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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 047056/2025

DATE: 18-09-2025

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

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In the matter between

R[...] G[...] Plaintiff

and

M[...] A[...] D[...] Defendant

J U D G M E N T

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20 **VON LUDWIG, AJ**: It is a heavy burden on a court to have to decide what is best for a minor child when that child's own parents are unable to do so. It is a responsibility for which we must be grateful because the parents have turned to us and said, “help us”. It is not always an abrogation of the parents' responsibilities by the parents. It is the

parents saying, "I know what I think is best, but it does not concur with what the other parent thinks is best".

And that is where the court really struggles, is when you have two good, loving parents and two good, loving support structures and they are unable to objectively determine what is best for a child. That does not mean that a court can get it right. Bear in mind I have never met any of you and nor will I. I have never met this wonderful little girl, who is the subject of this application, and nor will I.

10 So, at least I have the experts who have not spent nearly enough time and the people at the Family Advocate's Office, and the social worker who have done this under time constraints because the order that required the Family Advocate to get involved used the words as a "matter of urgency" and obviously the family advocate told the social worker, urgent. So, they have also had significant pressure to do their jobs.

As Mr Khan very rightly said, the norm for these reports is much longer. Even then, anyone in family law will 20 tell you that even those reports where they do psychometric testing, where they conduct all the various tests that can be done on children in age-appropriate circumstances, there is still no objective test as to whether you get it right. But what I do want us all to remember is there is no objective test as to whether you get parenting right even when you

are in the happiest of families.

It happens. As long as everyone is doing their best, if I could put those words in bold and go back to what I said to everybody earlier, do their best and place the child first. Within the context of that, the first court order had the benefit of no expert assistance whatsoever, and my learned sister Van Deventer did her best on the submissions that were made to her.

The second court order, likewise, had the benefit of no expert input and referred the matter for expert input. The expert input is now not only in dispute between the parties, but acknowledged by the Court as, (no disrespect to any of the experts), but as done under pressure, which brings with it incompleteness, typing errors, inability to devote your sole time and attention to it. It needs someone's sole time and attention.

What it does not need is to drag on forever and ever and ever in the hope of getting the “right answer”, because there is none. The right answer depends on the parents learning to respect and deal with each other, the family structures learning to find a way, even if you cannot respect each other, to deal with each other. In the tenets of your faith, in the tenets of all faith, come the injunctions to treat others as you would have them treat you.

It is hard. We live in a very hard world, and when

there is a minor child the subject of it all, it is incredibly hard to take a step back and be the bigger person, but it is possible. Test yourselves, you will see that it is possible and always put her at the forefront of your mind. A Judge giving a judgement in a case like this can go on forever.

There are so many cases and so many learned views drawn from other case law, from facts, but the overriding fact is that every case is different, on its own merits, on its own facts, and yet every case is the same because we all live in one country, one society. We live in a permutation of life where we work five days of the week, we have weekends two days of the week. Day is day, night is night.

You cannot make orders really out of the parameters of these things because they are the realities. People go to their jobs, school hours are school hours, children go to schools at certain ages. All of those have to be taken into account and it makes it difficult to try and find any kind of parity for the parties and stability and balance for a child, which brings me to another point. We are constrained to always provide a child as best we can with stability and routine.

However, equally as important is a minor child's right to have both parents exercise their parental responsibilities in respect of that child and, quite frankly, as

Mr Khan said, in a human world, to be loved by both parents and to feel that love. Parents have a right to parent their child and they have a responsibility to parent their child. They have a right and a responsibility to love their child and to expose their child to the very best that life can offer, which includes exposing them to the very best of the other parent.

One of your parental responsibilities is to foster and promote the contact with the other parent, to foster and promote the child's family, extended family and cultural ties. It is a responsibility enshrined in the Children's Act and in our constitution. All of that being said, and conscious that I could say so much more, I go on to make the following order.

I do find this matter to be urgent and accordingly I do away with all the requirements and have heard it as an urgent application. I order that the minor child shall share care and contact with the parents equally and shall revert to the two-week, two-week regime as per the Van Deventer order. I order that the parents shall attend post-relationship co-parenting counselling with the social worker Heidi Reynolds or, if she is unable to see them and to commence their therapy within the next 30 days, they shall see anyone whom she nominates.

The costs of that therapy will be paid in terms of that expert's contractual prerequisites, shared between the parties pro-rata in accordance with their respective financial means. The attorneys know how to calculate that and they will do so. I further order that the parties refer the matter to either Tanya Kriel, as agreed, or if she is unable to commence this assessment, (and I will come to what she is called upon to assess), if she is unable to commence this assessment within the next 30 ordinary calendar days, in other words by the 18th or 19 October, either to her nominee or to Antony Townsend or to Dr Marilyn Davis-Shulman.

The parameters of the investigation and assessment that this nominated party will conduct, is to determine the best interests of the minor child with specific regard to what residence, care and contact routine should be implemented either from the date of her report and recommendations, (I should not say “her” because one of them is Antony Townsend, let us say “their” report and or recommendations) or from the date of divorce.

The costs of this person shall also be born between the parties, pro-rata, in accordance with their respective financial means. This report will be concluded by 15 April 2026. If the expert, who is approached to do it, is unable to undertake to do that, the next expert, being either the nominee of Tanya Kriel or Antony Townsend or Marilyn

Davis-Shulman, shall be approached on the same terms.

They will have all the powers that they have in their usual mandates when they accept an assessment and investigation and evaluation of this nature, namely if they deem it appropriate to conduct psychometric testing through an alternative psychometrist and to make whatever recommendations are in the best interest of the minor child they deem appropriate. It is for this reason that we have agreed on and or the court has ordered particular specialists.

Penultimately I order that in the conduct of their divorce the parties shall adhere to the rules of court and the directives with regard to closing pleadings in a divorce action and bringing the matter to trial readiness within those time parameters and expeditiously so that this minor child's future can be adjudicated upon once and for all.

As regards costs, cognisant of the fact that two of the parts of my order will require the parties to spend money, at this stage I reserve the costs of today's application for the trial court in the main divorce action.

Let me add in a paragraph prior to my costs order, as follows. This order shall be served on the Office of the Family Advocate. The Family Advocate is requested to suspend their investigation, pending finalisation of the report of the expert herein. And just in case it does not go

without saying, the expert herein is to be provided with all pleadings, court orders and family advocate and social work reports in the possession of the parties to date.

Obviously the expert will call for all other documents that the expert requires. The parties are expressly ordered to co-operate with that expert. If either party comes back to court for any kind of a mandamus, looking for co-operation with an expert, I am sure they will expect a punitive costs order made against them. I want to add, forgive me, I want to add, and I am going to have to obviously amend this order.

I think I am creating a rod for the parties back. The party with whom the minor child is not during those two weeks shall have telephonic contact with that child for no more than 10 minutes every day. If the parties are unable between themselves to sort out a routine as to when this contact shall take place, that contact shall take place half an hour before the minor child's bedtime.

Save for the assessments expressly ordered herein and save for ordinary medical or dental procedures and the continuation of any therapy she may be in at the moment for any form of anxiety, this child may not be referred, by either parent, to any other expert outside of this process unless it is a specific, immediate, urgent recommendation of Kriel, Townsend, Davis-Shulman or other person who is

conducting that assessment.

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ORDER

1. I find this matter to be urgent.

2. I order that the minor child shall share care and contact with the parents equally and shall revert to the two-week, two-week regime as per the Van Deventer order.

3. I order that the parents shall attend post-relationship co-parenting counselling with the social worker Heidi Reynolds or, if she is unable to see them and to commence their therapy within the next 30 days, they shall see anyone whom she nominates.

4. The costs of that therapy will be paid in terms of that expert's contractual prerequisites, shared between the parties pro-rata in accordance with their respective financial means. The attorneys will calculate that.

5. . I further order that the parties refer the matter to either Tanya Kriel, as agreed, or if she is unable to

commence this assessment within by the 18th or 19 October, either to her nominee or to Antony Townsend or to Dr Marilyn Davis-Shulman.

6. The parameters of the investigation and assessment that this nominated party will conduct, is to determine the best interests of the minor child with specific regard to what residence, care and contact routine should be implemented either from the date of their report and recommendations, or from the date of divorce.

7. The costs of this person shall be born between the parties, pro-rata, in accordance with their respective financial means.

8. This report will be concluded by 15 April 2026. If the expert, who is approached to do it, is unable to undertake to do that, the next expert, being either the nominee of Tanya Kriel or Antony Townsend or Marilyn Davis-Shulman, shall be approached on the same terms.

9. Such expert will have all the powers that they have

in their usual mandates when they accept an assessment and investigation and evaluation of this nature, namely if they deem it appropriate to conduct psychometric testing through an alternative psychometrist and to make whatever recommendations are in the best interest of the minor child they deem appropriate.

10. I order that in the conduct of their divorce the parties shall adhere to the rules of court and the directives with regard to closing pleadings in a divorce action and bringing the matter to trial readiness within those time parameters

11. This order shall be served on the Office of the Family Advocate. The Family Advocate is requested to suspend their investigation, pending finalisation of the report of the expert herein.

12. The expert herein is to be provided with all pleadings, court orders and family advocate and social work reports in the possession of the parties to date. The expert will call for all other documents that the expert requires. The parties are ordered to co-operate with that expert.

13. The party with whom the minor child is not during those two weeks shall have telephonic contact with that child for no more than 10 minutes every day. If the parties are unable between themselves to sort out a routine as to when this contact shall take place, that contact shall take place half an hour before the minor child's bedtime.

14. Save for the assessments expressly ordered herein and save for ordinary medical or dental procedures and the continuation of any therapy she may be in at the moment for any form of anxiety, this child may not be referred, by either parent, to any other expert outside of this process unless it is a specific, immediate, urgent recommendation of Kriel, Townsend, Davis-Shulman or other person who is conducting that assessment.

15. I reserve the costs of today's application for the trial court in the main divorce action

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VON LUDWIG, AJ

ACTING JUDGE OF THE HIGH COURT

DATE: 18 September 2025 ex tempore

02 October transcript received and signed