



**IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]**

Case no.: 3358/2024

In the matter between:

D[...] R[...]

Applicant / Respondent

and

N[...] M[...]

First Respondent / Second Applicant

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

Second Respondent / First

Applicant

Coram: Francis J

Heard: 2 December 2025

Delivered: 11 February 2026

REASONS

FRANCIS J

Introduction

[1] This matter concerns two minor children, W[...] M[...] -L [...], born on 9 October 2018, and L[...] M [...], born on 12 April 2022. The Applicant seeks an order granting him defined interim contact with both children pending the finalisation of an action in which broader relief relating to care and contact is sought. The Respondents, who are the children's parents and holders of parental responsibilities and rights, oppose the extent of the contact claimed.

[2] Also before the Court was a counter-application by the Respondents seeking, first, an interdict restraining the Applicant from publishing images or personal information relating to the children on social media and other public platforms, and second, an order compelling the Applicant to cooperate with a psychological assessment being conducted by an expert appointed by the Respondents. The Applicant sought a postponement of the counter-application.

[3] The matter was enrolled as urgent. An order was granted on 2 December 2025, with reasons reserved. These are the reasons.

Factual background

[4] The First Respondent is the biological father of both children. The Second Respondent is the former spouse of the First Respondent. W[...] was born pursuant to a surrogacy agreement concluded during the Respondents' marriage, in terms of which they are co-holders of parental responsibilities and rights. L[...] was born pursuant to a separate surrogacy agreement concluded during the relationship between the Applicant and the First Respondent. In terms of that agreement, parental responsibilities and rights in respect of L[...] vest solely in the First Respondent. The Applicant was not a party to that agreement.

[5] For a period following L[...]’s birth, the Applicant resided with the children and played a significant role in their daily lives. Following the termination of the relationship between the Applicant and the First Respondent, interim contact arrangements were implemented. The present application seeks to regulate interim contact pending the determination of the action proceedings.

The legal framework

[6] Parental responsibilities and rights are governed by sections 18 to 22 of the Children’s Act 38 of 2005. Those rights vest primarily in parents as defined in

the Act. They include the responsibilities and rights of care, contact, guardianship and maintenance.

[7] The Respondents are the children's legal parents and constitute the primary family unit recognised by law. The Applicant does not qualify as a parent in terms of sections 19, 20 or 21 of the Act and is not an automatic holder of parental responsibilities and rights. His standing arises solely from section 23 of the Act, which permits a person having a sufficient interest in the care, well-being or development of a child to apply for an order granting contact.

[8] It follows that any order regulating contact must be carefully circumscribed. Contact facilitates the maintenance of a relationship; it does not confer decision-making authority or dilute the parental authority of those who hold parental responsibilities and rights. The distinction between contact, on the one hand, and care or guardianship, on the other, must remain clear to avoid confusion and conflict.

The application for postponement

[9] The Applicant sought a postponement of the counter-application on the basis that he had insufficient time to prepare a response. He tendered an interim undertaking not to engage in the conduct complained of pending a later hearing.

[10] A postponement is an indulgence, not a right. An applicant must demonstrate good cause, including a reasonable explanation, the absence of dilatory intent, and that the interests of justice favour the postponement (*Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (Nm)).

[11] The Applicant's explanation was unpersuasive. He had adequate time to respond to the discrete issues raised in the counter-application and failed to demonstrate a prima facie defence to the substantive relief sought. In matters affecting children, delay is often inimical to their best interests. The application for postponement was accordingly refused, with costs on scale C, including the costs of two counsel where so employed.

The counter-application

The social-media interdict

[12] The first component of the counter-application concerns an interdict restraining the Applicant from publishing images or personal information relating to the minor children on social media platforms or public blogs. The enquiry is grounded in the children's rights to privacy and dignity, and the paramountcy of their best interests under section 28(2) of the Constitution.

[13] Those rights are given legislative effect in both the Children’s Act and the Protection of Personal Information Act 4 of 2013 (“POPIA”). Section 34 of POPIA prohibits the processing of a child’s personal information unless it is carried out with the consent of a “competent person”, being a holder of parental responsibilities and rights. It was common cause that the Respondents did not consent to the publication of the children’s images or personal information.

[14] Section 32(4) of the Children’s Act further provides that a person who does not hold parental responsibilities and rights may not hold himself out as the parent or primary caregiver of a child in a manner that may mislead the child or any other person. The Applicant’s public portrayal of the children as his own, together with the dissemination of their images and personal narratives, contravenes this statutory prohibition. Such conduct intrudes upon the children’s rights to privacy and dignity, risks confusion regarding their familial identity, and undermines the Respondents’ lawful exercise of parental authority. In circumstances of ongoing litigation marked by conflict, the continued publication of such material is inimical to the children’s best interests. An interdict is both necessary and appropriate to prevent further harm (see, *Centre for Child Law v Media 24 Ltd* 2020 (4) SA 319 (CC)).

Compulsion to cooperate with the expert assessment

[15] The second component of the counter-application concerns an order compelling the Applicant to cooperate with a psychological assessment being conducted by Mr Altman. In matters involving minor children, this Court exercises an inherent and non-delegable jurisdiction as upper guardian. It is settled law that the Court is not bound by the forensic choices or procedural preferences of the parties, but bears an independent duty to place itself in a position to determine what arrangement best serves the interests of the child (*Van der Linde v Van der Linde* 1996 (3) SA 509 (O)).

[16] That duty carries with it the power to regulate the Court's own process and to direct the taking of steps reasonably required to obtain reliable and relevant information bearing on a child's welfare. This includes directing cooperation with expert assessments where such assessments are necessary to inform the Court's decision (*Ex parte Oppel and Another* 2002 (5) SA 125 (C)).

[17] On the facts of the present matter, the Applicant initially participated in the assessment process but thereafter refused to continue, citing alleged unprofessionalism and partiality on the part of the expert. A litigant is not entitled unilaterally to frustrate an expert process aimed at assisting the Court in the discharge of its constitutional and statutory obligations. Allegations concerning an expert's impartiality, methodology or conclusions are matters to be addressed through the proper forensic testing of the evidence, including

cross-examination, and do not justify a refusal to participate in the assessment itself (see, *Michael v Linksfield Park Clinic (Pty) Ltd* 2001 (3) SA 1188 (SCA)).

[18] To permit a party to withdraw from an assessment on the basis of unproven allegations would undermine the Court's upper-guardian function and impair its ability to make an informed determination of the children's best interests. The order compelling the Applicant's cooperation was therefore justified.

[19] The counter-application accordingly succeeded.

The Family Advocate's report

[20] A report was obtained from the Office of the Family Advocate. While the factual observations contained therein regarding the children's attachments are of assistance, the report at times employs terminology suggestive of care or shared parental rights, concepts that do not arise for determination in this application.

[21] A court is not bound by expert recommendations and must critically evaluate such evidence within the correct legal framework. To the extent that

the report strays beyond its mandate or misstates the Applicant's legal status, those aspects cannot be accepted uncritically.

[22] There was partial agreement between the parties, primarily premised on an acceptance of certain of the Family Advocate's recommendations regarding interim contact. The existence of such agreement is a relevant and pragmatic factor, as it indicates areas of reduced conflict. However, the agreement between parties concerning children does not bind the Court. As the upper guardian of all minors, it has duty to satisfy itself that any arrangement serves the paramount best interests of the child (*McCall v McCall* 1994 (3) SA 201 (C)). Indeed, the child's best interests is not just a guiding principle; it is a justiciable right that imposes a positive obligation on the courts. Therefore, while the Court gives due weight to the parties' agreement as a constructive step, it remains the Court's obligation to scrutinise the proposed terms against the full matrix of evidence and the statutory factors in section 7 of the Act.

Best interests of the children

[23] The children's best interests are paramount (section 28(2) of the Constitution and section 9 of the Children's Act). In applying this standard, I have had regard to the factors listed in section 7 of the Act.

[24] The evidence, including that of the Family Counsellor, establishes that both children share a close, loving bond with the Applicant, forged during a period of cohabitation. L[...], in particular, demonstrates a strong attachment. It is incontrovertible that severing this relationship would be detrimental. W[...] also enjoys a positive relationship with the Applicant, though she exhibits a primary emotional orientation towards the Respondents.

[25] W[...] and L[...] are not only siblings; they are children within a legally constituted family headed by the Respondents. By all accounts they are very close. The sibling bond is a vital source of mutual support and emotional continuity, especially amidst family transition.

[26] The expert evidence is divided on whether the children's contact schedules must be identical. Some argue for alignment to protect the sibling bond. The Family Counsellor, however, presented a nuanced view, suggesting that in this specific context, the children's individual emotional needs might sometimes necessitate separate scheduling. While this insight has merit, the principle of preserving the sibling bond and the coherence of the primary family life must be given pre-eminent weight. A contact regime that routinely separates the children during their leisure time risks weakening this essential bond and creating parallel family experiences that could confuse the children and undermine the Respondents' family unit. The children's need for a stable,

unified family environment outweighs the marginal benefit of maximising individual time with the Applicant if it fractures their shared life.

[27] The high level of acrimony between the adults poses a significant risk to the children. The contact order must therefore be clear, structured and calculated to minimise conflict.

Determination

[28] The Applicant is entitled to meaningful contact in terms of section 23 of the Children's Act. However, such contact must be structured in a manner that preserves the Respondents' parental authority, prioritises the sibling bond, and reduces the potential for future conflict.

[29] The order made on 2 December 2025 reflects these considerations and is reproduced below.

[30] During the course of the hearing, the parties signalled their agreement on certain other ancillary matters. I had no difficulty with the consensual views expressed on these issues and they were incorporated in the order.

ORDER

1. The Applicant's application for a postponement of the relief sought in paragraphs 3,4 and 6 of the Respondents' Notice of Counter-Application is refused with costs on scale C.
2. In respect of the Applicant's application and the Respondents' counter-application, the Respondents' counter-application succeeds and an order is made in the terms set out below.
3. The Applicant, in terms of section 23(1)(a) of the Children's Act 38 of 2005, ('the Children's Act') shall have contact with the children, W[...] M[...] L[...] and L[...] M[...], during the December 2025/ January 2026 school holiday as follows:
 - a. L[...] shall spend from Thursday 4 to Sunday 7 December with the Applicant;
 - b. W[...] and L[...] shall spend from Sunday 14 to Saturday 27 December 2025 with the Applicant.
4. Pending finalisation of the action instituted by the Applicant (as Plaintiff) under case number 2025-151339 (or the outcome of any other application that any of the parties may bring):

c. The First Respondent, as the sole parent of L[...], shall facilitate the Applicant having interim contact with L[...] in terms of section 23(1)(a) of the Children's Act. Such interim contact shall take place as follows:

i. During the school term:

1. On every Wednesday from after school until the Thursday morning when he is returned to school.

2. On one weekend per month from after school on the Friday until the Monday morning when he is returned to school. This weekend contact shall take place on the same weekend that W[...] spends with the Applicant.

ii. For one-third of school holidays per annum, calculated from the commencement of the March holiday in one year to the end of the January holiday the following year. Such holiday contact shall coincide with the holiday contact the Applicant has with W[...].

d. The First and Second Respondents, as the parents of W[...], shall facilitate the Applicant having interim contact with W[...] in terms of section 23(1)(a) of the Children's Act. Such interim contact shall take place as follows:

i. During the school term:

1. On every Wednesday from after school until the Thursday morning when she is returned to school;

2. On one weekend per month, from a Friday after school until the Monday morning when she is returned to school. This weekend contact shall take place on the same weekend that L[...] spends with the Applicant.

ii. For one-third of school holidays per annum, calculated from the commencement of the March holiday in one year to the end of the January holiday the following year. Such holiday contact shall coincide with the holiday contact the Applicant has with L[...].

e. The First and Second Respondents, as the parents of W[...] and the

First Respondent as the parent of L[...], will finalise the weekend contact arrangements in the last week of each month, for the following month, to provide certainty in respect thereof.

- f. The Applicant shall be permitted to attend all functions, meeting, concerts, sports days, matches and other events that are hosted by the children's schools or extra-mural clubs.
- g. The Applicant shall be entitled to communicate directly with L[...]'s educators, coaches and doctors, provided that the Applicant is precluded from making any decisions or exercising any parental rights in respect of L[...], arising from such communications.
- h. Mr Anton Neethling shall be appointed as a Contact Coordinator ('CC') to the parties, in order to facilitate the contact arrangements as set out in this order. The parties shall cooperate with the CC. The parties shall share the costs of the CC on an equal basis, unless otherwise determined by the CC. Each party shall be responsible for the costs incurred in respect of documentation that they send to the CC. The decision of the CC shall be final, pending any decision of this Court in this regard, arising from an application initiated by any of the parties.

- i. The children shall be with either the First or the Second Respondents on Rosh Hashanah, Passover and any other Jewish holidays on which Herzlia School closes.
- j. Any contact that the Applicant wishes to have with the children on special occasions, shall take place in the discretion of the children's parent, in the case of L[...], being the First Respondent and in the case of W[...], the First and Second Respondents.
- k. In the event that the Applicant does not have contact with either child, for whatever reason, during the stipulated periods during term-time, as provided for herein, he shall not be entitled to 'make-up' such time.
- l. The Applicant's contact with either child, as provided for herein is subject to his being physically present during such contact periods.
- m. The Applicant shall not be entitled to post any photographs of either of the children on any social media platform or in a profile photograph on his mobile phone, nor shall he cause any photographs of either of the children to be posted on any social media platform.

- n. The Applicant shall not be entitled to name or refer to the children on any social media platforms/ blogs or cause them to be named or referred to on any social media platforms/ blogs.
- o. The interdict in force in respect of First Respondent shall remain of force and effect.
- p. The Applicant shall notify the First Respondent if either child is not well when he has contact with them in order for him, and the Second Respondent in respect of W[...], to make a decision regarding whether such child should remain with the Applicant or return to his care.
- q. The Applicant is directed to cooperate with the ongoing assessment by Mr Bernard Altman, clinical psychologist appointed by the Respondents, including the Applicant attending on such consultations as Mr Altman may require, making his children, M[...] and M[...] available for such consultations as Mr Altman may require, and by not causing any collateral with whom Mr Altman may wish to consult to refuse to cooperate with Mr Altman.

5. All questions of the costs of the application and the counter-application,

including the question of the costs of two counsel, shall stand over for later determination.

FRANCIS, J

Judge of the High Court, Cape Town