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

JUDGMENT

Not Reportable

Case No: 2025-103053

In the matter between:

W[...] G[...] J[...]

Applicant

And

B[...] J[...] (nee C[...])

Respondent

Coram:

DA SILVA SALIE, J

Heard and ex tempore Reasons delivered on: 15 December 2025

Written Reasons delivered on : 17 December 2025

SUMMARY:

Urgent application – Minor child – Contact – Upper guardian – Prior court order appointing curator ad litem and directing therapeutic reunification – Non-compliance by primary caregiver – Child’s expressed wishes considered contextually and not mechanically – Structured, incremental contact ordered to prevent parental alienation – Therapeutic intervention to continue – Curator empowered to direct further contact – Respondent’s conduct necessitating urgent intervention – Applicant substantially successful – Costs awarded against respondent on Scale C.

ORDER

1. In the result, I made the order attached hereto and marked as “X”.

WRITTEN REASONS

DA SILVA SALIE J:

Introduction:

[1] This matter concerns a minor child, “AJ”, aged nine. The matter was argued before me on the urgent roll of Monday, 15 December 2025. The relief sought stemmed from a previous order of this Court, dated 21 July 2025 which appointed the curator ad litem for the minor, directed a therapeutic reunification process between the applicant and AJ as well as provision for contact. After the submissions by both counsel as well as the previously appointed curator ad litem, I made the order granting the applicant contact to the minor with a specific timetable, continued therapeutic intervention, granting the curator powers to direct additional contact and other ancillary relief as well as a costs order against the respondent. The judgment was handed down *ex tempore* setting out my reasons. A formal request for reasons was however submitted to the Registrar of this Court today, which reasons follow below:

[2] The parties, the biological parents of AJ, are presently litigants in an acrimonious action for divorce. It is evident from the papers that there is a steady deterioration of trust and cooperation between the parties, and compliance by the respondent to the previous order of this Court in July 2025. The parties separated homes earlier this year, in April 2025. Until then the minor lived with both parents. The papers illustrate that with the passage of time, since the parties’ separation and so too, after the Order of this Court in July 2025, there has not been compliance with the Court directives which provided for a structured therapeutic process and the applicant’s contact with the child.

[3] Essentially, the applicant approached this Court on the basis that he has been denied contact to the minor by the respondent and non-compliance of the mandated sessions with psychologist, Mr. Altman. The applicant contends that the respondent is alienating him from AJ and that her conduct is aimed at undermining the terms of the order which were directed to ensure that the minor and his father establish a continued relationship. The application is brought on the urgent roll as he submits the harm to his son in building a relationship with him is ongoing and will continue unless this Court orders urgent relief. The respondent on the other hand denies that the matter is urgent and furthermore denies that she is in contempt of the order as it is the child’s wishes to

not meet with Mr. Altman and that he does not want to see his father. On that basis, she submits the voice of the child must be heard and respected as forced contact with his father is against his express wishes and harmful to AJ.

Urgency

[4] Matters affecting a minor child's care and contact is considered urgent. In this matter, the Court had previously ordered contact and other processes for the therapeutic assistance of the minor. The absence of contact between the minor and his father and the stalled therapeutic process enforces emotional distance between the applicant and the minor and it would be detrimental to the minor. Judicial intervention by this Court as the upper guardian of all minor children are thus warranted in addition to maintaining oversight of its previous order relating to the minor child. On the facts of this matter I am satisfied that this Court has appropriately been approached for urgent relief.

The July 2025 Order and Therapeutic Pathway

[5] The July 2025 order established a comprehensive and child-centred reunification framework, including:

[5.1] the appointment of the curator ad litem;

[5.2] therapeutic assessment by psychologist, Mr Bernard Altman;

[6.3] cooperation obligations on both parties;

[5.4] Family Advocate involvement; and

[5.5] a consultation between legal representatives following receipt of professional reports.

[6] This staged process was intended to address AJ's distress and reluctance around contact, while rebuilding the relationship between father and child in a measured and supported manner. It remains the operative legal framework.

[7] The affidavits reveal deeply conflicting narratives. The applicant alleges obstruction and non-compliance, whilst the respondent raises concerns relating to the child's anxiety and his apprehension regarding contact with his father.

Best Interests of the Child

[8] Section 28 of the Constitution and the Children's Act require that AJ's best interests remain paramount. What emerges from the papers is that a blanket denial of contact or permitting a continued *de facto* position of no contact do not serve those interests. The respondent's resistance to applicant's contact is not justified on the present papers.

[9] The evidence reflects that AJ has previously engaged positively with the applicant. Prolonged suspension of contact risks deepening alienation, which may ultimately be more harmful than carefully managed engagement.

[10] The Court therefore adopts a balanced approach: structured, time-limited contact at reasonable intervals, whilst the therapeutic and curator-led processes continue in parallel.

[11] Submissions were made by both counsel for the applicant and respondent as well as the curator ad litem, Adv. Janssen. The curator filed a report placed before the Court.

[12] It is evident that the respondent had not complied with the provisions of the July order and that she could not, as she elected to do, unilaterally change the terms of the Order. In circumstances where she did not consider the Court's previous order to be serving the minor's best interests based on her apprehensions or alleged wishes of the minor, she ought to have applied to Court for a variation of the order supported by her submissions under oath. It is apparent that the conduct of the respondent illustrates a consistent pattern of invoking fear in the minor of his father as well as feelings of distrust orchestrated to amount to an apparent but not real "refusal" by the minor to spend time with his father.

[13] The minor is very clearly divided in his loyalties towards his mother and father and caught up in mudslinging in this unhealthy toxic web. The voice of the child does not amount to hearing it only in the mechanical and literal sense. The manifestation of the child's voice and needs must be considered in the full sphere of the facts and circumstances of this case. To simply comply with what a child states on these facts, would amount to doing him a disservice and failing in ensuring that his best interests are considered and protected by this Court as the upper guardian of all minor children.

[14] I am satisfied that AJ needs the reinforcement and command by this Court to ensure that he has contact with his father and the benefit of therapeutic intervention by

the psychologist who had already established contact and a relationship with him. Significantly, the minor would only meet and engage persons who are “vetted” by his mother, being Dr. Badenhorst, Oom Andre (her attorney of record) and Oom Deon (a fellow church member). Given this willingness, it does not make sense why the minor would not be willing to engage with the Adv. Janssen (the curator), Mr. Altman and his own father. The curator indicated that whilst the minor verbalised that he would not want to see his father, he could not set out any reasons for that, and his conduct and other non-verbal cues indicated to the contrary that indeed he longed for his father and contact to him.

[15] The respondent’s opposition, coupled with her conduct in frustrating the implementation of the existing court-ordered contact framework and therapeutic measures, rendered urgent judicial intervention unavoidable. I am satisfied that the applicant has been substantially successful in securing access and continued therapeutic intervention, and the respondent’s conduct necessitated urgent recourse. A costs order on Scale C is warranted.

Order

[16] In the result, I made the order attached hereto and marked as “X”.

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicant: Adv. J McCurdie SC

Instructed by: Michael Baynham Attorneys

For Respondent: Mr Andre Marais

c/o Guthrie & Theron Attorneys

Curator Ad Litem: Adv. J Janssen