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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



Case number: 2023-091071

Date of hearing: 9 September 2025

Date delivered: 18 September 2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE: 18/9/25

SIGNATURE

In the application between:

C[...] G[...] S[...]

Applicant

and

L[...] S[...]

Respondent

JUDGMENT

SWANEPOEL J:

[1] The parties are currently in the throes of a bitterly contested divorce, in which the primary dispute apparently relates to the care and contact arrangements in respect of their young children, G, a boy, who is almost 7 years old, and M, a girl, who is 5 years old.

[2] The parties separated in October 2022. During December 2023 the applicant launched an urgent application that culminated in an order by agreement, with the following material provisions:

[2.1] The parties were declared to have joint parental rights and responsibilities in respect of the children, in terms of section 18 of the Children's Act, 38 of 2005;

[2.2] Dr Ronel Duchon was appointed to conduct an assessment of the parties and the children, and to make a recommendation as to the children's best interests;

[2.3] Pending the outcome of the assessment, the dispute relating to care and contact during holidays was referred to mediation;

[2.4] Whilst the children would, in the interim, remain in the primary care of the respondent, the applicant would be entitled to the following contact:

[2.4.1] On Monday, Tuesday and Wednesday mornings the applicant would collect the children from the respondent's home and take them to school;

[2.4.2] Wednesday afternoons from 16h00 until 18h30;

[2.4.3] From 16h00 on Thursday afternoons until Saturday at 13h00.

[3] In an interim report dated 3 April 2024 the Family Advocate recommended that the applicant should have reduced contact as follows: Wednesday contact from 16h00 until 18h00, every alternate weekend from 09h00 on Saturday until 18h00 on Sunday, and video calls every Tuesday, Thursday and alternate weekends. It did so after having conducted one interview with the parties on 27 March 2024. The recommendation was allegedly based on the "need to stabilize the children emotionally".

[4] The Family Advocate made the recommendation based exclusively on the respondent's disclosures to the effect that both children had regressed since the parties separated in October 2022 (she told Dr. Duchon that M[...] had regressed since September 2023). The recommendation was made without any supporting collateral evidence confirming the respondent's contentions (which Dr. Duchon later found to be without foundation). The respondent contended that the applicant suffered from bipolar disorder (which was later disproved per Dr. Pretorius), that he consumed alcohol to excess (which was later

contradicted by blood tests), that the applicant was incapable of caring for the children on his own (which Dr. Duchon found not to be so), and that there was high conflict between the parties (much of which the respondent caused).

[5] Nonetheless, the Family Advocate saw fit to reduce the applicant's contact, and armed with that report, the respondent started reducing the applicant's contact substantially. She removed the children from their nursery school and enrolled them elsewhere, ostensibly because the applicant had visited them at school. The respondent refused to give effect to the December 2023 order, and insisted that the Family Advocate recommendations be implemented.

[6] I am extremely perturbed by the fact that the respondent took it upon herself to simply ignore a court order. The applicant has contended that the respondent is intransigent, and is set on doing what she wants as far as the children are concerned. She believes that she is the final arbitrator as to what is in their interests. I will deal with this issue fully below, but this seems to me to be a well-founded statement. I also find it perturbing that neither the Family Advocate nor her attorneys impressed on the respondent that she had to comply with the court order until it had been varied.

[7] On 28 May 2024 the December 2023 order was varied in the following respects: The applicant was allowed to fetch the children every morning to take them to school, and to take G to an occupational

therapist every second session. The applicant was also granted contact every second weekend from after school on Friday to Sunday at 17h00, Wednesday contact between 16h00 and 18h30 and video call contact each Tuesday, Thursday and every second Sunday for 30 minutes.

[8] Dr. Duchen's report was published on 22 December 2024. The (extremely comprehensive) report proposed the following contact arrangements: For the first six months of 2025: Sleepover contact on Wednesdays from after school until Thursday mornings, with the daily pick-up for school continuing, and contact on alternate weekends from Friday after school until Sunday at 17h00. After six months the applicant's contact is to include Sunday night sleepovers. From 2026 the children are to sleep over with the applicant on the Thursday that he has them for the weekend.

[9] The result would be that from 2026, and on every alternate week, the applicant would have the children from Wednesday until Monday morning. The morning pick-ups would then fall away. Dr. Duchen also recommended that school holidays be shared equally.

[10] Dr. Duchen, who was appointed by the parties jointly, has been practicing as a counselling psychologist since 1994. She holds a B.Sc (mathematical Sciences), a B.Sc (Hon), a MA (Psychology) and a D.Litt et Phil degree, the latter focusing on psychological testing. She has been appointed as a Family Counsellor volunteer with the Office of the

Family Advocate. She has presented numerous papers in the field of family matters.

[11] Dr. Duchen conducted 24 interviews and psychometrical assessments with the parties and the children. It is important to deal with her findings in detail. Dr. Duchen described the respondent as being analytical in her approach to matters, including in her parenting, whilst the applicant had a more *laisse faire* attitude. Whilst the respondent is more authoritarian by nature, the applicant was raised in a more permissive style. Their parenting styles are the polar opposite of the other. Nonetheless, the applicant believes the respondent to be a good mother. On the other hand, the respondent believes the applicant to be dishonest, disrespectful, manipulative, and engaged in a power struggle.

[12] Alarmingly, she told Dr. Duchen that she thought that the parenting relationship between them “worked well when C[...] was less involved in the children’s lives and more preoccupied with his own work and hobbies. That statement suggests a strong motive to try and exclude the applicant from the children’s lives. On the other hand, Dr. Duchen found that the applicant viewed the respondent in a positive light, and wished to co-parent with her in a positive manner. The applicant’s attempts to do so were resisted by the respondent who refused to meet with him, and on her own version she stopped talking to the applicant about the children.

[13] The respondent is extremely suspicious about the applicant's motives, as she perceives them. Upon being asked what changes could be made to the prevailing arrangements, she said that if his motive was to sabotage her relationship with the children, nothing could be done to improve the situation. The belief that the applicant has ulterior motives is reflected in her belief, for instance, that the applicant has hacked her phone and has bugged her house (for which no evidence exists), and that he has taken the children to a different therapist without her knowledge (which is only founded in the respondent's imagination). Astoundingly, she accused the applicant of using a different therapist in order (inter alia) to make the children more self-sufficient, to form a bond with them, and to counteract the regression that the children had allegedly experienced. Even if there were any basis to believe that the children had attended alternative therapy, it is concerning that the respondent would object to these laudable objectives.

[14] Dr. Duchon considered the respondent to be ambivalent about the prospect of the applicant exercising contact with the children. She believed the respondent to be over-vigilant and restrictive with her "gatekeeping" of the applicant's contact with the children. This finding supports my view that the respondent believes that she, and only she, knows what is best for the children. She has no respect for the applicant's role in the children's lives.

[15] Dr. Duchon describes both parents as being engaged with the children. Both are fully capable of caring for the children, despite the

respondent's view of the applicant to the opposite effect. In fact, Dr. Duchen pointed out that the parties each brought a different personality and approach to parenting that would stand the children in good stead. Importantly, Dr. Duchen did not report on any regression by the children.

[16] During July 2025 the Office of the Family Advocate brought out a report that proposed that the applicant should enjoy the following contact:

[16.1] Between the ages of five and six: Contact every alternate weekend from Friday after school until Sunday at 17h00, Wednesday contact from 16h00 until 18h00, telephonic contact on alternate Sundays between 18h30 and 19h00 and on Tuesday and Thursday evenings from 18h30 to 19h00, and shared holiday contact for five days at a time.

[16.2] Between the ages of six and seven the contact would remain the same save that the holiday contact would be extended to 10 days.

[16.3] From the age of seven the holiday contact was to be increased, with the remaining contact remaining the same.

[17] It must be noted that the above recommendation would be impossible to implement as the children differ in age by some two years, and if the recommendation were to be implemented literally, the same contact arrangements would not apply to both children, resulting in a

fragmented contact regime. The Family Advocate had regard to Dr. Duchen's report, to school reports, to a letter from Dr. Pretorius, the applicant's psychiatrist, and to a telephonic interview with the respondent's mother, to a blood test of the applicant, and to input from Mr. Du Plessis, a clinical psychologist, who opined on Dr. Duchen's report. No collateral evidence was sought from anyone who could express an opinion on the applicant's parenting abilities.

[18] The Family Advocate correctly pointed out that there is much conflict between the parties. It did not, however, consider the numerous red flags in Dr. Duchen's report that show that the conflict is largely the result of the respondent's baseless distrust of the applicant, and her belief that it is best that the applicant be excluded from the children's lives. The Family Advocate blithely accepted the collateral evidence of the respondent's mother that the children had regressed, seemingly without considering whether her opinion was possibly influenced by bias.

[19] The alleged regression was placed solely at the feet of the applicant, in the belief that it was the children's contact with the applicant that was causing their trauma. I do not see that there was any consideration given to other possibilities, such as that the children perhaps missed the applicant and the nuclear family, or that the respondent's negative view of the applicant had perhaps inadvertently influenced the children.

[20] Certainly, according to the children's teachers, they have not experienced any regressive behaviour by them. G's teacher reports that *"It appears that G is coping well on an emotional and behavior level since his parents' divorce.... There are no noticeable behavior problems I see at school.... It appears that both parents are able to meet G's needs and they always show interest in his school activities and posts. He always talks positively about his mother, father and sister, and I can hear that he loves them very much. It seems that he has accepted the divorce and copes well with the situation."*

[21] As far as M is concerned, her teacher reports:

"Daar word tans geen uitvalle ten opsigte van haar emosionele welstand waargeneem nie en haar optrede is soos 'n gewone 4-jarige dogtertjie....Sy het geen emosionele uitvalle by die skool nie en is 'n selfversekerde kleuter. M neem maklik afskeid van haar pappa in die oggende en geniet dit om by die skool te wees. Sy is opgewonde in die middag om albei haar ouers te sien en is 'n liefdevolle kleuter.... Albei ouers is betrokke by die skool se aktiwiteite en kommunikeer gereeld met die onderwyser. Beide ouers woon funksies en ouervergaderings by."

[22] It is difficult to marry the picture painted by the children's teachers with the picture painted by the respondent. Ultimately, however, the Family Advocate expressed the view that the contact proposed by Dr. Duchon was not age-appropriate. It said that a child requires a stable

environment, which, apparently, it cannot experience if it has two involved parents who do not reside together and who share residency. Taking that view to its ultimate conclusion, shared residency would never, in the Family Advocate's view, be appropriate, especially for younger children. Apparently the Family Advocate also expressed that very view to the applicant.

[23] If that is the Family Advocate's view, that would be most unfortunate. There are no hard and fast rules, and each case must be considered strictly on its merits. One cannot apply a blanket approach to all matters.

[24] More unfortunately, the Family Advocate expressed the view that Dr. Duchon had put the applicant's interests ahead of those of the children. That view is incorrect, which should have been apparent in reading Dr. Duchon's nuanced report. Her view was that the parties each brought different personality traits to their relationship with the children, which would be of benefit to the children. In that sense it is important for the children to be allowed to have a proper and fulfilling relationship with both parents.

[25] Furthermore, apparently Mr. Du Plessis provided feedback to the Family Advocate, indicating that he agreed with Dr. Duchon's test results. Whether he provided any comment on the outcome of the report is uncertain.

[26] For the reasons set out above, save to accept the view that the respondent is viewed by the children as their primary caregiver, and that they should primarily reside with her, I cannot accept the Family Advocate's report.

[27] Is shared residency appropriate in this case? Dr. Duchen made the point, which I endorse, that parents engaging in a shared residence regime should be able to shield their children from *'intense and protracted parental conflict'*. The parties are not able to co-parent, and it seems likely that their parenting conflict will remain unresolved. In a shared residence situation the children are with each parent for a protracted period, making it more likely that the parents would have to consult one another when crises or problems arise. For that reason, shared residency is inappropriate in these circumstances. I acknowledge that it seems unfair to make that finding, especially given the fact that the respondent seems to be the primary source of the strife between the parties.

[28] It is necessary, also, to limit the parties' exposure to one another. The morning pick-ups seem, especially, to be a source of strife between the parties, and should probably be curtailed. The contact arrangements should also be unfragmented in order to be more manageable and to promote stability for the children. The order should, furthermore, be implemented in a sensitive manner allowing the children to opportunity to become accustomed to extended contact. Having said that, it is important that the children should spend more time with the applicant.

[29] I shall attempt to craft an order that allows for the applicant to have more contact with the children, that is sensitive to the children's need for structure, and that restricts the amount of interaction between the applicant and the respondent.

[30] The applicant has suggested that a parenting coordinator be appointed to manage the contact arrangements. Given the near certainty of strife between the parties in future, it is a sensible proposal. The respondent has submitted that she is unable to pay for the services of a parenting coordinator, but that submission is factually unsubstantiated.

[31] Finally, there remains the issue of costs. The applicant has achieved some success, but not fully so. I am also mindful of the fact that the respondent was, in my view, the main cause of the strife between the parties. However, ultimately, the final decision on the parental rights of the respective parties will be made at trial, and it is perhaps appropriate to allow that court to determine the outcome of the costs in these proceedings.

[32] I make the following order, pendente lite:

[32.1] The parties shall remain the joint holders of full parental rights and responsibilities in respect of the minor children, G and M.

[32.2] The primary residence of the children shall remain with the respondent;

[32.3] The applicant shall have parental rights and responsibilities of contacts and care as follows:

UNTIL 31 DECEMBER 2026:

IN WEEK 1 OF A TWO WEEK CYCLE:

[32.3.1] Sleepover contact from after school on Friday until the following Monday morning (when week 2 commences) when the applicant shall take the children to school;

[31.3.2] Telephonic contact on Tuesday and Thursday between 18h00 and 18h30;

IN WEEK 2 OF A TWO WEEK CYCLE:

[31.3.3] Sleepover contact on Wednesday from after school until Thursday when the applicant shall drop the children at school.

[31.3.4] Telephonic contact on Tuesday, Thursday and Saturday between 18h00 and 18h30.

[31.3.5] The applicant shall collect the children from the applicant's home on Monday morning (after he has not had weekend contact) and drop them at school.

HOLIDAY CONTACT

[31.3.6] The applicant shall be entitled to contact one short school holiday per year, and half of each long school holiday, with the Christmas period alternating annually between the parties, provided that the long holidays shall be divided so that the children are with each party for a maximum period of five days each.

FROM 1 JANUARY 2027:

IN WEEK 1 OF A TWO WEEK CYCLE:

[31.3.7] Sleepover contact from after school on Thursday until the following Monday morning (when week 2 commences) when the applicant shall take the children to school.

[31.3.8] Telephonic contact on Tuesday between 18h00 and 18h30.

IN WEEK 2 OF A TWO WEEK CYCLE:

[31.3.9] Sleepover contact on Wednesday from after school until Thursday when the applicant shall drop the children at school.

[31.3.10] Telephonic contact on Tuesday, Thursday and Saturday between 18h00 and 18h30.

HOLIDAY CONTACT

[31.3.11] The applicant shall be entitled to contact one short school holiday per year, and half of each long school holiday, with the Christmas period alternating annually between the parties.

[31.4] The parties shall jointly appoint a parenting coordinator who shall be a social worker or clinical psychologist with no less than 15 years' experience in the field of family law and who shall be appointed by the Chairperson of the Legal Practice Council.

[31.5] The parties shall be equally liable for the costs of the parenting coordinator.

[31.6] The parenting coordinator shall:

[31.6.1] Give directions relating to the exercise of contact by the applicant;

[31.6.2] Resolve any disputes between the parties;

[31.6.3] Be entitled to appoint any professional person, including, but not limited to mediators, or therapists for either the parties or the children, to assist her in exercising her mandate and where she deems it necessary.

[31.7] The costs of this application shall be reserved for determination in the divorce action.

**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

Counsel for the applicant:	Adv. L van der Westhuizen
Instructed by:	Schoeman Associates
Counsel for the respondent:	Adv. B Bergentuin
Instructed by:	VFV Attorneys
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