REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2026-103466

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE SIGNATURE

In the matter between:

JDJ Applicant

and

LHJ Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an urgent application in which the applicant, the biological father of two minor children, seeks, in substance, an order compelling the respondent, their biological mother, to return the children from the Eastern Cape to Gauteng within 24 hours, together with a range of ancillary interdictory relief restraining their retention or relocation, restoring electronic contact, and directing the disclosure

of the children's whereabouts. In Part B the applicant seeks an investigation and report by the Office of the Family Advocate into the children's best interests, primary residence, schooling and therapeutic needs, and an interdict against any removal of the children from Gauteng without his consent or an order of court.

[2] The parties are husband and wife, married for some eleven years, whose marriage has, on the respondent's version, broken down irretrievably. They have two sons: M, who is of school-going age, and R, a young child with significant special needs. The application was launched as one of extreme urgency and was set down for hearing on 12 May 2026. The respondent opposes the relief and prays that the application be dismissed, alternatively struck from the roll for want of urgency, with costs.

The parties and the minor children

[3] The applicant is Mr Jared Denis Jones, an adult male who resides at the former matrimonial home in Germiston, Gauteng, and who describes himself as self-employed. The respondent is Ms Leilani-Jeanette Helene Jones, an adult female who, with the children, currently resides with her mother near Kenton-on-Sea in the Eastern Cape.

[4] The first minor child, M, is approximately ten years of age and attends school. The second minor child, R, is approximately four years of age. It is common cause that R has been diagnosed with cerebral palsy and global developmental delay; that he is mostly non-verbal, has delayed milestones, is not toilet-trained, presents with autistic and attention-related traits, suffers sleeping difficulties and asthma, and is dependent on chronic medication and on a structured therapeutic regime including occupational therapy, speech therapy and physiotherapy.

[5] R's vulnerability, his dependence on routine and on having access to the extensive therapies he requires is a fundamental basis upon which the applicant insists that the children need urgently to be returned to Gauteng, where M previously attended school and R has access to all the therapies that have been set up for him and he desperately needs.

Background and the conflicting versions of the parties

[6] On 15 April 2026 the respondent travelled with the children from Gauteng to the Eastern Cape to visit her family. It is common cause that the trip was, at its inception, presented as a visit, and that a return on 30 April 2026 was contemplated, with return flights having been arranged. It is equally common cause that the respondent and the children did not return on 30 April 2026 and that they remain in the Eastern Cape.

[7] On the applicant's version, the respondent represented the trip as temporary, he relied on that representation, and he attended at OR Tambo International Airport to meet the children only to be served with a letter from the respondent's attorneys advising that she had decided to remain in the Eastern Cape with the children. He characterises this as a unilateral relocation and a *fait accomplii* effected through self-help, in breach of his parental responsibilities and rights and without the consultation contemplated by section 31 of the Children's Act 38 of 2005 (“the Children’s Act”).

[8] The applicant alleges that the respondent assaulted him on or about 14 April 2026, that she removed him from the family's Life360 location-sharing application, and that her conduct is suggestive that the respondent is intent on ensuring his alienation from the minor children such that any investigation to determine which parent it would be in the best interests of the children to reside will be thwarted.

[9] The respondent's version, set out in a comprehensive answering affidavit, is materially different. She says that the marriage has, over the past five years, deteriorated to the point of irretrievable breakdown, and that the applicant is a controlling, domineering and verbally, emotionally and psychologically abusive person whose customary mode of communication is to shout and to scream. She says that she left for the Eastern Cape to have some time out and stay with her mother, whose support she was badly in need of.

[10] The applicant insists that when leaving for the Eastern Cape to stay with her mother, she intended to return, but that, once removed from what she describes as the acrimony and abuse from the applicant in the matrimonial home, she came

to appreciate that remaining in a calm and supportive environment with her extended family was in her and the children's best interests.

[11] In a supplementary affidavit the respondent expands upon this and explains that upon arrival in the Eastern Cape and being away from the applicant's manipulative conduct, she appreciated how emotionally exhausted she and the children were and that she had now escaped from the extremely toxic environment that they had all lived in in the matrimonial home. She accordingly took a decision to permanently relocate to the Eastern Cape with the minor children and issued a letter through her attorneys on 30 April 2026 recording her intention to institute divorce proceedings. She admits that she did not take the scheduled flight back to Gauteng and informed the applicant that she would be permanently relocating to the Eastern Cape.

[12] In her supplementary affidavit the respondent also refers to the fact that the situation has been exacerbated by the fact that the applicant keeps falsely accusing her of having extra-marital affairs, speaks of her in exceptionally disparaging manner to their mutual acquaintances. She also points out the applicant has been mocking and insulting her on social media, accusing her of having a lover and stating that this will ruin the respondent.

[13] The respondent says that she is, and always has been, the children's primary caregiver, and that she alone has sourced and managed R's therapeutic support, attended his medical consultations, surgeries and investigations, and met the day-to-day demands of his condition. On the other hand, she maintain that the applicant has largely been an absent father who takes little interest in R and who, by his conduct, upsets the child. She insists that the children are now thriving; M has settled into a new school which he prefers, has made friends and has taken up extra-mural activities, and R has, since the move, begun to verbalise more, to indicate his needs, and to benefit from the support of her mother and extended family. She also points out that she has arranged for R's therapeutic regime to resume in the Eastern Cape.

[14] As to the alleged assault, the respondent says that the incident of April 2026 was an isolated domestic dispute that got out of hand, that she regrets, and that

the applicant himself injured her on the same occasion by placing his hand over her face and inducing a panic attack, as she is claustrophobic. She points to the considerable disparity in size between the parties and denies that she is a violent person. The respondent, furthermore, denies any deliberate alienation, says that she actively encourages and facilitates daily telephonic and video contact between the applicant and the children, that she sends him photographs and updates. The respondent explains that she removed the applicant from the Life360 application only because he was using it to track and control her movements, while consenting to his continued tracking of M.

[15] The respondent further raises the respondent's parlous financial circumstances and points out that there is an imminent threat that the matrimonial home may be repossessed as the applicant has fallen into arrears of approximately R700 000 on the bond over the former matrimonial home. The respondent accordingly suggests that a return to Gauteng could expose the children to homelessness, which I must say is a bit far-fetched. She says that she carries the burden of the household and the children's expenses, including R's therapy and medical costs, and that she is presently working three jobs to do so.

The issues

[16] The following issues fall to be determined: first, whether the matter is properly before the court as one of urgency; second, the nature of the relief sought and the standard against which it must be measured; third, and decisively, whether the relief sought - in particular the immediate return of the children to Gauteng - is consonant with the paramount consideration of the children's best interests; and fourth, the appropriate order as to costs.

Urgency

[17] The matter was one brought with extreme urgency, requiring that the respondent forthwith return the minor children to the matrimonial home in Gauteng within 24 hours of the granting of the order by the court.

[18] Rule 6(12) of the Uniform Rules of Court requires an applicant who approaches the court as a matter of urgency to set out explicitly the circumstances said to

render the matter urgent and the reasons why substantial redress cannot be obtained in due course.[1] Urgency is not established merely by an applicant's say-so; it is a matter for the court's assessment on the facts, and self-created urgency will ordinarily not be countenanced.[2]

[19] The respondent contends that the urgency is self-created. On her version, and indeed on a fair reading of the common-cause chronology, the applicant knew by no later than 30 April 2026 (when the respondent's attorneys' letter was provided to him at the airport informing him that the respondent intended to remain in the Eastern Cape). The application was nonetheless brought only some twelve days later, on the eve of the hearing on 12 May 2026, on truncated time frames that afforded the respondent, a self-represented litigant of limited means situated in a distant province with the daily care of a special-needs child, barely two business days within which to answer.

[20] The respondent was at material times aware where the children were and that there was no need for an order in terms of prayer 7 of the notice of motion that she forthwith provide the applicant with the children's exact physical address. She points out that it was not as if she had absconded with the minor children or that they were in any danger of imminent harm.

[21] There is considerable force in the respondent's complaints. Where a litigant sits on his rights and then manufactures an emergency that visits real prejudice on the opposing party's ability to be heard, a court is entitled to look askance at the claimed urgency. That said, this is a matter concerning minor children, in which the court sits as upper guardian and in which an overly technical approach on urgency may not serve the children's best interests. I accordingly was prepared to assume, without deciding, that the matter is sufficiently urgent to be entertained, and to determine it on its merits. I, however, directed that the respondent could supplement her answering affidavit that had been prepared under unrealistic time constraints and thereby minimise the prejudice. The

---

[1] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F-138H.
[2] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) ZAGPJHC 196 (23 September 2011) at paras 6-8,

applicant then filed a supplementary affidavit in response to the respondent's further affidavit.

The legal framework and relevant case law

[22] Section 28(2) of the Constitution provides that a child's best interests are of paramount importance in every matter concerning the child.[3] That injunction is given statutory expression in section 9 of the Children's Act 38 of 2005, which directs that in all matters concerning the care, protection and well-being of a child the standard of the child's best interests is of paramount importance and must be applied.[4]

[23] Section 7(1) of the Children's Act sets out a non-exhaustive list of factors relevant to the best-interests enquiry. They include the nature of the personal relationship between the child and each parent; the attitude of each parent towards the child and towards the exercise of parental responsibilities and rights; the capacity of each parent to provide for the needs of the child, including emotional and intellectual needs; the likely effect on the child of any change in circumstances, including the likely effect of any separation from a parent or caregiver with whom the child has been living; the practical difficulty and expense of a child maintaining contact with a parent; the child's age, maturity, stage of development, and any disability or chronic illness; and the need to protect the child from any physical or psychological harm, and any family violence involving the child or a family member.[5]

[24] Sections 18, 20 and 21 confirm that the applicant, as the children's father, is a co-holder of full parental responsibilities and rights, and section 31 requires a co-holder, before taking a major decision affecting a child's living conditions, education, health or contact with the other parent, to give due consideration to the views and wishes of the other co-holder. The applicant is correct that the respondent's decision to remain in the Eastern Cape with the children was a

---

[3] Section 28(2) of the Constitution of the Republic of South Africa, 1996.
[4] Section 9 of the Children's Act 38 of 2005. See also *S v M (Centre for Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC) at paras 14-26
[5] Section 7(1) of the Children's Act, in particular ss 7(1)(a), (d), (e), (f), (h), (k) and (n) (family violence involving the child or a family member).

major decision of this kind, and that, ideally, it ought to have been preceded by consultation. The respondent's answer is that the obligation to consult is not absolute and yields to the paramountcy of the children's best interests.

[25] Section 31 of the Children's Act provides:

"*Before a person holding parental responsibilities and rights in respect of a child takes any decision affecting contact between the child and a co-holder of parental responsibilities and rights, or which is likely to significantly change or have an adverse effect to the child's living conditions, education, health, personal relations with a parent or family member or generally the child's wellbeing, that person must give due consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child*."

[26] Section 31, however, does not confer on a co-holder a veto over the other, nor does it elevate the procedural obligation to consult above the substantive and overriding standard of the children's best interests. The remedy for a breach of section 31 is not the mechanical reversal of the decision irrespective of its consequences for the children; it is an enquiry, governed by section 9, into what the children's best interests require.

[27] The applicant insists that the children's interests are best served by them returning to Gauteng where the Family Advocate will be best placed to investigate and make recommendations on their best interests. The respondent maintains that it is in the best interests of the children to remain out of the toxic environment in which they had all hitherto been living and that the family advocate in the Eastern Cape High Court be directed to investigate her circumstances, and that in Gauteng investigate the applicant's circumstances.

[28] In *TLK v EEEB*,[6] Dippenaar J dealt with an inter-provincial relocation commented on the provisions section 31 as follows:

---

6 *T.L.K v E.E.E.B* (2024/149673) [2025] ZAGPJHC 101 (10 January 2025)

"[14] The Act does not expressly regulate inter provincial relocation. Section 31 does not expressly require the consent of the other party. The applicant's complaint that he did not consent to the relocation as a basis for the substantive relief sought, thus lacks merit.

[15] The true question to consider is whether the proposed relocation is in the best interests of the minor child. It must further be considered whether the respondent gave due consideration to the views expressed by the applicant and whether the relocation was bona fide and reasonable."

[29] I also refer to what was stated by Satchwell J in *LW v DB*:[7]

"*The solution of our courts can never be to order that separated parents must live at close proximity to each other in order that each parent lives in close proximity to a child. Our courts have not been appointed the guardians of adults and parents are not the prisoners of our courts*."

[30] Abro AJ delivered what may be termed a definitive judgment on relocation in *BMS v JNW* in this division on 10 February 2025.[8] He provided a useful exposition of the principles to be applied in considering relocations that I quote below:

"Principle considerations in relocation matters

[71] Courts in deciding a relocation must carefully evaluate, weigh and balance a myriad of competing factors.

[72] Cloete AJA in Jackson v Jackson pointed out that such litigation amounts to a 'judicial investigation' of what was in the best interests of the children. Scot JA in the minority judgment stressed that 'what must be stressed is that each case must be decided on its own particular facts.'

---

[7] 2020 (1) SA 169 GJ at para 152

[8] *B.M.S v J.N.W* (2024/110526) [2025] ZAGPJHC 112 (10 February 2025)

[73] The respondent's presence in the country only every alternate month coupled with the emotional and psychological trauma suffered by the children, and the applicant, are facts specific to this matter and which weighed heavily on my decision.

The decision to relocate must be reasonable and bona fide

[74] Keeping in mind that this is not an international relocation I have had regard to the following decisions which have provided guidance in this matter.

[75] In Cunningham v Pretorius Murphy J made reference to the balancing act that a court adjudicating a relocation faces. He stated the following in this regard -

> *"Generally speaking, before substituting consent or refusing leave to a custodian parent to take a child out of the country, the court must carefully weigh and balance the reasonableness of the custodian's decision to relocate, the practical and other considerations on which the decision is based, the competing advantages and disadvantages of relocation, and how relocation will affect the child's relationship with the non-custodian."*

[76] Nugent J in Godbeer v Godbeer whilst recognising that the children's relocation with their mother to the United Kingdon would obviously have an effect on their contact with their father recognised the following -

> *"The applicant must now fend for herself in the world and must perforce have the freedom to make such choices as she considers best for her and her family."*

[77] Having had regard to the facts of the matter and more particularly the acrimony between the parties which contributed to the circumstances surrounding the applicant's desire to move to Cape Town with the children, I am satisfied that the applicant's decision to relocate is genuine and rational and as such bona fide and reasonable. I am satisfied that

the relocation in the circumstances is in the children's best interests. I am further satisfied that the respondent's contact with the children need not be affected by their relocation to Cape Town.

Paramountcy of the best interests of the minor children

[78] The 'central and constant consideration' in determining a relocation application is whether the child/children's best interests will be served by permitting their removal from the country to another country, or as in this matter, from one province to another.

[79] It is trite that in all matters concerning the care, protection and well-being of a child, the standard of the child's best interests is of paramount importance and must be applied.

[80] In F v F Maya AJA held that "in such matters, the courts consistently applied the criterion that the children's best interests were paramount. What was in the child's best interests, however, depended on the facts of the particular case.'

[81] Satchwell J in LW v DB provided principles and guidelines applicable to the relocation of children which may be distilled from the Constitution, the judgments of numerous courts on the subject and conventions to which the Republic is a signatory. The guidelines provide that a court may take into account the following -

"1. The interests of the children are the first and paramount consideration.

2. Each case is to be decided on its own particular facts.

3. Both parents have a joint primary responsibility for raising the child and where the parents are separated, the child has the right and the parents the responsibility to ensure that contact is maintained.

4. *Where a custodial parent wishes to emigrate, a court will not lightly refuse leave for the children to be taken out of the country if the decision of the custodial parent is shown to be bona fide and reasonable.*

5. *The courts have always been sensitive to the situation of the parent who is to remain behind. The degree of such sensitivity and the role it plays in determining the best interests of children remain a vexed question."*

Unilateral relocation, self-help and the status quo ante

[31] The applicant relies on the well-known line of relocation authority, namely *Jackson v Jackson*, *F v* F and *J v J* , for the proposition that relocation disputes require careful, child-centred balancing and scrutiny of the *bona fides* and reasonableness of the proposed move.[9] I accept that statement of principle without reservation. But the same authorities are double-edged; they establish that the enquiry is fact-sensitive and that the court must guard against the elevation of a non-custodial parent's wishes above the welfare of the children. In *F v F* the Supreme Court of Appeal cautioned against an approach that subordinates the interests of children to the vindication of a parent's rights, and emphasised that a court must be astute to the practical reality of who cares for the children on a day to day basis.[10]

[32] The applicant's central submission is that the respondent resorted to impermissible self-help and that the court should not permit unilateral conduct to create a new *status quo*; the appropriate course, he says, is to restore the children to Gauteng pending a Family Advocate investigation. In this respect, the applicant wants me to treat the respondent's conduct in the same way that the courts would treat a spoliation.

[33] However, the respondent did not abscond with the children to an unknown destination, nor did she sever the applicant's contact with them. On her version,

---

[9] *Jackson v Jackson* 2002 (2) SA 303 (SCA) at para 2; *F v F* 2006 (3) SA 42 (SCA) at paras 8-12; *J v J* 2008 (6) SA 30 (C). See also *Cunningham v Pretorius* (31187/08) ZAGPHC 258 (21 August 2008)
[10] *F v F* (*supra*) at para 11 (per Maya AJA)

which I am bound largely to accept on the approach in *Plascon-Evans*,[11] she relocated with the children to the safety of her extended family in response to an abusive and financially precarious household, she has kept the applicant informed of the children's whereabouts, and she facilitates his daily contact with them. This is not the conduct of a parent bent on alienation; it is, on the probabilities, the conduct of a primary caregiver acting to protect her children who is appreciative that their continued access to the applicant is in their best interests.

[34] Unfortunately for the applicant, the reality is that the children have been residing with the respondent and her parents in the Eastern Cape since 15 April 2026 and, after 30 April 2026 (when the respondent made her decision not to return), M has been enrolled in school where he has settled and a therapeutic program has been put in place for. The effect of this is that the relief that the applicant now seeks would not preserve the previous *status quo*; it would destroy the present one.

[35] This is said mindful that this is precisely the scenario that the applicant sought to avoid in bringing the application urgently. However, the case law referenced above makes it clear that in any event, the respondent is and has always been the primary caregiver of the minor children and is entitled to choose where she wishes to reside with them. This she is entitled to do even if this means residing with them in a different province making the applicant's access to them more difficult and perhaps also more limited than it would otherwise have been had the respondent not decided to relocate to the Eastern Cape.

[36] To order the immediate return of the children to Gauteng would be to uproot a settled and, on the evidence, beneficial arrangement to both the respondent and the minor children when ultimately it may not prove to be in their best interests to reside with the applicant in Gauteng. If the respondent is to be believed, M has settled at his new school and is thriving, and R has an established therapeutic routine. The applicant cannot simultaneously contend that abrupt disruption of a

[11] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C; See also *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para 26

routine is harmful to a special-needs child and ask the court to inflict precisely that disruption upon R now.

[37] Moreover, a return to the former *status quo ante* may no longer be a reality as the former matrimonial home is on the unchallenged evidence, at risk of being repossessed by reason of the applicant's default of the mortgaged bond instalments. A return order would thus not necessarily restore the children to the stability and familiarity of the matrimonial home; it may end up being returning the children to further upheaval and their having to get accustomed to yet another home environment.

The best interests of the children

[38] When the section 7 factors are applied to the facts of this matter, they point overwhelmingly against the interim relief urgently sought.

[39] First, the respondent is, on the probabilities, the children's established primary caregiver. Her detailed and specific account of her sole management of R's complex medical and therapeutic needs, including the consultations, the surgeries, the MRI, EEG, reflux and sleep investigations, the medication regime, the occupational, speech and physiotherapy, and the Makaton signing programme, stands in stark contrast to the applicant's more general assertions of involvement, that are disputed. The capacity of the respondent to provide for these children, and in particular for R, is not seriously in doubt; the applicant's capacity, against the backdrop of his absence of involvement in R's daily routine, is.

[40] Second, I consider the likely effect on the children of a change in circumstances. The children have been settled in the Eastern Cape since mid-April 2026. M has been enrolled in and prefers his new school. R's routine has, on the respondent's version, not been interrupted but replaced, and he has shown developmental gains. To order their return would be to impose a further abrupt change (the second in a matter of months) on children who have seemingly settled into a new life in the Eastern Cape where there is the support of a maternal grandparent.

[41] Third, I must consider the need to protect the children from harm and family violence, be it physical or emotional. The respondent's evidence, taken at face value as it must be in motion proceedings, is that the Gauteng household was characterised by shouting, intimidation and verbal, emotional and psychological abuse directed at her and at M, and that a physical altercation occurred in which the applicant also injured her and she him.

[42] Section 7(1)(k) of the Children's Act makes family violence involving a family member a factor directly relevant to determining the children's best interests. The existence of a prior volatile and acrimonious home environment is not in genuine dispute. That environment is not one to which children, and least of all a fragile child such as R, should be ordered to return on an urgent basis and in advance of any investigation.

[43] Fourth, section 11 of the Children's Act requires that, in any matter concerning a child with a disability or chronic illness, due consideration be given to the provision of appropriate care and support and to the child's need for stability, dignity and self-reliance. R is such a child. Every consideration relevant to his care, the need to stability, routine, the continuity of a competent and committed caregiver, and the avoidance of abrupt and repeated upheaval, militates against his summary removal from the environment in which he is presently improving.

The allegation of parental alienation

[44] The applicant, properly, does not ask the court to make a final finding of parental alienation at this interim stage; he contends only for a risk of incipient alienation evidenced by the removal of the children, the control of contact, and his removal from the Life360 application. The authorities confirm that allegations of alienation and contact-frustration are serious and must not be taken lightly, because of the harm such conduct may visit on a child.[12]

[45] On the evidence before me there is no foundation for a finding, even at the level of a *prima facie* risk, that the respondent is alienating the children. She facilitates daily telephonic and video contact, sends photographs and updates, has

[12] *V v L* (1575/2021) ZAFSHC 284; *G.J.N v M.C* (34350/2020) ZAGPPHC 329; *T v M* 1997 (1) SA 54 (A); *Soller NO v G* 2003 (5) SA 430 (W).

encouraged the applicant and M to play online games together, and has tendered to agree a structured contact regime. Her removal of the applicant from a location-sharing application that tracked her own movements, in the context of an abusive relationship from which she was extricating herself, is not evidence of alienation; it is, on her version, an act of self-protection. This, moreover, did not cause alienation as the respondent has continued to allow the applicant to track M's movements.

The requirements for the interim relief sought

[46] Although the applicant frames Part A as interim relief pending the Family Advocate's investigation, the return order he seeks is, in substance and effect, final. Once the children are uprooted and returned to Gauteng, the harm is done and is not readily undone by a later report by the Family Advocate.

[47] Where interim relief will, in practical terms, dispose of the very issue that the contemplated enquiry is meant to resolve, the applicant must satisfy a more exacting standard than that ordinarily applicable to an interim interdict, and the prospects of ultimate success and the balance of convenience must be assessed and properly interrogated.[13]

[48] Tested against that standard the application must fail. The applicant has not established a clear right to the children's immediate return; his right as a co-holder of parental responsibilities and rights is not a right to dictate the whereabouts of the children's residence in disregard of their best interests. He has not established a well-grounded apprehension of irreparable harm; the harm he postulates (disruption to schooling and therapy and erosion of contact) is, on the evidence, harm that his own relief would cause rather than prevent, while his contact will continue.

[49] The balance of convenience favours the respondent and the children overwhelmingly, for the reasons already given. And there plainly is a satisfactory alternative- indeed a more appropriate remedy that has already been envisaged by the applicant in Part B of his notice of motion- that is that the Family Advocate

[13] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at paras 41-50

be directed to conduct an investigation into and report on the best interests of the minor children, with specific reference to care, primary residence and contact. This investigation can be conducted on an expedited basis while the children remain in the stable environment they presently occupy, supplemented if necessary by interim contact and care arrangements which the respondent has tendered to agree to.

[50] It does not follow from the dismissal of the application that the applicant is without recourse, or that the disputes between parties are at an end; they are not. The children's long-term residence, care, contact, and the proper arrangements for R's ongoing therapy, remain to be determined, whether in the pending divorce proceedings or in proceedings properly constituted for that purpose, and with the benefit of an investigation and report by the Office of the Family Advocate. Both parties have expressed a willingness to submit to such an investigation, and the respondent has tendered to mediate and agree to a structured contact regime.

[51] The appropriate forum for that enquiry is one which can engage the merits fully, on proper evidence and with the assistance of the Family Advocate and such other experts as may be necessary, rather than an urgent court constrained by truncated time frames and the limitations of motion proceedings.[14]

[52] Nothing in this judgment should be understood as a final determination of the children's primary residence or of the parties' respective parental capabilities; those are questions for the investigation and for the court that will ultimately decide them. What this judgment decides is the narrow question before me and that is whether the children should be immediately returned to Gauteng pending an investigation and report by the Family Advocate as to their best interests.

[14] *Family Advocate, Cape Town v Houtman* 2007 (3) SA 363 (SCA) at para 12; and see ss 4 and 5 of the Mediation in Certain Divorce Matters Act 24 of 1987.

Costs

[53] The respondent has been substantially successful and seeks costs, including costs on the attorney-and-client scale.

[54] Costs ordinarily follow the result. I am not, however, persuaded costs, let alone on a punitive scale, are warranted. This is a matter between parents concerning their children, in which intemperate costs orders may entrench acrimony to the children's detriment. This is particularly so where the applicant's resort to litigation to secure the return of the children to Gauteng was neither unreasonable nor *mala fide*.

[55] One needs to be alive to the fact that the applicant's whole world has been turned upside down since the children were removed from the matrimonial home and he was unceremoniously told by the delivery of a letter from the respondent's attorney at the airport, that his family would not be returning. The applicant is also suspicious that this was planned from the outset.

[56] In these fraught circumstances, my view is that the appropriate order would be that each party bear their own costs.

Order

[57] In the result, I grant the following order:

(1). The Office of the Family Advocate Johannesburg in conjunction with the Office of the Family Advocate Makhanda, is hereby ordered to conduct an urgent investigation into the best interest of the minor children, specifically in relation to primary residency, care, and contact and to deliver its respective reports within three months of the date of this order.

(2). Pending the finalisation of the report from the Family Advocate's Office, the applicant is granted contact with the minor children as follows:

a. Physical contact, every alternate weekend from 15h00 on Friday to 15h00 on Sunday, or as agreed by the parties, with or without mediation.

b. Daily electronic contact by way of cellular phone or WhatsApp video call between 17h00 and 18h00 or as otherwise arranged between the parties, with or without mediation.

(3). No order is made as to costs.

[redacted]
S.M WENTZEL-THOMPSON
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING:
Date of the hearing: 12 May 2026 and 1 June 2026
Date of the judgment: 9 June 2026

APPEARANCES
For the applicant: Jason Andrew Krause instructed by Nijhuis Attorneys
For the respondent: Raccanello Attorneys and Conveyancers