



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: A128/2024

Reportable

In the matter between:

R[...] L[...]

Appellant

And

J[...] F[...] D[...] L[...]

Respondent

Coram: Thulare J, Pangarker J and Elliott AJ

Hearing date: 22 January 2025

Supplementary written submissions: 12 and 22 August 2025

Judgment delivered: 12 December 2025

Summary: Post-divorce maintenance for major dependent children born of parties' marriage – Appeal to Full Court against decision of the High Court which

dismissed appellant's application for contempt of Court, additional maintenance and arrear maintenance – Settlement agreement containing maintenance agreement incorporated into final decree of divorce – Maintenance order granted in terms of section 6 of Divorce Act 70 of 1979 - Whether the appellant (mother) had the necessary locus standi to approach the High Court for such relief against respondent (father) post-divorce on behalf of major dependents – Authorities considered

ORDER

The appeal is dismissed with costs which shall include the costs of two counsel on Scale C.

JUDGMENT

PANGARKER J (THULARE J and ELLIOTT AJ concurring)

Introduction

[1] This appeal arises from a judgment delivered by the Court *a quo* on 9 October 2023 which dismissed the appellant's application for contempt of Court, additional maintenance for the parties' two adult dependent children as well as arrear maintenance. The appeal is with leave granted by the Supreme Court of Appeal (SCA) to the Full Court on 8 March 2024.

[2] It is common cause that the parties were divorced in the High Court on 6 September 2019 and that the Court hearing the divorce granted a final decree of divorce incorporating a settlement agreement which encapsulated the proprietary consequences of the parties' marriage in community of property, personal maintenance for the appellant and maintenance for the parties' adult dependent children, Y[...] S[...] L[...] (Y[...]) and R[...] D[...] L[...] (R[...]).

[3] The appellant was the defendant in the divorce action and the applicant in the Court *a quo* in what has been referred to as "*the contempt and maintenance application*". The respondent opposed the application successfully and consequently opposed the appeal. For purposes of this judgment, the three-fold application is simply referred to as "*the application*" and where reference is made to "*the order*" or "*maintenance order*", it refers to clause 2.4.4 of the settlement agreement which was incorporated into the parties' final decree of divorce.

The application in the Court *a quo*

[4] The parties were married for 30 years before their eventual divorce in the High Court. At the time of the divorce, their four children had already attained the age of majority. The two youngest, Y[...] and R[...], were adult dependents and have throughout the application and the appeal been referred to as "*adult dependent children*" or "*the children*", a description which I also adopt in this judgment. It bears mentioning that both parties were legally represented during the divorce proceedings and in the Court *a quo* proceeding.

[5] In the settlement agreement concluded between them, the parties made provision for the maintenance of R[...] and Y[...] in clause 2.4.4, which reads as follows:

"2.4.4 It is agreed between the parties that the Plaintiff will be responsible for the maintenance of their children which will include a rental contribution

of R3 000 (Three Thousand Rand) per month to the Defendant in respect of her rental shortfall for their son, R[...] D[...] L[...], at the property of the Defendant situated in Stellenbosch, for as long as he may occupy it as a student.”

[6] In 2020, two years prior to the appellant's High Court application, Y[...] applied for maintenance against the respondent at the Hopefield Magistrates' Court. From the evidence in the High Court application, it was apparent that the maintenance application was first removed from the Magistrates' Court's roll and thereafter unilaterally withdrawn at a stage when the High Court application had already been in progress but before it was argued.

[7] In the application, the appellant sought the following orders:

1. *Declaring the Respondent to be in contempt of Court in that he has and is continuing to deliberately, intentionally (wilfully) and in mala fides breach the maintenance provisions in paragraph 2.4.4 of the Settlement Agreement which was made an Order of Court handed down by His Lordship Mr Justice Thulare on 6 September 2019 under Case Number 3547/2019.*
2. *Committing the Respondent to imprisonment for a period of six (6) months, or such other period as the above Honourable Court may deem fit, further alternatively imposing a suspended sentence on the Respondent on such terms as the Court;*
3. *That the Respondent is ordered to pay all medical and related expenses of the Respondent's daughter, Y[...] L[...] and his son R[...] and that the Respondent is ordered to retain them on his medical aid scheme.*
4. *That the Respondent is ordered to pay all educational and related expenses of the children including their tertiary education to the institutions and when the amounts fall due.*

5. *That the Respondent is ordered to pay all expenses relating to the children's books, stationery and other equipment reasonably required in their studies.*
6. *That the Respondent is ordered to pay all expenses in relation to the children's maintenance requirements including all relevant living expenses incurred by the children.*

Alternatively to prayers 4 to 6:

7. *That the Respondent is ordered to pay maintenance in respect of the children, in respect of Y[...] that amount of R25 966.00 and in respect of R[...] the amount of R10 173.00 on the first of each month into the bank account of the Applicant.*
8. *That the Respondent is ordered to pay arrears maintenance in the amount of R535 600.50 in respect of the children to the Applicant, Applicant having paid maintenance in lieu of maintenance by the Respondent.*
9. *Costs on an attorney & client scale."*

[8] At the time of Y[...]’s maintenance application, she had already obtained two tertiary certificates at the Animation Studio which the respondent had financed. She had applied and enrolled for a third course which, according to the respondent, was done unilaterally and he was thus disinclined to pay as he held the view that Y[...] could consider similar, less expensive courses. R[...] was studying medicine at Stellenbosch University.

[9] The appellant’s case in the Court *a quo* was premised on the grounds that the maintenance order renders the respondent solely liable for the adult dependent children’s maintenance but that due to inadequate payment contributions by him, she

was forced to maintain them. To illustrate, the appellant alleged that she made various payments from September 2019¹ to December 2022 in excess of R453 000. Her total contribution included, *inter alia*, Y[...]’s medical expenses not covered by the respondent’s medical aid, her living and accommodation expenses including monthly rental, a rental deposit, and the payment of stationery, pocket money, clothing and other items.

[10] In respect of R[...], the appellant’s contention was that she had paid R5 500 per month from May 2021 in respect of his maintenance needs. In her application, she averred that the respondent’s attitude was that he had no further maintenance obligations towards the children and was thus in contempt of the maintenance order. In addition, the appellant submitted that the respondent was reluctant to pay for R[...]’s medical studies.

[11] The respondent’s case was that each of their four children had received R210 000 paid into their bank accounts to cater for their day-to-day expenses while studying. At the time of the application, Y[...] and R[...] were in their early 20s. In respect of Y[...]’s maintenance application, the respondent emphasized that the application was only removed from the Hopefield Maintenance Court’s roll and thus still pending when the appellant launched the High Court application.

[12] The respondent centred his opposition on the view that the maintenance order² did not state that maintenance was payable until each child became self-supporting and also did not indicate that only he was responsible for payment of the children’s maintenance. Significantly, he made the point that the appellant had no *locus standi* to bring the application for maintenance and contempt of Court against him. He was not opposed to paying maintenance but queried and disputed the children’s reasonable expenses or reasonable maintenance needs. His view throughout the application was that their reasonable needs were to be determined in an enquiry instituted by the maintenance officer in the Maintenance Court in terms of section 6(2) of the Maintenance Act 99 of 1998 (the Maintenance Act).

¹ Month in which the parties divorced

² Clause 2.4.4

[13] The respondent emphasised that he had paid for two of his daughter's courses and two degrees obtained by his son and questioned why Y[...] required R9 000 more³ maintenance than the amount she sought in the Maintenance Court. Furthermore, the respondent took issue that though he had paid for Y[...]’s studies up to that point she had unilaterally decided to embark on a three-year course⁴. The respondent considered Y[...]’s maintenance needs and requirements to be excessive and lavish, stressing that he had also paid for her motor vehicle and related expenses. As for the medical aid, his explanation was that his medical aid did not allow him in 2020 to have Y[...] as a dependent as she was a student at the time.

[14] In respect of R[...]’s further medical studies, the respondent questioned why his son had not applied for a bursary or loan to finance such studies. His version was that he had paid all R[...]’s expenses and he failed to understand why more maintenance was being claimed on R[...]’s behalf.

[15] According to the respondent, his children could obtain part-time work while pursuing their studies. His view was that the application to the High Court was premature as the children’s reasonable maintenance needs could only be determined through the process of a maintenance enquiry. He denied that he was in contempt of the maintenance order.

[16] In reply, the appellant denied that the maintenance order made her responsible for the children’s maintenance needs. She also denied the *lis alibi pendens* defence on the basis that she was not a party to Y[...]’s maintenance application and furthermore, her view was that the attack on her *locus standi* was without merit as she was enforcing her rights in terms of the divorce order.

[17] The appellant’s explanation regarding the maintenance application was that there were no dates provided in the Hopefield Court and that it was not advisable that there be a protracted maintenance fight between a daughter and father. She maintained that the respondent was solely liable for the adult children’s maintenance and furthermore, that the respondent made out no case for the view that their maintenance claims were unreasonable.

³ In the application before the Court *a quo*

⁴ Respondent admitted to not contributing to Yolandi’s studies since January 2022

The Court *a quo*'s judgment

[18] The Court *a quo* recognised that the respondent's obligation towards R[...]’s Stellenbosch rental accommodation as referred to in the maintenance order had been discharged. Y[...]’s application for maintenance was pending at the time of institution of the High Court application but was removed or withdrawn when the respondent delivered his answering affidavit.

[19] The appellant submitted that there were a few options available for the Court *a quo*, the details of which are not relevant to the appeal. The Court *a quo* held that the application revolved around the interpretation of clause 2.4.4 of the settlement agreement and that the main dispute centred around the amount of maintenance payable in respect of the children and arrear maintenance. It held that Y[...]’s case for current and future maintenance was pending at the time of institution of the application and that such defence was correctly raised by the respondent.

[20] Furthermore, the Court *a quo* held that the divorce order was silent on the amount of maintenance payable by the respondent and thus, he could not be held in contempt of the order. It went on to hold that what constituted reasonable maintenance still had to be determined and that the order was to be interpreted in line with section 15(3)(b) of the Maintenance Act, meaning that maintenance payable by the respondent had to be fair.

[21] The Court *a quo* did not acquiesce to the appellant's proposals as it could not assess the reasonableness of the maintenance applied for and emphasised that such determination could only be made after the hearing of evidence. Similarly, a determination on the arrear maintenance claim required an inquiry by the Maintenance Court. The Court *a quo*'s view was that the present, past and future maintenance issues raised by the appellant should proceed in the Maintenance Court and that bringing such claims in the High Court would have the effect of lengthening proceedings rather than curtailing it.

[22] In respect of the contempt application, the Court *a quo* also found that as the respondent disputed certain amounts related to the children's maintenance needs, it therefore followed that he was not in contempt of the maintenance order. In its order, the application was dismissed with costs.

Grounds of appeal

[23] The first ground of appeal is that the Court *a quo* failed to interpret the Court order⁵ and ought to have found that the order provided that only the respondent was responsible for the dependent children's maintenance. The Court ought to have found that the respondent failed to contribute to his daughter's maintenance at all and it erred in placing any relevance on the appellant's ability to pay maintenance.

[24] Furthermore, the Court *a quo* confused the test for the issue of a writ of execution with contempt proceedings, and it erred in not enforcing the High Court order which dealt with the maintenance needs of dependent children. A further ground of appeal is that by means of an intelligent assessment, the Court *a quo* could have determined the children's maintenance needs. In dismissing the application, the Court *a quo* failed to consider section 28(2) of the Constitution of South Africa.

[25] The appellant's further ground of appeal is that the *lis alibi pendens* defence was not available to the respondent and because there were systemic failures in the Maintenance Court, it required of the Court *a quo* to be pro-active in respect of the dependent children.

The parties' submissions on appeal

⁵ A reference to the maintenance order incorporated in the final decree of divorce

[26] Pursuant to additional research done on the issue of *locus standi* of a parent to apply for relief post-divorce, this Court invited the parties' legal representatives to provide supplementary written submissions on the *locus standi* issue. The parties' attention was drawn to some recent authorities not considered in their initial submissions and the Court was favoured with supplementary written submissions by the parties' counsel which are considered below.

[27] The appellant relies on **Bursey v Bursey and Another**⁶ and **Z v Z**⁷ for the submission that she had the necessary *locus standi* to institute the application and seek enforcement of the maintenance order granted in the divorce. Counsel for the appellant emphasised that **Z v Z**⁸ warned against the institution of separate claims for maintenance by adult dependent children against a parent as it would lead to a piecemeal adjudication of issues arising from the same divorce. It was submitted on the appellant's behalf that it would be irrational to hold that a parent could claim maintenance on behalf of their dependent major child but not be able (as a divorced parent) to have the necessary *locus standi* to enforce such order in the form of a contempt application and claim for arrear maintenance.

[28] The appellant's further submissions are that the Gauteng decisions, **AJN v WLN**⁹ and **OV v CMV**¹⁰ were wrongly decided. In respect of the two decisions from this Division, it is submitted that **AF v MF**¹¹ and **DWT v MT and Another**¹² were correctly decided, with the latter judgment following **Z v Z**. The further submission was that the debate as to whether a parent of an adult dependent child has *locus standi* to enforce a maintenance order granted in a divorce action does not come into the picture. As seen below, in the discussion regarding these judgments and the issues in the appeal including *locus standi*, I respectfully disagree with the appellant's counsel's view that a parent's *locus standi* to enforce a maintenance order, in the circumstances prevailing in this matter, do not come into the picture.

⁶ 1999 (3) SA 33 (SCA). Bursey is also cited as B v B and Another (1999) All SA 289 (A)

⁷ 2022 (5) SA 451 (SCA)

⁸ Para [17], judgment

⁹ [2023] ZAGPPHC 341

¹⁰ [2024] ZAGPPHC 1150

¹¹ 2019 (6) SA 422 (WCC)

¹² [2022] ZAWCHC 203, an appeal judgment by two Judges

[29] Part of the motivation behind the appellant's case is that a claim for arrear maintenance and contempt proceedings are matters arising from or in connection with the enforcement of maintenance orders and related to a divorce. It is submitted that the appellant's application intended to enforce the maintenance order granted by the High Court in the divorce action, and the objective (insofar as the contempt application) was to seek the respondent's compliance with such order.

[30] The respondent's counsel also recognised the significance of section 6(3) of the Divorce Act and correctly so, in my view. The respondent, however, submitted that the issue of *locus standi* is not only procedural but also a matter of substance as it concerns "*the sufficiency and directness of a person's interest*"¹³. While the respondent agrees with the principles set out in **Burse** and **Z v Z**, his counsel argued that in order to determine whether a parent has the necessary *locus standi* to enforce a maintenance order as agreed between the parties, the terms of the settlement agreement will be the determining factor. In respect of this submission, the respondent relies, *inter alia*, on **AJN v WLN**.¹⁴

[31] Furthermore, the respondent's view is that the maintenance order was made in favour of the parties' adult dependent children and that it made no provision for payment to the appellant. In that respect, counsel for the respondent argued that only Y[...] and R[...] could therefore enforce the maintenance order incorporated in the divorce order. Relying on **Coopers and Lybrand v Bryant**¹⁵, the respondent's counsel argued that as the order did not state that the mother would be the children's primary caregiver, it follows therefore that there was never the intention that the appellant would have the legal standing to act as such.

[32] In view of the fact that the appellant was not the primary caregiver, that the parties did not agree thereto, and that the order does not state that maintenance was payable to the appellant directly, the respondent submitted that all indications were that at the time of concluding the settlement agreement, the appellant had no

¹³ Respondent's supplementary heads of argument, par 25

¹⁴ Para [21]

¹⁵ 1995 (3) SA 761 (A)

intention of enforcing maintenance obligations of the respondent on behalf of R[...] and Y[...].

[33] The further thrust of the submissions on behalf of the respondent was that only Y[...] could enforce the order in respect of the maintenance obligation which each of the parents owe to her as a dependent. Furthermore, the respondent agrees that contempt proceedings are applicable to enforce maintenance orders in the High Court but in respect of such enforcement, and aside from the *locus standi* issue, the amount(s) which the respondent must pay on the appellant's version, would still have to be determined.

The *locus standi* of the appellant

[34] *Locus standi* was raised as a point *in limine* in the answering affidavit, addressed as a point of opposition in the appeal and argued by the respondent's counsel in the appeal. The appellant's counsel's submission was to the effect that as there was no cross-appeal, *locus standi* of the appellant was a non-issue. In any event, so it was argued on the appellant's behalf, **Z v Z**¹⁶ was authority for the view that the appellant was vested with the necessary *locus standi* to institute the application in the High Court for maintenance and arrear maintenance for the adult dependent children and contempt of Court in respect of the order granted in the divorce.

[35] Having considered the record of proceedings, it is apparent that the lack of *locus standi* defence was never abandoned by the respondent. In fact, it was raised pertinently as a point *in limine* and thus required adjudication before proceeding to consider the merits of the matter. The only reference thereto in the judgment was that the appellant made the averment that she had the necessary *locus standi* to launch the application on Y[...]’s behalf as she (the appellant) bore the expenses.

[36] However, after careful consideration, it is apparent that the Court *a quo* proceeded with the application and in her judgment, omitted to rule and decide on

¹⁶ 2022(5) SA 451 (SCA)

the point *in limine*, the lack of *locus standi* of the appellant. In my view, this was an incorrect approach as the point raised by the respondent required specific consideration and adjudication first before considering other issues in dispute. In view of the arguments on appeal, I thus hold the view that the question of the appellant's *locus standi* remained a live issue in the Court *a quo* and on appeal.

Relevant aspects related to the divorce and the maintenance order

[37] Considering the common cause or undisputed facts which prevailed during the application, the following relevant aspects are highlighted:

- i. at the time of concluding the settlement agreement and the granting of the final divorce order, Y[...] and R[...] had already attained the age of majority and were studying at tertiary/educational institutions;
- ii. neither Y[...] nor R[...] were self-supporting when the divorce order was granted, and by all accounts, not self-supporting at the time the application was launched in the High Court;
- iii. clause 2.4.4 of the settlement agreement, which was incorporated into the parties' final decree of divorce, constituted a maintenance order in terms of section 6(3) of the Divorce Act 70 of 1979 (Divorce Act);
- iv. the maintenance order is silent on the duration of the payment of maintenance for the children, the manner of payment, the amount(s) per month per child and aside from referring to R[...]’s rental shortfall payable to the appellant, the order was also silent as to the recipient(s) of the maintenance¹⁷;
- v. the rental accommodation/shortfall in respect of R[...] was not an issue in the application; and

¹⁷ In other words, to whom the maintenance was payable

vi. the *lis alibi pendens* defence is not an issue in the appeal.

Legal principles

[38] Turning firstly to **Z v Z**, it is apparent from the judgment of the SCA that the basis for its finding that a divorcing parent has *locus standi* to seek an order for maintenance of a major, dependent child during or upon divorce, has its foundation in section 6 of the Divorce Act. The SCA stated that:

*“[10] The Divorce Act governs the law relating to divorce and provides for incidental matters. A ‘divorce action’ is defined in s 1 to mean ‘an action by which a decree of divorce or other relief in connection therewith is applied for’. A marriage between spouses may, in terms of s 3, be dissolved by a court by a decree of divorce only on the grounds of the irretrievable breakdown of the marriage relationship between the parties to the marriage as contemplated in s 4 or mental illness or the continuous unconsciousness of the defendant as contemplated in s 5. The *lis* relating to the claim for a decree of divorce, therefore, is one between the parties to the marriage. A decree of divorce between those parties, however, will not be granted until the court is satisfied that the provisions made with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances (s 6(1)(a)). A court granting a decree of divorce may, inter alia in regard to the maintenance of a dependent child of the marriage, make any order which it may deem fit (s 6(3)).*

[11] Unsurprisingly, ss 6(1)(a) and 6(3) do not differentiate between a minor child and a major dependent child of the marriage in regard to the payment of maintenance. For, as was observed by the Constitutional Court in Centre for Child Law v Minister of Justice and Constitutional Development and Others (National Institute for Crime Prevention and the Re-Integration of Offenders, as Amicus Curiae),¹⁸ albeit in a different context,

¹⁸ Centre for Child Law v Minister of Justice and Constitutional Development and Others (National Institute for Crime Prevention and the Re-Integration of Offenders, as Amicus Curiae) [2009] ZACC

‘ . . . there is no intrinsic magic in the age of 18, except that in many contexts it has been accepted as marking the transition from childhood to adulthood’.
And in *Smit*,¹⁹ it was said about a 21-year-old university student that he,
‘ . . . though well on the way towards being self-supporting, is, because of his youth and the resultant absence of the completion of his training, still legally a child within his father’s household and a member who shares his family’s mode and standard of living.’

[12] The court may, in terms of s 6(3), also in regard to the maintenance of an adult dependent child of the marriage, ‘make any order which it may deem fit’. The concomitant of that power of a court granting a decree of divorce between the parties to the marriage, is the legal standing of a spouse or both spouses to claim and counterclaim the payment of maintenance for and on behalf an adult dependent child of the marriage. In so doing, the parent will plead the necessary *facta probanda*, such as their relative means and circumstances, the needs of the adult dependent child, the most fitting method of payment - i.e. directly to a parent or to the adult dependent child or in parts to a parent, to the adult dependent child, to an educational institution, lump sum or periodic payments, and so on – in order to persuade the court what is most satisfactory or best to be effected in the circumstances regarding the payment of maintenance.²⁰”

(my emphasis)

[39] Thus, upon an “ordinary grammatical meaning, properly contextualised” sections 6(1)(a) and (3) of the Divorce Act are support for an interpretation that a parent may claim maintenance for their adult dependent child upon divorce.²¹ The SCA in *Z v Z* also held that such an order binds the parties to the marriage (the parents) and that the adult dependent child would be entitled to institute maintenance proceedings against a parent in terms of the Maintenance Act. It must

18; 2009 (2) SACR 477 (CC) para 39. Also see *Centre for Child Law and Others v Media 24 Ltd and Others* [2019] ZACC 46; 2020 (4) SA 319 (CC) para 102.

¹⁹ *Smit* fn 3 at 1021H-I.

²⁰ *Z v Z*, para [10]-[12]; Footnotes retained in this judgment

²¹ *Z v Z* supra, para [15]

be borne in mind that while **Z v Z** finally laid to rest the issue of the standing of a parent to claim maintenance on behalf of an adult dependent child against the other parent *upon divorce*, there is no requirement in the Divorce Act that the dependent child should be joined as a party to the divorce action of his/her parents.²²

[40] The question which arose in the application and with respect, not answered by the Court *a quo*, was whether the parent (in this instance, the appellant) had the standing to apply for maintenance for Y[...] and R[...] and enforce the section 6 order, after divorce²³? While the appellant's counsel wished to downplay a distinction between an application such as the one brought in the Notice of Motion post-divorce and maintenance in terms of a section 6(3) order in/upon the divorce, my view is that there is indeed a distinction which cannot simply be glossed over. Furthermore, I emphasise that the appellant's application sought three distinct orders for relief after divorce: enforcement in the form of contempt of Court; additional maintenance for the major dependent children or a variation of the section 6 order, and arrear maintenance in favour of the appellant.

[41] In order to address these questions and issues which are relevant to the outcome of the appeal, I turn to consider various authorities referred to above. Firstly, in **AF v MF**²⁴, a reportable judgment of this Division, decided before **Z v Z**, Davis AJ held that inasmuch as section 6 of the Divorce Act enjoins a divorce Court not to grant an order until the welfare (and maintenance) of an adult dependent child is catered for, so too should a Court in a Rule 43 application be satisfied that such child is properly provided for. While the matter before Davis AJ was indeed a Rule 43 application, the Court emphasised the vulnerable position of young adult dependents in the midst of their divorcing parents' conflict and recognised the difficult position such child faces were he/she to institute a maintenance application against their parent²⁵.

²² Z v Z supra, par [15]

²³ My emphasis

²⁴ Supra, para [74]

²⁵ AF v MF supra, para [74], [76]. A further important point in **AF v MF**, is that in an effort to protect the dignity and well-being of the adult dependent child, his or her maintenance should be regulated in order to avoid parent-child conflict and foster a sense of security and stability for that child.

[42] In another judgment from this Division, **DWT v MT and Another**²⁶, an appeal from a Maintenance Court, the Court was required to consider an appeal by an ex-husband against whom the Maintenance Court had granted a warrant of execution as enforcement of a maintenance order obtained by his ex-wife. The appellant's issue in the appeal was that the order granted pursuant to a settlement reached in terms of section 17 of the Maintenance Act related to adult dependent children²⁷.

[43] In its analysis, the Court of appeal in **DWT** found that the distinction which the appellant sought to draw between his matter and **Burse**²⁸, which dealt with the duty of divorced parents to maintain a dependent child, and hence the distinction between the provisions of the Divorce Act and Maintenance Act, was without merit.²⁹ With reference to section 26(2)(a) and (b) of the Maintenance Act, the Court in **DWT** found that the respondent's (the mother) *locus standi* was established as the consent order granted in terms of section 17 of the Maintenance Act was granted in her favour on behalf of the adult dependent children. It thus seemed that **DWT** extended the principles expounded in **Z v Z** to orders in terms of the Maintenance Act.

[44] In **AJN v WLN**, a recent unreported judgment of the Pretoria High Court, a divorced mother obtained a writ of execution against her ex-husband for non-payment of maintenance in terms of a divorce order³⁰. At the time the divorce order was granted, the parties' children were minors, yet they had each already reached the age of majority when she applied for the writ of execution.

[45] In the application to set aside the writ, the applicant (the father) in **AJN** submitted that the underlying *causa* in respect of the divorce proceedings no longer existed in that the children were already majors and the order incorporating the settlement agreement provided for his payment of maintenance while the children were minors. In the Court's assessment of the issues, Collis J held that in the absence of an amendment of the divorce order (to refer to maintenance payable to adult/dependent children), it was evident that the divorce order provided for

²⁶ Supra

²⁷ At the time of the initial order, the children were minors and the order referred to minor children – see judgment supra, para [5] – [7]

²⁸ Supra

²⁹ Para [15] and [16]

³⁰ Supra, para [4]-[5]

maintenance to be paid to minor children and not children who had reached the age of majority³¹.

[46] The Court in **AJN** held further that it was apparent that the writ was issued in respect of minor, not major children, and where *“it was issued in circumstances where the children are now majors, the said writ was incorrectly issued as the underlying causa had fallen away and should therefore be set aside.”*³² The finding in **AJN** was further that the execution creditor (the mother/respondent) had no *locus standi* to apply for the writ. I understand the rationale which underscored this finding to be that the children in question had reached the age of majority and in so doing, they had passed from the natural guardianship of their parents, hence the dependent children’s entitlement to receive and enforce rights to claim maintenance vested in them and not in the parent in whose favour the initial order was granted.³³ Collis J also confirmed the principle in **Smit v Smit**³⁴ that major children have standing in their own right to apply for maintenance against their parents

[47] In yet a further recent Pretoria High Court judgment, **OV v CMV**³⁵, a consent paper was concluded at the time of the parties’ divorce in terms of which maintenance was payable to the parties’ minor children. One of the issues before the Court was the mother’s *locus standi* to execute a writ of execution for arrear maintenance relating to the parties’ children, two of whom had already reached the age of majority after their parents’ divorce. The High Court had granted the divorce order, and the writ was also applied for in the High Court, with the mother seeking post-divorce enforcement of the maintenance order on behalf of the adult children.

[48] Aside from issues relating to the warrant, which are irrelevant to this appeal, the main concern before Scheepers AJ was *locus standi* and post-divorce enforcement of the maintenance order. The Court drew a distinction between those principles set out in **Z v Z** and those in its predecessor, **AJN v WLN**.

³¹ Supra, para [21] – [23]

³² Para [24]

³³ Para [27] supra

³⁴ 1980 (3) SA 1010 (O) at 1018

³⁵ Supra

[49] After a careful analysis of the distinctions between the aforementioned principles in the two judgments, Scheepers AJ found that the mother had no *locus standi* to claim payment on behalf of the adult children as they were personally entitled to receive and enforce maintenance rights because upon attaining majority, the children had passed from the natural guardianship of their parents (the parties)³⁶. Relying on **Smit v Smit**³⁷ and **Richter v Richter**³⁸, the Court in **OV** agreed with the *ratio* in **AJN** that the terms of a settlement agreement must be considered in the determination of whether a parent has *locus standi* (or not) to enforce the agreement contained in the order.³⁹ Scheepers AJ held that the non-joinder of the adult children to the amendment/variation application of the parent, in the absence of an unequivocal consent or waiver by them, non-suited the mother and hence the application for an amendment of the existing order could not be granted.

[50] As seen above, there is a distinction drawn in some judgments between a situation where a parent seeks maintenance for an adult dependent child at the time of divorce, and the *locus standi* of the parent seeking post-divorce enforcement and maintenance for that child. In my view, the terms of the parties' settlement agreement in respect of maintenance for a dependent adult child must be considered when dealing with the issue of a parent's *locus standi*, and the distinction is not artificial.

The parents' common law duty of support

[51] The appellant maintained that clause 2.4.4 is clear: the responsibility to maintain Y[...] and R[...] lay solely with the respondent. However, the respondent persisted in his opposition to the application that the clause did not state that he was solely responsible for the children's maintenance requirements but that in accordance with legal principles, both parents were responsible for their maintenance needs.

³⁶ Para [27]

³⁷ Supra at 1018

³⁸ 1947(3) SA 86 (W)

³⁹ Para [32]

[52] Turning to the nature of the duty of support of both parents toward their children, I refer to **Bursey**⁴⁰, which was an appeal involving divorced parents who similarly had a settlement agreement incorporated in their divorce order in terms of which the father (appellant) was ordered to pay maintenance for two minor children until they were self-supporting. The terms of the order were unambiguous and the issue on appeal was whether maintenance ceased when the minor children attained the age of majority or became self-supporting.

[53] In its consideration of the issue, the SCA in **Bursey** held that:

“According to our common law both divorced parents have a duty to maintain a child of the dissolved marriage. The incidence of this duty in respect of each parent depends upon their relative means and circumstances and the needs of the child from time to time. The duty does not terminate when the child reaches a particular age but continues after majority. (In re Estate Visser 1948 (3) SA 1129 (C) at 1133-4; Kemp v Kemp 1958 (3) SA 736 (D & CLD) at 737 in fine; Lamb v Sack 1974(2) SA 670 (T); Hoffmann v Van Herdan NO and Another 1982 (2) SA 274 (T) at 275A.) That the duty to maintain extends beyond majority is recognized by sec 6 of the Divorce Act 70 of 1979. Sec 6 (1) (a) provides that a decree of divorce shall not be granted until the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances. Sec 6 (3) provides that a court granting a decree of divorce may make any order which it deems fit in regard to the maintenance of a dependent child of the marriage. This provision must be contrasted with the provision in the sub-section relating to the custody or guardianship of, or access to a minor child. A maintenance order does not replace or alter a divorced parent’s common law duty to maintain a child. In Kemp v Kemp, supra, Jansen J stated at 738 A-B that as a matter of expediency the court, as the upper guardian of the child, usually regulates the incidence of this duty as between the parents when it grants the divorce and

⁴⁰ Supra

that its order for maintenance is ancillary to the common law duty to support.⁴¹

[54] It is thus evident from the findings in **Burse**y that the parents' duty of support is dependent on their respective means and a Court order, including one which incorporated the terms of a settlement agreement and was granted in terms of section 6 of the Divorce Act, seeks to regulate such duty between the parents from date of divorce and beyond⁴². More importantly, **Burse**y signals a reminder that the common law duty of support of parents toward their minor or major dependent child is ancillary to an order for the child's maintenance. This principle is echoed in section 15(1) of the Maintenance Act which provides that an order for maintenance of a child is directed at enforcing the common law duty of the parents to support the child and that such duty exists at the time of issuing of the order "*and is expected to continue*"⁴³.

[55] In respect of section 6(3) of the Divorce Act, the legislature granted to a Court hearing a divorce, the authority to make any order which it may deem fit in respect of the maintenance of a dependent child of the marriage. Thus, in this matter, the maintenance order granted at the time of divorce is ancillary to the parties' common law duty of support of the dependent children and seeks to regulate the incidence of their duty; thus, its terms must be given effect to.⁴⁴

Interpretation of the maintenance order (clause 2.4.4)

[56] No exercise of interpretation of a contract would be complete without a reference to the approach to interpretation of documents, including contracts and legislation, as set out in **Natal Joint Municipal Pension Fund v Endumeni Municipality**⁴⁵, where Wallis JA stated as follows:

⁴¹ Supra, p 292

⁴² Bursey supra, p 290

⁴³ Section 15(1) Maintenance Act

⁴⁴ Bursey, p292; see also Kemp v Kemp 1958(3) SA 736 (D & CLD at 738

⁴⁵ 2012 (4) SA 593 (SCA)

[18] Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

[19] All this is consistent with the 'emerging trend in statutory construction'. It clearly adopts as the proper approach to the interpretation of documents the second of the two possible approaches mentioned by Schreiner JA in Jaga v Dönges NO and another, namely that from the outset one considers the context and the language together, with neither predominating over the other. This is the approach that courts in South Africa should now follow, without the need to cite authorities from an earlier era that are not necessarily consistent and frequently reflect an approach to interpretation that is no longer appropriate."

(footnotes omitted)

[57] Applying the *Endumeni* standard of interpretation, the language of the maintenance order must be considered. The wording refers to an agreement that the plaintiff (the respondent) will be responsible for the children's maintenance. Objectively considered, no reference is made to the defendant (appellant) as also being responsible for the children's maintenance. While the respondent's view is that the order does not say that he is *solely* responsible for maintaining R[...] and Y [...], the order reads that the respondent would be responsible for the children's maintenance, which included R[...]’s rental contribution.

[58] Thus, while accepting that the common law duty of support rests on both parents and continues after divorce, it must be emphasised that section 6(3) of the Divorce Act grants the Court in the divorce proceedings the authority to grant a maintenance order for the dependent children as that Court sees fit. Having regard to the affidavits before the Court *a quo*, there certainly was no evidence in the application that there were issues with the maintenance order at the time of the granting of divorce. Subsequent to the divorce and even in light of the disputes between the respondent and children regarding certain expenses, the latter did not apply to vary the terms of the order in terms of section 8 of the Divorce Act nor did he approach the Maintenance Court for substitution of the order. These factors lend credence to my view that the parties had agreed that he would be responsible for the children's maintenance.

[59] To the extent that there was a debate in the appeal regarding the duration of the order, and mindful that the maintenance order is silent on this aspect, I find no reason to deviate from the view that maintenance for Y[...] and R[...] is/was payable until each became self-supporting.

[60] Turning to the context in which the clause occurs⁴⁶, from the facts it is evident that the maintenance order was clearly granted pursuant to the parties' agreement during/at divorce relating to the two dependent children. The prevailing circumstances at the time of divorce were that R[...] was still living in his mother's accommodation⁴⁷ but Y[...] was not⁴⁸. As expressed by the appellant in her founding

⁴⁶ Endumeni, *supra* par [18]

⁴⁷ He moved out at the end of December 2019

affidavit, the purpose of the agreement was to provide for the maintenance of the dependent children at the time of divorce and beyond, and until they became self-supporting. The motivation behind such agreement as in clause 2.4.4. was that section 6(3) of the Divorce Act sanctioning an order at divorce for maintenance payable to the parties' dependent children.

[61] Given that the parties were represented during the divorce, it may be accepted that they were aware of the terms of the agreement, were satisfied with its import and consented to the terms. Ordinarily, when the order relates to the maintenance of a minor child, the maintenance pursuant to a divorce order would be paid to the primary carer or primary residence parent on behalf of that minor child. This would accord with the role of a parent as the child's guardian.

[62] In this matter, it is common cause that the children were already majors at the time of their parents' divorce, and the question may be asked whether the appellant represented R[...] and Y[...] at the time of the divorce and to whom was the maintenance payable? In **Richter v Richter**⁴⁹, Price J addressed the aspect as follows:

"The money is ordered to be paid to the mother of the children; therefore, it follows that it is to be paid only until the children pass out of her natural guardianship at the latest. It is true that there is reciprocal obligation in certain circumstances for sons and daughters to support their parents and vice versa, but this is under quite a different rule of law and has nothing to do with the obligation of parents to support and educate their minor children, and if such a claim were preferred against a father by a destitute major daughter it would have to be preferred by the daughter herself and not by the mother as her natural guardian, for she would no longer be the natural guardian of such daughter."

(my emphasis)

⁴⁸ Yolandi commenced living with the appellant from December 2019 to the beginning of February 2022

⁴⁹ 1947(3) SA 86 (W) at 91

[63] The above finding in **Richter** is echoed in **AJN v WLN**⁵⁰ and in my view, cannot be faulted. Whilst I respectfully disagree with the Court in **Richter** that maintenance ceases on the child reaching the age of majority, I indeed agree with that Court's finding that on the attainment of the age of majority, children pass from the natural guardianship of their parents. Thus, once they attain the age(s) of majority, according to **Smit v Smit**, the major children's entitlement to receive and enforce rights to a maintenance claim against a parent vests in them personally⁵¹.

[64] Thus, once the dependent child reaches the age of majority, he/she therefore has the necessary *locus standi* in their own name and right to claim maintenance against a parent. Thus, in the circumstances of this matter, Y[...] and R[...] could claim maintenance, arrear maintenance and seek orders for contempt in respect of enforcing the order against the respondent. The facts of the matter indicate that these are indeed the steps which Y[...] took but eventually did not proceed with in the Hopefield Maintenance Court.

[65] At the time of the divorce, even accepting that the divorce order was granted some time prior to the SCA's judgment in **Z v Z**, the appellant was a party to those proceedings and a spouse in the marriage. In light of the above discussion, I shall accept that the parties were aware of their common law duty of support which continued post-divorce. Here one then sees the ancillary nature of the maintenance order and how it sought to regulate the incidence of the parents' duty to support their dependent children.

[66] In **PL v YL**⁵², the Full Court of the Eastern Cape High Court, Grahamstown, had an opportunity to consider the practice in divorce actions of incorporating a settlement agreement into a final divorce order. In a very detailed judgment, the Court recognized that a settlement which disposes of the issues between the parties is in most instances, a compromise (*transactio*)⁵³ which is an agreement between the parties to an obligation or lawsuit/action which settles the issues in dispute and in

⁵⁰ Para 27

⁵¹ Smit v Smit supra 1018 A-C

⁵² 2013 (6) SA 28 (ECG) – the judgment appears on Saflii as Ex parte Le Grange and Another; Le grange v Le Grange [2013] ZAECGHC 75

⁵³ Judgment, par [9]

terms of which each party concedes something. The law of contract applies to a compromise and any enforcement and withdrawal from a contract may be based on the same grounds as in contract⁵⁴.

[67] **PL v YL** also distinguished between issues which a divorce Court are required to determine, such as maintenance for minor and dependent children in terms of section 6 and those issues referred to in section 7, namely personal maintenance and the proprietary consequences of the marriage which the divorcing parties are entitled to agree to in terms of a written agreement concluded between⁵⁵.

[68] The Court granting the divorce plays a role in respect of the first category and is legislatively mandated to ensure that (as in this matter) the maintenance of the major dependent children have been taken care of and thereupon, it grants an order it deems fit in terms of section 6. In such circumstance, notwithstanding the agreement or compromise regarding maintenance for the children, the intervention of the Court is not dispensed with.

[69] It is a common, daily feature in divorces that parties conclude settlement agreements which include an agreement regarding maintenance as allowed by section 6. Following on from the discussion and findings in **PL v YL**, I am satisfied that the Court granting the divorce and incorporating the terms of the settlement agreement in the final divorce order, was satisfied that the agreement in clause 2.4.4 was satisfactory or the best for the dependent children in the circumstances, and in incorporating it, granted an order it deemed fit in terms of section 6(3) of the Divorce Act.

[70] The facts in this matter do not indicate that an issue arose either between the parties, their legal representatives or the Court, regarding the wording of clause 2.4.4 at the time of divorce. Also, the context in which the agreement was concluded and the terms of clause 2.4.4 are further informed by these additional facts: the respondent did not directly pay money to the appellant *in lieu* of maintenance and ancillary expenses of the children; the respondent made direct payments to R[...] and

⁵⁴ Supra, par [9]

⁵⁵ PL v YL supra, para [11]-[13]

Y[...] and/or to institutions or service providers on their behalf; thirdly, and by way of by example, between 2018 to 2021, Y[...] received approximately R857 046 from the respondent, which comprised payment of, *inter alia*, a motor vehicle, a film production course, rental deposit, rent, pocket money, Vega course, laptop, cell phone, car insurance and more, and payments were made by the respondent to R[...] as well. These facts lead to the conclusion that all or most of the expenses of the children were paid and/or required to be paid by the respondent.

[71] On an ordinary reading of clause 2.4.4, the payment of the appellant's shortfall of rental for R[...] was due to be paid directly to the appellant for as long as R[...] occupied such property as a student. As indicated earlier in the judgment, there was no dispute between the parties regarding a shortfall in respect of rental at the time of the hearing before the Court *a quo* and it is not an issue in the appeal.

[72] While it is accepted that the appellant was a party in the divorce, applying ***Endumeni's*** interpretive tools, and considered considering the analysis of the findings in ***PL v YL***, I am not convinced by the appellant's submission that the section 6(3) order was granted in her name. To clarify, in a divorce, the *lis* is between the parties to the marriage⁵⁶. In respect of the divorce action, the legislative authority in section 6(3) of the Divorce Act and the common law granted the parents *locus standi* to claim and counterclaim maintenance for the major dependent children in such proceedings. The fact that at the time of the divorce they had already moved out of their parents' guardianship must therefore be seen against the provisions of section 6, the pertinent point being that maintenance for major dependent children may be agreed upon and is allowed in their parents' divorce, such as in this case.

[73] However, the situation is different post-divorce, as the children's rights to claim and enforce the order vests directly in them, and these are the circumstances which prevailed at the time of the application in the High Court. In my view, and as correctly determined in ***AJN***, the *causa* had fallen away and R[...] and Y[...]’s entitlement to enforce and receive rights to claim maintenance vested in them and not in a parent.

⁵⁶ Z v Z, par [10]

[74] In terms of the maintenance order, aside from the rental shortfall payment to the appellant, there is no reference that the maintenance and ancillary payments were to be paid to the appellant. As seen, payments were made to the children and/or institutions. Certainly, all these factors inform my view that the maintenance was not due to be paid to the appellant and was not granted to her on behalf of the children.

[75] In this regard, the circumstances in this matter differ from that which prevailed in **DWT v MT** in that the order in this matter is not one which was made in the name of the mother in terms of section 17 of the Maintenance Act and was not granted in her favour. Certainly, the order also did not indicate that the appellant was the children's primary caregiver and in fact could not do so as they were already majors at the time of the divorce and no longer under their parents' guardianship. Added to this, the reference to section 26(2) of the Maintenance Act in **DWT v MT**, which played a role in that Court's finding regarding *locus standi* of the mother, does not find application in this matter as the sub-section deals with the enforcement of a maintenance order by the person in whose favour such order was made. In view of all these reasons, facts and circumstances, I find that **DWT v MT** is distinguishable from this matter and its findings thus do not bind this Court in the circumstances.

[76] Furthermore, I agree with the respondent's counsel's submission that the terms of the settlement agreement and so too, the order, are the determining factors, and in this matter, the order is silent on whom payment must be made to. These aspects lead me to conclude that the appellant never had the intention at the time of concluding the settlement agreement to enforce maintenance obligations upon the respondent.

[77] In view of the above assessment, legal principles and findings, it therefore follows that any claim(s) for maintenance against the respondent, and for enforcement of the order, lay solely with Y[...] and R[...] as major dependent children in favour of whom a section 6(3) order was previously granted. The argument by the appellant that *locus standi* is a non-issue or irrelevant misses the importance of the distinction between maintenance sought in terms of section 6(3) in a divorce between parents of major dependent children, and a parent's post-divorce claim on

behalf of such child for enforcement, arrear maintenance and additional maintenance. As seen above, the distinction is thus not artificial.

[78] While generally contempt and arrear maintenance are matters arising from a maintenance order, the facts and circumstance of each matter must be considered, along with the terms of a maintenance order, and the status of the dependent children. A blanket approach which ignores the wording of the maintenance agreement and/or order, does not assist the appellant. In view of all these factors, I thus conclude that the respondent's submissions are correct and that the appellant lacked *locus standi* to approach the High Court in such circumstances and seek the relief prayed for in the Notice of Motion. This brings me to the relief in the Notice of Motion.

The relief in the Notice of Motion

[79] In respect of prayers 3 to 6 of the Notice of Motion, it is clear that there was never any issue taken with the divorce Court's exercise of its authority in granting an order which it deemed fit, as already stated. Furthermore, no case was made out in the Court *a quo* that prayers 3 to 6 amounted to clarification of the maintenance order granted in the divorce. Thus, in view of the findings above regarding the wording and interpretation of the order that the respondent is required to pay all the maintenance needs of R[...] and Y[...], it is unclear why prayers 3 to 6 of the Notice of Motion were sought in the first place.

[80] In my view, prayers 3 to 6 thus amounted to a duplication of what was already contained in the maintenance order. Furthermore, it is trite that maintenance does not only constitute a cash component to support a child, but includes, as referred to in sections 15(2) and (3) of the Maintenance Act, provision for food, clothing, accommodation, medical care, education, a proper living and upbringing. That being the case and absent a case made out in the Court *a quo* for clarification of the order (as argued by counsel for the respondent), prayers 3 to 6 were unnecessary in the circumstances.

[81] Paragraph 7 of the Notice of Motion sought specific amounts payable to each child per month, as an alternative to prayers 3 to 6. In my view, the submissions of the respondent are convincing in that the appellant had no *locus standi* to seek an order for payment of specific amounts to each of the children into her bank account. In view of the authorities referred to in this judgment, the appellant had no *locus standi* to seek such an order as the right to claim maintenance vested with Y[...] and R[...].

[82] Whether prayer 7 constituted a variation of the maintenance order which would have triggered section 8(1) of the Divorce Act is arguable and is not a consideration on appeal. For completeness sake, however, even if such relief amounted to a variation application, the appellant would have faced these potential hurdles: the claim for maintenance vested in the major dependent children and not in her; an application in terms of section 8(1) would have affected the rights of Y[...] and R[...] and thus they would have had to be joined to the application as interested and affected persons; and, a determination of their reasonable and necessary expenses would have been required in order for the Court *a quo* to have determined whether the amounts sought in paragraph 7, were in fact reasonable and fair.

[83] Insofar as prayer 8 for arrear maintenance is concerned, the issue for the appellant, in view of the above findings, is that it is highly questionable that she would be at liberty to claim arrear maintenance when the order was not granted in her name. No maintenance payments were made to her. The fact that she was a party to the divorce action and subsequent order does not entitle her to claim what she clearly refers to as “*arrear maintenance... in respect of the children*”.

[84] The appellant's motivation was that she made payments in respect of the children *in lieu* of maintenance which the respondent should have, but did not, pay. At best for the appellant, she may have a civil claim for the amounts expended for the children in the absence of the respondent's maintenance payments to them, but the claim referred to in paragraph 8 of the Notice of Motion is, in my view, not arrear maintenance payable to her arising out of the order nor does it constitute an enforcement of the order on behalf of Y[...] and R[...]. For such a claim to be successful, the order would have had to be in the appellant's name and/or the

maintenance payments would have had to be specifically payable to her, which was not the case⁵⁷.

[85] Lastly, my view is that the appellant also lacks *locus standi* to proceed with contempt of court proceedings against the respondent. It is trite that **Bannatyne v Bannatyne**⁵⁸ is authority that non-payment of maintenance can lead to contempt of court proceedings in the High Court. In this instance, the order is a High Court order hence an application to hold the respondent in contempt of Court to enforce the order would ordinarily not be problematic but for the *locus standi* issue.

[86] There is no need to deal with the trite requirements for contempt of Court in view of the findings in the appeal. I agree with the appellant's submissions that an order *ad factum praestandum*, which is an order to do something, is indeed capable of being the basis of contempt proceedings⁵⁹. While I respectfully disagree with the Court *a quo*'s rationale on certain aspects highlighted in this judgment, its finding in dismissing the contempt of Court application was, in my view, correct.

[87] Furthermore, the respondent disputed the reasonable needs of the children and for example, whether additional courses were required. His issue was not that he was required to pay until Y[...] and R[...] became self-supporting, but rather that he queried their needs, questioning whether their expenses as alleged by the appellant were reasonable, necessary and fair. In such circumstances in Motion Court proceedings, where final relief is sought, the **Plascon-Evans** rule would apply, and the respondent's version would thus be preferred unless, for example, it was inherently unacceptable.

[88] As found earlier in the judgment, the appellant had no *locus standi* to bring the application for contempt of court (prayers 1 and 2), a variation and/or clarification of the maintenance order (prayers 3 to 6, and 7) and an arrear maintenance claim (prayer 8) in the High Court. Accordingly, the point *in limine* should have been upheld.

⁵⁷ Except for the rental shortfall related to Ruan

⁵⁸ 2003(2) BCLR 111 (CC) 112

⁵⁹ Burchell v Burchell [2005] ZAECHC 35 par 4

[89] Having regard to the above, but for reasons other than those held by the Court *a quo*, the application was correctly dismissed by that Court. On the issue of a request for referral of a maintenance dispute to the Maintenance Court, I decline to do so. In other circumstances, it may have been a competent order or remedy to refer the maintenance issue to the Maintenance Court but in the circumstances of this matter and in view of the fact that we were informed on appeal that Y[...] had concluded her third course, there may be a number of variables, such as the very real possibility that R[...] and Y[...] may no longer be dependent and may well be self-supporting.

[90] In respect of section 28(2) of the Constitution, it has been held above that the rights to claim maintenance and enforce the order, lie with R[...] and Y [...], and vested in them on reaching the age of majority. While I am mindful that litigation between a parent and child has its very real problems as recognised in **AF v MF**, as seen in this matter, Y[...] had commenced exercising her rights by approaching the Maintenance Court but then withdrew her application thus the argument that their rights were infringed, is questionable if not unconvincing.

Costs and conclusion

[91] In conclusion, the appeal falls to be dismissed, and I am of the view that costs of two counsel on scale C are warranted in the circumstances. Lastly, I have considered the appellant's counsel's submissions on costs and indicate that in the order of the SCA, the costs orders of the Court *a quo* were already set aside.

Order

[92] In the result, I would grant the following order:

The appeal is dismissed with costs which shall include the costs of two counsel on scale C.

M PANGARKER
JUDGE OF THE HIGH COURT

I agree and it is so ordered,

D M THULARE
JUDGE OF THE HIGH COURT

I agree,

G ELLIOTT
ACTING JUDGE OF THE HIGH COURT

Appearances

For appellant: Adv G Rautenbach SC

Instructed by: Van Niekerk Groenewoud and Van Zyl Inc.

Tygervally

Ref: Mr Karl Laubscher

For respondent: Adv L Buikman SC

Instructed by: Mostert and Bosman

Bellville

Ref: Mr J Steyn

