



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 1979/2024

In the matter between:

R L

APPLICANT

and

D L

RESPONDENT

Neutral citation: *R L v D L* (1979/2024) [2025] ZAFSHC 357 (14 November 2025)

Coram: Daffue J

Heard: 14 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 15h00 on 14 November 2025.

Summary: Best interests of children – application by father on urgent basis for the appointment of a psychiatrist to assess two minor children, a social worker to do a forensic investigation and for the Office of the Family Advocate to conduct an investigation and report to the court – application opposed by the mother who was granted primary care of the children in terms of an order in terms of rule 43 – the children are resident with the mother in North West and the father is resident in Gauteng - divorce proceedings were instituted in the Free State Province when the parties were still resident in that province – application dismissed.

ORDER

1 The application is dismissed with costs on an attorney and client scale, inclusive of the costs of counsel on scale B.

JUDGMENT

Daffue J

Introduction

[1] The applicant, the father of two minor children, unnecessarily caused his estranged wife, the respondent and mother of the children, to draft opposing papers in haste and furthermore, inconvenienced the court by having to receive and peruse 357 pages of documents over a period of two days and to hear the alleged urgent application on Thursday evening, after having presided over the unopposed motion court roll from 09h30 till 16h00. Two other urgent applications had to be considered thereafter as well. More shall be said in this regard later herein.

The parties

[2] The applicant is Mr R L, an adult male person employed as a business manager at Nedbank in Edenvale. At the time of the application, the applicant was resident in Northriding, Johannesburg, Gauteng, but intended to relocate to Fourways, a different suburb in Johannesburg.

[3] The respondent is Mrs D L, an adult female schoolteacher residing in Schoemansville, Hartbeespoort, North West.

[4] I shall refer to the parties as Mr R L and Mrs D L respectively, to avoid confusion, bearing in mind their different citations in the divorce action and rule 43 application to which I shall refer in a while.

The relief claimed

[5] On 5 August 2025, Mr R L caused an application to be issued in terms whereof he intended to apply for urgent relief on 14 August 2025. Mrs D L was directed to serve a notice of intention to oppose on/or before 10h00 on 6 August 2025 and in the event of opposition, to file her answering affidavit on/or before 10h00 on 11 August 2025. She was allowed a mere 20 hours in which to oppose the application and three clear court days to file her answering affidavit. The replying affidavit was sent by email to her attorneys on Tuesday night, 12 August 2025 at 22h39. This document was presented to me the next day, *ie* the day before the hearing of the application under the circumstances as set out above.

[6] I do not intend to quote the relief sought in the notice of motion *verbatim*, but mention the following:

- a. an order was sought that the matter be heard on an urgent basis in terms of Uniform Rule 6(12);
- b. that Dr Kim Barnard, a paediatrician, be appointed to conduct a clinical assessment of the parties' two minor children, P G and D M, with directions to compile a report;
- c. that Tanya Kriel, a social worker, be appointed to conduct a forensic investigation into the best interests of the minor children;
- d. that Mrs D L be interdicted from making unilateral decisions pertaining to the minor children;
- e. that Mrs D L be directed to obtain the medical files relating to the children from Dr Roche-Kelly and present same to Dr Barnard, Tanya Kriel as well as the Office of the Family Advocate;
- f. that the Office of the Family Advocate in the Free State Province be directed to conduct an investigation into the minor children's best interests;
- g. that the primary care and residence of the minor children shall vest with Mr R L forthwith subject to his estranged wife's contact rights, alternatively, that the orders issued under rule 43 in case number 419/2024 be varied;
- h. that the award of primary residence and contact rights requested herein shall serve as an interim interdict pending the outcome of the investigations;
- i. that Mrs D L be ordered to pay the costs of the application on an attorney and client scale.

[7] It should be mentioned that the reference to the rule 43 case number is incorrect. The correct number is 1979/2024, the same number under which the present application has been brought. The divorce action was instituted under case number 419/2024.

The litigation history

[8] Mrs D L issued summons out of this court under case number 419/2024. That file was never presented to the Court before or during argument. It is not certain what transpired in the divorce action and whether pleadings have been closed. The waiting list for trial dates in the Free State is about six months and there should not have been any reason why the divorce matter should not have been declared trial-ready by now and trial dates allocated for the hearing.

[9] On 10 April 2024 Mrs D L brought an application in terms of rule 43 under application number 1979/2024. I repeat that Mr R L elected to make use of this application number which he should not have done, bearing in mind that he has brought a substantial new application and not merely an application in terms of rule 43(6) to seek a variation of the rule 43 orders.

[10] After considering the documents filed of record and hearing submissions by the legal practitioners in the opposed rule 43 application, Manye AJ awarded primary residence of the minor children to Mrs D L *pendente lite* subject to Mr R L's extensive contact rights.

[11] After a cursory perusal of the rule 43 application papers contained in the present court file, I noticed that Mr R L stated in paragraph 9.12 of his answering affidavit that the only aspect of substance which remained in dispute in the divorce action was a difference of a R1 000 between the amount claimed by Mrs D L in respect of child maintenance and what he tendered unconditionally. Consequently, he submitted that there existed no reason whatsoever why the divorce action could not proceed to trial to ventilate this dispute. He had no objection that the primary residence of the minor children be awarded to Mrs D L *pendente lite*. It is unacceptable that litigants seek to waste time and valuable judicial resources to fight in the High Court about a maintenance dispute of R1 000. This matter should have been mediated and/or settled long ago. As mentioned, since the institution of the divorce action, the parties relocated from the Free State Province to

Gauteng and North West respectively. Mrs D L is employed and resident in the North West Province where the parties' children are residing. The present application was instituted on 5 August 2025, *ie* 15 months after the rule 43 order referred to above. The divorce action could have been finalised by now.

Jurisdiction of the court

[12] At the onset, I raised my doubts with the parties about the jurisdiction of the Court to adjudicate the application. It is apposite that I deal with this issue. I repeat that Mr R L utilised the rule 43 application number to have his notice of motion issued. I mentioned that although he referred in the alternative to a variation of the orders granted in terms of rule 43, it is apparent that he brought a substantial new application. His counsel submitted, relying on *J v J*,¹ that the best interests of the children should not be mechanically sacrificed on the altar of jurisdictional formalism. Therefore, so he argued, this Court should not shy away from adjudicating the dispute.

[13] The jurisdiction of the High Court is regulated by s 21 of the Superior Courts Act 10 of 2013. A division of the High Court has jurisdiction over all persons residing or being within its jurisdiction and in relation to all causes arising and all offences triable within its area of jurisdiction and of all other matters of which it may according to law take cognisance.

[14] Section 29 of the Children's Act 38 of 2005 (the Children's Act) provides that:
'(1) An application in terms of section 22 (4) (b), 23, 24, 26 (1) (b) or 28 may be brought before the High Court, a divorce court in a divorce matter or a children's court, as the case may be, within whose area of jurisdiction the child concerned is ordinarily resident.' (Emphasis added.)

[15] Mr R L's case falls within the purview of s 28 of the Children's Act. He is the co-holder of parental responsibilities and rights in respect of the children and seeks relief concerning them. The best interests principle pertaining to children as contained in s 28 of the Constitution of South Africa has been incorporated in s 9 of the Children's Act. Such best interests are of paramount importance. This cannot be ignored, but the question to be considered is whether a dispute in this regard could and should be adjudicated where no law directly provides that this Court has jurisdiction or capacity to hear the matter. Its

¹ *J v J* 2008 (6) SA 30 (C) par 20.

jurisdiction is explicitly excluded by s 29 of the Children's Act, insofar as the minor children are not ordinarily resident within its jurisdiction.

[16] I agree with the conclusion arrived at in *YC v JRC*.² This Court may exercise its inherent jurisdiction when no law directly provides for a given situation, but when its jurisdiction is explicitly excluded by legislation, it cannot simply ignore the legislation and adjudicate a dispute. The learned judge in *YC v JRC* correctly accepted in paragraph 29 of the judgment the conclusion arrived at by Goosen J.³ I agree that s 29 places a territorial limitation on the jurisdiction of all courts, also the High Court.

[17] In *Ceronio v Snyman*⁴ (*Ceronio*) the Court held nearly half a century ago as follows: 'The reason is that, although a Court may decide that, as between the two parents, one of them is entitled to the custody of the minor child and make a declaratory order to that effect, the only proper *forum* for deciding whether or not the child should be entrusted to either of its parents and, if so, subject to what safeguards as to the child's welfare, is the Court which exercises the upper guardianship over the child, i.e. the Court in whose jurisdiction the child is. The upper guardian has to determine the child's position, irrespective of the rights of the parents *inter se*, in accordance with what appears to be in the best interests of the child.'

[18] The Court held in *Ceronio* that although the Court with jurisdiction to adjudicate the divorce proceedings could make an order relating to custody of the child, only the Court having jurisdiction in respect of the place where the child happened to be at the time had jurisdiction to order the handing over of that child to the parent to whom custody was awarded.

[19] Consequently, I am satisfied that this Court does not have jurisdiction to adjudicate the matter brought before it. However, on the basis that I may be wrong, I shall consider firstly, urgency, and thereafter the merits of the application.

Urgency

[20] Mr R L's concern, and according to him the most important reason why he brought his urgent application, is the prescription of Risperdal, a schedule 5 anti-psychotic

² *YC v JRC* [2024] ZAWCHC 273 paras 27-31.

³ *N.A.N v C.N; In re: J.N* (2425/2016) [2017] ZAECPHC 61 para 22.

⁴ *Ceronio v Snyman* 1961 (4) SA 294 (W) p 298.

drug/medication, to the one minor child, D M. No medical evidence was provided to the Court as to the side-effects of this medication, but I am satisfied that this is an aspect that should be properly considered. It is necessary that a second opinion be obtained. I shall deal with this in more detail hereunder. Be that as it may, there was just no reason why Mr R L should have burdened his estranged wife and this Court with an extremely urgent application.

[21] The issue about the taking of unilateral decisions by Mrs D L on behalf of the children can never be seen as a trigger to launch an urgent application, particularly bearing in mind the facts *in casu*. The same applies to Mr R L's belief that the primary residence of the children should be awarded to him forthwith and pending the investigations he has in mind.

[22] Mr R L's attorneys are practising in Gauteng. If litigants in that Province wait for months and even a year or longer to obtain a date for the hearing of an opposed application, so be it. They should have obtained proper advice from their Bloemfontein correspondent in respect of the situation in the Free State. If the usual time frames were adhered to as provided for in rule 6, this application could still have been set down for hearing during the third term of 2025. In such a case, the judge to whom the matter would be allocated, would have been presented with written heads of argument and a proper opportunity to consider the matter carefully. As often occurs in urgent applications, the presiding judge is not presented with full and proper argument with reference to all relevant authorities and is required to grant an order in haste and under severe pressure, often to be lambasted by the losing party and nowadays also on social media.

[23] Mr R L's attorneys served a copy of the application papers by e-mail on Mrs D L on 5 August 2025 at 14h47. As mentioned, she had 20 hours to oppose the application and three clear court days to file an answering affidavit. Notwithstanding that, she complied and presented a detailed answering affidavit. However, there can be no doubt at all that she and her lawyers were placed under undue stress to comply with Mr R L's instructions, which were not only unfair and unreasonable, but deserves to be penalised with an appropriate costs order. On his own version, he was aware of the alleged dangerous medication administered to the daughter on 18 July 2025, but waited 18 days to serve his application. The founding affidavit consists of 37 pages, excluding the 65

pages of annexures.

[24] Insofar as Mr R L pleaded in the alternative that the orders previously issued in terms of rule 43 be varied, he should have utilised the procedure prescribed in rule 43(6). Such procedure would have brought him before the court relatively quickly, but obviously, with a disadvantage to him, insofar as he would not be entitled to file a replying affidavit. He probably considered this, whereupon he embarked upon a new cause of action. Instead of obtaining a new application number, he made use of the previous rule 43 application number, to wit 1979/2024.

[25] I was tempted to strike this application from the court roll due to lack of urgency but eventually decided to hear the parties on the merits. Having done that, and bearing in mind my workload, I took my time to write a judgment insofar as I was satisfied that Mrs D L had made proper arrangements for the children to be consulted and examined by specialists. Therefore, I was satisfied that their best interests would not be jeopardised in the process.

Evaluation of the evidence and the parties' submissions

[26] I do not intend to provide a detailed factual matrix and will limit myself to the most important issues. As mentioned, the divorce proceedings were instituted in the Free State Province when both parties were still residing here. Now, Mrs D L and her children are staying in North West and Mr R L in Gauteng. Mrs D L is a teacher at the Hartbeespoort High School in Schoemansville, Hartbeespoort, in which town she also resides. Mr R L resides in Johannesburg, presently employed as a business manager at Nedbank in Edenville. The parties' son is seven years old and the daughter will turn five in a month's time.

[27] Mr R L intended to launch an urgent application in the Magistrate's Court of Madibeng, held in Brits, but was advised that the rule 43 proceedings had to be instituted out of the High Court which made the original rule 43 order. As a result, he was 'forced' to bring his application in this court 'for the safety and well-being of my children and due to material uncertainty surrounding their living arrangements.' According to him, he was 'simply been cut off and denied by the respondent from exercising [his] parental responsibilities and rights.'

[28] Notwithstanding Mr R L's version as summarised in the previous paragraph, it is common cause that the two children resided with him during the June/July school holiday for a period of 16 days. This is when he discovered that Mrs D L had been administering Risperdal, a prescribed medication, to the daughter which he regards as an anti-psychotic drug. On his version, Mrs D L deliberately misled him about the medication. He tried to contact Dr Roche-Kelly, the medical practitioner who prescribed the medication, but she refused to provide him with any medical information pertaining to the children.

[29] Mr R L refers to the toxic relationship when the parties were still staying together and that he has been accused of abusive and violent behaviour towards Mrs D L. It is irrelevant to go into any detail in this regard. He is also dissatisfied that the children were enrolled in a primary school and a day-care centre respectively, without consultation with him. He also complains that Mrs D L would not report to him about the children's whereabouts every weekend when they are with her and that she refused to allow him contact with the minor children on Father's Day, 2024.

[30] Mr R L took it upon himself to make an appointment with Dr Kim Barnard to assess the children, she being the only paediatrician with whom he could arrange a consultation within a short period of time. This was scheduled for Saturday, 16 September 2024 according to the WhatsApp messages attached to his affidavit. In his founding affidavit, he refers to an appointment scheduled for 16 August 2025, which is contradicted by the WhatsApp messages. In my view, he intentionally tried to show why the application should be heard urgently.

[31] The children have met Mr R L's new partner. They have been staying with them when he exercised his contact rights in terms of the rule 43 order. According to him, a close bond has already been formed between his new partner and the children. It is therefore evident that Mrs D L is not so obstructive as Mr R L portrays her. I accept that Mr R L is concerned about the health and well-being of his children and that he cannot stand idly by and allow Mrs D L to act what he believes to be contrary to the children's best interests. This is unfortunately a situation where the parents fight like cat and dog and as we all know, the parties that are suffering and will be suffering the most, are the children. Their emotional well-being is sacrificed in the process.

[32] Mrs D L confirms that she as the primary caregiver of the children plays an active role in their daily lives. She takes them to school and collects them every day. On her version, Mr R L shows a disinterest and lack of enthusiasm compared to the level of care that she invests daily in the children. She mentions that it would be causing emotional and mental distress to the children to uproot them by enrolling them in a new school and place them in a two-bedroom townhouse. As a teacher, she is able to attend to the children's extra-mural activities during afternoons and weekends, thereby actively supporting their interests. She explains why the son was placed in the only Afrikaans primary school within her area, although Mr R L insisted that he be enrolled in Broederstroom Primary School, which falls under the Gauteng Educational Department. The children reside with her in North West. She stays in a safe three-bedroom home with a garden and a shed, which offers ample space for the children to play. Each has their own bedroom.

[33] On receipt of the answering affidavit, Mr R L was probably well advised not to proceed with his endeavour to obtain primary care of the children forthwith. If he was not insisting on primary care and if the parties would be reasonable towards each other, they could have requested a mediator to mediate their differences. In such an event, the whole application could have been avoided.

[34] Mrs D L states that Risperdal was prescribed for their daughter by a qualified paediatrician, Dr Roche-Kelly, as a temporary measure pending an appointment with a paediatric psychologist. This process is quite understandable, bearing in mind the emotional stress on the children caused by the unsavoury relationship between their parents. She explains further that Mr R L failed to disclose that he was notified well in advance of the children's appointments with the specialists referred to hereunder. I do not intend to consider the history mentioned by her in respect of Mr R L's alleged aggressive behaviour. She has no problem if the Family Advocate is appointed to conduct the necessary investigations. I should mention that I contacted Adv Du Plooy of the Family Advocate's Office in Bloemfontein prior to the hearing of the application. She explained that their network in the Free State was already overloaded. She mentioned that it would be quite difficult to arrange with the Offices of the Family Advocate in North West and Gauteng in order to do a proper and detailed investigation. After considering the

difficulties to be experienced and the actions taken on which I will now focus, I decided against calling for an investigation by the Family Advocate.

[35] Already on 28 June 2025, Mrs D L contacted two paediatric psychologists, namely Dr Ramsander and Dr Erasmus. She booked appointments for each child. She notified Mr R L about these appointments as mentioned above. Dr Ramsander's appointments for the children were scheduled for 19 September 2025 and 23 September 2025 respectively and the appointment for both children with Dr Erasmus was scheduled for 27 October 2025. Hopefully, the children were assessed by now and that the parties have accepted the opinions of these two specialists.

[36] I do not intend to deal with the replying affidavit in any detail whatsoever. This is yet again an affidavit consisting of 51 pages, excluding annexures. Mr R L even tries to put Dr Roche-Kelly in a bad light and insists that their daughter be taken to Dr Kim Barnard. Unfortunately, Mr R L pays lip service to his version that he does not want to portray Mrs D L in a bad light. He insists that he is deprived of his fatherly responsibilities and rights. He even refers to photographs taken of the matrimonial home, allegedly ransacked by the Mrs D L as long ago as 21 August 2023 which is clearly irrelevant. I reiterate that the conflict between the parties should be stopped to prevent permanent emotional damaged to the children.

[37] Mr. R L is entitled to play a role in the lives of the children, but he must understand that s 31 of the Children's Act is applicable. It reads as follows.

'(1)(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.

(b) A decision referred to in paragraph (a) is any decision-

- (i) in connection with a matter listed in section 18(3)(c);
- (ii) affecting contact between the child and a co-holder of parental responsibilities and rights;
- (iii) regarding the assignment of guardianship or care in respect of the child to another person in terms of section 27; or
- (iv) which is likely to significantly change, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being.

(2)(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b), that person must give due consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child.

(b) A decision referred to in paragraph (a) is any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holder's exercise of parental responsibilities and rights in respect of the child.'

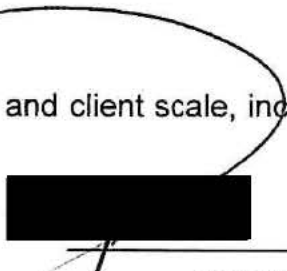
[38] Although due consideration must be given to the views and wishes expressed by any co-holder of parental responsibilities and rights in respect of a child, the legislature does not insist on consent to be provided by such co-holder. Reasonableness, fairness and the best interests of the children, which are paramount in all situations, must be considered.

Conclusion

[39] As mentioned earlier herein, and even on the basis that this court does have jurisdiction to hear the application, it should really have been struck from the roll with punitive costs due to lack of urgency. However, I decided to also consider the merits of the application. Having done so, Mr R L has not made out a case for relief. In fact, he abandoned his claim that the primary care and residence of the children be awarded to him forthwith. He was informed that Mrs D L had made appointments with specialists to do clinical assessments of the children by the time that he brought the application. He failed to mention this in his founding affidavit. In reply he stated that the conversation took place on 28 July 2025 and not 28 June 2025. Although he insists that other specialists do assessments, it is not for him, he not being the primary caregiver, to dictate the terms. I am satisfied that, bearing in mind the merits of the application, no case has been made out for the relief sought by Mr R L. He shall pay the costs of the application and in the exercise of my discretion, such costs shall be on an attorney and client scale.

Order

1. The application is dismissed with costs on an attorney and client scale, inclusive of the costs of counsel on scale B.


J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	JJ Grundlingh
Instructed by:	Lovius Block, Bloemfontein
For the Respondent:	A Sander
Instructed by:	Peyper Attorneys, Bloemfontein.