

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

Case Number: 2023/087853

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

18 September 2025

In the matter between:

M[...] Z[...] B[...]

(Born M[...])

Applicant

And

M[...] K[...] T[...]

First Respondent

MAGISTRATE M KOPEDI (NO)

Second Respondent

JUDGMENT

MUDAU, J:

[1] On 9 September 2024, I ordered that the minor child between the first and second respondent be enrolled for play therapy and that the second respondent immediately undergo a hair follicle, nail clipping drug test and screening to be

submitted to this court within 14 days of the order. I have been approached to provide reasons for the order. These are the reasons.

Background

[3] The applicant launched an urgent application pursuant to Rule 6 (12) of the Uniform Rules in two parts, firstly in part A, for an interim interdict to regulate the minor child's primary or shared residency arrangement pending a review application which forms Part B of the relief sought in the notice of motion. The relief sought in terms of Part B relates to the review and setting aside of the Magistrates' Court order currently regulating the primary residence, care and contact as well as access with respect to the minor child. The contact that the first respondent sought to alter at that stage was by way of agreement as reflected in the decree of divorce. In Part A, the applicant also sought the following relief:

- 1. Pending the finalisation of the relief sought in terms of Part B below, the First Respondent shall be entitled to exercise contact with Z[...] D[...] I[...] M[...] ("minor child") every alternate weekend from after school on Friday until Monday morning when he shall take the minor child to school.*
- 2. The minor child is immediately enrolled for play therapy with a professional play therapist to be determined mutually by both parties, failing agreement, to be appointed at the recommendation and nomination of the above Honourable Court; and*
- 3. The First Respondent to immediately undergo a hair follicle drug test and screening and submit the results to both the above Honourable Court and the applicant within 7 days of this Order as well as costs.*

[4] The application first served before Wright J, who dismissed it for lack of urgency on Tuesday 12 September 2023. This court was only seized with Part A of the application. The applicant and the first respondent got divorced on 2 August 2019 by order of the Randburg Regional Magistrates, Randburg. In terms of the decree of divorce, primary residence of the minor child was awarded to the applicant, with specific and reasonable rights of care and contact granted to the first respondent.

[5] According to the applicant, during the subsistence of the parties' marriage, the first respondent abused at least 3 types of narcotics. He even attempted to influence her into joining him in the habit, but she refused. After consuming drugs, the first respondent became verbally abusive and physically violent. So, her fear over the well-being of the minor child in extended care of the first respondent was and remains well founded.

[6] On 4 August 2023, the Friday that the minor child was supposed to commence her week-long stay with the first respondent, she received a phone call from the minor child's school. They informed her that the child was frantic, and she immediately had to go to the school. When she got there, the child was visibly upset, and in tears. The child reported to her that she feared going to the first respondent's house as he shouts and beats her up if she does not read properly. Subsequently, on 18 August 2023, the child's class teacher Miss Le Grange wrote a written account of what she had witnessed with the minor child ("annexure ZB3").

[7] According to the applicant, their daughter now cries a lot about the experience of her father's harshness and beatings. The concern was by the time the review is heard, there is no telling how much more distress the minor child would have gone through in the current shared residency regime. The applicant alleged that she witnessed the child's psychological and emotional distress that has been borne out of the shared residency and the spartan treatment the minor child has been subjected to in the elongated interaction with the first respondent.

[8] In his opposing affidavit, the first respondent denies using drugs but is averse to taking the test to establish his alleged innocence from the habit of substance abuse. He alleges that he is a loving father who merely seeks to safeguard his rights and ensure that his minor child's right to have him in her life is protected as this is in her best interest. On his version, the applicant has on numerous occasions in the magistrates' courts subjected him to the very tests she wishes him to undergo again. Although these tests infringed on my Constitutional rights to dignity, I agreed to subject himself to them, at own expense to put to rest her baseless allegations that he is a drug abuser. The last of the test was on 7 March 2022. He also alleged that, the play therapy report received in 2018, accords with the court's findings as it made

it clear that parent alienation is a source of great distress for the minor child who could sense the animosity held by her parents for each other. He contended that, it would be in the best interests of the minor child if the minor continues with the play therapy but that it be an inclusive process.

[9] In an e-mail correspondence sent by the first respondent on the day of the incident giving rise to this application where the first respondent states as follows: *"it does concern me that Zina didn't have a good day at school. I think it would be important to find out what was the issue that caused her to be emotional and unhappy, so one knows how to deal with it. Once you have had that discussion with her, I would appreciate it if you can update me as her father..."* The first respondent contends that there simply is no factual or evidentiary basis to substantiate the relief that the applicant seeks.

[10] In closing submission, the applicant submitted that the enrolment or signing up of the child for assessment with a child psychologist or other expert for interventions such as play therapy may assist the minor child heal from the trauma that she showed and experienced recently at home and at school. Clearly, the first respondent does not seem to dispute the necessity of the expert intervention, but he has not been forthcoming in accepting the applicant's suggestions regarding which expert to hire. Section 28(2) of the Constitution which is the supreme law requires that a child's best interests have paramount importance in every matter concerning the child.

[11] In *AD and Another v DW and Others (Centre for Child Law as Amicus Curiae; Department for Social Development as Intervening Party)* 2008 (3) SA 183 (CC) at para 30, the Constitutional Court stated that the interest of minor children should not be held at ransom for the sake of legal niceties. The court noted that the best interest of the child should not be mechanically sacrificed on the altar of jurisdictional formalism.

[12] In view of the history of drug abuse by the first respondent, the last having been a year before this application was launched, I considered it to be in the best

interest of the child to grant part A of this application in the terms as set out in the order given the incident at the school as chronicled above.

Order

[13] The order is confirmed.

**MUDAU J
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

Counsel for the Applicant:	Adv. MB Madumise
Instructed by:	Kekana Hlatshwayo Radebe Inc.
 Counsel for the Respondents:	 Adv. Kgabo Tebogo Kgole
Instructed by:	TLP Shai Attorneys
 Date of Reasons for judgment:	 18 September 2025