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

CASE NO: 2024-005569

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date 22 July 2025

K. La M Manamela

In the matter between:

P[...] **C[...]**

Defendant/Applicant

and

C[...] **C[...]**

Plaintiff/Respondent

DATE OF REASONS FOR ORDER GRANTED: These reasons for order granted are issued by the Judge whose name is reflected herein and are submitted electronically to the parties/their legal representatives by email. The reasons are further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the reasons for the order granted is deemed to be 22 July 2025.

REASONS FOR ORDER GRANTED

Introduction

[1] These reasons are for the order made on 17 June 2025 in an urgent application for the permanent removal of the minor child born from the marriage between the parties ('these Reasons'). The order made effectively postponed the application or the main relief sought in the application pending the delivery of a report by the office of the Family Advocate or an appropriately qualified professional (comparable to the family advocate), jointly appointed by the parties ('the Order').¹

[2] The applicant, Mr P[...] C[...], is said to be dissatisfied with the deferment of the relief or the Order and is somewhat considering to launch an appeal against same. I could be tempted to say something about the appealability of the Order, but the proverbial bridge in this regard ought to be crossed only when it is reached.

[3] The applicant is married to Ms C[...] C[...], the respondent since 16 April 2016. On 11 June 2018, a minor child was born from the marriage between them. The parties are heading for a divorce after divorce proceedings were initiated by the respondent in January 2024. The applicant already describes the divorce as acrimonious with no prospects of settlement.² My preliminary assessment of the facts of this matter suggests that I fully associate myself with this view. This is the second interlocutory application already, after another was launched by the application in terms of Rule 43 of the Uniform Rules of the Court. I refer to the order made in the latter application, below.³

[4] What is notable, for current purposes, from the relief sought by the respondent (as the plaintiff) against the applicant (as the defendant) in the divorce action, apart from the conventional decree of divorce, is that the respondent seeks that the primary residence of the minor child vests in her with the applicant allowed to 'exercise contact with the minor child in accordance with a recommendation to be

¹ Par [9] below, for the full terms of the Order.

² Founding Affidavit ('FA') par 5.42, CaseLines ('CL') 29-20.

³ Par [5] below.

made by the Office of the Family Advocate'.⁴ The divorce action is defended by the applicant and includes a counterclaim that the primary residence of the minor child vests in the applicant. The divorce action appears to have lost traction whilst the interlocutory applications appear to be gaining momentum.

[5] The Rule 43 application was launched in September 2024 by the applicant for interim relief. The application came before Joyini AJ on 21 November 2024. The learned judge granted an order which appears to have been, significantly, by agreement between the parties ('the Rule 43 Order'). The terms of the Rule 43 Order included that the primary residency of the minor child was awarded to the respondent, 'subject to the applicant's and the respondent's parental responsibilities and rights of contact, which shall be subject to [the minor child's] educational, extramural, social, religious, sporting and the like activities'.⁵

[6] In June 2025, the respondent launched the current urgent application seeking the following relief, quoted in the material part:

1. That this application be heard as an urgent application in accordance with the provisions of Rule 6(12) and that the requirements pertaining to the time periods and service be dispensed with.
2. The Respondent is to undergo psychological- and psychometric assessments and supply the social worker appointed and the legal representative of the Applicant with such report.
3. That the minor child is to be placed in the primary care and residence of the Applicant;
4. Directing that the minor child's contact with the respondent be limited to that of contact under supervision with a phasing in approach to unsupervised contact...

⁴ Particulars of Claim (pars 3 and 4 of the relief sought), CL 25-7.

⁵ Rule 43 Order, CL 22-4 to 22-7.

5. The minor child be placed under supervision of the social worker Annelize Joubert, a social worker in private practice in alignment with Section 46(1)(f) of the Children's Act 38 of 2005 for a period of three months to monitor [the minor child's] well-being and care needs...
6. The parties are to pay equally all costs relating to the appointed experts, play therapy, speech therapy, social worker's costs and the costs of the supervision expert.
7. That the Respondent be ordered to pay the costs of this application on a punitive scale as between attorney and client in the event of opposition.
8. That leave be granted to the parties to supplement their affidavits, if necessary, if any expert recommends contact structures which are contrary to what is set out herein above and place the matter on the roll accordingly and in terms of the relevant practice directives.
9. That such further and/or alternative relief be granted to the Applicant which this Court deems reasonable and appropriate under the prevailing circumstances.⁶

[underlining added]

[7] The application was opposed by the respondent. The respondent participated at the hearing (conducted remotely or through a virtual link) in person and had filed her response to the founding papers very late. She also had to take an affirmation, at

⁶ CL 29-1 to 29-5.

the hearing, to declare solemnly the contents of her response to be the truth as it was not by way of an affidavit.

[8] The urgent application came before me in the family court of this Division on Friday, 13 June 2025. Ms A Korf, appeared for the applicant and, as already indicated, the respondent appeared in person. I used the long weekend (due to the public holiday on Monday, 16 June 2025) to reflect further on the appropriate order to be made, given the nature and extent of the relief sought by the applicant (reflected above, in the material part).⁷

[9] On Tuesday 17 June 2025, I made an order (through the prevailing convention of distributing same to the parties and uploading it on the CaseLines platform, without appearance by the parties) in the following terms:

1. That this application be heard as an urgent application in accordance with the provisions of Rule 6(12) and that the requirements pertaining to the time periods and service be dispensed with;
2. That the relief sought by the Applicant in terms of paragraphs 3, 4, 5 and 6 of the Notice of Motion to this application dated 2 June 2025 is postponed *sine die* pending the following:

2.1 the referral of this matter, including regarding the issues in paragraphs 3, 4, 5 and 6 of the Notice of Motion to this application dated 2 June 2025, to the Office of the Family Advocate for investigation and furnishing a report on an urgent basis, bearing in mind the report already compiled by the Family Advocate dated 13 August 2024;

2.2 alternatively to 2.1 above, the referral of this matter by agreement between the parties including regarding the issues in paragraphs 3, 4, 5 and 6 of the Notice of Motion to this application dated 2

⁷ Par [6] above on the relief sought in this application.

June 2025, to an appropriately qualified professional in private practice, comparable to the Family Advocate, for investigation and furnishing a report on an urgent basis, bearing in mind the report already compiled by the Family Advocate dated 13 August 2024.

3. That leave be granted to the parties to supplement their affidavits, if necessary, upon receipt of a report envisaged in 2 hereof, and place the matter on the roll accordingly and in terms of the relevant practice directives;
4. That the costs of this application be the costs in the divorce action, and
5. That, to avoid doubt:

5.1 any relief sought by the Applicant in terms of this application not directly addressed by the terms hereof is dismissed, and

5.2 the terms of the order made in respect of the application in terms of Rule 43 on 21 November 2024 remain extant or in force, save as may have been varied by the terms hereof.⁸

[underlining added]

[10] On 1 July 2025, the applicant's legal representatives emailed to my erstwhile allocated secretary a document labelled 'REQUEST FOR REASONS'. This document does not appear to have been uploaded on CaseLines. And it should be uploaded. I received the document the next day. The nature and extent of the contents of the document are as follows:

KINDLY TAKE NOTICE that the Defendant/Applicant requests written reasons for the judgment delivered in the above-mentioned matter on 17 June 2025.

⁸ CL 22-8 to 22-10.

The judgment in question relates to urgent application brought by the Defendant/Applicant for the urgent removal of the minor child. This request is made for the purpose of considering an appeal against the judgment.

The request the written reasons for the aforementioned judgment is made in terms of Rule 49(1)(c) of the Uniform Rules of Court.

[11] On 3 July 2025, the respondent sent an email, also to my erstwhile allocated secretary, with the following enquiry ('the Respondent's Enquiry'):

I would like to clarify something please,

In the order its says:

2.1 the referral of this matter, including regarding the issue in paragraphs 3,4,6 and 6 of the Notice of Motion to this application dated 2 June 2025, to the Office of the Family Advocate for investigation and furnishing a report on an urgent basis, bearing in mind the report already compiled by the Family Advocate dated 13 August 2024;

2.2 Alternatively to 2.1 above, the referral of this matter by agreement between the parties including regarding the issue in paragraphs 3,4,6 and 6 of the Notice of Motion to this application dated 2 June 2025, to an appropriately qualified professional in private practice, comparable to the Family Advocate , for investigation and furnishing a report on an urgent basis, bearing in mind the report already compiled by the Family Advocate dated 13 August 2024.

Does 2.2 mean that we have to get someone in private practice? Or can we go to the Family Advocate for investigation and a report?

[12] I decided to deal with the Respondent's Enquiry in these Reasons.⁹ Though, I intend to be brief, I continue the narration under self-explanatory subheadings.

Brief background

[13] The dispute manifested by this application relates to the primary residence of the minor child. Both parties passionately consider themselves entitled to same and this delicate issue has now become a contest of virtue or even a tug of war with the minor child in between.

[14] I deal under this part with the highlights of the issues in the background to the matter. I strive to do so on the basis of the common cause issues between the parties. They are very few such issues. I will, thus, indicate where an issue is in dispute. And, I only reflect those aspects which I consider material for these Reasons.

[15] The parties were married in 2016, although they have been romantically involved since 2013. The applicant describes himself as an electrician currently residing in Modimolle, Limpopo Province. The respondent stays in Clubview. The parties lived together, at some stage, in Cape Town until the applicant vacated the matrimonial home, due to what the applicant describes as 'unbearable living circumstances'.¹⁰

[16] As already indicated, the minor child was born on 11 June 2018 and, therefore, is now seven years old. The minor has a sibling or sister from the respondent's previous marriage. The sister is currently 17 or 18 years old. The children share an apartment with the respondent and her partner. The applicant lives with his extended family in Modimolle, Limpopo. The minor attends primary school in the Pretoria environ.

[17] The parties' relationship or marriage has been plagued by a history of violence. They are currently under cross protection orders against each other. This include the arrest of the applicant on his birthday and around the time of his

⁹ Par [45] below.

¹⁰ FA pars 5.5 – 5.9, CL 29-13 to 29-14.

grandmother's funeral in September 2023 at the time the couple and the children were staying in Cape Town. This is vehemently denied by the respondent, though.

[18] The respondent relocated from Cape Town to Pretoria in December 2023. The applicant relocated to Modimolle in Limpopo in September 2024, after remaining in Cape Town following the relocation of children and the respondent to Gauteng.

[19] The issues relating to the minor child's primary residence and parental rights and responsibilities regarding the contact were investigated by the office of the Family Advocate in terms of the Mediation in Certain Divorce Matters Act 24 of 1987. The Family Advocate delivered an interim report dated 25 April 2024. The final report dated 13 August 2024 is attached to the applicant's papers ('the Family Advocate Report').¹¹ According to the Family Advocate Report the process or investigation which led to the compilation of the report involved registered social workers with several years' experience, acting as the family advocate and family counsellor.

[20] It is stated in the Family Advocate Report that its focus was to investigate what is in the best interests of the minor child as set out in section 7 of the Children's Act 38 of 2005.¹² The latter provision is foreshadowed by section 28(2)¹³ of the Constitution of the Republic of South Africa, 1996 ('the Constitution').

[21] The Family Advocate Report includes recommendations made on consideration of the relevant information and as advised by the family counsellor, which included, that:

8.1 Full parental responsibilities and rights regarding care to vest with both parties.

8.2 Residency of the minor child to vest with the Plaintiff [i.e. the respondent in the current application].

¹¹ Annexure 'PC1' to FA ('i.e. Family Advocate Report'), CL 29-48 to 29-85.

¹² Family Advocate Report par 3.2, CL 29-50.

¹³ Section 28(2) of the Constitution provides that: '[a] child's best interests are of paramount importance in every matter concerning the child'.

8.3 Specific parental rights and responsibilities regarding the contact to vest with the Defendant [i.e. the applicant in the current application], as detailed in paragraph 11.3 of Annexure “A”.¹⁴

[22] Annexure ‘A’ to the Family Advocate Report is another report by the family counsellor, dated 13 August 2024 (‘the Family Counsellor Report’).¹⁵ The family counsellor boasts over 24 years of work experience in the fields of child protection and family care.¹⁶ She was requested by the Family Advocate to conduct an inquiry as to the best interests of the minor child in this matter. The recommendations made by the family counsellor correspond with those by the Family Advocate, stated above,¹⁷ as to the parties’ parental responsibilities and rights with regard to the care of the minor child and the award to the respondent of the primary care or residency of the minor child. There is another report compiled by a family counsellor, based in Cape Town, who conducted an inquiry into the social circumstances of the applicant (ostensibly whilst he was based there) as the father of the minor child. The latter report is dated 24 June 2024,¹⁸ but does not include any recommendations.

Applicant’s case (summarised)

[23] The relief sought by the applicant on an urgent basis in terms of this application was said to relate to the best interests of the minor child based on section 28 of the Constitution, read with sections 7, 9, 18 and 28 of the Children’s Act.

[24] I consider the following from the applicant’s founding affidavit to accurately summarise the applicant’s objective in launching the current application:

It was made clear from the outset that I intended to have primary residence of the minor child, as it is a well-known fact that since we

¹⁴ Family Advocate Report par 8, CL 29-53.

¹⁵ Family Counsellor Report, CL 29-54 to 29-71.

¹⁶ Family Counsellor Report par 1, CL 29-54.

¹⁷ Par [21] above.

¹⁸ Annexure ‘B’ to ‘PC1’ (i.e. Cape Town’s Family Counsellor’s report), CL 29-72 to 29-71.

resided in Cape Town the Respondent has shown very little interest in the care and up bringing [sic] of the minor child.¹⁹

[25] As stated above, the parties at some stage resided in Cape Town. The applicant says he learnt from a third party in December 2023 that the respondent and the children (including the minor child) had relocated to Gauteng. He says, thenceforth, he was prevented by the respondent from having contact with the minor child.

[26] The applicant says he relocated to Modimolle in September 2024 to be closer to the minor child, hoping that this would improve contact between the two of them, but in vain. The applicant and his attorneys considered the move to warrant that 'the recommendations of the [Office of the Family Advocate] be reconsidered'.²⁰ The recommendations are discussed above.²¹ These and more culminated in the launch of the Rule 43 application in September 2024.

[27] According to the applicant, he was able to resume a loving relationship with the minor child following the Rule 43 Order. This, he says, allowed him to observe the bad state of health and upkeep condition of the minor child, as well as the slow pace of his development and decline in academic performance.

[28] Further allegations by the applicant against the respondent include that: (a) the respondent is neglectful in her parental duties in respect of the minor child; (b) the minor child is in dirty clothes when visiting the applicant; (c) the minor child does not take with school books for his homework when visiting the applicant; (d) he appears not to have been fed properly; he is not attending play therapy; (e) the respondent and her partner observes or practises satanic rituals and watch horror movies in the presence of the minor child; (f) the minor child's speech or its development is impaired; (g) often when the applicant exercises his right of contact via telephone with the minor child there is interruption in the conversation by the respondent and her partner; (h) the respondent's partner has a big influence on the

¹⁹ FA par 5.12, CL 29-14.

²⁰ FA par 5.38, CL 29-19.

²¹ Pars [21]-[22] above.

respondent and constantly interferes in the parenting of the minor child, including by purporting to teach the minor child on how to become a man; (i) the respondent's partner has threatened the minor child with a belt, and (j) the minor child is forced to go outside to play until 18h00 in the evening when he should be attending to his school work.

[29] The applicant says he agreed with the respondent that Ms A Joubert, a social worker in private practice, conduct 'a full investigation into the psycho-social background of the minor child' and make recommendations as to what is in the best interests of the minor child.²² Ms Joubert conducted her investigation and rendered some reports, denoting what is branded 'red flags' and 'causes for concern' regarding the wellbeing of the minor child.²³ Ultimately, Ms Joubert recommended that the minor child be placed in the care of the applicant. In an addendum report of 28 May 2025, Ms Joubert elevated her concerns to the effect that the minor child is at risk and his situation requires serious and urgent consideration.

[30] The applicant, perhaps propped by the recommendations in Ms Joubert's reports, says he is concerned about the safety, care and wellbeing of the minor child. According to Ms Joubert and the applicant it would be in the interests of the minor child for him to be primarily residing with the applicant in Modimolle and the respondent to have phased-in contact.

[31] The Rule 43 Order requires that the respondent undergoes psychotherapy. She has not met this requirement or term of the Rule 43 Order and, therefore, is actually in contempt of the order, the applicant points out. She has also failed to arrange for the minor child to attend play therapy at his school and refused to co-operate with the forensic investigation (by the social worker) regarding 'the untoward sexually driven actions of the minor child'.²⁴ The latter refers to incidents when the minor child is said to have, twice, displayed some sexually improper behaviour of touching his father (i.e. the applicant's) private area. The minor child is also said to have kissed a girl at school. The applicant accuses the respondent of being unco-

²² FA par 5.54, CL 29-23.

²³ FA par 5.60, CL 29-24.

²⁴ FA par 4.4, CL 29-12.

operative in remedial measures undertaken to address this conduct or behaviour on the part of the minor child. Against consideration, among others, of all these, this urgent application ensued.

[32] The applicant says the contents of the reports by Ms Joubert are uncontested. They have not been objected against by the respondent until at the hearing, it is submitted on behalf of the applicant. But, I hasten to point out that the reports don't have to be contested or objected to if Ms Joubert is an expert jointly retained by the parties.

Respondent's case (summarised)

[33] As indicated above, the respondent took part in these proceedings without legal representation. She filed an opposing affidavit whose affirmation was done at the commencement of the hearing, as stated above. The affidavit was late and the respondent cited the pressures of the matric tests or examinations relating to her daughter in the timing and condition of the delivery of her response to the application. But the affidavit was admitted to form part of the papers before the Court. Essentially, the respondent views the current application as based on lies by the applicant.

[34] The respondent blames the decline in the academic performance of the minor child on the trauma placed on him by his father, the applicant. Apparently, this view is shared by the minor child's schoolteacher. The respondent is eminently opposed to the applicant being granted primary residence of the minor child. She has been his primary caregiver since birth, she pointed out.

[35] The respondent denies any form of abuse by her against the applicant and claims that the opposite is actually the truth. She also denies that the applicant was unaware of her relocation from Cape Town back to Gauteng.

[36] The respondent says she was not instantaneously told by the applicant about the inappropriate touching incidents by the minor child and somewhat only got to know of it at a later stage. When she probed, the minor child explained that it was a

mistake. Regarding the kissing of the girl at school, the minor or school authorities explained that the kissing was only on the forehead.

[37] Regarding her non-attendance of the psychotherapy prescribed in the Rule 43 Order, the respondent says that she was informed outside court on the material day by the applicant's attorney of record that the psychotherapy was only a recommendation (and thus optional) as divorces could be traumatic. Further, according to respondent, the child should be undergoing speech therapy and not play therapy. She denies that she had refused to participate in the forensic investigation by Ms Joubert, the social worker. She explains that the child could not participate as the scheduled session interfered with his schooling.

[38] The respondent, actually, accuses Ms Joubert of telling (read, reporting) the untruths and her reports as one sided. She strenuously denied receiving the reports by Ms Joubert until a week or so before the hearing of the urgent application. Ms Joubert advised her earlier – after apparently presenting the reports virtually, that the respondent should contact the applicant's attorneys should she require access to the reports.

Considerations of the relevant issues for purposes of the Order made (summarised)

[39] This is essentially an interlocutory application in divorce proceedings. The relief sought in this application is contended in the divorce proceedings. The relief sought by the applicant on an urgent basis was for the permanent removal of the minor child from the primary care of the respondent, the mother, to that of the applicant, the father. The applicant unsuccessfully sought the same relief less than a year ago in terms of the Rule 43 application.

[40] The minor child has been staying with his mother since birth and away from the applicant since around December 2023. The permanent removal is primarily pivoted on the reports obtained by the applicant from a social worker in private practice, namely Ms Joubert. Counsel for the applicant was emphatic in pointing out that Ms Joubert is a forensic social worker. At some stage I had expressed concern about the psychological effect of uprooting a seven year old from the primary care of

her mother without the benefit of an input from a psychologist. The impression I got – from the submissions by counsel - was that the involvement of Ms Joubert should remove such concerns from the Court.

[41] There is also an impression created that the respondent requires psychological assessment. This, in fact, is part of the Rule 43 Order. But this Court was not informed as to who made the assessment for this requirement before it found its way into the Rule 43 Order. The respondent explained that she was informed that this term of the Rule 43 Order is optional and she agreed to its inclusion as she was informed divorces could be traumatic. Obviously, she is bound by the Rule 43 Order, as long as it remains unvaried. For whatever is worth and from where I stood, the respondent appeared to be able to fare well in what she was doing in opposing this matter when she virtually appeared before me.

[42] The respondent rejected the contents of the reports by Ms Joubert. In some instances she labelled the contents to be untruths. She clearly does not accept the expert opinion of Ms Joubert including the way Ms Joubert went about in arriving at her opinions and recommendations. It is not significant that a litigant in a dispute rejects expert opinion presented to the court, without more. But it is not insignificant that a litigant, as the respondent does in this matter, challenges the accuracy of the material or facts relating to her involvement, ultimately grounding the expert opinions and/or recommendations. I am also not convinced that Ms Joubert was acquired jointly by both parties.

Conclusion and costs order granted

[43] Considering all of the above, I felt that the Court was not put in a position where it could decide the issue of permanent removal of the minor child, including the ancillary relief, sought by the applicant in this interlocutory application, in the best interests of the minor child, as provided by the Constitution and the Children's Act.

[44] Paramount of my concerns – and I deliberately belabour the point – is the effect of permanent removal of a seven year old who has been with his mother since birth. I felt that an investigation was warranted, especially given the fact that, the removal is to be on a permanent basis. The office of the Family Advocate is well

placed and statutorily empowered to assist the Court in this regard. I also found solace in the fact that the Family Advocate has already been involved and has delivered a report or reports. The report(s) may require some reconsideration on the basis of any change in circumstances, but it cannot just be discarded. Because there were concerns expressed by counsel for the applicant as to the turnaround time of the office of the Family Advocate due to volume of work it carries, I allowed in the Order for the parties to jointly retain the services of an appropriately qualified professional comparable to the Family Advocate to investigate and furnish a report.

[45] To directly answer the Respondent's Enquiry (referred to in par [12] above) , this means that the parties have a choice to approach the Family Advocate or someone with qualifications comparable to that of the Family Advocate. If there is no agreement, the Family Advocate has to be approached. But, whatever election is made the previous report by the Family Advocate ought to be considered for purposes of any report which is to serve before the Court.

[46] For these Reasons, I granted the Order. As part of the Order I made a costs order that costs be in the divorce action. I felt that as the substantial relief sought in the application is deferred, the landing of the liability for costs cannot be decided. Therefore, absent amicable settlement of the action, the costs of the application relating to the Order will be disposed of as part of the costs order made in the divorce action.

Khashane La M. Manamela
Acting Judge of the High Court

22 July 2025

Appearances:

For the Applicant : Ms A Korf

Instructed by : AKS Attorneys Inc, Johannesburg

For the Respondent : In person