent had threatened **ZH** to the effect that if **ZH** said anything to the Applicant or expressed to the Applicant that she would want to stay with him, she

¹⁰ Founding Affidavit: par 57 (*inclusive of sub-paragraphs thereto*), CaseLines 001-28 to 001-29

¹¹ Founding Affidavit: par 47, CaseLines 001-26

¹² Ibid

¹³ Ibid

¹⁴ Founding Affidavit: par 48, CaseLines 001-26

¹⁵ Founding Affidavit: par 51, CaseLines 001-26

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Founding Affidavit: par 52, CaseLines 001-26

¹⁹ Founding Affidavit: par 52.1, CaseLines 001-27

would punish **ZH** in a similar way to which she had punished **ZH**'s brother, Ismail.²⁰ The Respondent further threatened **ZH** that if she was caught doing so, she would give her away permanently to the Applicant and that she would never speak to **ZH** again. **ZH** appeared to be visibly emotional and terrified by this outcome;²¹

10.2. **ZH** repeatedly told the Applicant that she did not wish to return to Durban;²²

10.3. **ZH** was not "*herself*", she became unusually withdrawn at times during the weekend and repeatedly informed the Applicant that she was not permitted to discuss anything with him about her life in Durban or her new baby brother;²³

10.4. **Mr F.A.** gave **ZH** the silent treatment and that he had done so since mid-*April* because of **ZH** having informed the Applicant that the house in Durban was not ready;²⁴

10.5. **ZH** apologised to the Applicant for her giving the Applicant "*the silent treatment*" explaining that when she says anything to the Applicant he "*burn[s]*" her at Court, meaning that if the Applicant discloses anything that **ZH** has told him, the Respondent punishes her for her disclosures to the Applicant.²⁵

[11] According to the Applicant, **ZH** was emphatic that she did not wish to return to Durban into the Respondent's care. **ZH** became hysterical when the Applicant informed her that he had undertaken to return her to the Respondent.²⁶ The

²⁰ Founding Affidavit: par 54, CaseLines 001-27

²¹ Founding Affidavit: par 55, CaseLines 001-27

²² Founding Affidavit: par 52.1, CaseLines 001-27

²³ Founding Affidavit: par 52.2, CaseLines 001-27

²⁴ Founding Affidavit: par 59, CaseLines 001-29

²⁵ Ibid

²⁶ Founding Affidavit: par 60, CaseLines 001-29 to 001-30

Applicant avers that by virtue of the foregoing, he could not return *ZH* to Durban on *11 May 2025*.²⁷

- [12] On Monday, *12 May 2025*, *ZH* refused to return to Crawford College, Sandton, being the school that she used to attend prior to going to Durban, as she was scared that the Respondent would collect her and forceably take her away to Durban.²⁸
- [13] By virtue of *ZH's* distress during the weekend commencing *09 May 2025*, and the Applicant's concerns for *ZH*, as arising therefrom, the Applicant arranged for a social worker in private practice, Ms Lindiwe Shayi, to interview *ZH* on *12 May 2025* at 15h00, to assess and evaluate how *ZH* was feeling, given the recent events.²⁹ The interview appears to have taken place at the Applicant's residence.³⁰
- [14] I have had regard to the Report of the social worker, Ms Shayi, and to the submissions made by and on behalf of the Applicant in regard thereto. I have noted that the social worker made certain recommendations which, respectfully, I will not take into account as her interview with *ZH* cannot be equated to a forensic investigation into the best interests of *ZH* for purposes of making recommendations regarding *ZH's* primary residency, care and contact. However, having said that, I have taken cognisance of Ms Shayi's Report insofar as it is reflective of *ZH's* voice in the context of Part A of this application, and the relief sought therein. Ms Shayi reported, *inter alia*, from her observations and interaction with *ZH* that:-
- 14.1. *ZH* appeared calm, clean, looked free in the house and was interacting with everyone in the house.³¹ *ZH's* brother, Ismail, who was visiting from Cape Town, was also present;³²

²⁷ Founding Affidavit: par 61, CaseLines 001-30

²⁸ Founding Affidavit: par 65, CaseLines 001-31

²⁹ Founding Affidavit: par 66, CaseLines 001-31, read together with Annexure "FA12", CaseLines 001-648 to 001-653

³⁰ Founding Affidavit: par 3, CaseLines 001-15, read with Annexure "FA12", par 1, CaseLines 001-650

³¹ Founding Affidavit: Annexure "FA12", par 3, CaseLines 001-651

³² Founding Affidavit: Annexure "FA12" thereto, par 5, CaseLines 001-653

- 14.2. **ZH** was aware of what was happening in both her “*families*”. She said that she likes living in Sandton and that although she had developed friendships in Durban, she has a lot of friends in Johannesburg, in her school that she used to go to before she left for Durban with the Respondent;³³
- 14.3. **ZH** mentioned that she likes the Applicant’s company and that it feels good being with the Applicant;³⁴
- 14.4. although **ZH** mentioned that she likes being with the Respondent, she raised a concern about the Respondent’s husband, **Mr F.A.**, who does get moody and sometimes does not talk to **ZH** for a day if he is in a mood;³⁵
- 14.5. **ZH** feels that her parents care about her even though on two occasions she did feel like the Respondent was coercing her to say “*bad things*” about her living with the Applicant even though she would tell the Respondent that she is okay living with the Applicant.³⁶
- [15] The Applicant furthermore took **ZH** to her therapist, Ms Orli Bushkin, with whom **ZH** had been consulting weekly prior to being taken to Durban on **29 April 2025**. The Applicant avers that **ZH** had not attended therapy since **29 April 2025**. **ZH** saw Ms Bushkin on Tuesday, **13 May 2025** and continues to see Ms Bushkin every week.³⁷
- [16] Before I proceed to deal with what transpired further from **12 May 2025**, the Applicant referred to a Report from a Clinical Psychologist, Ms Muneera Mohamed, which is dated **07 June 2025**.³⁸ I have also had regard to the Report of Ms Mohamed and to the submissions made by and on behalf of the Applicant in regard thereto. I have noted that Ms Mohamed states that informed consent

³³ Founding Affidavit: Annexure “FA12”, par 4, CaseLines 001-651

³⁴ Ibid

³⁵ Ibid

³⁶ Founding Affidavit: Annexure “FA12”, par 4, CaseLines 001-652

³⁷ Founding Affidavit: par 68, CaseLines 001-32

³⁸ Founding Affidavit: Annexure “FA22”, CaseLines 001-728 to 001-734

for the Report, which was commissioned by the Applicant, was only obtained from the Applicant. Whilst Ms Mohamed has made certain recommendations, again, in the context of this matter and the relief sought in Part A thereof, I have taken cognisance of Ms Mohamed's Report to the extent that it is reflective of *ZH's* voice insofar as the application before me is concerned. It seems that *ZH* has attended therapeutic sessions with Ms Mohamed since *October 2024*.³⁹ From Ms Mohamed's Report, the following is apparent:-

- 16.1. *ZH* has consistently and clearly expressed a wish to remain with her father and to continue attending school in Johannesburg. These views were expressed voluntarily, in a calm and emotionally supportive setting, without external pressure;⁴⁰
- 16.2. *ZH* described her experience in Durban as emotionally unsettling. She said that she felt unsafe and alienated in her maternal household, with specific concerns regarding her stepfather, *Mr F.A.* In this regard, *ZH* referred to an incident when *Mr F.A.* allegedly slapped her for taking food, and when she perceived the Respondent to have witnessed the incident, but failed to intervene. *ZH* further referred to ongoing experiences of verbal hostility or emotional withdrawal from *Mr F.A.*;⁴¹
- 16.3. *ZH* articulated a recurring fear of being returned to Durban without notice stating that: "*I'm scared to go to school or anywhere, because Mum might take me back to Durban*";⁴²
- 16.4. whilst *ZH* expressed love for the Respondent, that she misses the Respondent at times and a desire to maintain contact with the Respondent, *ZH* also conveyed apprehension about emotional pressure and the possibility of being misunderstood or reprimanded;⁴³

³⁹ Founding Affidavit: Annexure "FA22", par 10, CaseLines 001-730

⁴⁰ Founding Affidavit: Annexure "FA22", par 12, CaseLines 001-731

⁴¹ Founding Affidavit: Annexure "FA22", par 13 (inclusive of subparagraphs), CaseLines 001-731

⁴² Founding Affidavit: Annexure "FA22", par 16, CaseLines 001-731

⁴³ Founding Affidavit: Annexure "FA22", par 17, CaseLines 001-731

- 16.5. **ZH** stated that whilst she misses her mother, she does not feel physically safe around her stepfather, **Mr F.A.**, and that she would prefer not to have contact with him;⁴⁴
- 16.6. **ZH** does not want to be removed from living at her father's house and be prevented from attending school at Crawford, Sandton. She is very sad and she is afraid to go to school because her mother will take her away and she knows that her mother will use Leila, her elder sister, to kidnap her from school and her mother will "*just drive to Durban*";⁴⁵
- 16.7. **ZH** really wants to go back to school but she does not want to go back to living with her stepfather or to Durban.⁴⁶
- [17] **ZH** returned to school, at Crawford, Sandton, on **14 May 2025**.⁴⁷ Arising out of various messages exchanged between the Applicant and the Respondent as well as legal correspondence exchanged between the parties' legal representatives, the Respondent, on **02 June 2025**, insisted that **ZH** be returned to her before 13h00 on that date, as the Respondent was in Johannesburg.⁴⁸ When the Applicant informed **ZH** that evening that she would be returning to reside with the Respondent, **ZH** became hysterical and inconsolable, insisting that she would not do so.⁴⁹
- [18] As a result of the foregoing, and since **02 June 2025**, **ZH** simply refused to attend school and became visibly distressed when the Applicant tried to take her to school.⁵⁰ The Applicant avers that **ZH** is terrified that she will be snatched and taken back to Durban.⁵¹ The Applicant accordingly made arrangements for **ZH** to attend to all her school work at home, the school having been made aware of the prevailing circumstances.⁵² As at the date of deposing to the

⁴⁴Founding Affidavit: Annexure "FA22", par 18, CaseLines 001-731

⁴⁵ Founding Affidavit: Annexure "FA22", par 18, CaseLines 001-732

⁴⁶ Ibid

⁴⁷ Founding Affidavit: par 70, CaseLines 001-32

⁴⁸ Founding Affidavit: par 74, CaseLines 001-33, read together with Annexure "FA14" thereto, CaseLines 001-656 to 001-657

⁴⁹ Founding Affidavit: par 75, CaseLines 001-33

⁵⁰ Founding Affidavit: par 76, CaseLines 001-33

⁵¹ Founding Affidavit: par 76, CaseLines 001-33

⁵² Ibid

Founding Affidavit on *23 June 2025*,⁵³ and apparently as at the date of the hearing of the matter on *22 July 2025*, the Respondent had refused to return to *ZH* her school bag and all her school books, personal items and effects.⁵⁴

- [19] The Applicant avers that by virtue of the Respondent's constant demands for *ZH* to be returned to her, *ZH's* refusal to do so, *ZH's* refusal to go back to school for fear that she will be snatched by the Respondent, and *ZH's* concerns as expressed in relation to the Respondent's husband, *Mr F.A.*, and his being harsh and punitive of her, that the Applicant was left with no alternative other than to approach this Court for the relief as set out in the Notice of Motion.⁵⁵ This was underscored, according to the Applicant, by the fact that he had made repeated meaningful attempts in the period *02 June 2025* to *10 June 2025* to avoid this application, and by the Respondent's refusal to either participate or respond thereto.⁵⁶

Relief sought

- [20] The Applicant's Notice of Motion is couched on a Part A/Part B basis. It bears mention that there is some disjuncture between the manner in which certain of the relief is couched in the Applicant's Founding Affidavit, on the one hand, and in the Notice of Motion, on the other. Be that as it may, in summary, the Applicant, seeks in Part A, an interim Order, on a semi-urgent basis,⁵⁷ in the following terms:-

20.1. that the matter be heard as an urgent matter and that the non-compliance with the Rules and Directives in regard to time limits and service be condoned, with the matter being regarded as urgent in terms of the provisions of Rule 6(12);⁵⁸

⁵³ Founding Affidavit: last page, CaseLines 001-46, read with par 76, CaseLines 001-33

⁵⁴ Ibid

⁵⁵ Founding Affidavit: par 99 (inclusive of sub-paragraphs thereto), CaseLines 001-38

⁵⁶ Founding Affidavit: paras 78 & 79, CaseLines 001-34, paras 100 to 108, CaseLines 001-38 to 001-41, read together with Annexures "FA19" and "FA20", CaseLines 001-713 to 001-723

⁵⁷ Applicant's Practice Note: par 6.1, CaseLines 007-4

⁵⁸ Notice of Motion Part A: prayer 1, CaseLines 001-3

- 20.2. that a forensic investigation be conducted by a neutral jointly appointed forensic psychologist to determine what arrangements would best serve *ZH's* wellbeing insofar as primary residence, care and contact are concerned, as well as whether or not it would be in *ZH's* best interests to relocate to Durban, KwaZulu-Natal.⁵⁹ In the event of the parties being unable to agree on the appointment of the forensic psychologist within 7 (*seven*) days of the granting of an Order herein, then the forensic psychologist is to be nominated by the Chairperson of the Family Law Forum;⁶⁰
- 20.3. that the forensic psychologist is to provide a Report, including written recommendations, in respect of *ZH's* best interests regarding primary residence, care and contact and the issue of whether or not it is in *ZH's* best interests to relocate to Durban;⁶¹
- 20.4. that the parties fully and timeously co-operate with the requirements of the forensic psychologist and that they be equally liable for the payment of the forensic psychologist's costs;⁶²
- 20.5. the immediate appointment of Ms Tania Holz as the parenting coordinator ("*PC*"), to assist in managing parenting conflicts and communications between the Applicant and the Respondent arising from the exercise of the parties' parental responsibilities and rights and with certain proposed powers and duties.⁶³ The parties are to be equally liable for the payment of the *PC's* costs.⁶⁴ In the context of this relief, the Applicant further seeks that the parties be ordered to create a WhatsApp group for purposes of all communication between the parties, relative to *ZH*, being relayed by way of data message on the said group and to

⁵⁹ Founding Affidavit: par 9.1, CaseLines 001.16

⁶⁰ Notice of Motion Part A: prayer 2, CaseLines 001-3

⁶¹ Notice of Motion Part A: prayer 2, CaseLines 001-3

⁶² Notice of Motion Part A: prayer 3, CaseLines 001-3 to 001-4

⁶³ Founding Affidavit: par 9.2, read together with annexures FA2 and FA3 thereto, CaseLines 001-91 to 001-96, and Notice of Motion Part A: prayer 4, CaseLines 001-4

⁶⁴ Notice of Motion Part A: prayer 6, CaseLines 001-4

which group the to be appointed *PC* is to have unrestricted supervisory access;⁶⁵

- 20.6. the immediate appointment of Ms Farhana Ismail as legal representative to *ZH*, not only in respect of this Application but also to represent *ZH* in any and all future legal proceedings.⁶⁶ The parties are to be equally liable for the payment of Ms Farhana Ismail's costs;⁶⁷
- 20.7. that pending the appointment and finalisation of the forensic assessment and the appointment of a *PC*, *ZH* is to remain in the Applicant's primary care and residence, subject to the Respondent exercising supervised contact with *ZH*, every Thursday from 15h00 until 17h00 and every Saturday from 13h00 until 16h00, said contact to be supervised by the social worker, Ms Lindiwe Shayi.⁶⁸ It is noted that nothing was said in either the Notice of Motion or the Founding Affidavit as to who should bear the costs of the supervision. It is further noted that nothing is said about *ZH's* routine and why the said specific contact times were proposed;
- 20.8. that the Respondent is to ensure that *ZH* has no contact with the Respondent's husband, *Mr F.A.*, until such time as the forensic psychologist and/or this Court confirms that such contact is appropriate;⁶⁹
- 20.9. that the Respondent be ordered to pay the costs of Part A of this application, including the costs of two Counsel, where employed, with the costs of senior Counsel on Scale C and the costs of junior Counsel on Scale B, as per Uniform Rule 67A;⁷⁰

⁶⁵ Notice of Motion Part A: prayer 5, CaseLines 001-4

⁶⁶ Founding Affidavit: par 9.3, CaseLines 001-17, and Notice of Motion Part A: prayer 8, CaseLines 001-4

⁶⁷ Notice of Motion Part A: prayer 9, CaseLines 001-5

⁶⁸ Founding Affidavit: par 9.4, CaseLines 001-17, and Notice of Motion Part A: prayers 2 & 7, CaseLines 001-3 to 001-4

⁶⁹ Founding Affidavit: par 9.5, CaseLines 001-17, and Notice of Motion Part A: prayer 10, CaseLines 001-5

⁷⁰ Notice of Motion Part A: prayer 11, CaseLines 001-5

20.10. that Part B of the Application be postponed *sine die*, with the parties being permitted to supplement their papers upon receipt of the written recommendations of the forensic psychologist.⁷¹

Parties' Submissions and deliberation thereon

- [21] The Application, which was launched on a semi-urgent basis, was served personally on the Respondent by the Sheriff of the Court on **26 June 2025**.⁷² A Notice of Intention to Oppose the Application was filed by 16h00 on **02 July 2025**, as prescribed in the Notice of Motion.⁷³ In terms of the Notice of Motion, the Respondent was to file her Answering Affidavit, if any, by no later than 16h30 on Wednesday, **09 July 2025**.⁷⁴ The Respondent did not file an Answering Affidavit.
- [22] It was apparent from the electronic case file on CaseLines that the Respondent's Attorneys of Record had filed a Notice of Withdrawal as Attorney of Record on Thursday, **17 July 2025**,⁷⁵ being two Court days before the date of enrolment of the matter on the Urgent Family Court Roll, being Tuesday, **22 July 2025**.
- [23] At the hearing of the matter on **22 July 2025**, the Respondent appeared in person. The Respondent informed the Court that she would be representing herself. The Respondent did not seek a postponement of the matter. The matter accordingly proceeded to be argued on the papers as they were before me, being the Founding Affidavit, together with annexures thereto.
- [24] When the Respondent addressed me in answer to the submissions by the Applicant's Counsel, she immediately indicated to the Court that certain of the

⁷¹ Notice of Motion Part A: prayers 12 & 13, CaseLines 001-5

⁷² Sheriff's Return of Service: CaseLines 002-1 to 002-3

⁷³ Notice of Intention to Oppose: CaseLines 003-1 to 003-2, read together with the Notice of Motion: 001-7

⁷⁴ Notice of Motion: CaseLines 001-7

⁷⁵ Notice of Withdrawal as Attorney of Record: CaseLines 024-1 to 024-4

relief, as sought in Part A of the Notice of Motion, was conceded to by her, including:-

- 24.1. the appointment of a forensic psychologist. The Respondent, however, sought that the scope of the investigation as set out in Part A of the Notice of Motion be extended to include the aspect of parental alienation. The Applicant's Counsel submitted that there was no difficulty with the scope of the investigation being extended to include the aspect of parental alienation;
- 24.2. that *ZH* was to remain in the interim primary care of the Applicant pending the forensic investigation to be conducted;
- 24.3. the appointment of a Parenting Co-ordinator ("*PC*"); and
- 24.4. the appointment of a legal representative for *ZH*.

[25] The Respondent was not, however, in agreement with the individuals nominated by the Applicant in the Notice of Motion to fulfil the respective roles of *PC* and legal representative for *ZH*, and accordingly the Respondent proposed that said individuals be nominated, in the absence of agreement between the parties, and on the same basis as the forensic psychologist, being by the Chairperson of the Gauteng Family Law Forum. Applicant's Counsel initially protested on the basis that the individuals nominated by the Applicant were professionals and independent, but later conceded, in the context of the matter and the acrimonious relationship between the parties that the individuals should be appointed by either the Chairperson of the Gauteng Family Law Forum or by the Court.

[26] The Respondent opposed the relief sought to the effect that her contact to *ZH* should be supervised, stating that this was unnecessary and impractical and that she had not seen *ZH* for three months. Insofar as the relief pertaining to her husband, *Mr F.A.*, not having any contact with *ZH* until such time as the forensic psychologist and/or this Court confirms that such contact is

appropriate, the Respondent stated that she would see *ZH* without her husband.

- [27] In regard to the aspect of the costs for the forensic psychologist, the *PC* and the legal representative for *ZH*, the Respondent submitted that the Applicant should bear those costs.
- [28] The Respondent further submitted that the application was not urgent and that the Applicant should bear the costs of Part A of this application.
- [29] It is common cause that I ruled the matter to be urgent given, *inter alia*, that the matter pertains to the best interests of *ZH*, my role as Upper Guardian in safeguarding those interests, and further given *ZH's* disclosures to Ms Shayi and Ms Mohamed to the effect that she did not wish to return to Durban, her disclosures in relation to *Mr F.A.*, and the concerns arising from *ZH* not wanting to physically attend school for fear of being snatched by the Respondent or by *ZH's* sister, Leila, and returned to Durban.
- [30] The Applicant annexed to his Founding Affidavit as well as to his proposed draft order herein, documents headed "*Powers of the Parenting Co-ordinator ("PC")*" and "*Terms of Appointment of Parenting Co-ordinator*", respectively.⁷⁶ During her submissions, the Respondent advised that since the parties' divorce from one another, there had been a Parenting Co-ordinator whose mandate had expired. Upon perusal of *the divorce order*, and more specifically the Settlement Agreement, as entered into between the parties, same indeed makes provision for dispute resolution and for the appointment of a *PC*.⁷⁷
- [31] Given that the terms of the Settlement Agreement were incorporated into the decree of divorce, as dealt with hereinabove, and that there is no application before me for a variation of the terms of the Settlement Agreement and given further that the Settlement Agreement governs, *inter alia*, the powers of the *PC*,

⁷⁶ Founding Affidavit: annexures "FA2" and "FA3" thereto, CaseLines 001-91 to 001-96

⁷⁷ Founding Affidavit: annexure "FA1" thereto, CaseLines 001-50 to 001-90, more specifically at clause 7 thereof which deals with Dispute Resolution and the appointment of a Parent Co-ordinator at CaseLines 001-66 to 001-70

I can see no reason why the provisions of the Settlement Agreement, more specifically clause 7 thereof, should not continue, *mutatis mutandis*, to govern said appointment.

- [32] In the circumstances of this matter, and in the best interests of **ZH**, I am inclined to agree with the relief sought by the Applicant to the effect that the parties be ordered to create a WhatsApp group for purposes of all communication between the parties, relative to **ZH**, being relayed by way of data message on the said group and to which group the to be appointed **PC** is to have unrestricted supervisory access.

- [33] Save for the instances of the appointment of the forensic psychologist, the **PC** and the legal representative for **ZH**, where I am inclined to order that, in the absence of agreement between the parties, these individuals are to be appointed by the Chairperson, for the time being of the Gauteng Family Law Forum, I am inclined to appoint the supervising social worker, being Ms Tanya Kriel ("**Ms Kriel**"), or one of the social workers under her employ, of the organisation known as Kidsbuzz Supervised Visitation and Bonding Therapy Centre, situated at 1 Adriaan Place, Malanshof, Randburg, Gauteng.

- [34] This I do in the best interests of **ZH**, given her expressed fears that she is too scared to go to school or anywhere else because the Respondent, or her elder sister at the behest of the Respondent, may snatch her and take her to Durban against her expressed will. The Court bears knowledge that **Ms Kriel** has the requisite facilities at Kidsbuzz for the supervision to take place in an environment that will create the necessary safety and security for **ZH** and enable her to freely interact with the Respondent.

- [35] Pursuant to hearing submissions from the Applicant's Counsel and from the Respondent, at the conclusion of the hearing, I conducted a Chamber interview with **ZH** to ascertain her views in accordance with the provisions of Section 10 of the Children's Act, 38 of 2005, pertaining to child participation. I have given due consideration to **ZH's** views and the Order I intend making herein will be reflective thereof.

Costs

- [36] Insofar as the costs of Part A of this semi-urgent application for interim relief, are concerned, as stated hereinabove, the Applicant seeks punitive costs against the Respondent on the basis that the Respondent be ordered to pay the costs of Part A of this application, including the costs of the two Counsel employed, with the costs of senior Counsel being on Scale C and the costs of junior Counsel being on Scale B, as per Uniform Rule 67A. In turn, the Respondent submitted that this application was not urgent and that the Applicant should be ordered to pay the costs thereof. Given that the Respondent was representing herself at the hearing, this would effectively translate into the Applicant bearing his own costs.
- [37] It is common cause that I have a discretion insofar as the ordering of costs is concerned, which discretion I am to exercise judicially. In the circumstances of this particular matter, and given further that the relief sought is on an interim Part A basis, with Part B to follow, I am of the view that the costs should be reserved for determination by the Court which is ultimately seized with the hearing of Part B hereof. Accordingly, the Order I make will be reflective of the foregoing.

Conclusion

- [38] In light of the facts and circumstances before me, the concessions made by the Respondent in regard to certain of the relief sought, and **ZH's** voice, as dealt with hereinabove, I accordingly deem it in **ZH's** best interests to make the interim Order in terms of Part A of the application before me, as detailed hereinbelow.

ORDER

In the circumstances, I make the following Order:-

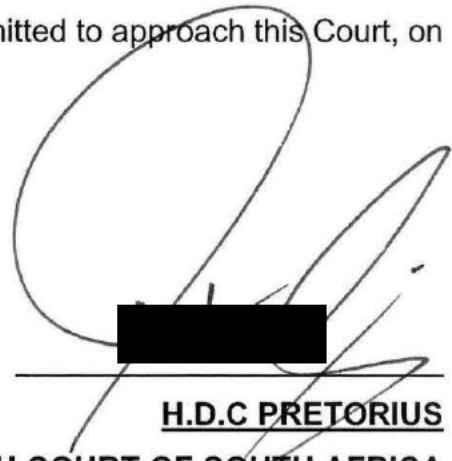
1. the time periods, forms and service provided for in the Uniform Rules and Practice Directives of Court are dispensed with and this application is disposed of as one of urgency in terms of the provisions of Rule 6(12);
2. pending the finalisation of a forensic investigation and assessment to be conducted by a forensic psychologist as referred to prayer 3 below, the minor child **ZH** is, notwithstanding the provisions of the Agreement of Settlement dated **14 February 2023**, the terms of which were incorporated in the decree of divorce granted by this Court on **17 March 2023**, and insofar as they pertain to residency, care of and contact to **ZH**, to remain in the Applicant's interim primary care and residence, subject to the Respondent's right to reasonable contact, as detailed in prayer 9 below;
3. within a period of 7 (*seven*) Court days of the date of the granting of this Order, the parties are to appoint a forensic psychologist who is to conduct a full forensic investigation and assessment and who is to provide a Report, including written recommendations, in respect of **ZH's** best interests regarding her primary residence, care and contact, parental alienation and the issue of whether it is in **ZH's** best interests to relocate to Durban;
4. in the event of the parties being unable to agree on the appointment of the forensic psychologist as provided for in prayer 3 above then, in such event, the said forensic psychologist is to be nominated, within a period of 10 (*ten*) Court days from the lapsing of the seven day period referred to in prayer 3, by the Chairperson, for the time being, of the Gauteng Family Law Forum;
5. the parties shall fully and timeously co-operate with the requirements of the forensic psychologist in pursuance of his/her forensic investigation as provided for in prayer 3 above;
6. the parties will be equally liable for the payment of the costs of the forensic psychologist appointed either in terms of prayer 3 or prayer 4;

7. the parties are to appoint a parenting coordinator ("**PC**") within a period of 7 (*seven*) Court days of the date of the granting of this Order and, failing the parties reaching agreement, as aforesaid, the **PC** shall then be nominated, within a period of 10 (*ten*) Court days from the lapsing of the seven day period, by the Chairperson, for the time being, of the Gauteng Family Law Forum. The **PC**'s powers and duties shall, *mutatis mutandis*, be in accordance with the provisions of clause 7 of the Agreement of Settlement entered into between the parties on **14 February 2023**, and made an Order of this Court when the decree of divorce was granted on **17 March 2023**;
8. the parties shall be equally liable for the payment of the costs of *the PC* referred to in prayer 7 above;
9. within 48 (*forty-eight*) hours of the appointment of the **PC** in terms of prayer 7, the parties are ordered to create a WhatsApp group for purposes of all communication between the parties, relative to **ZH**, being relayed by way of data message on the said group and to which group the **PC** is to be invited and to have unrestricted supervisory access to;
10. pending the finalisation of the forensic assessment by the forensic psychologist referred to in prayer 3 above, the Respondent shall be entitled, with effect from the date of the granting of this Order, to exercise the following contact to **ZH**:-
 - 10.1 every Thursday from 15h00 until 17h00;
 - 10.2 every weekend, either on a Saturday or a Sunday, from 10h00 until 13h00;
 - 10.3 continued daily telephonic, WhatsApp, FaceTime or any other social media and/or digital contact;
11. the contact referred to in prayers 10.1 and 10.2 above, shall be under the supervision of Ms Tanya Kriel ("**Ms Kriel**"), or one of the social workers under her employ, of the organisation known as Kidsbuzz Supervised Visitation and Bonding Therapy Centre, situated at 1 Adriaan Place, Malanshof, Randburg,

Gauteng and shall take place at the premises of Kidsbuzz. The times for contact specified in prayers 10.1 and 10.2 above shall be exclusive of traveling time to and from Kidsbuzz, i.e. the contact time shall be a full 2 hours and 3 hours respectively;

12. the parties shall be equally liable for the payment of the costs of *Ms Kriel*, which payments, and requisite arrangements for the supervised contact, are to be made timeously by the parties with *Ms Kriel*;
13. the parties are to appoint a legal representative for *ZH* within a period of 7 (*seven*) Court days of the date of the granting of this Order and, failing the parties reaching agreement, as aforesaid, the legal representative shall then be nominated, within a period of 10 (*ten*) Court days from the lapsing of the seven day period, by the Chairperson, for the time being, of the Gauteng Family Law Forum. The legal representative shall represent *ZH* in this application and in all and any future legal proceedings pertaining to her. The parties shall be equally liable for the payment of the costs of *ZH's* legal representative;
14. the Respondent shall ensure that *ZH* shall have no contact with the Respondent's husband, *Mr. FA*, until such time as the forensic psychologist confirms that such contact is appropriate or this Court orders otherwise;
15. within 48 (*forty-eight*) hours of the granting of this Order, the Respondent shall return to the Applicant, *ZH's* school bag and all of *ZH's* school books. The return of any of *ZH's* personal items and effects is to be facilitated in due course by the *PC* to be appointed in terms of prayer 7 above;
16. pending the Report and written recommendations of the forensic psychologist, referred to in prayer 3 above, the Respondent shall not be permitted to attend at *ZH's* school, being Crawford, Sandton, until such time as the forensic psychologist has released their Report and written recommendations confirming that such contact is appropriate or this Court orders otherwise. Only the Applicant, or someone designated by him, may collect *ZH* from her school, being Crawford, Sandton;

17. the costs of Part A of this application are reserved for determination by the Court seized with the hearing of Part B thereof, in due course;
18. Part B of the application is postponed *sine die*;
19. for purposes of the final adjudication of Part B of the application, upon receipt of the Report and written recommendations of the forensic psychologist, referred to prayer 3 above, the parties are permitted to approach this Court, on the same papers, duly supplemented.



A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a final flourish. The signature is written over a black rectangular redaction box.

H.D.C PRETORIUS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Electronically submitted

Delivered: This Order was prepared and authored by the Acting Judge whose name is reflected herein and is handed down electronically by circulation to the Parties / their legal representatives by e-mail and by uploading it to the electronic file of this matter on Court Online/CaseLines. The date of the Judgment is deemed to be 31 July 2025.

Dates Of Hearing: *22 July 2025*

Date Of Judgment: *31 July 2025*

APPEARANCES:

For Applicant:

Advocate L. Segal SC

and Advocate G.T. Kyriazis

Instructed by: Farhan Cassim Attorneys

For Respondent:

In person