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

JUDGMENT

**Not Reportable
Case No: 2025-212088**

In the matter between:

J[...] H[...] M[...]

Applicant

And

J[...] M[...]

Respondent

Coram: DA SILVA SALIE, J

Heard on: 17 December 2025

Delivered on: 19 December 2025

Summary:

Family law – Care and contact – Urgent interim relief pending Rule 43 – Highly acrimonious divorce litigation with criminal allegations between parties – Children presenting with neurodevelopmental and anxiety-related disorders – Respondent’s expert psychiatric reports confirming conditions developmental in origin and not attributable to parenting/environmental factors – No recommendation for supervised contact – Court finding supervision not warranted and potentially harmful in present context – Regular, predictable unsupervised contact ordered – Telephonic/WhatsApp contact regulated (including provision of device and obligations to keep it charged and available) – Office of the Family Advocate directed to investigate care and contact and file interim report (including recommendation on private-practice expert support and any further assessments) – Costs: each party to pay own costs.

ORDER

1. Pending the final determination of the Rule 43 application under case number 2025-201261, set down for hearing on 5 February 2026, the applicant shall exercise contact to the minors as set out below.
2. The applicant shall have unsupervised contact with the minor children.
3. During school terms, the applicant shall have contact with the minor children every Wednesday, by collecting them from the Respondent’s residence at 16h00 and returning them at 18h00.

4. During school holidays, including the December 2025 / January 2026 school holidays, the Applicant shall have contact every Wednesday, by collecting the children at 09h00 and returning them at 15h00.
5. Alternate weekend contact shall take place on Saturdays and Sundays, commencing on the first weekend following this order, by collecting the children at 09h00 and returning them at 16h00 on each day.
6. On 25 December 2025 (Christmas Day) and 1 January 2026 (New Year's Day), the Applicant shall collect the children at 14h00 and return them at 18h00.
7. The applicant is directed to provide the minor children with a cellular phone for purposes of telephonic contact including WhatsApp video calls. The applicant shall be entitled to telephonic contact with the minor children on alternate days between 17h00 and 19h00. The respondent is directed to ensure that the cellular phone is charged, switched on and made available to the minor children for telephonic contact with the Applicant during the times stipulated herein.
8. The Office of the Family Advocate is directed to investigate the care and contact arrangements of the minor children and to make recommendations regarding future care and contact.
9. The Office of the Family Advocate shall file and serve an interim report by no later than Monday, 2 February 2026, and in time for the hearing of the Rule 43 application on 5 February 2026.

10. The report shall further indicate whether the investigation ought to be supported by an expert in private practice, and, if so, shall include a recommendation of a suitably qualified expert.
11. Neither party shall unreasonably interfere with or frustrate the other party's exercise of contact in terms of this order.
12. Each party shall pay their own costs of suit.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This is an urgent application for interim care and contact pending the determination of a Rule 43 application between the parties, which is enrolled for hearing on 5 February 2026. The relief sought arises from the absence of a subsisting contact regime following an interim contact order. Following the expiration of that order, the parties have been unable to reach agreement as to further contact between the applicant and the children.

[2] The applicant seeks structured interim contact with the minor children presently aged 10 and 12 years. The Respondent opposes aspects of such contact and submits, both on the papers and in argument, that contact ought to be supervised and limited to

once per week contact between 10h30 and 12h00 for a number of reasons, moreover because the children are allegedly not amenable to seeing their father and that they get physically ill with the disruptiveness caused by having contact with him. I shall deal with these averments later in this judgment.

Background and the parties' dispute

[3] The litigation history reveals an extremely acrimonious relationship between the parties. The respondent has laid criminal charges against the applicant, including allegations of rape, assault and contravention of a domestic violence interdict. Additionally, the respondent makes various complaints of the applicant's conduct and that he does not show insight or sensitivity to the various mental and other health conditions of the children. The applicant is of the view that the children's health conditions are exaggerated by the respondent in an endeavour to obstruct his contact with the children or to blame him for their conditions and ailments. The applicant alleges that the applicant is subjecting the children to parental alienation towards him, including gatekeeping by controlling all access to the children, imposing unreasonably conditions such as insisting on supervision without any justified basis, interference with communication, false allegations of domestic violence, alcohol abuse and child endangerment and conditioning the children to consider their father as stress and harmful. The accusations raging between each other and their ineptness are endless and paints a picture of a very toxic and completely deteriorated relationship between the parents. The parties have been separated for some time, do not reside together and are amid divorce proceedings. The children are in the respondent's primary care. This is an undeniably difficult situation for them.

[4] It is very clear and apparent that the intensity of the dispute between the adults has permeated the lived experience and reality of the children. They are unavoidably exposed to the conflict and consequently display emotional unsettlement and reluctance

in the exercise of contact with their father. It is apparent that this is a combination of the exposure to the turmoil between the parents, their own anxieties and mental health challenges, and their loyalties to the respondent as their mother and primary carer.

Expert evidence

[5] Central to the respondent's opposition are the psychiatric reports of Dr Judy Bentley, furnished by the respondent, in respect of both minor children. Dr Bentley confirms that the children have been diagnosed with neurodevelopmental and anxiety-related disorders, including autism spectrum disorder, attention deficit hyperactivity disorder and associated anxiety conditions.

[6] Importantly, Dr Bentley expressly records that these conditions are developmental in origin, are not caused by environmental conditions or parenting practices, are present from birth, and persist across the lifespan, albeit with potential variation in severity.

[7] While the reports acknowledge that the children are sensitive to change, that frequent transitions may be distressing, and that enforced or poorly structured contact may exacerbate anxiety, Dr Bentley does not recommend supervised contact. Her emphasis is on predictability, routine and minimising disruption, rather than restriction or elimination of the parental relationship.

[8] On the papers before me taking into account the facts and historical background of the matter as well as the reports on record, there is no basis to justify the imposition of supervised contact at this stage.

Assessment of supervision and the children's best interests

[9] Whilst the minor children have indicated reluctance and emotional unsettlement in the exercise of contact with their father, I am not persuaded that the continuation of supervised contact is warranted. On the contrary, continued supervision in the present circumstances risks being counter-productive and potentially more harmful to the children's longer-term emotional security and imposes emotional conditioning that their father is a threat and harmful to them.

[10] The children are presently caught up in an environment of adult conflict. Continued exposure to allegations, hostility and litigation risks conditioning them to perceive their father as an aggressor and is clearly traumatising to them. Artificial contact and imposed through excessive control, is inimical to the children's sense of stability and identity. Stated differently, a continuation of the position that their father poses harm to them and that contact to him is bad, in the absence of satisfactory supporting evidence, serves only to emotionally condition the children that they are at risk in the hands of a parent, it tortures them, alienates them from their father and could only cause them further trauma with an indelible belief that they are not safe with the adults around them. Such disillusionment poses both short and long term emotional scars which the Court must avoid at all costs and take proactive measures to avoid.

[11] Gleaning from the papers before me as well as the previous contact order and submissions from counsel during argument, what is required at this interim stage is not restriction, but regularity, predictability and emotional containment. A structured routine is more likely to support the children's developmental and special needs than fragmented or highly controlled interaction.

[12] At the same time, the applicant must remain acutely mindful and insightful of the children's mental health, emotional challenges and physical ailments. Both parents bear a responsibility to ensure that contact with the father is facilitated in a manner that is positive, supportive and least invasive of the children's difficulties in adapting to change, including managing their social and separation anxieties and other neurodevelopmental vulnerabilities.

Telephonic contact

[13] The respondent alleges that both the minor children's cellular phones are broken, which has impeded telephonic contact between the applicant and the children. Pending the Rule 43 hearing, a practical interim arrangement is required to ensure that the applicant can maintain consistent communication with the children and as specified below.

Role of the Office of the Family Advocate

[14] Given the disputes between the parties regarding the nature, frequency and impact of contact, and mindful of the children's particular vulnerabilities, it is appropriate that the Office of the Family Advocate be directed to conduct an investigation into the care and contact arrangements of the minor children and to provide recommendations to assist the Court at the Rule 43 hearing. The investigation and all pleadings are in the possession of the Office of the Family Advocate.

[15] Such investigation should further address whether additional expert input is required and, if so, identify an appropriately qualified expert in private practice to support the process. The respondent has proposed and commenced with the appointment of Dr. Spurrier, to which the applicant has indicated ambivalence and uncertainty. The report of the Office of the Family Advocate must include consideration

of Dr. Spurrier or another expert as a suitably qualified expert to be appointed should they consider it necessary to assist in their investigation. Furthermore the report must also indicate whether an appointment of mental health experts for assessment of both the parties are required for the completion of their investigation.

Conclusion

[16] The interim regime ordered below is intended to preserve the children's relationship with both parents, introduce structure and certainty, and avoid unnecessary escalation or restriction of parental contact in the absence of evidence justifying such limitation. All issues remain open for determination at the Rule 43 hearing or as may be further directed by that Court.

Order:

1. Pending the final determination of the Rule 43 application under case number 2025-201261, set down for hearing on 5 February 2026, the applicant shall exercise contact to the minors as set out below.
2. The applicant shall have unsupervised contact with the minor children.
3. During school terms, the applicant shall have contact with the minor children every Wednesday, by collecting them from the Respondent's residence at 16h00 and returning them at 18h00.

4. During school holidays, including the December 2025 / January 2026 school holidays, the Applicant shall have contact every Wednesday, by collecting the children at 09h00 and returning them at 15h00.

5. Alternate weekend contact shall take place on Saturdays and Sundays, commencing on the first weekend following this order, by collecting the children at 09h00 and returning them at 16h00 on each day.

6. On 25 December 2025 (Christmas Day) and 1 January 2026 (New Year's Day), the Applicant shall collect the children at 14h00 and return them at 18h00.

7. The applicant is directed to provide the minor children with a cellular phone for purposes of telephonic contact including WhatsApp video calls. The applicant shall be entitled to telephonic contact with the minor children on alternate days between 17h00 and 19h00. The respondent is directed to ensure that the cellular phone is charged, switched on and made available to the minor children for telephonic contact with the Applicant during the times stipulated herein.

8. The Office of the Family Advocate is directed to investigate the care and contact arrangements of the minor children and to make recommendations regarding future care and contact.

9. The Office of the Family Advocate shall file and serve an interim report by no later than Monday, 2 February 2026, and in time for the hearing of the Rule 43 application on 5 February 2026.

10. The report shall further indicate whether the investigation ought to be supported by an expert in private practice, and, if so, shall include a recommendation of a suitably qualified expert.

11. Neither party shall unreasonably interfere with or frustrate the other party's exercise of contact in terms of this order.

12. Each party shall pay their own costs of suit.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant: Adv. M Abduroaf

For Respondent: Adv. B Wharton

Instructed by: Cornel Stander Attorneys