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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA.**

**CASE NO: 89128/2024**

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 23/02/26

SIGNATURE:

In the matter between:

**R[...], D[...]**

**Applicant**

and

**R[...], P[...], J[...]**

**Respondent**

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**JUDGMENT**

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**COURTENAY AJ:**

**Introduction:**

[1] E is four and a half years old. She lives with her mother. She visits her father on alternate weekends. One of her parents believes she has been sexually violated. The other believes the first parent has invented or imagined this violation, and is teaching E to believe it happened. E herself has made statements – some spontaneous, some in response to leading questions – that her father touched her

inappropriately. She has also, at other times, played happily with her father and shown no fear of him. E cannot tell this Court what is true. She can only tell this Court what she has come to believe is true – and in a case like this, that may not be the same thing.

[2] This Court has no expert evidence to resolve the dispute. No medical examination was conducted when the applicant says she first became concerned, nor in the sixteen months that followed. The South African Police Service was notified only in late November 2025, after this urgent application was launched. What the Court has instead are 490 pages of affidavits: allegations and denials, character attacks and counter-attacks, each parent insisting the other is either a predator or a liar. Not a single page contains an independent expert opinion. Not a single page brings the Court closer to knowing what happened in the private, unwitnessed moments of this family's life.

[3] Motion proceedings are not designed to adjudicate contested allegations of sexual abuse or psychological manipulation. Those determinations require *viva voce* evidence, cross-examination, and expert testimony. An urgent application compresses time and forecloses the rigorous inquiry that allegations of this gravity demand. Yet urgency has been invoked, and the Court must decide – not what happened, but what happens next. Not whether the respondent is guilty or the applicant is delusional, but where E sleeps tonight, and tomorrow night, and every night until the truth can be properly investigated.

[4] This judgment makes provisional findings based on the evidence currently before the Court. These findings are interim, not final, and subject to revision in light of the forensic investigation that must now urgently proceed. The Court does not determine whether the respondent sexually abused E – that question requires expert assessment. But the Court must determine, on the materials before it, what interim arrangement best protects E while that question is investigated. That determination requires assessing the credibility and conduct of both parents, not to assign blame, but to identify which arrangement minimises harm to E in conditions of profound evidentiary uncertainty. E cannot speak for herself in these proceedings. The Court must speak for her.

**Issues:**

[5] The applicant seeks suspension of the respondent's contact with E, alternatively supervised contact on a reduced schedule. She seeks the appointment of a forensic social worker to investigate the allegations and requests the involvement of the Office of the Family Advocate.

[6] The respondent seeks E's removal from the applicant's primary residence and her placement in the temporary care of his sister-in-law, with both parents afforded supervised contact. He seeks the appointment of a forensic psychologist to investigate whether E has been sexually abused and, if so, by whom. He also requests the involvement of the Office of the Family Advocate.

[7] During argument, certain points of convergence emerged:

[7.1] The applicant accepted that a psychologist, rather than a social worker, is required to assess the allegations with the necessary rigour they deserve.

[7.2] The respondent consented to supervised contact – not as any concession to the merits of the allegations, but as a strategic shield against further accusations while the investigation unfolds.

[7.3] Both parties accept that forensic investigation is necessary and that the Office of the Family Advocate should be involved.

[8] The principal issue is whether E should remain in the applicant's primary care, subject to supervision and conditions, or be removed and placed in the temporary care of the respondent's sister-in-law pending the forensic investigation. That question determines where this child will live, with whom she will sleep, and under whose influence she will remain while the investigation – which both parties now accept as indispensable – unfolds. It is not a simple choice between two competing parents. It requires an assessment of whether the evidence establishes risk to E of such immediacy and severity that removal – the most drastic intervention available to this Court – is justified, or whether the concerns raised by both parties can be managed through supervision, therapeutic intervention, strict parental conditions,

and expert oversight while E remains in the stability of her current primary residence. It is the most consequential question before this Court.

### **The Facts:**

#### ***Background:***

[9] E is four and a half years old. Her parents' marriage collapsed when she was not yet three. On 18 July 2024, they signed a settlement agreement. The applicant was granted primary residence. The respondent was granted contact on alternate weekends – Saturday from 09h00 to 17h00, Sunday from 08h00 to 17h00 – as well as Wednesday afternoons and telephonic contact on Tuesdays. It was incorporated into the decree of divorce on 18 November 2024.

[10] Four days after signing that agreement, the applicant contacted a therapist. On 23 July 2024, she completed an intake form for Ms Rademeyer. She wrote: *"I am concerned that someone might be touching her. I am aware of exploring but she is showing more interest in exploring in weird ways after a visit"*. Under the heading *"What are your major concerns about your child's behaviour?"* she wrote: *"Only that she 'plays' with herself more often and do strange things after visit or contact with dad"*. The respondent's counsel emphasised during argument the timing.

#### ***The Applicant's Account:***

[11] The applicant says the marriage was troubled. She alleges that the respondent would wake E late at night, enter her room at unreasonable hours, and sleep beside her until early morning. The respondent explains that he was tending to her needs. The applicant says he watched pornography while the family slept and contends he confessed repeatedly to a heightened sexual appetite and compulsive sexual behaviour, though she admits she has no proof of a pornography addiction. The respondent denies all of this.

[12] In March 2024, the respondent left the matrimonial home. By mid-2024, the applicant says, E's behaviour began to concern her. E became visibly distressed after returning from visits with her father, in particular.

[13] Ms Rademeyer's therapeutic engagement with E ran from 22 July to 15 October 2024. The respondent participated. He was never told the reason for the referral. Ms Rademeyer's feedback found nothing of concern. The applicant terminated the sessions in October 2024, citing the apparent manipulation of the process by the respondent.

[14] On 17 August 2024, the applicant permitted E to sleep over at the respondent's residence. She wanted to celebrate her birthday, she says, and it was a safer and more practical option. This was one month after she had engaged a therapist to assess whether someone was inappropriately touching E.

[15] In December 2024, the applicant sought a second opinion. The applicant consulted Ms Boonzaaier, a social worker, and repeated her concerns. Ms Boonzaaier advised her that –

[15.1] without a disclosure, it would be difficult to say whether abuse had occurred.

[15.2] if E said something concerning, she should listen but not interrogate. The questions might contaminate what the child was trying to communicate.

[15.3] there were, Ms Boonzaaier noted, alternative explanations for sexualized behaviour in young children.

[16] The applicant responded in writing. She acknowledged the advice. She wrote: *"I understand that there are alternative hypotheses, the only thing that doesn't add up with them is that the normal child exploration only takes place when she was with her dad, not at any other times"*. The applicant acknowledged that after E had a bad dream, she had asked E who was touching her, naming specific people. She wrote: *"I understand that was wrong, and I should have handled it differently"*.

[17] On 5 March 2025, the applicant and the respondent had sexual intercourse. This is not in dispute. The applicant says it was mutual and spontaneous. There was no agreement or expectation that he would stay over. There was no ongoing relationship.

[18] In August 2025, the applicant says, E began having bad dreams. That she would wake and say the respondent was touching her vagina. On multiple occasions after E returned from the respondent's care, the applicant observed visible redness in E's genital area. E told her it was caused by her father.

[19] In mid-October 2025, the applicant says, the respondent invited her into his home. He told her he was struggling with inappropriate thoughts and problems with self-control. Shortly after this conversation, she says, E began to make disclosures.

[20] On 15 October 2025, E told the applicant: "*Pappa het my nunu ge-touch*". This occurred while they attended the respondent's church life group. The applicant says she observed a marked change in E's behaviour relating to her own genital area.

[21] On 22 October 2025, E told the applicant that the respondent had touched her vagina while they sat together on the couch. E was crying and said her vagina hurt because it was red.

[22] On 8 November 2025, E said the respondent had asked her to lie on the bed in his room while they were playing tea party in the living room. He would touch for one minute, she said. He promised her new toys if she agreed. She said she did. It is not in dispute that the respondent had purchased her gifts on that date.

[23] Contact continued. No report was made to the police. No doctor was consulted. No urgent application was launched.

[24] On 10 November 2025, the applicant recorded a conversation with E, asking her recount what had happened two days earlier. The transcript shows the applicant asking:

[24.1] *"Wat maak hy? Verduidelik net vir my mooi."*

[24.2] *"Wat het gebeur? Hoekom het pappa vir jou mooi goed gegee?"*

[24.3] *"Nee jy het nie, jy praat stukkies en dan maak jy 'n grappie daarvan. Dit is nie 'n grappie nie. Praat mooi met mamma dan kan ons klaar kry en speel."*

[24.4] *"Jy het nou die dag vir mamma vertel, so vertel net weer vir my wat het gebeur daar."*

[25] On 9 November 2025, E was scheduled to see her father. The applicant told him E was not up to it. The respondent accepted. He left town shortly afterward and missed the midweek contact. The applicant launched this application on 19 November 2025. Between 24 and 27 November 2025 – after the application had been launched – she reported the allegations to the South African Police Service.

[26] When the respondent arranged for E to be assessed at the Teddy Bear Clinic without consulting the applicant or her attorneys, the applicant declined to participate. She says she was taken by surprise. In her replying affidavit, she annexes a clean urine test result.

### ***The Respondent's Account:***

[27] The respondent denies the allegations. He provides detailed accounts of what he and E did on the days abuse is alleged. Where the applicant says abuse occurred during a tea party on 8 November, he describes the day's activities: what they played, what they ate, when they rested. Where the applicant says he touched E on the couch on 22 October, he recounts the afternoon. The denials are specific, not general.

[28] The respondent says the applicant is mentally and emotionally compromised. She uses THC daily, he alleges. This has impaired her cognitive functioning, her memory, her emotional regulation. She is addicted to cannabis-based substances. The use has triggered paranoid delusions and heightened anxiety. She is dependent on sleeping pills and tranquilizers. Her mental health has deteriorated. He provides no expert evidence for any of this.

[29] He relays an incident: the applicant blamed him for a sexual dream she had about him. His nieces, he says, told him the applicant confided in them that she was sexually abused by her father as a child. He annexes affidavits from the nieces. They are unsigned.

[30] The respondent advances an alternative explanation. The applicant, he says, runs a cannabis business from her home. There is a walk-in store, a beauty salon, a manufacturing facility. She employs at least ten people. Two are men. She sells products containing illegal substances, he alleges. He names several individuals he describes as her "paramours." They have access to the home. If abuse occurred, he suggests, it could have been any of them. He provides no evidence linking any of these individuals to E or to the alleged conduct. This theory sits uneasily beside his primary position: that no abuse occurred at all.

[31] The respondent says he noticed E scratching her vagina on several occasions. He raised this with the applicant. The applicant dismissed it. It was a woman's issue, she said. He includes information about medical causes of vaginal irritation in young children: urinary tract infections, yeast infections, eczema, poor hygiene. These, he suggests, explain any redness the applicant observed.

[32] The respondent says the applicant never raised concerns about sexual abuse before this application (she did, on a single occasion, to which he replied "*dis reg, gaan groot. Ek hoop jy kom agter die kap van die byl*"). He had no knowledge of why Ms Rademeyer was engaged. Nothing was done after the settlement agreement was signed in July 2024. The parties remained cordial throughout 2024 and into 2025. He annexes communications showing civil exchanges.

[33] When he received this application, the respondent arranged for E to be assessed at the Teddy Bear Clinic. He did not consult the applicant or her attorneys. When the clinic contacted the applicant, she refused to participate.

***E's Current Status:***

[34] E has not seen her father since 08 November 2025. According to the applicant, she has only asked after him once.

### **Discussion:**

[35] A child's best interests are of paramount importance in every matter concerning the child.<sup>1</sup> The principle is emphatic and far-reaching.<sup>2</sup> Paramountcy requires close, individualised examination of E's precise circumstances – not the application of pre-determined formulas for the sake of certainty.<sup>3</sup> The determination of a child's best interests involves what has been described as a structured value judgment: a finding of mixed fact and opinion in which the court acquires an overall impression and assesses the circumstances in a balanced fashion.<sup>4</sup> This Court is not looking for the perfect parent.<sup>5</sup> It is looking for the least detrimental alternative for safeguarding E's growth and development.<sup>6</sup>

[36] This Court cannot determine, on the papers before it, whether the respondent sexually abused E. That determination requires forensic assessment by professionals with expertise in interviewing young children, evaluating developmental capacity, and distinguishing organic memory from external suggestion. Nor can this Court determine whether the applicant has deliberately or unconsciously influenced E's statements. The assessment of whether a parent's anxiety, trauma history, or psychological state has shaped their perception of events requires equally specialised evaluation. Both parties accept that expert assessment is necessary. The question this Court must answer is what interim arrangement best protects E while that assessment proceeds.

[37] While this Court cannot resolve the contested allegations, it can and must assess what the parties' own conduct – undisputed and admitted – reveals about risk, judgment, and capacity. Where a party's actions are fundamentally inconsistent with their professed beliefs, that inconsistency is not a disputed fact requiring *viva voce*

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<sup>1</sup> Sec. 28(2) of the Constitution.

<sup>2</sup> *S v M (Centre for Child Law as Amicus Curiae)* [2007] ZACC 18 at [25]

<sup>3</sup> *Id* at [24].

<sup>4</sup> *Cunningham v Pretorius* [2008] ZAGPHC 258 at [9].

<sup>5</sup> *ZDE v CE* [2024] ZASCA 159 at [16].

<sup>6</sup> *Ibid.*

evidence. It is an objective reality that informs the Court's assessment of what arrangement serves E's interests.

[38] The applicant's conduct over eighteen months raises serious concerns. On 18 July 2024, she signed a settlement agreement granting the respondent unsupervised contact. Four days later, she told a therapist she was concerned someone might be touching E. The language in the intake form – "*more interest in exploring, after a visit*" – suggests observations made over time, not concerns that arose in four days. On 17 August 2024, one month after engaging the therapist to assess whether E was being inappropriately touched, she permitted E to sleep over at the respondent's residence so she could celebrate her birthday. On 5 March 2025, eight months after first expressing concern, she had sexual intercourse with the respondent. In August and October 2025, E made disclosures. Contact continued. No urgent court order was sought. No police report was made. No medical examination was conducted. On 10 November 2025, nine months after being advised not to interrogate E, the applicant recorded a conversation in which she repeatedly pressed E to recount what had happened. On 19 November 2025, she launched this application. Between 24 and 27 November—after the application had been filed—she reported the allegations to the South African Police Service. Sixteen months had passed since she first expressed concern.

[39] This conduct is difficult to reconcile with genuine, sustained belief that E was being sexually abused. A parent who believes their child is in danger does not permit overnight stays for social convenience. A parent who believes their former partner is abusing their child does not engage in intimate sexual relations with that person. A parent who believes abuse is ongoing does not allow contact to continue week after week without seeking urgent intervention. The respondent's counsel emphasised these inconsistencies during argument, and rightly so. They are serious. They undermine the reliability of the applicant's account. They raise questions about whether her concern is grounded in reality or in something else – anxiety, confirmation bias, escalating suspicion detached from evidence.

[40] But the question before this Court is not whether the applicant's allegations are credible. The question is whether the evidence establishes risk to E of such

immediacy and severity that removal from her primary caregiver – the most drastic intervention available to this Court – is justified.<sup>7</sup> Removal of a child from the primary caregiver requires substantial justification.<sup>8</sup> Even where legitimate concerns about a parent exist, removal is not undertaken lightly. The principles underlying Chapter 9 of the Children's Act<sup>9</sup> – that removal is a last resort, that family preservation should be prioritised where safe to do so, and that removal requires proper assessment of alternatives – inform this Court's discretion even in proceedings that do not formally invoke that Chapter.<sup>10</sup>

[41] The applicant is not accused of abusing E. She is accused of poor judgment, of contaminating E's disclosures, and – by the respondent – of being mentally and emotionally compromised to the point where she cannot reliably perceive reality or refrain from unconsciously influencing E. The respondent does not allege deliberate fabrication or malicious manipulation. His case is that the applicant's judgment is impaired by substance abuse, anxiety, or paranoid delusions, and that this impairment has caused her to misperceive events or unconsciously shape E's beliefs. The respondent provides no expert evidence for these allegations. He annexes unsigned affidavits. He speculates about paramours and employees without evidence linking them to E or to the alleged conduct. His alternative perpetrator theory sits uneasily beside his primary position that no abuse occurred at all. Claims of mental impairment or psychological dysfunction require expert assessment by professionals with the necessary knowledge and training.<sup>11</sup> Lay opinion, however sincerely held, cannot substitute for professional evaluation in matters of such complexity and consequence.

[42] The distinction between incapacity and malice matters. Deliberate manipulation of a child for litigation advantage – fabricating allegations, coaching disclosures, weaponizing a child's statements – would raise concerns of such

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<sup>7</sup> See, *M v M* (Case No.: 57215/2017) (unreported). Available on request.

<sup>8</sup> See, *AK v MCK* [2009] ZAECPHC 35.

<sup>9</sup> Children's Act 38 of 2005 (Children's Act).

<sup>10</sup> See, generally, *C v Department of Health and Social Development, Gauteng* [2012] ZACC 1.

<sup>11</sup> *M* (n 5) at [100].

severity that removal might be justified even absent expert corroboration.<sup>12</sup> But allegations of psychological struggle describe a parent who is anxious, confused, or mistaken rather than malicious. Such struggles can be managed through therapeutic intervention, supervision, and court-imposed boundaries.<sup>13</sup> The respondent's own framing of the applicant's conduct as incapacity rather than intent undermines, rather than supports, the case for removal.

[43] Where a parent's own conduct (not contested allegations about their mental state, but their own admitted actions) raises questions about judgment and capacity, the court is entitled to draw inferences from that conduct.<sup>14</sup> The applicant's conduct does raise such questions. But the test is not whether this parent is flawless or whether her judgment has been perfect; the test is whether her conduct demonstrates impairment so severe that removal is necessary to protect E, or whether the concerns can be managed through supervision, conditions, and expert oversight while E remains in the stability of her current primary residence.

[44] A parent's emotional or mental health challenges—even if proven—are not an automatic bar to care. What matters is whether the parent is managing the condition and functioning in the parental role.<sup>15</sup> Many parents provide adequate care despite anxiety, trauma histories, or psychological difficulties. The question is adequate functioning, not perfection.<sup>16</sup> Here, there is no expert evidence that the applicant is unable to function in her parental role. The respondent raised no issues that gave him pause for thought whilst he exercised contact; his engagements were described by him as engaging, fun, and loving. Evidence of poor judgment exists – the sleepover, the sexual encounter, the recording made despite professional advice. But poor judgment in discrete instances is not the same as incapacity to provide care under conditions designed to prevent further contamination.

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<sup>12</sup> See, generally, *Mpofu v Minister of Justice and Constitutional Development* [2013] ZACC 15 at [21] where the Constitutional Court confirmed that as the upper guardian, a flexible approach must be followed by the High Court.

<sup>13</sup> See, generally, *P v P* [2007] ZASCA 47.

<sup>14</sup> See, *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at [26]. See also, *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd* [2010] ZASCA 66 at [19].

<sup>15</sup> *P* (n 10) at [23].

<sup>16</sup> *Ibid.*

[45] E has been in the applicant's exclusive care since 9 November 2025, when contact with the respondent ceased. There is no evidence before this Court regarding E's state during the intervening month. Prior to the cessation of contact, the applicant reports—and the respondent does not dispute—that E's teachers indicated she was doing well at school. The absence of evidence of deterioration in the applicant's care since contact ceased does not prove E is thriving. But neither does it support the inference that she is suffering immediate, demonstrable harm requiring emergency removal.

[46] Removal would cause E immediate and certain harm. She is four and a half years old. Her mother is her primary attachment figure. She has lived with her mother continuously since March 2024. Separating a young child from her primary caregiver causes attachment disruption, confusion, and distress. E may interpret removal as punishment for her disclosures – whether those disclosures reflect genuine experience, external suggestion, or some combination of both. If the allegations are true, removal places E with a family member loyal to the respondent, potentially silencing her or reinforcing the message that disclosure leads to loss. If the allegations are false but believed by E due to maternal influence, removal may reinforce E's belief that her mother was right to fear the respondent, compounding rather than remedying any alienation.

[47] The respondent seeks E's placement with his sister-in-law. LR is not a stranger to E, but neither is she neutral. As the respondent's family member, she has deposed to an affidavit supporting his application. Placement with her advantages the respondent and does not constitute neutral temporary safe care in any meaningful sense. Removing a child from her primary caregiver and placing her with a family member aligned with the other parent is not a neutral act. It is a profound shift in E's lived reality, carrying risks of its own.

[48] The least detrimental alternative is not removal. It is the maintenance of E's current primary residence, subject to conditions that protect her from further contamination and preserve the integrity of the forensic investigation.<sup>17</sup> The

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<sup>17</sup> See, sec. 7 of the Children's Act.

respondent's contact will be supervised. Given the parties' financial constraints, supervision will be undertaken by a responsible adult family member chosen by the respondent. This is not ideal. Family supervision lacks the neutrality and professional oversight that formal supervision by a registered social worker would provide. But perfect supervision is not always financially attainable, and the evidentiary basis for the allegations – weakened by the applicant's own conduct over eighteen months – does not justify the expense of professional supervision at this stage. The psychologist conducting the forensic assessment will monitor the contact arrangements and is empowered to recommend professional supervision if the evidence gathered during the assessment reveals that family supervision is inadequate. Supervision, even imperfect supervision, protects E if the allegations are true and preserves her relationship with her father if they are false. The respondent has consented to supervised contact – strategically, not as a concession to the merits, but the consent narrows the contested terrain.

[49] Both parents will be prohibited from discussing the allegations with E. Both will be prohibited from interrogating her about contact with the other parent. These are not mere aspirational directives. They are court orders, breach of which constitutes contempt.

[50] A forensic psychologist will be appointed immediately. The psychologist will have the authority to make interim recommendations, including recommendations regarding living arrangements, if the evidence gathered during the assessment reveals risks that require urgent intervention. This is not a final determination. It is a provisional order, responsive to emerging evidence. If the psychologist finds that E is being harmed in the applicant's care – if contamination continues despite court orders, if the applicant's judgment is so impaired that supervision and conditions are insufficient – the psychologist can (and must) recommend removal, and this Court can act on that recommendation. The order is not locked in. It is adaptive.

[51] E will be placed in therapeutic care with a qualified play therapist. The therapist's role is not forensic. It is to provide E with a safe space to process her experiences, whatever they are, without the pressure of satisfying a parent's need for confirmation or an investigator's need for answers. The Office of the Family

Advocate will also investigate and assess systemic factors relevant to E's wellbeing. The Family Advocate's investigation will not duplicate the psychologist's forensic work. It will provide independent verification and systemic context.

[52] This arrangement protects E. It protects her from ongoing abuse if the allegations are true, because the respondent will have no unsupervised access to her. It protects her from ongoing contamination if the allegations are false or uncertain, because the applicant is bound by court order not to discuss them with her and because therapeutic and expert oversight create accountability. It protects the integrity of the investigation by ensuring that the psychologist can assess E in conditions where external influence, to the extent it can be minimised, has been minimised. And it protects E from the immediate, certain harm of removal from her primary caregiver.

[53] Courts must be cautious about claims of parental alienation or psychological manipulation. Such claims require expert assessment by professionals with the necessary knowledge, training, and skill.<sup>18</sup> The concept remains controversial in judicial, legal, and psychological circles.<sup>19</sup> Lay litigants, however convinced of their perceptions, are not qualified to diagnose parental alienation or psychological impairment. The same caution applies to allegations of sexual abuse: neither set of allegations can be accepted without expert corroboration, and neither can be dismissed without proper investigation.

[54] If this Court were to remove E from the applicant's care based primarily on unsubstantiated allegations of mental impairment and substance abuse, it would set a troubling precedent. Mothers who allege sexual abuse – even if their allegations are ultimately unproven – would face the prospect of losing primary residence based on responsive allegations of mental illness advanced without expert support. That outcome would deter protective parents from coming forward. It would reward litigation strategies that deploy psychiatric labels as weapons. It would penalise disclosure. This judgment cannot contribute to that outcome.

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<sup>18</sup> *M* (above n 5) at [83].

<sup>19</sup> *Id* at [82]

[55] The applicant's conduct over eighteen months has not been exemplary. Her judgment has been poor. Her credibility is damaged. But those failures do not prove the respondent is safe. They do not prove E is in danger in the applicant's care. And they do not meet the threshold for the drastic step of removal. What they prove is that this case requires expert assessment – urgently, rigorously, and under conditions that protect both E's welfare and the integrity of the investigation. Those conditions can be established without removing E from her mother's care.

[56] E cannot speak for herself in these proceedings. But her interests can be identified and protected. Her interest is not in vindicating one parent's version of events over the other. It is in safety, in stability, in being allowed to be a child while the adults in her life – with the assistance of professionals – determine what has happened and what must happen next. The interim arrangement this Court orders today serves that interest. It is not perfect. No arrangement in circumstances like these can be. But it is the least detrimental alternative available on the evidence before this Court.

### **Conclusion:**

[57] E did not create this conflict. She did not ask to be caught between two parents whose versions of her life are irreconcilable. She is four and a half years old. She cannot advocate for herself. She cannot choose which parent to believe or which reality to inhabit. This Court must make those choices for her, knowing that the evidence is incomplete, the allegations are unproven, and the truth may not emerge for months.

[58] The arrangement this Court has ordered is not perfect. It will not eliminate the uncertainty that saturates this case. It will not resolve, today, whether E has been harmed by her father or by her mother's escalating anxiety. But it will protect E from the immediate, certain trauma of removal from her primary caregiver while ensuring that the investigation proceeds under conditions that preserve its integrity. It will allow both parents supervised contact with their daughter. It will impose boundaries that neither parent may cross. And it will empower professionals – psychologists, therapists, the Family Advocate – to assess, to intervene, and to recommend

adjustments if the evidence demands it. This is the least detrimental alternative available on the evidence before this Court. It serves E's interests. It is what the law requires.

[59] Courts confronted with allegations of this gravity must act, even when certainty is absent. They must weigh harms, assess risks, and choose the path that best protects the child while the truth is pursued. This Court has done so. The order that follows reflects that choice.

### **Order:**

[60] In the circumstances, the following order is made:

[60.1] The forms and service provided for in the Rules of Court are dispensed with, in respect of both the application and counterapplication, and the matter is considered as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.

[60.2] The respondent's late filing of his answering affidavit and counterapplication is condoned and the affidavit is accepted into evidence.

[60.3] Ms Claire O'Mahony, a psychologist in private practice is appointed as the forensic expert (**the expert**) to conduct an urgent full forensic investigation into:

[60.3.1] whether E[...] R[...] R[...], born on 22 June 2021 (E[...]), has been sexually abused and, if so, by whom.

[60.3.2] whether either parent's mental health, substance use, or psychological state poses a risk to E[...]’s welfare or impairs their capacity to exercise parental responsibilities and rights.

[60.3.3] any other factors relevant to E[...]’s safety, wellbeing, and best interests.

[60.4] The expert shall, on the basis of her investigation, make recommendations regarding the allocation of parental responsibilities and rights in respect of E[...], including primary residence and contact.

[60.5] The expert is empowered to:

[60.5.1] Investigate all disputes in respect of the parties' exercise of their parental responsibilities and rights in such manner as determined by the expert in her sole discretion.

[60.5.2] Determine the protocol for all communications, interviews, and sessions, including who shall or may be involved in same.

[60.5.3] Communicate in writing with either party, provided that such communication is copied to the other party simultaneously.

[60.5.4] Confer individually with the parties and any other person involved with the parties and/or with the child, including but not limited to siblings, step-parents, step-siblings, extended family members, friends, permanent life partners, household members, school and educational personnel, care providers, therapists, and healthcare providers.

[60.5.5] Consult with and obtain any information and/or documentation from the parties' legal representatives and any professional involved in the education, care, treatment, assessment, and/or therapy of either of the parties or of the child.

[60.5.6] Engage the services of other professionals to assist in making recommendations, and the parties shall be liable in equal shares for the costs of such professionals.

[60.5.7] Direct that the parties undergo assessments of their mental functioning, including psychological and/or psychiatric evaluation, and direct drug testing as and when required, nominating the method of testing and the timeframe for the testing to be completed.

[60.5.8] Meet and/or confer with any person whom the expert considers relevant at reasonable times and places without either party being present.

[60.5.9] Obtain such information and/or documentation as the expert may require to perform her mandate.

[60.6] Both parties shall be liable equally for the costs of the expert and any other person(s) appointed by her.

[60.7] The expert shall, within 7 (seven) days of the date of this order, nominate a qualified play therapist in Pretoria to provide therapeutic support to E[...]. The therapist's role shall not be forensic. The therapist shall provide

the child with a safe space to process her experiences without the pressure of satisfying a parent's need for confirmation or an investigator's need for answers. Both parties shall be liable equally for the costs of the therapist.

[60.8] In the event that the expert, during the course of her investigation, reasonably suspects that E[...] is being sexually abused, *alternatively* being coached to make false disclosures, *alternatively* that E[...] is suffering harm in her current living arrangements, the expert shall be entitled to immediately issue an interim report recommending a change in residence, contact, supervision, or any other issue, aspect, or matter as the expert may deem appropriate. Upon receipt of such interim report, either party may approach this Court or any other court with appropriate jurisdiction for a variation of this order.

[60.9] Pending the finalisation of the expert's report:

[60.9.1] E[...] shall remain in the primary residence of the applicant.

[60.9.2] The respondent shall exercise contact with E[...] as follows:

[60.9.2.1] Every weekend, alternating between Saturday and Sunday, from 12h00 to 16h00. (For example: if contact occurs on a Saturday in one week, it shall occur on a Sunday in the following week.)

[60.9.2.2] Every Wednesday from 16h00 to 18h00.

[60. 9.2.3] Daily telephonic contact on those days where the respondent does not have physical contact with E[...], at a time agreed between the parties, failing which between 18h30 and 19h00.

[60.9.3] The respondent's contact with E[...] shall be supervised by a responsible adult family member nominated by the respondent. The respondent shall notify the applicant in writing of the identity of the supervising family member within 48 hours of the date of this order. Contact shall take place at the applicant's residence unless otherwise agreed between the parties in writing or directed by the expert.

[60.9.4] The supervising family member shall not discuss the allegations or the litigation with E[...]. The supervising family member shall ensure that the respondent does not discuss the allegations with E[...] or interrogate E[...] about events, disclosures, or contact with the

applicant. A copy of this order must be brought to the attention of the supervising family member.

[60.10] Both parties are prohibited from:

[60.10.1] Discussing the allegations of sexual abuse or any related matters with E[...].

[60.10.2] Interrogating E[...] child about contact with the other parent, about events that may have occurred during such contact, or about any disclosures E[...] may have made.

[60.10.3] Making disparaging remarks about the other parent in E[...]’s presence or hearing.

[60.10.4] Allowing any other person to discuss the allegations with E[...] or interrogate E[...] in their presence.

[60.12] The Office of the Family Advocate is requested to investigate the best interests of E[...] and the allocation of parental responsibilities and rights on receipt of the report(s) of the expert and to make recommendations in relation thereto, including the child's place of primary residence.

[60.13] In the event of Ms Claire O'Mahony being unable to accept the appointment as the expert, the Chairperson of the Pretoria Society of Advocates shall urgently nominate an appropriately qualified expert to perform the investigation referred to in paragraph 3, which nomination shall take place within 10 (ten) days of the date of this order.

[60.14] Upon receipt of the expert's report (whether interim or final) and/or the Family Advocate's report, the parties shall be permitted to supplement their papers within 15 (fifteen) days of the date of receipt of the report.

[60.15] The costs of the application and counterapplication are reserved for determination during Part B.

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**COURTENAY AJ**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION**

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on Caselines.

For the applicant: Adv L van der Westhuizen

Instructed by: Hills Inc.

For the respondent: Adv L Segal SC

Instructed by: Jordaan Attorneys Inc.

Date of hearing: 05 December 2025.

Date of judgment: 11 December 2025.

Redated: 23 February 2026