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

CASE NO: 2024-098043

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

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F. MARCANDONATOS

18 November 2025

In the matter between:

M. A

Applicant

and

M. R

Respondent

This Order was prepared and authored by the Acting Judge whose name is reflected herein and is handed down electronically by circulation to the Parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Court Online/CaseLines. The date of the Judgment is deemed to be 18 November 2025

JUDGMENT

MARCANDONATOS AJ:

INTRODUCTION

[1] The parties herein have been cited by their full names. The parties have two minor children and two major dependent children, each of whom have also been cited with their full names. In the interests of the children and to protect their best interests, I deem it appropriate to follow standard practice, to refer to their children by initials only and in respect of the parties themselves, I shall interchangeably refer to Applicant as “*Mom*” and to Respondent as “*Dad*”.

[2] *Mom* approached this Court in terms of Rule 43 of the Uniform Rules of Court. She seeks, in brief, an Order as follows¹:-

2.1. both parties shall retain full parental responsibilities and rights in respect of the minor children, *M* (16 years) and *T* (13 years);

2.2. the implementation of the recommendations made by the jointly appointed social worker, Tanya Kriel, as per her Report published on 07 August 2025, in terms whereof:-

2.2.1. *M* shall reside with *Dad* at his current home and *M* shall exercise contact with *Mom* every alternate weekend from the Friday after school until the Sunday afternoon;

2.2.2. *T*'s residence shall be shared equally between *Mom* and *Dad* to be exercised, *inter alia*, as follows:-

2.2.2.1. *T*'s residence shall alternate between *Mom* and *Dad* on a weekly basis each Sunday at 17h00;

¹ Applicant's Supplementary Affidavit: Annexure “SA2” thereto, being Applicant's Amended Draft Order, CaseLines 004-411 to 004-420

- 2.2.2.2. when *T* is in either party's care, such party shall be responsible for fetching and carrying *T* to and from school and extra-mural activities;
- 2.2.2.3. an equal division of long and short holidays and provision for birthdays, Mother's day and Father's day;
- 2.2.3. the appointment of a suitably qualified therapist to conduct bonding therapy between *Mom* and *M*;
- 2.2.4. *M* shall attend therapy on a regular basis for purposes of, *inter alia*, addressing the concerns highlighted in the Report by Tanya Kriel;
- 2.2.5. *Mom* shall attend therapy on a regular basis for purposes of addressing the concerns highlighted in Tanya Kriel's Report;
- 2.2.6. *Dad* shall attend therapy on a regular basis for the purposes of addressing the concerns highlighted in Tanya Kriel's Report;
- 2.2.7. a parenting co-ordinator shall be appointed:-
 - 2.2.7.1. *Mom* and *Dad* shall jointly attend a parenting course and recommunication course as recommended by Tanya Kriel;
 - 2.2.7.2. family therapy takes place with a social worker or psychologist to assist the restructured unit with the on-going unresolved challenges experienced by the family;
- 2.3. *Dad* to be liable in respect of the minor children, *M* and *T*, as follows:-

- 2.3.1. by making payment of an amount of R19 111.00 per month, directly to Applicant;
- 2.3.2. by making payment, in full, of the following expenses directly to the applicable service providers:-
 - 2.3.2.1. the monthly instalment payable in relation to all mortgage bonds registered over the immovable property situated at 3[...] C[...] Street, J[...] Park, Randburg, Johannesburg (*“the former matrimonial home”*);
 - 2.3.2.2. the monthly invoice issued by the City of Johannesburg in respect of *the former matrimonial home*;
 - 2.3.2.3. the monthly insurance premiums payable in relation to *the former matrimonial home*, including the house structure and household contents;
 - 2.3.2.4. the monthly insurance premiums payable in relation to Kia Sedona motor vehicle driven by *Mom*;
 - 2.3.2.5. private school fees and expenses incurred in relation to *M* and *T*’s schooling at HeronBridge College, including the costs of registration fees, levies, stationery, text books, school uniforms, school camps, school tours, extra-mural activities and related expenses;
 - 2.3.2.6. the fees and related expenses incurred in relation *M* and *T*’s swimming, including the cost of all training, equipment, uniform/kit, competition and gala fees and ancillary expenses incurred in relation thereto;

- 2.3.2.7. the monthly medical aid premiums payable in respect of *M* and *T* on the existing medical aid or such other medical aid, which provides the same benefits;
 - 2.3.2.8. medical and related expenses incurred in relation to *M* and *T*, which expenses are not covered by the medical aid scheme, including but not necessarily limited to, medical, dental, orthodontic, optical, ophthalmological, surgical, psychotherapy, physiotherapy, dermatological, pharmaceutical and other medical and related expenses of the minor children;
- 2.4. **Dad** to be liable in respect of the two major dependent children, *T* (21 years) and *A* (19 years), as follows:-
- 2.4.1. by making payment of the tertiary education fees incurred, including but not limited to, registration fees, residence (*or accommodation*) fees, transport (*including the monthly insurance premiums payable in respect of the motor vehicles driven by T and A*), travel expenses, stationery, text books and groceries;
 - 2.4.2. the monthly medical premiums payable in respect of *T* and *A* who are both dependents on **Dad's** medical aid or such other medical aid, which provides the same benefits;
 - 2.4.3. medical and related expenses incurred in relation to *T* and *A*, which are not covered **Dad's** medical aid, including but not necessarily limited to, medical, dental, orthodontic, optical, ophthalmological, surgical, psychotherapy, physiotherapy, dermatological, pharmaceutical and other medical and related expenses of the major dependent children;

2.5. *Dad* shall retain *Mom* as a dependent on his existing medical aid scheme and continue to effect payment of the monthly medical aid premiums;

2.6. *Dad* to make a first contribution towards *Mom's* legal costs in the amount of R520 843,19.

[3] *Dad*, without having formally approached this Court and whilst not having instituted a Counterclaim, seeks the following relief²:-

3.1. primary residence of *M* and *T* and that they exercise contact with *Mom*, subject to their willingness to visit and communicate with her, every alternate weekend from a Friday to a Sunday and have telephonic contact three days a week;

3.2. *M* and *T* to continue with therapy with their respective therapists who shall facilitate the restoration of a relationship between *M* and *Mom*;

3.3. that *Mom* remain resident in *the former common home* so that she may continue her income earning activities, subject to *Mom* paying the monthly bond instalments, rates and taxes, utilities, maintenance, insurance policy, telephone and fibre, television licence and swimming pool maintenance;

3.4. that *Dad* shall retain *Mom* on his medical aid scheme and pay the monthly premiums in respect thereof;

3.5. *Dad* shall pay all of the children's medical related expenses;

3.6. *Dad* shall pay the minor children's school fees, school related expenses and extra-mural activities;

² Respondent's Supplementary Affidavit: annexure "SA2", CaseLines 004-455 to 004-460

- 3.7. **Dad** shall pay all of the major children's tuition fees, accommodation and groceries;
- 3.8. **Dad** shall pay the costs of clothing and cell phones for all the children;
- 3.9. **Dad** shall make payment of the monthly motor vehicle insurance of the vehicle used by **Mom**;
- 3.10. **Dad** shall make payment of the monthly vehicle insurance of the vehicle used by the major children;
- 3.11. **Mom** to obtain an iSober device at her cost and cell phone application, take tests, and shall daily at 18h00, when the children are in her care share the results with the parenting co-ordinator and in the event that the test results are positive, that **Dad** shall be entitled to collect the minor children from **Mom's** care;
- 3.12. **Mom** and **Dad** will retain parental responsibilities and rights in respect of the minor child, **M** and **T**;
- 3.13. **Mom** and **Dad** shall make joint decisions regarding all major aspects relating to the minor children, including education, medical treatment and participation in extra-mural and sporting activities;
- 3.14. the minor children shall primarily reside with **Dad**, and **Mom** shall have contact with the minor children, subject to the bonding therapist recommending that the contact is in **M's** best interests and further subject to any directive made by the parenting co-ordinator, as follows:-
- 3.14.1. every alternate weekend from Friday after school until Sunday evening;
- 3.14.2. alternate public holidays and long weekends;

- 3.14.3. half of all school holidays, provided that Christmas period and the entire duration of the Easter long weekend shall alternate between *Mom* and *Dad* each year;
- 3.14.4. on *Mom's* birthday and Mother's day;
- 3.14.5. on the minor children's birthdays, subject thereto that the time available on the minor children's birthdays shall be shared equally;
- 3.14.6. *Mom* and *Dad* shall be entitled to reasonable daily telephonic or video contact;
- 3.14.7. *M* shall continue with therapy with his current therapist, Michelle Nell, the costs of which shall be paid for by *Dad* and shall immediately commence with bonding therapy by a therapist recommended Dr Lynette Roux;
- 3.14.8. *T* shall continue with therapy with her current therapist, Christene Laidlaw, the costs of which shall be paid by *Dad*;
- 3.14.9. *Mom* and *Dad* shall undertake individual therapy with therapists and/or mental health professional of their own selection and each party shall be responsible for his/her own costs;
- 3.15. a parenting co-ordinator shall be appointed by agreement between *Mom* and *Dad* and failing agreement, a parenting co-ordinator has to be nominated by Dr Lynette Roux;
- 3.16. the parenting co-ordinator shall be a qualified clinical psychologist, social worker or family law practitioner of no less than 10 (*ten*) years standing;

3.17. the parenting co-ordinator may request either party to undergo hair follicle tests for the screening of drug or alcohol abuse;

3.18. *Mom* and *Dad* shall be responsible for the parenting co-ordinator's costs in equal shares.

IN BRIEF ISSUES THAT ARE UNCONTESTED

[4] *Mom* and *Dad* were married to each other on *03 April 2004*, out of community of property, excluding the application of the accrual regime.

[5] Four children were born of the marriage, two minors, *M* (*16 years of age*) and *T* (*13 years of age*) and two major dependent children, *T* (*21 years of age*) and *A* (*19 years of age*).

[6] *Dad* vacated *the former matrimonial home* on *30 July 2024* and took the two minor children, *M* and *T*, with him and is currently living at the home of his parents.

[7] *Mom* instituted divorce proceedings against *Dad*, on *29 August 2025*.

[8] The Pleadings have subsequently closed, however, a Pre-Trial Conference has not yet been convened.

IN SUMMARY, HOW THE MATTER EVOLVED

[9] On *04 April 2025* *Mom* instituted this Rule 43 Application.

[10] The relief which *Mom* originally sought was, in summary, that:-

10.1. Tanya Kriel conduct a forensic assessment regarding the best interests of *M* and *T*, the cost of which the parties would share;

10.2. the minor children's residency shall be shared equally between **Mom** and **Dad**;

10.3. relief pertaining to maintenance as referenced in paragraphs 2.3 and 2.4 above.³

[11] On *02 April 2025*, **Dad** deposed to his Sworn Reply in the Rule 43 Application stating that the Rule 43 Application, is premature, given that **Dad** had accepted the selection of Tanya Kriel, who had already, on or about *19 November 2024*, commenced the assessment, having interviewed the family members and that the parties were awaiting the assessment process to be finalised and for Tanya Kriel to publish her Report.

[12] Despite that Tanya Kriel's Report had not been published, **Mom** launched the Rule 43 Application and proceeded to enrol the Rule 43 Application for hearing during the week of *11 August 2025*.

[13] On *07 August 2025*, Tanya Kriel's Report was sent to the parties, under circumstances where the Application was due to be heard on *13 August 2025*.

[14] On *08 August 2025*, **Mom** filed a Supplementary Affidavit to which she appended a draft Order detailing the relief she seeks post the filing of Tanya Kriel's Report⁴ essentially seeking to implement the recommendations by Tanya Kriel.

[15] On *13 August 2025*, the Court granted an Order, ("*the Interim Order*"), which summary Ordered that:-

15.1. the Rule 43 Application is postponed for a virtual hearing before Marcandonatos AJ, to *28 August 2025* at 11h30;

³ Applicant's Notice of Motion: CaseLines 004-2 to 004-10

⁴ Applicant's Supplementary Affidavit: annexure "SA2", CaseLines 004-412 to 004-419

15.2. pending any Order which may be granted by the above Honourable Court in the Rule 43 Application which is to be heard on *28 August 2025* that:-

15.2.1. *M* shall:

15.2.1.1. reside with *Dad*;

15.2.1.2. continue with therapy with his current therapist, Michelle Nel, the costs of which shall be paid by *Dad*;

15.2.1.3. immediately commence with bonding therapy at a therapist to be nominated by Dr Lynette Roux, to restore the bond between *Mom* and *M*, which shall be paid for by *Dad*;

15.2.2. *T* shall:-

15.2.2.1. reside equally with *Mom* and *Dad* to be exercised in such a manner that *T's* residence shall alternate between *Mom* and *Dad* on a weekly basis which rotation shall be at 11h00 on a Sunday;

15.2.2.2. continue with therapy with her current therapist, Christene Laidlaw the cost of which shall be paid by *Dad*;

15.3. both *Mom* and *Dad* shall undertake individual therapy;

15.4. *Dad* shall continue to make payment of the monthly expenses in respect of the children;

15.5. the costs of the Rule 43 Application, are costs in the divorce action, save for the costs occasioned by the postponement, which are reserved.

[16] On *19 August 2025*, *Dad* deposed to a Supplementary Affidavit, to which he appended a draft Order detailing the relief he seeks post the filing of Tanya Kriel's Report.⁵

COMMON CAUSE ISSUES BETWEEN MOM AND DAD

[17] In summary, the following is common cause, namely that:-

17.1. *Mom* and *Dad* shall retain parental responsibilities and rights in respect of the minor children;

17.2. *M* shall reside primarily with *Dad*;

17.3. *Mom* and *Dad* shall be entitled to reasonable daily telephonic or video with the minor children when they are in the care of the other party;

17.4. bonding therapy between *Mom* and *M* is to take place;

17.5. *M* and *T* are to attend therapy;

17.6. *Mom* and *Dad* are to attend individual therapy;

17.7. a parenting co-ordinator shall be appointed who shall be a qualified clinical psychologist, social worker or family law practitioner with the appropriate expertise of not less than 10 (*ten*) years standing with the relevant professional council or authority, conversant with working with children and families in the context of disputed care and contact matters;

⁵ Respondent's Supplementary Affidavit: annexure "SA2", CaseLines 004-455 to 004-560

- 17.8. in the event of any dispute arising between the parties regarding the exercise of their parental responsibilities and rights in relation the minor children as detailed in the Order granted in the Rule 43 Application, in particular when **M** should commence exercising contact with **Mom**, the parties shall (*save in the case of emergency*) consult with the parenting co-ordinator in respect of such dispute;
- 17.9. the parenting co-ordinator shall attempt to resolve the dispute between the parties by way of mediation, but if he/she is unable to do so, he/she shall make a ruling;
- 17.10. if the mediation fails, the parenting co-ordinator shall provide his/her recommendations in writing, which recommendations shall be accompanied by reasons, shall be binding on the parties and shall be implemented by **Mom** and **Dad**, subject to the overriding jurisdiction of the High Court or any other Court of competent jurisdiction. The parties shall be bound by and shall implement the parenting co-ordinator's written recommendations unless and until a Court of competent jurisdiction overturns such recommendations;
- 17.11. the parenting co-ordinator may request either party to undergo hair follicle test(s) for the screening of drug or alcohol abuse;
- 17.12. **Dad** shall pay:-
- 17.12.1. costs to retain **Mom** and all the children on Discovery Health Classic Core Plan medical aid;
 - 17.12.2. excess medical expenses in respect of all the children;
 - 17.12.3. the minor children's school fees, school books and uniforms;

- 17.12.4. the minor children's swimming coaching, gala fees, subject thereto that *Dad* has consented to their participation in such galas and the cost of swimming costumes and other swimming accessories;
- 17.12.5. motor vehicle insurance in respect of the vehicle used by *Mom* and the vehicle used by the major children;
- 17.12.6. the cost of clothing in respect of all the children;
- 17.12.7. the cost of all the children's cell phone usage.

IN SUMMARY, ISSUES IN DISPUTE

[18] The following issues are in dispute and must be decided by the Court:-

18.1. whether, as sought by *Dad*:-

- 18.1.1. the parties shall make joint decisions pertaining to all major aspects to the minor children;
- 18.1.2. *T* shall reside primarily with *Mom* or whether, as sought by *Mom*, *T's* residence shall be shared equally between the parties;
- 18.1.3. *Mom* shall have contact with the minor children subject to (a) in respect of *M*, the bonding therapist, referred to hereinabove, having recommended that said contact is in *M's* best interests and (b) in respect of both *M* and *T*, any directive made by the parenting co-ordinator at specific times or whether as sought by *Mom*, she shall have contact to *M* regardless of the recommendation of the bonding therapist and the parenting co-ordinator;

- 18.1.4. *Mom* shall, at her cost, acquire an iSober device and cell phone application and utilise the same;
- 18.1.5. his consent to the minor children's participation in swimming galas and the cost of swimming costumes and other swimming accessories is required;
- 18.2. the identity of *M's* therapist;
- 18.3. the identity of *T's* therapist;
- 18.4. the identity of *M's* bonding therapist;
- 18.5. the mandate and identity of the parenting co-ordinator;
- 18.6. whether as sought by *Mom*:-
 - 18.6.1. the parties shall jointly attend a parenting course and recommunication course as recommended by Tanya Kriel, the costs of which shall be shared equally between the parties;
 - 18.6.2. family therapy to take place with a social worker or psychologist as nominated by Tanya Kriel to assist the restructured unit with the on-going unresolved challenges, the costs of which shall be shared equally between the parties;
- 18.7. insofar as the aspects of maintenance that are not common cause, same includes whether:-
 - 18.7.1. *Dad* to pay monthly cash maintenance of R19 111.00 in respect of *M* and *T's* maintenance;

18.7.2. *Mom* alternatively *Dad* shall pay the expenses in respect of *the former matrimonial home* where *Mom* resides, being the following:-

- 18.7.2.1. bond payments due to Investec Bank;
- 18.7.2.2. the life insurance policy, which is held by Investec Bank as security for the bond;
- 18.7.2.3. rates and taxes;
- 18.7.2.4. water and electricity consumption;
- 18.7.2.5. monthly maintenance and upkeep of the former common home;
- 18.7.2.6. television licence;
- 18.7.2.7. telephone and fibre;
- 18.7.2.8. swimming pool chemicals and maintenance;

18.8. whether *Dad* should pay a contribution towards *Mom's* costs and if so, in what amount;

18.9. the reserved costs of the postponement of the matter on *13 August 2025*.

SUBMISSIONS ON BEHALF OF APPLICANT (*WRITTEN AND ORAL*) IN SUMMARY

[19] Tanya Kriel was appointed jointly by *Mom* and *Dad*.

[20] Tanya Kriel commenced her first interviews on *11 November 2024* and completed her last interaction analysis on *19 June 2025*, spanning over 8 months⁶ pursuant to which she provided a Report after extensive investigation, including psychometric testing.⁷

[21] Tanya Kriel considered and took into account the conclusions and recommendations of the Report by Ms Maynard, a clinical psychologist, in terms whereof:-

21.1. the outcome of the psychometric tests by Ms Maynard wherein she stated in respect of *Dad*, that in terms of the MCMI, it may be assumed that *Dad* is experiencing a severe mental disorder, further professional observation and in-patient care may be appropriate;⁸

21.2. Ms Maynard stated that *Dad's* narrative indicated a significant emotional dependence on his parents, which may extend to his children, whom he sees as his best friends. He has been in a 20 year marriage with *Mom*, the relationship having started when he was 19 years of age and his narrative indicates that he may be co-dependent and he describes himself as very generous and helpful putting everyone but himself first;⁹

21.3. the MMPI indicated under emotional disfunction, that *Dad's* response indicates significant emotional distress, more specifically him reporting feeling sad and unhappy and being dissatisfied with his current life circumstances, likely complaining of feeling depressed, experiencing sadness and despair. In particular, he reports being indecisive and likely experiences incompetence, shame and lacks perseverance and self-reliance. He reports a history of suicidal/death ideation and/or past suicide attempts and he is likely at risk for self-harm and is preoccupied

⁶ Tanya Kriel's Report, par 3, CaseLines 004-357

⁷ Tanya Kriel's Report, CaseLines 004-375 to 004-384

⁸ Tanya Kriel's Report, page 21, CaseLines 004-375

⁹ Tanya Kriel's Report, page 23, CaseLines 004-377

with suicide and death, which is exacerbated by poor impulse control and substance abuse;¹⁰

21.4. the MCMI indicated alcohol use disorder and states that it is likely that *Dad* experiences repeated episodes of alcohol abuse. *Dad* is anxiously troubled, lonely and socially apprehensive much of the time, he appears to turn to alcohol to fulfil a number of otherwise difficult to achieve psychological functions and alcohol may not only serve to mediate his social anxiety but also may help him relate more comfortably to others by bolstering his feelings or self-esteem and wellbeing. For him, alcohol provides a quick dissolution to the psychic pain he feels by enabling him to blot-out awareness of his loneliness and troubled existence.¹¹ *Dad* also admitted to taking prescription medication that was not for him and he stated that he took Xanax from *Mom* to help him with anxiety;

21.5. during *Mom's* interviews with Tanya Kriel, she explained how her drinking and suicide attempts came about, referencing her father-in-law being a harsh man and that *Dad* would not stand up to him when necessary and when the family travelled to America to visit *Dad's* sister, the father-in-law dictated the entire trip, *Mom* had a panic attack in America, was hospitalised and no one visited her, when *Mom* returned to her sister-in-law's home, the paternal grandfather chased her out of the house, advising her that *Dad* and the children would remain and she should make her own way back to South Africa, she had filed for a divorce 8 years ago upon her return to South Africa, at which time *Dad* no longer supported her financially and when he attempted to sell her motor vehicle and move the children to another school, during which time *Dad* had contact with the children every alternate week,¹² *Dad* tried to convince her to reconcile and they attended counselling, *Dad* would leave his wedding ring in the bathroom, not allow her to touch his

¹⁰ Tanya Kriel's Report, pages 24 and 25, CaseLines 004-378 to 004-379

¹¹ Tanya's Kriel's Report: page 28, CaseLines 004-382

¹² Tanya Kriel's Report, par 4.10, CaseLines 004-358

phone and in *December 2023*, *Mom* had a breakdown and began drinking 3 to 4 drinks a night and she had pretended to take an overdose as she was overwhelmed, when she then consulted with a psychiatrist,¹³ *Dad* consumed alcohol every evening and he would become aggressive, during which time *Mom* did not consume alcohol and due to severe stress she lost 23kg in a period of two and half months, *Mom's* father-in-law verbally attacked her at a school gala and he swore at the swimming coach, whereafter *Mom* applied for a protection order,¹⁴ which *Mom* later withdrew the protection order, against her father-in-law;

- 21.6. Tanya Kriel recommended in regard to *Dad*, it needs to be noted that his test results indicates significant psychological distress and psychopathy, which may significantly impact upon his functioning and that he may experience significant abandonment anxiety, feeling deeply betrayed by *Mom*, and seems to have emotional dependency on the children concerned and might be triangulating the children, especially *M*, into the divorce proceedings. He may further have a permissive parenting style, which urgently needs to be addressed¹⁵;
- 21.7. furthermore, *Dad* is to continue receiving psychotherapy from Ms Katia Wood to address issues identified in the assessment¹⁶;
- 21.8. in respect of *Mom*, Tanya Kriel recommended *Mom* is to continue receiving psychotherapy from Dr Leslie King, to address the issues identified in her assessment and that she will need on-going therapy to address her anxiety and depression, which seems unacknowledged, as well as conflicting needs in her functioning whereby she is highly goal directed and focused on achievement while at the same time yearning for a more peaceful life.¹⁷

¹³ Tanya Kriel's Report, paras 4.13 and 4.14, CaseLines 004-358

¹⁴ Tanya Kriel's Report, par 4.32, CaseLines 004-360

¹⁵ Tanya Kriel's Report, page 30, par 11.2, CaseLines 004-384

¹⁶ Tanya Kriel's Report, page 31, Caselines 004-385

¹⁷ Tanya Kriel's Report: pages 40 and 41, CaseLines 004-394 to 004-395

- [22] Prior to the publication of Tanya Kriel's Report, **Dad** in his Sworn Answer, stated unequivocally that he remains willing to abide by Tanya Kriel's recommendations once available and to continue to act in a manner that prioritises the best interests and emotional wellbeing of the children.¹⁸
- [23] Yet, upon the publication of Tanya Kriel's Report, he did not merely abide by the Report and recommendations and instead he called for the Report by Ms Maynard and deposed to a Supplementary Affidavit where he states that Tanya Kriel erred in two material aspects namely:-
- 23.1. she ignored, alternatively paid insufficient attention to what **Dad** stated in respect of **Mom's** alcohol and substance abuse, suicidal tendencies and unsuitability as a primary caregiver; and
- 23.2. she was wrong in finding that **Dad** is a risk for suicide.
- [24] Accordingly, **Dad** concluded that these errors justified disregard of Tanya Kriel's recommendation as well as the shared residency currently applying to **T** as wrong and not in her best interests.¹⁹
- [25] **Dad** suggested that Tanya Kriel adopted what he calls a "*he said – she said*" method but in so saying, he disregards Tanya Kriel's incorporation of Ms Maynard's interpretation of the psychometric tests that she performed on both **Mom** and **Dad** and that Tanya Kriel specifically quoted from Ms Maynard's Report in this regard and it is therefore not simply a matter of Tanya Kriel having reported a narrative of what **Mom**, the children and **Dad** reported to her.²⁰

¹⁸ Respondent's Sworn Answer: par 134.2, CaseLines 004-227

¹⁹ Respondent's Supplementary Affidavit: paras 8 and 9, CaseLines 004-431 and 004-432

²⁰ Respondent's Supplementary Affidavit: par 14, CaseLines 004-436

- [26] **Dad** alleges that Tanya Kriel failed to address **Mom's** alcohol abuse, overdoes and suicidal tendencies.²¹ This is a stark contrast to the fact that Tanya Kriel specifically reported that the children confirmed **Mom's** alcohol and suicidal tendencies.²²
- [27] Moreover, Tanya Kriel reported that addiction is indicated in both **Mom** and **Dad** and that it is necessary that the parties remain sober to be able to resolve conflict and build trust within the new family environment, which **Dad** quotes in his Supplementary Affidavit.²³
- [28] **Dad** glibly states that he does not agree that he is a suicide risk or that he has any preoccupation with suicide and death, yet he ignores what the psychometric assessment and results revealed in this regard. Moreover, **Dad** concedes that when his relationship with **Mom** broke down, it caused him stress, which made him feel down and depressed, but denies that it made him feel suicidal.²⁴
- [29] In support of his denial, **Dad** attempts to rely on what he calls a Report from a Counsellor and psychologist, Katherine Wood,²⁵ despite wherein she explicitly states: *"no clinical psychometric measures were conducted during the therapeutic process and therefore, this letter is not fit for forensic purposes"*.²⁶
- [30] Evidently, Katherine Wood, appreciates the importance of psychometric measures and a forensic investigation, which is exactly what Ms Maynard and Tanya Kriel had done. Ms Wood, acknowledged that what she stated, was merely a letter and not a Report.

²¹ Respondent's Supplementary Affidavit: par 22, CaseLines 004-438

²² Respondent's Supplementary Affidavit: par 23, CaseLines 004-438

²³ Respondent's Supplementary Affidavit: par 27.2, CaseLines 004-440

²⁴ Respondent's Supplementary Affidavit: par 30.1, CaseLines 004-441

²⁵ Respondent's Supplementary Affidavit: par 30.2, CaseLines 004-441

²⁶ Respondent's Supplementary Affidavit: annexure "SA3", CaseLines 004-463

- [31] **Dad** then goes further and places reliance on a letter prepared by his psychiatrist, Dr Karen Vukovic,²⁷ wherein she confirms that she has been seeing **Dad** since *20 November 2024* and that he is being treated for an adjustment disorder, with mixed anxiety and depression, after the separation from **Mom**. The letter does not explain the nature and extent of what is meant by “*adjustment disorder with mixed anxiety*”.
- [32] Dr Vukovic, who is a registered psychiatrist, considered **Dad’s** disorder to be of a serious enough nature, as to warrant prescription medication, which includes anti-depressant and sleeping tablets.²⁸
- [33] There appears to be no continuity in the treatment provided by Dr Vukovic and the therapy provided by Ms Wood, in that these two professionals did not communicate with one another about a treating regime for **Dad**.
- [34] Dr Vukovic states that **Dad** “*is apparently in therapy with Katherine Wood, through his work employee wellness programme*”.
- [35] What the nature and extent of his work employee wellness programme is, is not explained neither by Dr Vukovic nor by Ms Wood, who apparently offers this employee wellness programme.
- [36] The criticism raised by **Dad** against Tanya Kriel’s Report, that she did not sufficiently take into account **Mom’s** alcohol abuse and suicide attempts is unfounded. However, his motivation for doing so is entirely clear i.e. that he does not want **Mom** to have shared residency and he does not wish to encourage a relationship between **M** and **Mom**. In stark contrast, **Dad** wishes to be depicted as the perfect parent with no mental disorders, addictions or suicide adiation. **Dad** clearly is of the misconstrued view that if he is the perfect parent, he, by default, becomes a primary resident parent in respect of both minor children. Once he has primary residence of the minor children, the issue of his maintenance contributions becomes academic. This is clearly

²⁷ Respondent’s Supplementary Affidavit: paras 30.4 and 30.5, CaseLines 004-442

²⁸ Respondent’s Supplementary Affidavit: annexure “SA4”, CaseLines 004-465

what *Dad* believes, if one has regard to the content of his Sworn Reply and the relief that he claims in terms of the proposed draft Order attached to his Supplementary Affidavit.

- [37] Notably, as already alluded to by *Dad*, despite being armed with a copy of Ms Maynard's Report about him, does not critique Ms Maynard's Report, does not disclose Ms Maynard's Report to the Honourable Court and does not take issue with the quotations from Ms Maynard's Report relating to the psychometric testing, results and Ms Maynard's interpretation thereof. The elusive conclusion is that *Dad* accepts Ms Maynard's Report and if this is so, there is no conceivable reason why he can challenge Tanya Kriel's findings, which heavily rely on Ms Maynard's feedback.
- [38] It is submitted that *Dad's* challenge of Tanya Kriel's Report must be seen for what it really is and that it is to gain primary residence of both minor children and which would absolve him from any maintenance claim made by *Mom*, disregarding the best interests of the children, in spite that sufficient precautionary measures have been put in place in Tanya Kriel's recommendations, such as the appointment of a parenting co-ordinator and on-going therapy.
- [39] In addition, Tanya Kriel took account of the views and considerations of the children. *T* told Tanya Kriel that the relationship with her mother is satisfactory and that she enjoys living in *the former matrimonial home* with her mother where she has her own bedroom. *T* did express concerns about her mother abusing alcohol, but this has been addressed through the recommendations by Tanya Kriel. *T* at no stage during her interview as recorded and detailed by Tanya Kriel, indicated that she did not wish to see her mother, as *M* had done and that she does not enjoy the shared residency arrangement.
- [40] The foregoing ignores and demonstrates that *Dad* does not prioritise the best interests of the children, as he professes to do under oath in his Sworn Reply.

[41] In the premise, *Mom* submits that there is no reason to disregard the recommendations of Tanya Kriel or to implement piecemeal or to add on to them as *Dad* has suggested in his draft Order.

SUBMISSIONS ON BEHALF OF RESPONDENT (*WRITTEN AND ORAL*) IN SUMMARY

[42] *Dad* disputes that Tanya Kriel's recommendation is correct in that he contends:-

42.1. Tanya Kriel ignored, alternatively paid insufficient attention to what he stated in respect of *Mom's* alcohol and substance abuse, suicidal tendencies and instability as primary caregiver;

42.2. Tanya Kriel is wrong in finding that he is a risk for suicide.

[43] In support of his contention, he raised a number of flaws relating to her reporting, findings and recommendations, including that in spite of her Report defining her role to conduct an investigation into the best interests of the minor children, including residency, contact and care and to provide insight into the history and status perusing all collateral information:-

43.1. her report merely comprises a narrative of what the children and the parties reported to her;

43.2. the "*he said – she said*" method does not assist the Court in making a judicious finding as to what is in the best interests of the children;

43.3. she ignored, alternatively paid insufficient attention to what *Dad* stated in respect of *Mom's* alcohol and substance abuse, suicide attempts and unsuitability as a primary caregiver;

43.4. in spite of Tanya Kriel stating that she perused all collateral information and her having been provided with a copy of *Dad's* Sworn Reply herein, wherein *Mom's* alcohol and substance abuse, infidelity and instability as primary caregiver were clearly raised,²⁹ as well as the medical statements and invoices annexed thereto,³⁰ which also refers to *Dad's* details of *Mom's* physical and emotional abuse towards the children and *Dad*, Tanya Kriel failed to address *Mom's* alcohol abuse, overdoses and suicidal tendencies;

43.5. Tanya Kriel failed in terms of what the children confirmed about *Mom's* alcohol abuse and suicidal tendencies:-

43.5.1. in relation to what *M* reported to her on *28 January 2025*, wherein he noted that *Mom* overdosed medication, consumes approximately 8 whiskeys in an evening and goes to bed intoxicated, she has an "*addiction*", she destroyed all her alcohol but his sister found a bottle of whiskey, she passed out on *23 November 2023* and that *T* had taken photos of *Mom* having passed out on *01 January 2025*';

43.5.2. in relation to *T*, reporting to her on *28 January 2025* wherein she reported that it bothers her and makes her feel uncomfortable when *Mom* consumes alcohol, she promised to stop drinking but still consumes alcohol behind their backs and in relation to *T* having reported to her on *31 January 2025*, that consuming alcohol causes *Mom* to become mean and selfish and whilst she makes promises to stop consuming alcohol she uses a flask and she is always intoxicated and miserable without alcohol; and

43.5.3. in relation to *A*, having reported to Tanya Kriel on *31 January 2025*, that *Mom* becomes intoxicated and takes medication and

²⁹ Respondent's Supplementary Affidavit: CaseLines 004-437

³⁰ Respondent's Supplementary Affidavit: annexure "AA4", CaseLines 004-267

whilst she promises to stop consuming alcohol, she does not keep her promises.

- [44] He therefore states that the evaluation of Tanya Kriel in support of her recommendation is unconvincing, lacks substance and indicates that there is no motivation for her decision and that she failed to address the grave and serious concerns regarding **Mom's** suicide attempts and continued abuse of alcohol.
- [45] The only reference to **Mom's** alcohol abuse is in paragraph 15.1 and 15.9 of her report,³¹ in which she highlights that the children's relationship has been disrupted but it is unclear that the transgressional history of alcohol abuse of **Mom** contributed to this and it is important that both **Mom** and **Dad** remain sober to be able to resolve conflict and build trust within the new family environment.
- [46] Instead, Tanya Kriel elects to highlight that **Dad** was identified as being a risk for suicide and should be addressed with urgency.³²
- [47] In the premises and having regard to the foregoing, **Dad** submits that there is no rational basis upon which Tanya Kriel can recommend that it is in **T's** best interests to reside with **Mom** 50% of the time and moreover she does not put a protective network in place to shield **T** from **Mom's** alcohol abuse.
- [48] Accordingly, this Court should err on the side of caution and grant an Order as sought by **Dad**, which provides for **T** residing with him and **Mom** having certain defined contact with **T**, subject to the input of a parenting co-ordinator.
- [49] **Dad** submitted that there was an incorrect finding by Tanya Kriel that he is a risk for suicide recording that:-

³¹ Respondent's Supplementary Affidavit: par 27, CaseLines 004-440

³² Tanya's Kriel's Report, par 15.5, Caselines 004-407

49.1. he suffered, given the breakdown of the marriage, stress and at times he feels down and depressed but certainly not suicidal;

49.2. Katherine Woods, a psychologist with whom he commenced consulting on *02 October 2024*, had four sessions with her in *October 2024* and two sessions in *November 2024* and another session on *16 April 2025* and obtained a letter from her dated *15 August 2025*,³³ wherein she confirms:-

49.2.1. the dates of the sessions he had with her;

49.2.2. that he approached her for therapy to navigate his separation and divorce from *Mom*;

49.2.3. he presented with symptoms relating to stress, anxiety and trauma;

49.2.4. he did not present with suicidal ideation or intention;

49.2.5. he was committed to sessions and made significant progress in working through the stress, anxiety and trauma related symptoms.

[50] In addition *Dad* consulted with Dr Vukovic since *20 November 2024*, and appended as annexure “*SA4*” to his Supplementary Affidavit, a Report from her dated *19 August 2025* wherein she confirms:-

50.1. *Dad* is being treated for adjustment disorder and mixed anxiety and depression after his separation from *Mom*;

50.2. the medication she prescribed to *Dad*;

³³ Respondent’s Supplementary Affidavit: annexure “SA3”, CaseLines 004-463

50.3. *Dad* is compliant on treatment and a responsible patient.

- [51] Dr Vukovic does not find that *Dad* is suicidal.

- [52] In spite of *Dad* having been informed by both Dr Vukovic and Ms Woods that he no longer needs to see them as he is doing well emotionally, he has, given the provisions of the Interim Order, made an appointment to have another therapy session with Ms Woods on *22 August 2025*, he continues to take the anti-depressants as prescribed by Dr Vukovic and no longer needs sleeping tablets to assist him in sleeping.

- [53] What he mentioned to Ms Maynard regarding suicide and his thoughts thereon on one occasion, 10 years ago, he did not action it and he never tried to harm himself, which he told Ms Maynard.

- [54] Tanya Kriel, however, completely ignores the fact that *Mom* on several occasions attempted to commit suicide in consequence of which she had been hospitalised, which attempts he provides details.

- [55] The Reports of Ms Wood and Dr Vukovic clearly evidence that *Dad* is not a suicide risk and therefore there is no reason why *T* cannot be in his primary care.

- [56] Moreover, Tanya Kriel recommends that *T* is in *Dad's* care for 50% of the time which evidences that even Tanya Kriel is not concerned about *Dad* being a suicide risk.

- [57] In the premise this Court cannot and should not be guided by Tanya's Kriel's recommendations.

- [58] In addition, *Dad* raises the unaffordability of Tanya Kriel's recommendations regarding therapy and states that he simply cannot afford all the therapy as recommended by Tanya Kriel.

- [59] *Dad* further states that albeit common cause that *T* has thus far been residing with the parties on a weekly rotational basis, he states that this is not in her best interests, which situation developed after he moved out of the former common home and it was allowed to continue pending the outcome of the Rule 43 Application and there is no protection for *T* while in the care of *Mom* where she continues to abuse alcohol and the only safety mechanism, which Tanya Kriel incorporated, was that the parenting co-ordinator can direct the parties to undergo hair follicle test, which does not protect *T* against her *Mom's* alcoholism.
- [60] In respect of *M*, it is common cause that he should remain in *Dad's* primary care, however, the difficulty arises that Tanya Kriel as well as *Mom* in her revised Order, seeks that *Mom* will commence, with immediate effect, contact with *M* on alternate weekends and no provision whatsoever is made for him to first undergo bonding therapy between himself and *Mom* to restore the relationship before weekend contact commences. Moreover, *Mom* seeks extended holiday contact between herself and *M* as well as half of all long and short school holidays, foreseeably *Mom* wanting *M* to spend 50% of the *December 2025/January 2026* holidays in her care, again without any provision that bonding therapy should first successfully be completed.
- [61] Currently the relationship between *Mom* and *M* is particularly poor and *M* has not spent time with *Mom* since *2025*.
- [62] Therefore before there can be any consideration of extended contact between *Mom* and *M*, the bonding therapy must first take place and successfully be completed.
- [63] It should be within the discretion of the therapist who undertakes bonding therapy to direct and recommend when it will be in *M's* best interests that he resume extended contact with *Mom*, which can be facilitated through the parenting co-ordinator.
- [64] In respect of therapy for *M* and *T*, *Dad* states that:-

64.1. *M* and *T* have historically attended therapy, *M*'s therapist being Ms Nel and *T*'s being Ms Laidlaw;

64.2. it is not in the children's best interests to be exposed to new therapists;

64.3. he proposes that *T* continues therapy with Ms Laidlaw and *M* continues therapy with Ms Nel.

[65] The Interim Order already directs *M* and *T* to continue therapy with their current therapists and there is no logical motivation to change the therapy regime.

[66] *Dad* seeks that a parenting co-ordinator be appointed by agreement between the parties and failing agreement, nominated by Dr Roux, in order to (a) consult with the bonding therapists, Ms Nel and Ms Laidlaw, regarding the minor children's contact with *Mom* and to make recommendations as to the implementation of the contact having due regard to the best interests of the minor children, (b) develop a comprehensive parenting plan for use by the parties, (c) attempt to resolve disputes between the parties relating to their parental responsibilities and rights in respect of the minor children as detailed in the Order, which he says is in their best interest because:-

66.1. it provides a structure whereby the therapist can give input to the parenting co-ordinator as to the extent of contact that will be in *M* and *T*'s best interests;

66.2. by allowing the input from the therapist, it will provide a further mechanism to protect *M* and *T* from *Mom*'s alcohol and suicidal tendencies;

66.3. the bonding therapist will be able to give input as to what is in *M*'s best interests regarding his reunification with *Mom*;

- [67] *Dad* also seeks an Order that *Mom*, shall at her cost acquire an iSober device and cell phone application, and shall daily at 18h00, when the children are in her care, utilise the device and share the results with the parenting co-ordinator. In the event that the device and/or cell phone application shows that *Mom* has consumed alcohol, *Dad* shall be entitled to collect the minor children from *Mom's* care, which shall put in a place a mechanism to monitor *Mom's* alcohol abuse and removing of the children if the device shows that she has consumed alcohol.
- [68] *Dad* seeks that the therapist give input to the parenting co-ordinator to guide the contact between the minor children and *Mom*.
- [69] Given that the Interim Order already directs therapy for *M* and *T* and both *Mom* and *Dad* are to undertake individual therapy, *Dad* submits that this therapeutic regime is sufficient as he cannot afford parenting counselling and family therapy.

APPLICANT'S FINANCIAL CIRCUMSTANCES ACCORDING TO APPLICANT

- [70] *Dad* was the sole income earner for the majority of the parties' marriage, whilst *Mom* concentrated her time and energy on raising the children. Approximately five years ago, *Mom* began selling raw pet food and breeding American Bull dogs and Sphinx cats, in an effort to earn an income.³⁴
- [71] Up and until the end of *August 2024*, *Mom* used the money earned from the aforesaid endeavours, to pay for the children's monthly swimming coaching and their competition fees. *Dad* continued to cover all *Mom* and the children's other expenses up and until the of *August 2024*.³⁵
- [72] *Mom* alleges that her income includes the following:-

³⁴ Applicant's Sworn Statement: par 72, CaseLines 004-41

³⁵ Applicant's Sworn Statement: par 73, CaseLines 004-41

72.1. breeding and selling American Bull dogs in the sum of approximately R25 000.00, which equates to an average income of R2 083,00 per month;³⁶

72.2. annual income from Sphinx kitten breeding in an amount of R57 000.00, which equates to an average income of R4 750.00 per month;³⁷

72.3. approximately R15 000.00 per month through the sale of raw pet food.³⁸

[73] **Mom** states that she requires continued residency at *the former matrimonial home* at the very least, *pendente lite*, in order to continue her breeding business.³⁹

[74] **Mom** estimates her and the minor children's monthly expenses to total R78 793.00,⁴⁰ which expenses have historically been paid by **Dad**.

[75] **Mom's** personal total monthly expenses is R20 102.00.⁴¹

[76] When deducting what **Mom** earns from her raw food business, in the sum of R15 000.00 per month, **Mom** claims a shortfall of R5 073.00 towards spousal maintenance from **Dad**.⁴²

[77] **Dad's** total monthly contribution payable towards **M** and **T** is claimed by **Mom** together with **Dad's** effective contribution towards her monthly maintenance amounts to an estimated amount of approximately R58 720.00 per month, made up as follows:-

³⁶ Applicant's Sworn Statement: par 79, CaseLines 004-43

³⁷ Applicant's Sworn Statement: par 86, CaseLines 004-45

³⁸ Applicant's Sworn Statement: par 93, CaseLines 004-47

³⁹ Applicant's Sworn Statement: par 89, CaseLines 004-46

⁴⁰ Applicant's Sworn Statement: schedule of expenses, CaseLines 004-48 to 004-51

⁴¹ Applicant's Sworn Statement: par 99, CaseLines 004-52

⁴² Applicant's Sworn Statement: par 99, CaseLines 004-52 to 004-53

77.1. direct expenses on behalf of *M* and *T* in the estimated monthly amount of R34 507.00;

77.2. effective contribution in the amount of R5 102.00 towards *Mom's* monthly expenses; and

77.3. cash for *M* and *T* in the amount of R19 111.00 per month.⁴³

RESPONDENT'S FINANCIAL CIRCUMSTANCES ACCORDING TO APPLICANT

[78] Whilst *Dad* alleges that his net monthly salary amounts to R61 892.00 from his employment at Investec⁴⁴, *Mom* states that this version does not align with his financial disclosure and bank statements provided and submits that *Dad* is not being frank and honest in his disclosure.

[79] On an analysis of *Dad's* FNB cheque account, *Mom* states that *Dad's* net monthly income over the past six months, between *October 2024* and *March 2025*, does not amount to approximately R61 000.00 as alleged by *Dad*, but more accurately, at the very least, of R127 739.00.⁴⁵

[80] In *Dad's* Financial Disclosure Form, he reflects his income as follows:-

80.1. gross income for last financial year as shown on IRP5 – R2 101 842.00

80.2. net income for last financial year - R568 634.24

80.3. details of value of any bonuses or other occasional payments received from employment – R218 633.00;

80.4. estimate of net income from employer for next twelve months – R1 568 634.24.

⁴³ Applicant's Sworn Statement: par 103, CaseLines 004-55

⁴⁴ Respondent's Sworn Answer: par 98, CaseLines 004-213

⁴⁵ Applicant's Heads of Argument: paras 68 and 69, CaseLines 013-35 to 013-36

[81] This equates to a monthly income of R130 719.52, excluding any freelance work conducted by *Dad*⁴⁶ and when taking into account the freelance work, *Dad* declares an income of R2 220 523.89, which equates to R185 043.65 per month.⁴⁷

APPLICANT AND RESPONDENT'S FINANCIAL CIRCUMSTANCES ACCORDING TO RESPONDENT

[82] *Dad* states that *Mom* has a monthly income of between R35 958.00 to R45 959.00 from her business and in addition she earns money from her father's business in which she has interest and in a Close Corporation, but that it appears that she has deliberately scaled back her efforts in a calculated attempt to present herself as financially dependent and thereby shift more of the burden of the family's financial requirements on to *Dad*.⁴⁸

[83] *Dad* informs the Court that:-

83.1. he receives a net salary of R61 892.00 from his employment at Investec;

83.2. over the proceeding twelve month period he earned the following amounts from freelance work:-

83.2.1. from Media Metrix – R337 760.00, net for the twelve month period, which is R28 146.66 per month;

83.2.2. Coding Boys – R31 324.75 for the twelve month period, which is R2 602.90 per month;

83.2.3. from Bires – R490 000.00 for the twelve month period, which is R35 000.00 per month;

⁴⁶ Respondent's Financial Disclosure Form: CaseLines 005-190 to 005-191

⁴⁷ Respondent's Financial Disclosure Form: CaseLines 005-195

⁴⁸ Respondent's Heads of Argument: paras 79.4 and 79.5: CaseLines 013-97

83.3. historically he thus earned on average the sum of R65 749.56 per month from his freelance work.

[84] However, he alleges that his financial position has deteriorated in that:-

84.1. his freelance work from Bires ended in *September 2024* given that *Dad* could not take up contract work in Cape Town; and

84.2. from Coding Boys it declined significantly since *February 2024*, after *Dad's* business partner relocated to New Zealand.

[85] Realistically *Dad* would thus earn no more than R30 000.00 per month from the freelance work in future.

[86] Accordingly *Dad* yields a monthly income of approximately R91 000.00 per month.

MONTHLY EXPENSES

[87] *Mom* wants an *Order* that:-

87.1. *Dad* shall pay a monthly cash amount of R19 111.00 in respect of *M* and *T's* maintenance;

87.2. *Dad* shall pay the expenses in respect of *the former matrimonial home*;

87.3. however, she does not seem to pursue her alleged monthly shortfall R5 073,00 towards spousal maintenance from *Dad* – see paragraph 76 *supra*.

[88] It is common cause that *Dad* maintains all four children and he tenders to continue paying:-

- 88.1. the cost to retain **Mom** and children on Discovery Health, Classic Core Plan medical aid;
- 88.2. excess medical expenses in respect of the children;
- 88.3. the minor children's school fees, school books and uniforms;
- 88.4. the minor children's swimming coaching, gala fees, subject thereto that Dad has consented to their participation in such galas and the cost of swimming costumes and other swimming accessories;
- 88.5. vehicle insurance in respect the vehicle used by Mom and the vehicle used by the major children;
- 88.6. the tuition fees in respect of the major children, student accommodation, fuel and groceries;
- 88.7. the cost of clothing in respect the children;
- 88.8. cost of the children's cell phone usage.

[89] **Dad** lists his monthly expenses including those of the children, in a schedule attached to his Financial Disclosure Form.⁴⁹

[90] Certain of the items therein relate to *the former matrimonial home*, which he has historically paid, but wants to stop, which include:-

90.1.	bond payments –	R13 268.72;
90.2.	rates –	R1 328.44;
90.3.	water and electricity –	R6 523.35;
90.4.	householders insurance –	R5 215.19;
90.5.	homeowner's insurance –	R1 261.81

⁴⁹ Respondent's Financial Disclosure Form: schedule attached, CaseLines 005-399

90.6.	house insurance –	R500.00;
90.7.	Tv licence –	R300.00;
90.8.	telephone and ADSL/fibre –	R507.33;
90.9.	domestic worker –	R5 000.00;
90.10.	gardener –	R1 000.00;
90.11.	swimming pool chemicals and maintenance –	R500.00
	Total	<u>R35 404.74</u>

[91] *Dad* alleges that his monthly expenses, including those of the children, amount to R138 998.39, however, he includes medical aid premiums of R8 035.00 and R2 882.00 as part of his expenses. He states that in relation to these expenses, these are contributions deducted from his gross salary.

COURT'S DETERMINATION OF THE ISSUES RELATING TO THE CHILDREN

[92] In the matter of **J v J**⁵⁰, Erasmus J, held that the Court as upper guardian, is empowered and under a duty to consider and evaluate all relevant facts placed before it when deciding the issue, which is of paramount importance, being the best interests of children.⁵¹ The Court referred to the matter of **Terblanche v Terblanche**⁵² wherein it was stated that when a Court sits as upper guardian in a custody matter: “... *it has extremely wide powers in establishing what is in the best interests of minor or dependent children. It is not bound by procedural strictures or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information of whatever nature, which may be able to assist it in resolving custody and related disputes*”.⁵³

[93] In the **J v J** matter, the Court also referred to the decision of **AD & DD v DW & Others** (*Centre for Child Law as Amicus Curiae; Department for Social Development as intervening party*)⁵⁴, where the Constitutional Court endorsed

⁵⁰ 2008 (6) SA 30(1)

⁵¹ Ibid: par 20

⁵² 1992 (1) SA 501 (W)

⁵³ Ibid: page 504 C

⁵⁴ 2008 (3) SA 183 (CC)

the view of the minority in the Supreme Court of Appeal, that the interests of minors should not be “*held to ransom for the sake of legal niceties*” and determined that in the case before it, the best interests of the child “*should not be mechanically sacrificed on the altar of jurisdictional formalism*”.⁵⁵

- [94] Furthermore in the matter of **P v P**⁵⁶ it was held “...in determining what custody arrangements will best serve the children’s interests in a case such as the present, a Court is not looking for the ‘perfect parent’ – doubtless there is no such being. The Court’s quest is to find which has been called ‘the least detrimental available alternative, for safeguarding the children’s growth and development’.”⁵⁷

Tanya Kriel’s Report

- [95] In following the reasoning of the above authorities, I will not ignore any facts and circumstances presented by either party, when considering what is in the best interests of the children, and I will, in determining what arrangements will best serve the minor children herein, not be looking for the “*perfect parent*” but rather “*the least detrimental available alternative, for safeguarding the children’s growth and development*”.

- [96] After extensive investigation, including psychometric testing by Ms Maynard, Tanya Kriel provided a Report and made the following recommendations:-

- 96.1. **Mom** and **Dad** shall continue to have full parental responsibilities and rights with regards the guardianship, care, contact and maintenance of the minor children;
- 96.2. **T** shall remain in a shared residency contact regime and alternate weekly between **Mom** and **Dad**;

⁵⁵ J v J: 2008 (6) SA 30 (C), par 20

⁵⁶ 2007 (5) SA 94 SCA

⁵⁷ Par 24 supra.

- 96.3. *M* shall be in the primary care of *Dad*, with contact to *Mom* on alternate weekends;
- 96.4. *Mom* and *Dad* should attend therapy on a regular basis;
- 96.5. *M* is to attend therapy on a regular basis;
- 96.6. bonding therapy is take place between *Mom* and *M* to build their relationship;
- 96.7. a comprehensive parenting plan should be developed;
- 96.8. a parenting co-ordinator should regulate and monitor the family, navigate decisions and assist with the resolution of conflict;
- 96.9. hair follicle testing should be performed upon request of the parenting co-ordinator;
- 96.10. *Mom* and *Dad* must co-parent, a parenting course and recommunication co-parenting course is recommended and should commence with both parties attending the course jointly;
- 96.11. family therapy with a social worker or psychologist is recommended.

[97] I am not persuaded by, I do not agree with and I reject *Dad's* submissions as recorded in this Judgment at paragraphs 42 to 57 *supra*, that the Report of Tanya Kriel is, *inter alia*, flawed, did not take into account material information pertaining either to *Mom* or *Dad* and that her recommendations must therefore be disregarded and/or that this Court should not be guided by her recommendations. I furthermore disagree that she simply adopted a "*he said – she said*" approach as submitted by him.

[98] Tanya Kriel is a respected expert in this Division. It is apparent from her Report, that aside from her various interviews wherein she reported on what

was conveyed to her, she, in addition, relied heavily upon the psychometric testing by Ms Maynard, as conducted in relation to both *Mom* and *Dad* and I am persuaded by the submissions by *Mom's* Counsel and as recorded in paragraphs 20 to 41 *supra* in this Judgment.

[99] In spite of the issues raised and relating to both *Mom* and *Dad*, in respect of *inter alia*, alcohol consumption and use and emotional disfunction, Tanya Kriel nonetheless, in taking these matters into consideration, concluded the recommendations made by her, including to report that she interviewed each of the minor children and took into account their respective views, and that *T* continues to maintain that she wants the current status to continue and that *M* continues to maintain that he wants to reside primarily with *Dad*.

[100] I am also mindful of what was stated in the matter of **B v S**⁵⁸ wherein it was stated:

“The dicta in these cases are clear and persuasive. They show that no parental right, privilege or claim as regards access will have substance or meaning if access will be inimical to the child’s welfare. Only if access is in the child’s best interests can access be granted. The child’s welfare is thus the central, constant factor in every instance. On that, access is wholly dependent. It is thus the child’s right to have access, or to be spared access, that determines whether contact with the non-custodian parent will be granted. Essentially, therefore, if one is to speak of an inherent entitlement at all, it is that of the child, not the parent.”[Emphasis added]

[101] Furthermore, I am, in addition, mindful of the provisions of Section 10 of the Children’s Act, 38 of 2005 (*as amended*), in which it is stated:

“Every child that is of such an age, maturity and stage of development has to be able to participate in any matter concerning that child has the right to

⁵⁸ 1995(3) SA 571(A) at 581 J2582A

participate in an appropriate way and views expressed by the child must be given due consideration.”.

[102] The extent to which I have taken into account the recommendations of Tanya Kriel, will be apparent from what is stated hereunder in relation to the minor children and in so doing, what is stated, must not derogate from what I have stated at paragraphs 92 to 101 above.

T

[103] It is common cause that the position prior to, at the time of and after the receipt of the Report of Tanya Kriel (*confirmed in the Interim Order*), is that the residency of **T** is shared between **Mom** and **Dad**.

[104] It is also apparent from the Report of Tanya Kriel, that **T** has expressed her desire to want to continue residing equally between her parents.

[105] I see no reason why the interim status should therefore not remain and that **T's** residence should not continue, *pendente lite*, to be shared between **Mom** and **Dad**.

M

[106] Whilst Tanya Kriel has recommended that **M** shall be in the primary care of **Dad**, with contact to **Mom** on alternate weekends, taking into account:-

106.1. that **Mom** and **Dad** agree that a parenting co-ordinator be appointed;

106.2. that various therapeutic interventions will be taking place;

106.3. the poor relationship between **M** and **Mom** and the age of **M** at the time of the hearing of this matter (*16 years of age*),

as far as this aspect of Tanya Kriel's recommendations are concerned, I am of the view that it would be in *M*'s best interests, for therapy, including bonding therapy, to play out and which will hopefully improve the relationship between *M* and *Mom*, whereafter contact will or may be introduced.

[107] In this regard, I emphasise the quote in ***B v S*** (*supra*) and reiterate that the right to have contact or to be spared contact, is the right of *M*, not his parents.

General

[108] I am satisfied that there are the following safeguards pertaining to *M* and *T*:-

- 108.1. this is an interim Order, meaning that either party can approach this Court in terms of Rule 43(6), if needs be;
- 108.2. as agreed between *Mom* and *Dad*, a parenting co-ordinator will be appointed; and
- 108.3. as agreed between *Mom* and *Dad*, there will be various therapeutic interventions taking place.

Therapeutic intervention

[109] In my view, it is important for both *M* and *T* to continue with therapy and in the interests of continuity and further unnecessary costs being incurred, that they each continue with their current therapists, *M* with Michelle Nel and *T* with Christene Laidlaw, the costs of which shall be paid for by *Dad*.

[110] In particular, *M*'s therapist should have therapy with him regularly to also assist him with the possible gambling addiction, as well as his lack of attachment to *Mom* and to assist him with the possible destructive view he has of his *Mom*.

Therapy for *Mom* and *Dad*

[111] In light of Tanya Kriel's finding that co-parenting is failing at present, both *Mom* and *Dad*, must attend individual therapy on a regular basis with a health professional of their own selection, at his/her own cost.

Bonding Therapy between *M* and *Mom*

[112] Whilst I am of the view that the implementation of immediate contact between *M* and *Mom* is presently problematic, it is in the best interests of *M* to rebuild his relationship with his mother and the destructive view he has of her by way of bonding therapy, as having been nominated by Dr L Roux in terms of the Interim Order, alternatively and in the absence thereof for any reason, by the parenting co-ordinator to which reference is made hereunder, the costs of which will be paid for by *Dad*.

Parenting co-ordinator

[113] *Mom* and *Dad* are in agreement as to the appointment of a parenting co-ordinator, however, neither party has identified a parenting co-ordinator and/or a mandate for the parenting co-ordinator.

[114] In the absence of *Mom* and *Dad* reaching agreement on the identity of a parenting co-ordinator, same shall be nominated by the Gauteng Family Law Forum ("*GFLF*") and which parenting co-ordinator shall assist the parties to develop a comprehensive parenting plan for use by the parties, having due regard to the best interests of the minor children, to include a mechanism for the resolving of any dispute between *Mom* and *Dad* relating to their parental responsibilities and rights to the minor children, including any matter referred to in the Rule 43 Order.

Parenting and recommunication course and family therapy

[115] It will benefit *Mom* and *Dad* to attend a parenting and recommunication course as nominated by Tanya Kriel, the costs of which shall be shared equally by *Mom* and *Dad*.

[116] In addition, family therapy is to take place with a social worker or psychologist as nominated by Tanya Kriel, to assist the restructure unit as to the on-going, unresolved challenges, the costs of which will be shared by both parties.

COURT'S DETERMINATION OF THE ISSUES RELATING TO MAINTENANCE

[117] It is clear from *Dad's* Sworn Reply, read with his Financial Disclosure Form ("*FDF*") that:-

117.1. he receives a monthly income from his employment at Investec; and

117.2. he earns additional income from freelance work as well as discretionary annual bonuses from his employment at Investec.

[118] However, *Dad* alleges that his financial position has deteriorated given that his freelance work from Bires and Coding Boys ended and declined.

[119] In *Dad's FDF* he reflects his income (*see paragraphs 80 and 81 hereinabove*) totalling R130 719,52, excluding any freelance work conducted by him and when taking into account the freelance work, *Dad* declares an income of R2 220 523.89, which equates to R185 043,65 per month.

[120] Albeit that oral argument was submitted on behalf of *Dad* that this is not correct, that there was an error in the computation of *Dad's* income and that it is far less, this does not appear in any documents filed in this matter, either from *Dad's* Sworn Reply, his *FDF* or his Supplementary Affidavit, that this is the case. Accordingly, this would be something that would need to be investigated further for the purposes of the pending divorce proceedings, however, insofar as this Judgment is concerned, I can only rely on the disclosures made. I am of the view that as far *Dad's* means are concerned, I am satisfied that he has the capacity to continue to the maintenance

requirements, *pendente lite*, as dealt with and subject to what is stated hereinbelow.

[121] **Mom** alleges that her average monthly income is R21 833,00 (*supra* paragraph 72 above), whilst **Dad** states that **Mom** has a monthly income of between R35 958.00 to R45 959.00 per month (*supra* paragraph 82). It is, however, debatable as to whether or not **Dad's** computation thereof is accurate and, to repeat, this would need to be investigated further for the purposes of the pending divorce proceedings. For the purposes of the determination of this matter, I am persuaded by **Mom's** version of her monthly income, however, it is noted that in respect of her claim that her personal monthly expenses totals R20 102.00, this amount includes expenses in respect of which she wants **Dad** to pay for, totalling an amount of R10 2225.00 (*i.e. comprising of lodging/bonds- R4 833.00, rates – R443.00, water – R1 000.00, House insurance – R667.00, medical aid – R2 882,00, excess medicals – R200.00 and medication – R200.00*).

[122] Given that I have determined that:-

- 122.1. **T's** primary residence shall be shared between **Mom** and **Dad**;
- 122.2. **M's** primary residence shall remain with **Dad** and contact between **M** and **Mom** shall not immediately be implemented;
- 122.3. **Dad's** monthly income is approximately R185 043.65 – see paragraph 81 *supra*;
- 122.4. **Mom's** estimated monthly income is approximately R21 833.00 – see paragraph 72 *supra*;
- 122.5. the difference in **Mom's** personal monthly expenses, after deducting the expenses she wants **Dad** to pay for, her total personal monthly expenses is R9 877.00, leaving her with a surplus of income, in the sum of R11 956.00;

I am therefore respectfully of the view that:-

- 122.6. **Dad** should continue paying for and be responsible for the monthly expenses pertaining to *the former matrimonial home*, which he has historically paid and as identified in paragraph 90 *supra*;
- 122.7. **Dad** should continue paying for the amounts tendered by him as itemized in paragraph 88 *supra*, as well as any amplified expenses as claimed for by **Mom** and as identified in paragraphs 2.3.2 and 2.4 *supra*; and
- 122.8. **Mom** is not entitled to the cash maintenance claimed in respect of **T** and **M** as she too has a duty to contribute to the reasonable and necessary maintenance requirements in accordance with her means.

APPLICANT'S CLAIM FOR A CONTRIBUTION TO COSTS

[123] **Dad** states that **Mom** is not entitled to any contribution towards her legal costs given that:-

- 123.1. he does not have the means with which to pay the amount of R520 843.19 sought, as he uses every cent available to provide for the children and if the Court granted the order he would be unable to pay same and would be forced to default;
- 123.2. he does not have cash funds available;
- 123.3. the only realisable assets he has, are shares with worth some R12 060.56;
- 123.4. **Mom** seeks a contribution to her costs up to and including the first day of Trial, which is wholly premature where:-

- 123.4.1. *Dad* already pays and tenders and continues to pay the expenses in relation to the children;
- 123.4.2. the parties are married out of community of property excluding the accrual and there is thus no proprietary dispute;
- 123.4.3. *Mom* is earning sufficient income to sustain her own financial requirements;
- 123.4.4. both parties agree that the joint ownership of *the former matrimonial home* should be terminated;
- 123.4.5. accordingly, there is no issue in dispute and it should not proceed to trial.

[124] *Dad* further claims that the parties have not attended mediation and given what is stated, there is a high likelihood of the matter being resolved.

[125] *Dad* further disputes the reasonableness of the fees claimed in the Bill of Costs in that:-

- 125.1. *Mom* is claiming historic costs where there is no evidence that the costs are outstanding or that she has borrowed funds to pay same;
- 125.2. *Mom* claims costs in respect of the Rule 43 Application;
- 125.3. the amounts claimed by *Mom* are grossly inflated;
- 125.4. *Mom* claims costs in respect of expert witnesses where it is not established that she will require an expert;
- 125.5. *Mom* claims costs in respect of a forensic auditor where there is no proprietary issue in dispute.

[126] In support of *Mom's* claim for a contribution to her costs, she has annexed to her Sworn Statement, a Bill of Costs, headed "*Memorandum of Attorney and Client Fees and Disbursements – Estimated further such costs of Brand Potgieter Incorporated – prepared for purposes of assessment of contribution to Plaintiff's Costs in terms of Rule 43*" (*the Bill of Costs*).⁵⁹

[127] *The Bill of Costs* was prepared by Willem Karel Wandrag, employed by Cyril Moola Attorneys, who deposed to a Confirmatory Affidavit in regard *the Bill of Costs* as prepared him.⁶⁰ The grand total reflected on *the Bill of Costs*, inclusive of fees, disbursements and VAT is in the sum of R784 799.58.

[128] *Mom's* claim for a contribution of R520 843,19 is the difference after deduction of an amount of R223 956,39 paid by her father to her attorneys.

[129] Whilst *Dad's* Counsel addressed legal argument to the Court at the hearing of the matter in regard to *Mom's* claim for a contribution to costs, neither *Dad* in his Sworn Reply, Supplementary Affidavit nor in argument, interrogated *the Bill of Costs* or raised an objection to any specific items in respect of fees and disbursements as reflected therein, other than as stated above in this Judgment. *Dad's* failure to interrogate *the Bill of Costs*, is of no assistance to the Court.

[130] The legal principles applicable to a claim for a contribution to costs, have been confirmed in various decisions by our Courts over the years and the essence of which is the following:-

130.1. a claim for a contribution to costs is a claim *sui generis* and is an incident of the duty of support, which spouses owe to each other;⁶¹

⁵⁹ Applicant's Sworn Statement: annexure "SS15", CaseLines 004-162 to 004-168

⁶⁰ Applicant's Sworn Statement: annexure "SS16", CaseLines 004-170 to 004-172

⁶¹ Cary v Cary 1999(3) SA 615(C); AF v MF 2019(6) SA 422(WCC) at 428 (e) to (f)

- 130.2. there is the fundamental right to equality and equal protection before the law and there should be “*equality of arms*” for a divorce trial to be fair;⁶²
- 130.3. although the rules of the duty of support between spouses are gender neutral, in light of the traditional child care roles and the wealth disparity between men and women, the norm has been that it is generally women who seek relief from the Courts in terms of Rule 43(1)(b);⁶³
- 130.4. the purpose of the remedy is therefore to enable the party in the pending divorce action, who is comparatively speaking, financially disadvantaged in relation to the other party, to adequately put their case before Court;⁶⁴
- 130.5. as to what is “*adequate*” will depend upon the nature of the litigation, the scale upon which the husband is litigating and the scale upon which the wife intends to litigate, with due regard being had to the husband’s financial position;
- 130.6. the quantum of the contribution to costs, which a Court may order a spouse to pay, lies within the discretion of the presiding Judge. In this regard, the Court should have regard to the circumstances of the case, the financial position of the parties and the particular issues involved in the pending litigation in order for the wife to be enabled to adequately present her case before Court.⁶⁵

[131] I will therefore proceed to evaluate and in the exercise of my discretion, make a determination in regard to *Mom’s* claim for a contribution to her costs, against the backdrop of the aforesaid legal principles and to the particular issues involved in the pending litigation, it being noteworthy that *Dad*

⁶² Eke v Parsons 2016(3) SA 37(CC)

⁶³ AF v MF 2019(6) SA 422 (WCC) par [14]

⁶⁴ Van Rippen v Van Rippen 1949(4) SA 634 (C)

⁶⁵ AF v MF 2019(6) SA 422 (WCC) par [14]

instructed Senior Counsel in the Rule 43 Application, whilst **Mom** instructed a Junior Counsel. It is further noteworthy that nowhere has **Dad** dealt with and disclosed, how he is affording his own legal charges (*fees and disbursements*), including, but not limited to, the quantum thereof and/or the costs of Senior Counsel. In circumstances where **Dad** simply denies that **Mom** is entitled to a contribution to her legal costs and charges without any specificity and given the foregoing, in my view, this flies into the face of the principle “*equality of arms*”.

[132] Without derogating from the foregoing and given that:-

132.1. **Mom** is seeking an Order that the costs of this Rule 43 Application be costs in the Divorce Action, it is clear, in my view, that **Mom** cannot be entitled to “*double dip*”; and

132.2. the historic costs, including fees and disbursements, appears to have been settled and paid for,

I will therefore disallow the contribution as claimed in *the Bill of Costs*, as follows:-

132.3. items 1 to 23 of *the Bill of Costs* pertaining to the historic costs, including fees (*totalling R54 921.00*) and disbursements (*totalling R1 530.00*), = R56 451.00;⁶⁶ and

132.4. items 24 to 44 of *the Bill of Costs* pertaining to this Rule 43 Application, fees (*totalling R16 427.00*) and disbursements (*totalling R71 300.00*), = R87 727.00.⁶⁷

[133] Insofar as the balance of the claim of the contribution to future costs as contained in *the Bill of Costs* is concerned, I have considered *the Bill of Costs* and bearing in mind that this is a claim for an initial contribution to future

⁶⁶ Applicant's Sworn Affidavit: Annexure “SS15” CaseLines 004-162 to 004-163

⁶⁷ Applicant's Sworn Affidavit: Annexure “SS15” CaseLines 004-163 to 004-164

costs, albeit that *the Bill of Costs* reflects the estimated costs up to and including the first day of Trial, that *Mom* is the Plaintiff in the divorce action and that *Mom* can bring a further Application(s) for additional contributions to costs if the need arises, even during the trial, in this context, I have the following comments in regard *the Bill of Costs*:-

- 133.1. it is evident from the papers in the Divorce Action that *Mom* is pursuing a claim in terms of Section 7(3) of the Divorce Act and I therefore disagree with *Dad's* argument that because the parties are married out of community of property, that there are no further proprietary disputes in the Divorce Action;
- 133.2. *Mom* may therefore need to engage with various experts pursuant thereto, for example a forensic accountant, however, what is not apparent from the Affidavits filed herein by *Mom*, is exactly what is in dispute and therefore precisely, which experts are required and therefore not enough information was put before me, to properly consider a contribution in respect of experts;
- 133.3. whilst it is evident that *Mom* is pursuing a claim for spousal maintenance, it is not clear to what extent and in respect of the principle, quantum and duration she is seeking same, and thus exactly what is in dispute and therefore her need for expert testimony in respect thereof is also unclear;
- 133.4. in respect of the further investigation into *Dad* and *Mom's* income for the purposes of the Divorce Action, I am of the view that this can be pursued by way *Subpoenae*.

[134] In the premise, I will therefore (*in addition to the disallowed items referred to above in this Judgment*), disallow the contributions as claimed in *the Bill of Costs*, in respect of items 68, 69, 70, 71, 72, 77, 78, 98, 99, 100, 101, 102, 103, 104, 105, 123, 124, 145, 155, 156, and 157, both in respect of fees (R15 324.50) and disbursements (R141 450.00), = R156 774.50.

[135] Accordingly, the total of the disallowed items amounts to R300 952.50 – see paragraphs 132 and 134 *supra*.

[136] In regard to the remaining items on *the Bill of Cost*, (*items 45 to 62 – fees = R220 223.00 and disbursements = R362 450.00*), excluding fees and disbursements in respect of the items referred to in paragraph 134 above, which have been disallowed for the reasons dealt with above, this amounts to fees = R204 898.50 and disbursements = R221 000.00 totalling R425 898.50.

[137] In my view and for the above reasons, the sum of R425 898.50 exclusive of VAT, represents an adequate first contribution to *Mom's* future costs in the pending divorce action.

COSTS

[138] It is common cause that *Mom* enrolled this matter for hearing before receipt of Tanya Kriel's Report.

[139] Immediately once Tanya Kriel's Report became available, *Mom* filed a Supplementary Affidavit in which she sought supplementary relief based upon the recommendations of Tanya Kriel.

[140] When the matter came before me on *13 August 2025*, I granted an Interim Order in terms whereof the matter was, by agreement, postponed for a virtual hearing on *28 August 2025*.

[141] Further thereto, *Dad* was afforded the opportunity to file a Supplementary Affidavit to which he appended an amended draft Order detailing the relief he seeks, post the receipt of Tanya Kriel's Report.

[142] *Dad* is seeking that *Mom* is to pay the reserved costs of the postponement of the hearing on *13 August 2025*, in circumstances whereby he himself filed a

Supplementary Affidavit and is seeking relief in spite of not formally bringing a Counter-Application.

[143] Part of the relief sought by **Dad** relates to minor children.

[144] Accordingly, the Report of Tanya Kriel is of assistance to this Court. **Dad** was afforded the opportunity to deal with the Report of Tanya Kriel and given that this matter involves the best interests of both minor and major dependent children, I see no reason why **Mom** must be lumbered with the reserved costs of *13 August 2025*.

[145] Both **Mom** and **Dad** agree that the costs of the Rule 43 Application are costs in the divorce action.

[146] In the premise, the costs of *13 August 2025* are included in the Rule 43 costs as costs in the divorce action.

THE ORDER

[1] After having heard Counsel for Applicant and Counsel for Respondent and having considered the documents filed on Record, the Court directs that the following Order is made, *pendente lite*,:-

- 1.1. the late filing of Applicant and Respondent's Supplementary Affidavits is condoned;
- 1.2. both parties shall retain full parental responsibilities and rights in respect of **M** and **T**, as envisaged in section 18 (2) of the Children's Act, 38 of 2005, as amended;
- 1.3. **M** shall reside with the Respondent, currently at 3[...] C[...] Street, M[...], Johannesburg;

- 1.4. *T's* residence shall be shared equally between the parties, currently at 3[...] C[...] Street, M[...], Johannesburg and currently at 3[...] C[...] Street, J[...] Park, Randburg, Johannesburg, to be exercised as follows:-

during school terms

- 1.4.1. *T's* residence shall alternate between the Applicant and the Respondent on a weekly basis each Sunday at 17h00;
- 1.4.2. when *T* is in either party's care, such party shall be responsible for fetching and carrying *T* to and from school (*alternatively the school bus collection point situated in Douglasdale*) and extra-mural activities;

1.5. during school holidays:

- 1.5.1. *T's* long and short school holidays shall be divided equally in half and shared between the Applicant and Respondent, provided that the Christmas period (*from 24 to 26 December*) and the entire duration of the Easter long weekend shall alternate between the Applicant and Respondent each year, *T* being in the Applicant's care for Easter and Christmas during odd years (*commencing in 2025*) and in the Respondent's care for Easter and Christmas during even years (*commencing in 2026*);
- 1.5.2. *T's* birthday shall be shared equally between the Applicant and Respondent each year so that both parents have the opportunity to celebrate *T's* birthday with her each year;

- 1.5.3. *T* shall spend the whole of Father's Day from the evening prior to Father's Day until the Monday morning following Father's Day, with the Respondent, and the whole of the Respondent's birthday from the evening prior to his birthday until the morning of the day following the Respondent's birthday with the Respondent each year;
- 1.5.4. *T* shall spend the whole of Mother's Day from the evening prior to Mother's Day until the Monday morning following Mother's Day with the Applicant, and the whole of the Applicant's birthday from the evening prior to her birthday until the morning of the day following the Applicant's birthday with the Applicant each year;
- 1.6. each party shall have reasonable daily telephone or video contact with *T* when she is in the care of the other party;
- 1.7. bonding therapy between the Applicant and *M*, to continue and to be conducted by the therapist as nominated by Dr Lynette Roux and in the absence thereof for any reason, within 3 (*three*) days of the appointment of the parenting co-ordinator, then, in such event, the parenting co-ordinator shall nominate a bonding therapist within 5 (*five*) days after the lapse of the aforesaid 3 (*three*) day period, whereafter the bonding therapy shall commence as soon as practicable following his/her nomination, and shall endure for such period as recommended by the nominated therapist. The bonding therapist shall be mandated to rebuild the relationship between *M* and the Applicant and the destructive view *M* has of her with the purpose of reunification and restoration of contact between the Applicant and *M* and the terms thereof. The costs of the aforesaid bonding therapy shall be borne and paid for by the Respondent;
- 1.8. *M* shall attend therapy on a regular basis with his current therapist, Michelle Nel, for purposes of, *inter alia*, addressing his possible

gambling addiction and his lack of attachment to the Applicant and to assist him with the destructive view he has of the Applicant, the cost of which shall be paid for by the Respondent;

- 1.9. *T* shall attend therapy on a regular basis with her current therapist, Christene Laidlaw, the cost of which shall be paid for by the Respondent;
- 1.10. the Applicant shall attend individual therapy on a regular basis, the costs of which shall be paid for by the Applicant insofar as the said costs are not paid for by the medical aid scheme of which the Applicant is a beneficiary, to address, *inter alia*, her anxiety and depression, as well as conflicting needs in her functioning and her alcohol consumption and usage;
- 1.11. the Respondent shall attend individual therapy on a regular basis, the costs of which shall be paid for by the Respondent insofar as the said costs are not paid for by the medical aid scheme of which the Respondent is a beneficiary, to address, *inter alia*, his alcohol use and consumption, emotional disfunction, his permissive parenting style and possible suicide tendencies and depression;
- 1.12. a parenting co-ordinator ("*PC*") shall be appointed in order to develop a comprehensive parenting plan for use by the parties, to regulate and monitor the family, to navigate decisions and to assist with the resolution of disputes and:
 - 1.12.1. the *PC* shall be a qualified clinical psychologist or social worker with the appropriate expertise of not less than 10 (*ten*) years standing with the relevant professional council or authority, conversant with working with children and families in the context of disputed care and contact matters;

- 1.12.2. the Gauteng Family Law Forum ("*the GFLF*") shall upon receipt of this Order from either party, nominate a suitable person with availability to accept the appointment as *PC* (*in accordance with the requirements stipulated in paragraph 1.12.1 above*) to act as *PC* and once such person has been nominated by *the GFLF*, the parties shall proceed to appoint the person nominated by *the GFLF*, as their *PC*;
- 1.12.3. the *PC* shall continue to act until he/she resigns, or the Applicant and Respondent agree in writing that his/her appointment is terminated, or his/her appointment is terminated by an order of Court. If the *PC* ceases to act as *PC* for any reason, he/she shall be substituted by another *PC* appointed by the parties by agreement, alternatively and failing agreement for any reason, by way of nomination by *the GFLF* in terms of paragraph 1.12.2 above;
- 1.12.4. in the event of any dispute arising between the parties regarding the exercise of their parental rights and responsibilities in relation to the minor children as detailed in this Order, including in relation to when and if *M* should commence exercising contact with the Applicant, or in relation to any other issue regarding the minor children's best interests, which the parties are unable to resolve themselves, the parties shall (*save in the case of urgency*) consult with the *PC* in respect of such dispute, who shall in addition be entitled to call for and receive collateral information from any of the therapists or health professionals referred to in this Order;
- 1.12.5. the *PC* shall attempt to resolve the dispute between the Applicant and Respondent by way of mediation, but if he/she is unable to do so, he/she shall make a ruling as detailed in paragraph 1.12.6 below;

- 1.12.6. in the event that the mediation fails, the *PC* shall provide his/her recommendations in writing, which recommendations shall be accompanied by reasons, shall be binding on the parties and shall be implemented by the Applicant and Respondent, subject to the overriding jurisdiction of the High Court or any other court of competent jurisdiction. The Applicant and Respondent shall be bound by and shall implement the *PC's* written recommendations unless and until a Court of competent jurisdiction overturns such recommendations;
- 1.12.7. the *PC* may request either party to undergo a hair follicle test/s for the screening of drug or alcohol abuse;
- 1.12.8. the Applicant and Respondent shall be responsible for the *PC's* costs in equal shares;
- 1.13. the parties shall jointly attend a parenting course and recommunication course as recommended by Tanya Kriel, the cost of which shall be shared equally between the parties;.
- 1.14. family therapy is to take place with a social worker or psychologist as nominated by Tanya Kriel, to assist the restructured unit with the ongoing unresolved challenges, the cost of which shall be shared equally between the parties;
- 1.15. the Respondent shall be liable for *M* and *T's* maintenance and shall:
 - 1.15.1. effect payment in full of the following expenses, which payments shall be effected by the Respondent directly to the applicable service providers:
 - 1.15.1.1. the monthly instalment payable in relation to all mortgage bonds registered over the immovable property situated at 3[...] C[...] Street, J[...] Park,

Randburg, Johannesburg (*“the former matrimonial home”*);

- 1.15.1.2. the monthly invoice issued by the City of Johannesburg in respect of *the former matrimonial home*;
- 1.15.1.3. the monthly insurance premiums payable in relation to *the former matrimonial home*, including the house structure and household contents;
- 1.15.1.4. the monthly insurance premiums payable in relation to the Kia Sedona motor vehicle driven by the Applicant;
- 1.15.1.5. the private school fees and expenses incurred in relation to *M* and *T*’s schooling at HeronBridge College and including the cost of registration fees, levies, stationery, textbooks, school uniforms, school camps and school tours;
- 1.15.1.6. the fees and related expenses incurred in relation to *M* and *T*’s swimming, including the cost of all training, equipment, uniforms/kit, competition and gala fees and ancillary expenses incurred in relation thereto;
- 1.15.1.7. the monthly medical aid premiums payable in respect of *M* and *T* who are both dependents of the Respondent’s medical aid, and who shall remain dependents of the Respondent’s existing medical aid or such other medical aid which provides the same benefits; and

- 1.15.1.8. the medical and related expenses incurred in relation to *M* and *T*, which expenses are not covered by the Respondent's medical aid, including but not necessarily limited to medical, dental, orthodontic, optical, ophthalmological, surgical, psychotherapy, physiotherapy, dermatological, pharmaceutical and other medical or related expenses of the aforesaid children;
- 1.16. the Respondent shall be solely liable for the maintenance of the major dependent children, *T* and *A* and shall effect payment in full of the following expenses, which payments shall be effected by the Respondent directly to the applicable service providers:
 - 1.16.1. the tertiary education fees incurred in relation to *T* and *A*, including but not limited to registration fees, residence (*or accommodation*) fees, transport (*including the monthly insurance premiums payable in respect of the motor vehicles driven by T and A*) and travel expenses, stationery, and textbooks;
 - 1.16.2. the monthly medical aid premiums payable in respect of *T* and *A* who are both dependents of the Respondent's medical aid, and who shall remain dependents of the Respondent's existing medical aid or such other medical aid which provides the same benefits;
 - 1.16.3. the medical and related expenses incurred in relation to *T* and *A*, which expenses are not covered by the Respondent's medical aid, including but not necessarily limited to medical, dental, orthodontic, optical, ophthalmological, surgical, psychotherapy, physiotherapy, dermatological, pharmaceutical and other medical or related expenses of the aforesaid major dependent children;

- 1.17. the Respondent shall retain the Applicant as a dependent on his existing medical aid and shall continue to effect payment of the monthly medical aid premiums payable in relation thereto;
- 1.18. the Respondent shall effect payment of a contribution towards the Applicant's legal costs up to and including the first day of trial, in the amount of R425 898.50, (*four hundred and twenty five thousand eight hundred and ninety eight rand and fifty cents*), plus VAT within 60 ordinary days of this Order;
- 1.19. costs to be in the divorce action, including the reserved costs of *13 August 2025*.

F. MARCANDONATOS
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: *13 and 28 August 2025*
Judgment: *18 November 2025*

Appearances

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