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

Case number: 2023-079353

1. REPORTABLE: ~~YES~~/NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/ NO
3. REVISED: YES/ ~~NO~~

DATE: 21 August 2025

In the matter between:

M[...] G[...] M[...]

FIRST APPLICANT

M[...] C[...] M[...]

SECOND APPLICANT

and

N[...] B[...]

FIRST RESPONDENT

M[...] C[...] M[...] JNR

SECOND RESPONDENT

**THE OFFICE OF THE FAMILY
ADVOCATE, PRETORIA**

THIRD RESPONDENT

JUDGMENT

MARX DU PLESSIS, AJ

Introduction

1. This matter came before me as an urgent counterapplication in which, *inter alia*, the variation of a court order granted by Davis J on 22 August 2023 is sought. That order was granted pursuant to an urgent application launched by Mr and Mrs M[...] during August 2023 (“**the main application**”). For ease of reference, and to avoid confusion, I will continue to refer to them herein as they were in the main application, namely, the applicants.

2. At the centre of both the main application and the present counterapplication is a five-year-old girl, L[...] (‘L’).

3. The order sought to be varied assigned certain parental responsibilities and rights to the applicants, appointed experts to investigate the parties’ respective parental responsibilities and rights, and regulates how such responsibilities and rights in relation to L’s care and contact are to be exercised pending the finalisation of Part B of the main application.

Background

4. L was born on 10 July 2020 and is the biological daughter of the first respondent in the main application, Ms B[...] (‘**first respondent**’). It is the first respondent who has launched the counterapplication presently before me.

5. Several days after L’s birth, the first respondent and her then partner, Mr M.C. M[...], the son of the applicants, moved into the home of the applicants. The applicants and their son were led to believe that L was their biological daughter and granddaughter. This later proved not to be the case.

6. Initially, L was cared for by the applicants, their son, and the first respondent. At some point during 2020, the first respondent, the applicants' son, and L moved into the home of the applicants' daughters.

7. They resided there until mid-January 2021, when the first respondent and the applicants' son terminated their relationship. At that time, the first respondent and the applicants' son agreed to a shared residency arrangement in respect of L, agreeing that L's care would alternate between them on a two-weekly basis.

8. The first respondent did not always adhere to the shared residency schedule; with the result that L remained in the care of the applicants' son. During these periods, the applicants assisted extensively with L's care.

9. During or about July 2022, the parties agreed that L would remain primarily in the applicants' care, and that the first respondent and the applicants' son would exercise contact with L over weekends, alternating between them. The first respondent, however, did not adhere to this arrangement and often missed her contact sessions with L.

10. The applicants willingly assumed the role of L's primary caregivers, and the first respondent appears, at that stage, to have relinquished that responsibility to them of her own accord.

11. In May 2023, the applicants and their son were informed that L was not, in fact, the biological daughter of the applicants' son. The first respondent nevertheless assured the applicants that they would always remain L's grandparents.

12. Notwithstanding this revelation about L's paternity, L continued to reside primarily in the applicants' care.

13. Over the weekend of L's third birthday, she exercised contact with the first respondent, who, at the conclusion of the weekend, refused to return L to the applicants' care.

14. The applicants and the first respondent engaged one another through their respective legal representatives but were unable to reach agreement regarding L's care and their respective parental responsibilities and rights in relation to L. During this time, and for a period of approximately seven weeks, L had no contact with the applicants.

15. In an effort to reinstate contact with L, the applicants launched the main application, during August 2023, which was opposed by the first respondent.

16. Pursuant to the hearing of the main application, an order was granted in terms of which, *inter alia*:

16.1 The applicants were assigned care, contact and guardianship in respect of L.

16.2 The Office of the Family Advocate was directed to conduct an urgent investigation into L's best interests, particularly in relation to the parties' respective parental responsibilities and rights and L's primary place of residence, and to report thereon.

16.3 Contact with L was to alternate on a weekly basis between the applicants and the first respondent.

16.4 Part B of the main application was postponed *sine die*.

17. During October 2023, following consultations with the parties, the Office of the Family Advocate issued an interim report in which it requested that certain information be provided before it could finalise and publish its report.

18. The final report of the Office of the Family Advocate, dated 14 May 2024, was made available to the parties shortly after its completion.

19. In addition to the report of the Office of the Family Advocate, the parties procured a report from a social worker, Ms Eunice Uys. The report, dated 2 June 2025, was made available to the parties shortly after its completion.

20. In her report, Ms Uys recommended a multi-phased approach to the phasing out of L's primary care and residence with the applicants. Effectively, upon completion of the recommended multi-phased process, L would reside primarily with the first respondent, while maintaining contact with the applicants on alternate weekends from Thursday afternoon to Monday morning, during school holidays, as well as through regular midweek contact.

21. After receipt of Ms Uys's report, the parties engaged one another and held a roundtable meeting on or about 25 June 2025. Following an exchange of correspondence dated 2 and 10 July 2025, respectively, it became apparent that the parties were in agreement in relation to the following:

21.1 The phasing out of L[...]s primary care and residence with the applicants, such that upon completion of the phasing out process, L's primary care and residence would vest with the first respondent.

21.2 The need for L[...] to commence therapy immediately.

21.3 That the costs associated with L[...]s therapy are to be shared equally between the applicants and the first respondent.

21.4 That Phases 1 to 3 of the multi-phased process recommended by Ms Uys be implemented as set out in her report.

22. In her letter of 2 July 2025, the first respondent effectively proposes that the applicants' extended weekend contact with L be phased out entirely over the period September 2025 to September 2026, and that their holiday contact with L be reduced and phased out over the period 1 July 2025 to 30 June 2026.

23. The first respondent's proposal culminates in the applicants being entitled only to one lunch or outing with L per month, which would not include any sleepover contact. In addition, the applicants would no longer be entitled to any holiday contact with L, unless agreed to by the first respondent, in writing.

24. In their letter of 10 July 2025, the applicants expressed their dissatisfaction with the first respondent's proposal, noting that the proposed contact structure, and the substantial reduction in contact between them and L, would not serve L's best

interests, particularly in light of, and having regard to, Ms Uys's report, findings, and recommendations. The applicants proceeded to advance a comprehensive, multi-phased counterproposal, which accords more or less with the recommendations of Ms Uys.

25. On 16 July 2025, the first respondent's attorney addressed further correspondence to the applicants' attorney, noting that no response had yet been received to their letters of 10 and 11 July 2025, and insisting that the phasing out of L's primary care and residence with the applicants commence on 28 July 2025.

26. In response, the applicants' attorney, in a letter dated 24 July 2025, indicated that the phasing out of L's primary care and residence could not commence on 28 July 2025, as the parties had not yet reached agreement on the end result to be achieved, particularly regarding their contact with L, nor on the phasing-out schedule. The applicants' attorney further called for a response to their proposal, as set out in their letter of 10 July 2025, within seven days, failing which the applicants would supplement their papers and enrol Part B of the main application for argument.

27. Instead of responding to the applicants' proposal, the first respondent launched the urgent counterapplication now before me on 29 July 2025.

28. When asked why the first respondent had elected not to provide a response to the applicants' letter of 10 July 2025, counsel for the first respondent submitted that the first respondent's letter of 2 July 2025 already constituted a counterproposal to the recommendations made by Ms Uys, and that the applicants' letter of 10 July 2025 merely reflected their unwillingness to engage further. I do not agree as the first respondent was expressly invited to respond to the applicants' counterproposal.

29. The counterapplication was launched on 29 July 2025 and was set down for hearing on Wednesday, 13 August 2025. This enrolment was not in accordance with the prevailing practice directives and appears to have been arranged for the benefit and convenience of the first respondent's counsel, who was otherwise engaged on Tuesday, 12 August 2025.

30. After service of the urgent counterapplication, a notice of set down for 12 August 2025 was served on the applicants. According to the argument before me, this was done for the purpose of enrolling the matter. However, it created confusion for the applicants, who were uncertain whether the matter had been set down for 13 August 2025, as reflected in the notice of counterapplication, or for 12 August 2025, as reflected in the notice of set down.

31. I allocated the application for hearing on 13 August 2025, being the date selected by the first respondent in her notice of counterapplication.

Urgency

32. The well-established rule and practice in this Division is that urgent matters must be enrolled for hearing on a Tuesday, with all papers to be filed before noon on the preceding Thursday. This established rule and procedure was disregarded by the first respondent.

33. Counsel for the first respondent candidly indicated that a notice of set down, reflecting 12 August 2025 as hearing date, was delivered solely for the purpose of securing enrolment. The registrar's refusal to enrol the matter for Wednesday, 13 August 2025, and insistence that a notice of set down be filed for Tuesday, 12 August 2025, is a further reinforcement and confirmation of the well-established rule and practice regarding the enrolment of urgent applications in this Division.

34. Notwithstanding this, the application was ultimately set down for hearing on Wednesday, 13 August 2025 in accordance with the notice of motion, at the instance of the first respondent, and plainly for the convenience of her counsel, as is evident from the replying affidavit and a note uploaded to the CaseLines file.

35. A matter may be enrolled on the urgent roll on a day other than the Tuesday only where justifiable, and in truly exceptional circumstances. No such circumstances were advanced, nor do any exist on the papers.

36. Not only did the first respondent fail to comply with the practice directives regarding the enrolment of the counterapplication, but the timelines between obtaining the reports of the Office of the Family Advocate and Ms Uys, and the time taken for their investigations and reports to be completed, do not establish or support the urgency alleged and relied on by the first respondent.

37. Ms Uys indicates in her report that L's history of abandonment, disrupted caregiving, and inconsistent emotional attunement has heightened her vulnerability in respect of relational security.

38. It is therefore developmentally critical that L's caregiving environment continues to provide a stable and reliable secure base. The applicants have consistently provided such care and demonstrated a sustained emotional commitment to her wellbeing.

39. The first respondent elected to launch this urgent counterapplication, ostensibly in L's best interests, rather than first attempting to meaningfully engage with the applicants with a view to ensuring that they all continue to provide L with a stable and reliable secure base.

40. The first respondent has not demonstrated that the existing care and residence arrangements pose any real or perceived threat to L's security or wellbeing that justify the launching of the counterapplication on an urgent basis, in the manner she did.

41. This arrangement has been in place since August 2023, and its continuation for a further month or two after receipt of Ms Uys's report, whether while the parties endeavour to reach agreement regarding L's future care or await a hearing date in the normal course, will not in any way endanger L. Significantly, the first respondent has not advanced any credible or substantive contention to the contrary.

42. A further ground advanced for urgency was the alleged difficulty experienced by the first respondent in enrolling L as a Grade R learner without a birth certificate

which, she contends, the applicants have refused to hand over to her. The applicants, however, state that they are not in possession of L's birth certificate.

43. The first respondent argues that in the absence of the birth certificate and in the absence of the applicant consent, she is unable to enrol L as a learner in time for the coming school year. On this basis she seeks, as a matter of urgency, an order with the effect of divesting the applicants of their guardianship rights in respect of L.

44. The first respondent has, however, made no attempt to request the applicants' consent, nor has she invited them to accompany her to the Department of Home Affairs to apply for a replacement birth certificate.

45. The alleged urgency of this counterapplication is therefore not borne out by the facts.

Mediation

46. In order to ensure that L's caregiving environment continues to provide her with a stable and reliable secure base, it is imperative that the parties are able to co-parent successfully. This much is confirmed by Ms Uys.

47. This cannot be achieved where the parties' acrimony is fuelled and exacerbated by litigation, particularly litigation which could and should have been avoided had the parties engaged one another actively, in good faith, and in a constructive and facilitated manner.

48. The papers demonstrate that the parties were able to reach agreement on serious and fundamental aspects regarding L's care. There is no reason why, if correctly guided, they should not also be able to reach agreement on the remaining aspects, such as the applicants' contact with L.

49. L's history of disrupted care and her potential experiences of loss or abandonment may cause her to perceive her environment as fragile and uncertain. It is therefore critical that her current and future caregiving environment is one that is

emotionally available, attuned to her developmental needs, and capable of accommodating her full range of feelings.

50. Therapeutic support is essential for L, particularly to assist her in navigating competing loyalties and emotional expectations that may arise from her secure attachment to multiple caregivers and the special bond she shares with each of them.

51. The multi-phased process recommended by Ms Uys was designed to optimise the continuity of L's secure attachments with her multiple caregivers, while simultaneously ensuring clear emotional boundaries and positive long-term outcomes. The parties must not lose sight of this.

52. Each of the parties has played a significant role in L's upbringing. To remove, or limit her access and contact with any one of them, is likely to have a profoundly negative impact on her. The parties, who profess to act in L's best interests, are urged to consider not only their own positions, but also what each of them means to L and the unique contributions each has made to her life.

53. Collaboration between the parties is essential to L's emotional wellbeing, particularly given her past experiences of relational disruption. Encouragingly, the parties have demonstrated that they are able to reach agreement on issues of significance to L's welfare, including her primary care and residence, her need for therapeutic intervention, and the phasing-out of her primary residence with the applicants.

54. In light of L's needs as highlighted by Ms Uys and given that the parties have reached agreement on fundamental aspects of her care, I am of the view that, with appropriate effort, the remaining disputes between them are capable of resolution through mediation.

55. These disputes include, in particular, the process of phasing-out L's primary residence with the applicants, and the manner in which she is to enjoy continued and regular contact with them, as recommended by both Ms Uys and the Office of the Family Advocate.

56. As stated, the fact that the parties have demonstrated an ability to settle certain issues leads me to conclude that the remaining disputes are also capable of being mediated.

57. It is for this reason that I have determined to stay the counterapplication and direct the parties to consider the referral of the outstanding disputes to mediation. I intend directing that the parties will not be permitted to re-enrol this counterapplication, including Part B of the main application, until they have placed before the Court cogent evidence that they have meaningfully, properly and in good faith engaged one another in mediation, and a full explanation as to why mediation would be fruitless.

Therapeutic intervention

58. While engaging in mediation, the parties are ad idem that L should commence with and undergo therapeutic intervention as recommended by Ms Uys. They are, however, unable to agree upon a suitably qualified expert to undertake this process.

59. The applicants contend, in my view correctly, that Ms Ilana Karam, assisted by Ms Michelle de Bruyn, should be appointed for this purpose, as recommended by Ms Uys. Given that Ms Uys conducted a comprehensive assessment of L and all role-players, she is best placed to recommend suitably qualified professionals capable of providing the necessary therapeutic support to L.

60. The first respondent opposes the appointment of the experts recommended by Ms Uys, contending that it would be inconvenient for her to travel with L between Centurion and Pretoria East. She instead proposes the appointment of Ms Sonja Bouwer. However, no evidence of Ms Bouwer's training or qualifications was placed before Court until after argument on 13 August 2025. The certificates subsequently uploaded are presented without context or adequate explanation.

61. I see no reason why the experts recommended by Ms Uys, namely Ms Ilana Karam, assisted by Ms Michelle de Bruyn, should not undertake the required therapeutic process with L.

Costs

62. Courts are generally reluctant to discourage parents or persons holding parental rights and responsibilities from acting in what they believe to be in the best interests of the children concerned.

63. The matter of ***Bethell v Bland and Others***¹ provides useful guidance regarding the approach to costs in matters concerning children. In that matter, the Court held that a successful litigant is ordinarily entitled to their costs and that no matter how bona fide and concerned a party may be, it is unfair for a person who has been unnecessarily drawn into litigation, and who successfully resists it, to be burdened with the costs of doing so.

64. In this matter, the first respondent's counterapplication is premised on the report of Ms Uys. However, the relief sought by her only partially accords with the recommendations made by Ms Uys. The relief claimed by the first respondent appears to seek the exclusion of the applicants from L's life almost entirely, notwithstanding that Ms Uys discouraged and expressly advised against such an approach. I have not, however, considered the merits of the counterapplication, as this was not argued before me, and I accordingly make no finding thereon.

65. The counterapplication was also brought as one of urgency. The first respondent, however, elected not to comply with the practice directives, nor has she demonstrated why she would not be afforded substantial redress in due course. This is particularly so given that applications in the Family Court, whether opposed or unopposed, are dealt with expeditiously, and hearing dates are allocated within a relatively brief period.

¹ 1996(4) SA 472 (WLD) at 475E-I

66. A further ground advanced for urgency was the applicants' alleged refusal to provide the first respondent with L's birth certificate, which she claimed was required for L's enrolment in Grade R in 2026. However, it transpired both in the papers and during argument that the birth certificate is not in the applicants' possession. Significantly, the first respondent has not even attempted to request the applicants' assistance or their presence at the Department of Home Affairs to apply for the reissue thereof.

67. It is plain that this counterapplication could have been avoided had the first respondent engaged the applicants directly and meaningfully on the matters canvassed in this judgment.

68. While my initial inclination, based on the above grounds, was to grant a costs order against the first respondent, I am convinced, having considered the effect such an order would have at this stage, that the granting of such an order would be counterproductive to the mediation process which the parties are directed to consider. It may impede a process which, in my view, holds real potential to resolve the remaining disputes.

69. For these reasons, I deem it appropriate to reserve the costs of the counterapplication, as well as the wasted costs occasioned by its enrolment in the urgent Family Court on 13 August 2025. Should mediation prove unsuccessful, either party will be entitled not only to re-enrol the counterapplication and Part B of the main application for hearing, but also to argue the question of the reserved costs.

Order

In the result, I make the following order:

1. The counterapplication is stayed, and the parties are directed to consider the referral of the outstanding disputes between them concerning L[...]s current and future care, in particular the applicants' continued contact with L[...], to mediation.

2. The parties shall not be entitled to re-enrol the counterapplication until such time as they have placed before the Court cogent evidence that they have meaningfully, properly and in good faith considered and engaged one another regarding mediation, together with a full and sufficient explanation as to why a referral to mediation would be fruitless.
3. Ms Ilana Karam, assisted by Ms Michelle de Bruyn, is appointed to undertake the recommended therapeutic process with L[...], in accordance with the report and recommendations of Ms Uys. The parties shall be jointly and equally liable for the fees associated with this therapeutic process.
4. The costs of the counterapplication, as well as the wasted costs occasioned by its enrolment in the urgent Family Court on 13 August 2025, are reserved for later determination.

Z MARX DU PLESSIS
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 13 August 2025
Date of order: 21 August 2025

APPEARANCES

On behalf of the applicants: Adv B Bester
On behalf of the first respondent: Adv S van Dyk