



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case 2026-028549
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
Date: 26 February 2026

In the matter between:

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

Applicant

and

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

Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This urgent application concerns the interim care and contact arrangements of two minor children, L[...] (7) and S[...] (4), pending the outcome of a forensic assessment and the determination of Part B of the application. In all such matters,

the Court is guided by the paramountcy of the best interests of the child in terms of section 28(2) of the Constitution and section 9 of the Children's Act.¹

[2] The parties were in a romantic relationship, from which the two children were born. They separated in or about September 2025.

[3] The applicant seeks, in essence, to preserve primary residence with her, to secure a structured contact regime regulating the children's contact with the respondent, and to procure the appointment of a forensic psychologist to investigate and make recommendations regarding the longer-term care and contact arrangements.

[4] The respondent opposes the urgency and much of the relief, contending that the urgency is self-created, that there is no crisis to speak of, and that both parties are, and should remain, co-primary caregivers. He considers the structured regime proposed by the applicant to be unduly restrictive. His affidavits are couched in robust terms, but the core point is that he seeks more time with the children, not less.

Urgency

[5] Because the matter has been enrolled on the urgent family roll, the applicant must make out a case for urgency, which the respondent argues she has failed to do. The respondent points out that the parties separated in September 2025 and that, since then, he has regularly exercised contact facilitated by the applicant. He says there is no specific recent "crisis" that would justify hearing the matter urgently.²

[6] The applicant accepts that there may not be a single trigger event, but bases her urgency on a pattern of conduct she deems detrimental to the children. She states that, particularly during November 2025 to February 2026, the respondent engaged in conduct which, cumulatively, renders the matter urgent. For instance, he removed the children early from school under the guise of 'appointments' to spend

¹ 38 of 2005.

² See Rule 6(12)(b) and *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 (GSJ) para 6–9.

time with them contrary to what she had requested; he failed to inform her of their whereabouts; he refused to return them at agreed times; he used relatives to collect them during school hours on non-contact days; and he resisted requests to fix predictable times for telephonic contact in line with their bedtime and therapeutic routines. She provided repeated instances in which the respondent collected the children from school before the end of the school day, without her knowledge or consent, and instances in which the school itself contacted her about his unannounced collection of the children.

[7] Disruption of the children's school routine is a cause for concern. While the urgency does not arise from a single crisis event, persistent interference with the children's education, particularly during these foundational years, is troubling. The ongoing disagreements between the parties are not isolated incidents concerning a weekend or a particular occasion; they illustrate a continuing pattern of unpredictable, unilateral changes to the children's daily routines and educational environment, instead of predictable, structured and collaborative co-parenting.

[8] It is unreasonable to expect the applicant to delay action until matters escalate into a dramatic crisis. The children are already adjusting to their parents' separation, and subjecting them to further stress should be avoided.³ The pressure on a caregiver faced with repeated unpredictability is cumulative and may make emotions unbearable, which in turn increases the urgency. That emotional pressure is not, in itself, dispositive, but it explains why a matter may crystallise as urgent only after a series of events rather than a single dramatic incident.

[9] The respondent's argument that there is no urgency because he is a capable and loving father and the children enjoy spending time with him does not address the core issue: the urgency stems from the impact of unpredictability on their well-being, not from a denial of his importance in their lives.

³ *C.A.L v A.L* [2023] ZANWHC 77 see para 20 where it sometimes the impact on minor children cannot be undone, and that that cannot be fixed by "substantial redress in due course".

[10] On the papers, the applicant has made attempts to resolve the contact arrangements consensually, including proposing a neutral forensic assessment. These efforts did not yield a structured, reliable regime. Instead, she is confronted with persistent, documented unpredictability around school collections and contact, in circumstances where the respondent has repeatedly asserted that, absent a court order, he will exercise his parental rights as he sees fit. That is the context in which this application was launched.

[11] The turnaround time in the family court is comparatively short. Even so, I deem the fact that minor children are involved.⁴ The parties' current inability to co-parent predictably at this stage of their breakup, and the factors that justify the matter being enrolled on the urgent roll for a limited interim intervention to bridge the arrangements until a longer-term regime can be crafted with the assistance of appropriate experts.

[12] I accordingly condone the applicant's non-compliance with the rules and enrol the matter as urgent.

Merits

Care and contact

[13] In determining interim care and contact, I am guided by the constitutional injunction that a child's best interests are of paramount importance in every matter concerning the child (section 28(2) of the Constitution) and by section 9 of the Children's Act,⁵ which requires that standard to be applied in all matters concerning the care, protection and well-being of a child. The jurisprudence has long stressed that the child's welfare is central and that contact is determined with reference to what is in the child's best interests, not as a parental entitlement.⁶

⁴ *RMD v KD* [2023] ZAKZPHC 2 para 6. Mossop J declined to strike a matter involving a minor child from the roll for lack of urgency, holding that where parents cannot agree and decisions affecting the child's immediate future must be made, the court may intervene urgently in the child's best interests.

⁵ 38 of 2005.

⁶ *B v S* 1995 (3) SA 571 (A) at 583G.

[14] It is clear from the papers and was confirmed in the submissions that both parties love their children and that the children are attached to both of them. It is also evident that, before and after the separation, both parties have been involved in the children's care, with the assistance of a child-minder.

[15] The applicant submits that she has been the children's stable, day-to-day caregiver, as they primarily reside with her, in part because the respondent's demanding work schedule involves significant travel and irregular hours. She tenders that the status quo be preserved by confirming primary residence in her, while the respondent exercises weekly contact in the form of alternate weekend sleepovers and mid-week contact sessions. The respondent, by contrast, seeks more extensive mid-week sleepovers, in a pattern approximating an equal-time arrangement.

[16] When considering the issues before me, I did not have the benefit of an expert report specifically addressing the issue of residency, care and contact.⁷ In these circumstances, I am not sufficiently informed to order a shared-residence regime for the children, particularly given the existing instability. The weight of the evidence favours retaining primary residence with the applicant, while increasing the predictability and structure of the respondent's contact.

[17] This is not an indictment of the respondent or his ability to take care of the children. From the papers, it is clear that the children are bonded to their father and desire to spend more time with him. It is not in their best interest that his involvement be restricted to a minimum or conservative level, if a somewhat more generous and structured pattern can be managed without undermining their routine and the security it provides at this stage of the parties' breakup.

[18] I therefore agree that the respondent should have additional mid-week overnight contact, particularly in light of his complaint that the afternoons he spends with the children are largely consumed by transporting them from school to therapy and then back to the applicant's home. Spending an inordinate amount of time on the

⁷ *Terblanche v Terblanche* 1992 (1) SA 501 (W) at 504C.

roads in Johannesburg is the bane of any parent's existence. While time spent in the car travelling is often precious, it is not necessarily relaxing quality time.

[19] A workable compromise is to introduce a Thursday sleepover during school term, along with the alternate weekends. This means that during one week it will be a single overnight on Thursday, and in the alternate week it will result in a Thursday–Sunday afternoon contact.

[20] The respondent's desire for near-equal time also calls for a final brief comment. In *K.O. v M.S.*,⁸ the court cautioned against the misconception that shared residency is required for a quality relationship between a non-residential parent and a minor child, and emphasised that the quality of parenting, rather than the quantity of time, is what ultimately matters. That insight resonates in this case.

The role of child-minders and extended family

[21] The child-minders play a stabilising role in this family's life. Both parties rely on help, and the children are accustomed to their presence. However, child-minders should not be placed at the centre of the parties' acrimony or used as conduits for conflict. At the same time, their consistent presence during sleepovers can provide continuity for the children. I am reluctant to make an order that binds people who are not before me and who have not had a chance to voice their preferences. I do, however, record that, should they agree, their accompanying the children for sleepovers can have a stabilising effect.

[22] Likewise, the extended family can be a source of enrichment, connection and support for the children, particularly in a culture where communal caregiving is valued. Still, it remains for the parents to ensure that core decisions about care and contact are made between them, and that relatives are not used to undermine or evade the contact regime.

[23] In the interim, until a forensic psychologist has had the opportunity to observe the family and provide a report with a more thorough picture of the children's set-up,

⁸ 2025 ZAGPPHC 192 paras 57 and 67.

the care and contact regime relates only to the parties. Sleepover contact may not be exercised vicariously by family members, unless both parties are out of town. In this event, a family member of the parent who would otherwise have exercised the sleepover contact may do so.

Travel and "make-up" regime

[24] The respondent's work entails national and international travel. In the past, he has taken the children on trips with the applicant's consent, and sometimes that travel has impacted his contact time with them when they did not accompany him. The travel itself is not a negative factor, but the effect it may have on the structured care and contact regime set out in this order can create practical difficulties. It also makes it more challenging to craft an order that remains fair to both parties.

[25] Nevertheless, a fair approach is, first, that any parent whose travel will materially affect scheduled contact must inform the other parent, in writing, as soon as reasonably possible, of the dates and the anticipated impact on contact. This is for two reasons: most importantly, so that the children can be informed and their expectations managed, and secondly, so that scheduled contact can, as far as reasonably practicable, be made up either in advance or on the parent's return, by agreement between the parties. If they are unable to agree, the missed contact will not automatically accumulate indefinitely; rather, the parties are expected, in good faith, to attempt to restore a fair balance over time, always bearing in mind the children's need for predictability.

School attendance and collections

[26] As stated above, the respondent's removal of the children from school during the school day, often without notice to the applicant and sometimes for reasons that do not justify interfering with the school day, is cause for concern. The children's school environment should be a place of safety and routine, not a stage for parental conflict. This matters both for their education and their emotional stability.

[27] For this reason, it is necessary to include a provision that the children are only to be collected from school at the normal end of the school day, save where the

school itself has informed either parent that a child is unwell and needs to be collected, or where both parents agree in writing (by email or WhatsApp) to an early collection for a specific, limited purpose. Neither parent is to engage school staff to secure an early release of a child, save in genuine emergencies or with the other parent's prior agreement.

[28] Schools cannot be expected to enforce court orders that regulate the relationship between quarrelling parents, and teachers and other staff should, in an ideal world, not be required to mediate such high-conflict that often plays out on school grounds. Nonetheless, a copy of the order should be brought to the attention of the children's school, so that the school is informed about the interim arrangement.

Forensic assessment

[29] The complexity of the factual disputes in this matter, including the parties' differing parenting styles and the children's therapeutic needs, makes it appropriate to call on specialised expertise. As noted in *K.O v M.S.*⁹ the purpose of such a report is to assist and provide a court with an objective opinion on the emotional and interpersonal interactions between all parties.

[30] Both parties now accept, at least in principle, that a forensic psychologist should be appointed to investigate the care, contact and residence arrangements and to make recommendations to the court. This is consistent with the court's role as upper guardian and the recognition that expert evidence can assist in complex parenting disputes. The only remaining disagreements are the identity of the psychologist and the apportionment of costs.

[31] The applicant proposed Dr O'Mahony, who has relevant forensic experience and could commence relatively soon. The respondent raised no articulate objection to her suitability at the time the application was launched, he simply rejected the suggestion. However, it is undesirable in a matter fraught with distrust that the expert

⁹ [2025] ZAGPPHC 192 para 47 onwards.

be perceived as chosen by one party and imposed on another. On the other hand, the appointment should not be delayed indefinitely because a party cannot agree.

[32] A pragmatic mechanism is to direct each party to nominate two suitably qualified forensic psychologists. If the parties themselves cannot agree on a person from that list, the list is to be referred to a neutral body, such as the Gauteng Family Law Forum, to select one, taking into account the person's expertise and the need for a speedy commencement of the assessment. Given the apparent disparity in the parties' financial positions, an 80/20 split (respondent/applicant) of the expert's costs is appropriate at this stage.

[33] Both parties are to co-operate fully with the assessment and to make the children available for interviews, observation and any collateral processes required by the expert.

Conclusion

[34] Much is made of the parties' papers regarding their various emotional challenges, including an incident in September 2025. Courts must be slow to equate the existence of mental-health challenges with parental unfitness, especially in instances where a person sought professional help to deal with them. It would be deeply concerning if a person's attempt to address their own mental health responsibly is used against them in court papers to disqualify them from being a present parent, absent any cogent evidence from an expert that their condition renders them unsafe or unable to care appropriately for children. None of what was said about either party's mental health status impacted what I have decided. Courts have repeatedly emphasised that the best interests of the child, not the parents' disputes, are central.¹⁰ That is what has guided my decision-making.

[35] As the upper guardian of these two children as well, I am concerned about their well-being and take cognisance of the fact that, in times of emotional uncertainty, a predictable daily structure can support the children in processing their feelings. The complexities of the court order may be difficult to explain. Of course, it

¹⁰ B v S 1995 (3) SA 571 (A) at 583G.

is for the parents and therapists to decide how best to communicate the order to the children, but one practical tool may be a monthly calendar that indicates on what dates and times they will be with their dad, and on what dates and times they will be with their mom. A visual explanation often helps them to understand and manage their expectations. To help with the communication, I have prepared a brief letter addressed to the children, explaining this order in age-appropriate language. It does not form part of the order itself, but the parties are authorised, and encouraged, to share it with the children in consultation with their therapist.

Costs

[36] The applicant has been substantially successful in obtaining urgent, structured interim relief and in securing a mechanism for a forensic assessment, as she required from the onset of the disagreements. The respondent's stance on urgency and the necessity of expert input shifted over time and, on the papers, has contributed to the need for court intervention. In the circumstances, I am satisfied that the respondent bears the costs of part A, and that the appropriate scale, in terms of Rule 67A, is scale B.

Order

[37] Accordingly, the following order is made:

1. The applicant's non-compliance with the Uniform Rules of Court is condoned, and the matter is heard as an urgent matter in terms of Rule 6(12).
2. Pending the report and recommendations of a forensic psychologist and the final determination of Part B of this application, the following interim regime shall apply:
 - 2.1. The minor children, L[...] M[...] M[...] M[...] ("L[...]") and S[...] M[...] E[...] M[...] ("S[...]"), shall reside primarily with the applicant.
 - 2.2. During school terms, the respondent shall be entitled to exercise contact with the children on the following basis:
 - 2.2.1. The respondent may collect the children from the applicant's residence on Tuesdays at 07h20 to take them to school.

- 2.2.2. The respondent may collect the children from school after 16h00 on Tuesdays, in alignment with their extracurricular schedule, and shall return them to the applicant's residence by 19h00.
- 2.2.3. The respondent shall have sleepover contact on Thursdays.
- 2.2.3.1. In the first week ("Week A"), the respondent shall collect the children from school after 16h00 on Thursday, in alignment with their extracurricular schedule, and the children shall sleep over at his residence that night. He shall return them to school on Friday morning.
- 2.2.3.2. In the alternate week ("Week B"), which shall coincide with the respondent's alternate weekend contact as set out in 2.3, the respondent shall collect the children from school after 16h00 on Thursday and they shall remain in his care overnight on Thursday, Friday and Saturday nights. He shall return them to the applicant by 17h00 on Sunday, at her residence.
- 2.2.3.3. On the Thursdays that L[...] has therapy, the respondent shall collect the children no later than 15h15, and transport L[...] to her therapy session.
- 2.2.3.4. The first week after this order is "Week A".
- 2.3. Sleepover contact shall occur every second weekend ("Week B") at the respondent's residence, from Thursday after school until Sunday at 17h00. He shall return the children to the applicant at her residence.
- 2.3.1. When S[...] is in the respondent's care over a weekend, the respondent shall ensure that he attends his therapy session on Saturdays from 12h00 to 13h00.
- 2.4. During school holidays and on public holidays, the following shall apply:
- 2.4.1. During all school holidays, including the December/January holiday, the children's holiday time shall, as a general rule, be shared equally between the parents on a half-half basis, to be arranged by agreement in writing, taking into account their travel plans and the children's reasonable holiday activities. If they cannot agree, each parent shall be entitled to half of the holiday by number of overnights, with the applicant having the first half in the first holiday following this order and the respondent the second half, alternating thereafter.

- 2.4.2. In addition to the half-half division of the December/January holiday, one parent shall have the children with them over Christmas, and the other over New Year, alternating annually. In 2026, the applicant shall have the Christmas period and the respondent shall have the New Year period; thereafter, the roles shall alternate each year.
- 2.4.3. Public holidays that fall on a day when the children are with a parent shall be spent with that parent, unless the parties agree otherwise in writing. Where a public holiday falls on a Friday or a Monday which is adjacent to an alternate weekend (Week B), it shall be added to that weekend.
- 2.5. The children shall attend school regularly in accordance with the school's timetable.
- 2.5.1. Save if the school itself has informed a parent that a child is unwell and must be collected, or save where both parents have agreed in writing (including by email or WhatsApp) to a particular early collection for a specific purpose, neither parent shall remove, or cause any third party to remove, a child from school before the normal end of the school day.
- 2.5.2. Neither parent shall approach the school staff to secure early release of a child, except in a genuine emergency or with the prior written consent of the other parent.
- 2.6. Daily windows for telephonic or video contact between the children and the non-residential parent when they are not in that parent's physical care will fall between 17h00 and 18h30.
- 2.6.1. Neither parent shall contact the children outside the agreed-upon windows, except in an emergency or with the other parent's prior arrangement. Neither parent shall use the child-minder, teachers, or other third parties as intermediaries to circumvent this arrangement.
- 2.7. Any parent whose travel (local or international) will materially affect the contact time scheduled in terms of this order shall, as soon as reasonably practicable after becoming aware of the travel, inform the other parent in writing of the dates and the anticipated impact on contact.

- 2.7.1. Where, because of such travel, a parent is unable to exercise scheduled contact, the parties shall in good faith endeavour to agree, in writing, on reasonable "make-up" contact for that parent, having regard to the children's routine and commitments.
- 2.7.2. If the parties cannot agree, missed contact shall not automatically accumulate, but both parents shall keep in mind, in future scheduling discussions, the desirability of maintaining a broadly fair balance of meaningful time with each parent over the medium term, always bearing in mind the children's need for predictability.
3. A suitably qualified forensic psychologist shall be appointed to conduct a comprehensive assessment into the care, contact and residence arrangements of the minor children and to make recommendations to the decision-maker seized with the matter. The appointment shall proceed as follows:
- 3.1. Within five court days of this order, each party shall, in writing, nominate two forensic psychologists with demonstrable experience in child-focused forensic assessments in high-conflict parenting disputes.
- 3.2. Within five court days of receipt of both sets of nominations, the parties will endeavour to agree on a person, failing which the parties' legal representatives shall jointly submit the four names to the Gauteng Family Law Forum and request that one of them be designated to conduct the assessment, taking into account expertise, availability and the need for expeditious completion.
- 3.3. The costs of the forensic assessment shall be borne 80% by the respondent and 20% by the applicant.
- 3.4. Both parties are directed to co-operate fully with the assessment, to sign any reasonable consent forms required, to make themselves and the children reasonably available for interviews and observations, and not to seek to influence the expert to align with their respective positions.
4. Upon receipt of the forensic psychologist's report and recommendations, the parties shall be entitled to supplement their papers in Part B of the application as follows:
- 4.1. The applicant shall deliver a supplementary founding affidavit within ten days of receipt of the report.

- 4.2. The respondent shall deliver a supplementary answering affidavit within ten days of receipt of the applicant's supplementary founding affidavit.
- 4.3. The applicant may deliver a supplementary replying affidavit within ten days of receipt of the respondent's supplementary answering affidavit.
5. Part B of the application is postponed sine die. Either party may, after close of the supplementary pleadings, enrol Part B for hearing on reasonable notice to the other.
6. The respondent shall pay the costs of Part A of this application, on scale B.

WJ du Plessis

Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing:	24 February 2026
Date of judgment:	26 February 2026
For the applicant:	F Bezuidenhout instructed by Venessa Fernihough and associates
For the respondent:	D Mpofu SC, with him N Mokoena, instructed by Eric Mabuza attorneys

A letter to L[...] and S[...]

26 February 2026
Johannesburg

Dear L[...] and S[...],

Your mom and dad recently came to court so that I could help them work out a plan about where you will stay, and when, for the next few months. I listened carefully to both of them, and I want to explain my decision to you so that you can understand what was decided and why.

Firstly, both your mom and dad told the court how much they love you, and how they both like spending time with you. Even if they are not getting along so well right now, their love for you has not changed. Them not getting along so great at the moment is not your fault – sometimes Moms and Dads fight because of adult things.

After listening to them, I decided that, for now, you will stay mostly with Mom. But don't worry, you will still see your dad (or "Baba", as you call him) a lot.

- ✿ On Tuesday mornings he will pick you up at Mom's place to take you to school, and fetch you again after school until the evening, when you sleep at mom's.
- ✿ On Thursdays you will have a sleepover at his house. He will fetch you from school on the Thursday, you will sleep over, and he will take you back to school on the Friday. L[...], when you have therapy on a Thursday, he will take you there.
- ✿ On some weekends you will also sleep over at Dad's house. That means: One weekend you will sleep at Mom's house, the next weekend at Dad's house. That also means that in some weeks he will pick you up after school on a Thursday, and you will be with him until the Sunday at 17h00.

Sometimes, when Mom or Dad travel, this might change a little, but they will talk to each other and to you about that.

I tried to make a table about what your weeks may look like:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Mom	Dad takes you to school and picks you up after Sleep at Mom's	Mom	Mom takes you to school Sleepover at Dad	Mom	Mom	Mom
Mom	Dad takes you to school and picks you up after Sleep at Mom's	Mom	Mom takes you to school Sleepover at Dad	Dad	Dad	Dad

In the school holidays, you will spend half the time with Mom and half the time with Dad.

It is important that you go to school every school day. No one may fetch you from school in the middle of the day unless you feel sick, or both Mom and Dad say you may go home early.

Later on, a special doctor, called a psychologist (it is such a big word!), will meet you, Mom and Dad. Their job is to help the next judge understand what life is like for you and what will be best for you. They are usually kind people, and you can talk to them honestly about how you feel. Mom and Dad will not be angry with you if you share your feelings honestly.

Mom and Dad will try their best to work together. If you are unsure about where you will be on a certain day, you can ask them to show you on the calendar.

The reason why I decided this is to make sure that you know when you are with Mom and when you are with Dad, until the psychologist (that big word again) and the next judge help to make a longer-term plan. The psychologist will help the next judge in making that plan, and will tell the judge what you want.

My decision does not mean that I think your Mom or your Dad loves you more, or that one of them is a better parent. It is only to give you clear routines and to help you know when you are with Mom, and when you are with Dad. That will also help Mom and Dad to fight a bit less. And hopefully, that will make you feel a bit safer.

With care,

Judge Elmien du Plessis