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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 111433/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES.

DATE 10 JUNE 2026

SIGNATURE

R[...] J[...] P[...] Applicant

And

V[...] P[...] Respondent

JUDGMENT

NEUKIRCHER J:

1] Disputes between parents where the main issues between them relate to the award of primary residence and care of, and contact to, a minor child[1] are some of the most difficult decisions a court is faced with making.

2] Sitting as Upper Guardian, the imperative enshrined in s 28(2) of the Constitution and s7 of the Children's Act 38 of 2005 (the Act) dictate that a child's best interests are of paramount importance in every matter concerning the child.

3] It is in applying this principle that courts are more often than not these days confronted with unnecessary and frivolous litigation by warring parties where one

[1] Or children

or both have lost sight of this, and where litigation is "dressed up" as being "in the best interests" of the child in question.

4] The Family Court, Pretoria was established in April 2023. It is a court dedicated to adjudicating disputes that arise out of relationships between parties whether they are married or in a form of domestic partnership, but especially where there are minor children that are affected by the disputes.

5] The present application is one in which the applicant seeks to have this court appoint a private clinical psychologist, at his cost, to conduct an evaluation of both parties and their 9-year-old daughter. The purpose of the evaluation is that the expert would then make a recommendation as to care and contact, which is in dispute in the pending divorce action.

6] To this end, the applicant seeks the appointment of Dr Ronel Duchen. In his founding affidavit, he suggests – in the alternative – that either Dr Robyn Fasser or Dr Lynette Roux be appointed.

7] It is common cause that the mediation[2] undertaken in August 2025 was unsuccessful.

8] Whilst the relief certainly sounds innocuous enough, in reality at the time the application was launched on 24 October 2025, the Family Advocate, Pretoria was in the midst of their own investigation into the issues of care and contact. Their report had yet to be finalised and they had yet to make any recommendations.

9] The application is opposed by the respondent who contends that it is premature, unnecessary and expensive. She also objects to Dr Duchen as she argues that the application is nothing more than a thinly veiled guise to obtain a shared residency order which Dr Duchen (allegedly) has a reputation of endorsing.

[2] The mediator was an educations psychologist, Dr Linda Botha

10] By the time this application was heard on 15 April 2026, the report of the Family Advocate was finalised. This was four months after the application was launched and one month after the replying affidavit had been filed.

11] In order to give context to the order I intend to make, it is necessary to set out the background to this application.

Background

12] The parties were married on 19 September 2010 in community of property. Their daughter (L) was born on 30 September 2017. She is a Grade 2 pupil at the Diocesan School for Girls, Pretoria. She is now almost 9 years old.

13] Divorce proceedings in this division are underway and have yet to be set down for hearing. It is clear from these papers that they have all the hallmarks of being highly acrimonious.

14] It is common cause that the respondent vacated the common home with L on 24 June 2025[3]. It is also common cause that she obtained a Protection Order against the applicant when she left the common home because of an alleged assault that she says took place at the time. However, the respondent has decided not to pursue that application and the order was set aside in November 2025.

15] It also appears to be common cause that because of this incident the respondent withheld the applicant's contact to L for approximately two weeks after she and L vacated the common home. The applicant's contact has since been restored, albeit that the extent of his contact is not to his liking.

16] At present, the applicant has the following contact to L:

a) alternative weekends from after school on Friday until a Monday morning when he drops L back at school;

[3] She and L have since returned and the applicant vacated the house

b) Tuesday midweek after school until 17h30;

c) telephonic/ video calls daily at 18h00;

d) school drop-off on Tuesdays and Thursdays.

17] But, according to the applicant, this contact arrangement is simply demonstrative of the respondent's attempts to alienate him from L (amongst many other allegations).

18] It is the applicant's case that he has always been very involved in L's life and that he has always meaningfully participated in her daily cate, schooling, homework and extra-mural activities prior to the parties' separation. He alleges that his relationship with L is "close" and "stable" and that he is, and always has been, financially responsible and emotionally present. He argues that the current contact arrangement marginalises him.

19] He alleges that respondent repeatedly changes the contact arrangements and controls when and how he sees L; he complains that the respondent uses L's extra-mural activities as a weapon to reduce the time L spends with him and he also complains that the respondent arranges school meetings without him and gives a one-sided narrative to L's teachers.

20] But, according to the applicant, the most concerning of all is that the respondent has emotional and psychological issues that impact on her ability to parent L: he alleges that she suffers from mood instability, withdrawal, self-neglect, self-harm tendencies, suicide threats and she does not comply with the medication prescribed to her by her doctors to assist her in dealing with all these issues. He alleges that all these issues have left L vulnerable and have affected her emotionally.

21] As a final bow to his arrow, the applicant alleges that L has expressed a wish to live with him and to spend more time with him.

22] Interestingly enough, at the time that this application was heard in April 2026, the applicant had yet to bring any application to have primary care and

residence of L awarded to him – this despite the allegations detailed above. Furthermore, despite the respondent launching a recent Rule 43 application, he filed no counter-application for primary care and residence either.

23] As stated, the Family Advocate's investigation had commenced by the time this application was heard, but their report had not yet been finalised. Despite this, the applicant alleges that the Family Advocate's investigation alone would be insufficient and that an expert report is essential for the court to determine L's best interests in relation to care and contact. He alleges that although the Family Advocate and psychologist both conduct an investigation, they serve different functions, but he has failed to properly explain the difference and the allegation is therefore made *in vacuo*.

24] In essence, the thrust of the respondent's answering affidavit – which opposes the relief sought – is that the application is premature and without merit at this stage. She argues that the applicant is trying to manufacture evidence against her to support his claim for primary care and residence in the main divorce proceedings and that the investigation by Dr Duchen amounts to little more than a fishing expedition to see if this claim would receive some support by an expert.

25] Over and above this, the respondent also objects to the experts suggested by the applicant whom she suggests have been chosen for their predilection for shared primary care – this she argues, is the applicant's true aim. She argues that, when the applicant's true intentions are analysed, it is clear that this is not truly about L's best interests, but rather about the applicant's dissatisfaction with the present contact arrangements.

26] To summarise her case on merits[4], the respondent states that she has always been L's primary caregiver, and even reduced her work commitments in 2025 so that she could spend more time with L; that L is doing well academically

[4] And I emphasize that both parties' cases are summarized herein as a snapshot of their affidavits as the issues of primary care and residence and contact are not for this court to decide or even comment on at this stage9

and emotionally; that there is no evidence that she is incapable of caring for L and that the applicant's allegations are exaggerated and unsupported.

27] Although the respondent admits that she suffered from post-natal depression and later from emotional difficulties for which she was prescribed Lexamil on limited occasions, her emotional difficulties are historical and contextual and have not hampered her ongoing ability to parent L effectively.

28] But the respondent also alleges that the applicant has not been, and is not, the most suited parent to be awarded primary care and residence. She alleges that this is clear to see from the fact that the applicant has involved L in the ongoing conflict between the parties; he has encouraged L to contact him if she believes that respondent is being "reckless"; he constantly undermines her authority which creates unnecessary conflict; his work and personal commitments always took precedence over parenting during their marriage. Given all this, he is not the most suited to be L's primary caregiver.

29] Respondent emphasizes that L is happy, stable and doing well and that a further investigation will only delay the finalisation of the proceedings which is ultimately not in L's best interest.

30] However, respondent states that in the event that this court in inclined to appoint an expert, the appointment "should be of an independent and impartial practitioner and preferably someone in Pretoria or in close proximity to where we reside."

31] As stated supra, despite the allegations made by the applicant against the respondent, he has taken absolutely no steps whatsoever to secure either primary care and residence of L or to extend his contact to her. One must bear in mind that this is despite the allegations made by him. This, in my view, reinforces respondent's case that firstly, the applicant's motives are not as pure as he professes, and secondly, the expert's investigation is simply a fishing expedition.

32] In a supplementary affidavit filed by the respondent on 31 March 2026 she states:

> "6. The applicant engaged in a conversation with me on 12 February 2026, during which he indicated that his claim for primary care and residence was advanced as a precautionary measure to prevent the possibility of my relocating overseas with L…"

33] Interestingly, the answer to the above is the following:

> "4.6 [the respondent] seeks to reply on an alleged conversation and impute improper motives to the Applicant. This is outright denied and in any event irrelevant to the relief sought in this application.
>
> 4.7 Paragraph 7 similarly attempts to draw inferences from the procedural conduct in of the Applicant in Rule 43 proceedings. Such inferences are similarly legally unsustainable and irrelevant to the present enquiry which is not concerned with interim procedural steps in other proceedings."

34] But the conversation detailed in par 32 supra is not irrelevant. Neither is the fact that the applicant has yet to bring any sort of application to safeguard L's best interests and secure primary care and residence in the face of the allegations he makes that respondent is unsuited to care for her. The conversation is relevant because the applicant does not deny that it took place – he denies the "improper motives" imputed to the conversation. That is not the same as denying the content of the conversation and telling this court what the conversation, in fact, was.

The Family Advocate

35] The Family Advocate's recommendations were finalised prior to the hearing of this application. In the report, they recommend that it is in L's best interests that she remain in the respondent's care because of the routine and structure that she provides, but that that applicant should be given regular contact with L because they have a strong bond.

36] The recommendation is as follows:

a) primary care and residence of L to remain with the respondent;

b) contact to be given to the applicant as follows:

(i) alternative weekends from Friday 17h00 until Sunday 17h00;

(ii) every Wednesday afternoon from after school until 18h00;

(iii) regular video/telephonic contact;

(iv) rotating school holidays;

(v) shared Christmas and New Year on a rotating basis;

(vi) Father's Day with the applicant and Mother's Day with the respondent.

37] The Family Advocate and Family Counsellor found that L has a close and loving relationship with both parents; that she has a particularly strong bond with the applicant; that she experiences stability structure and routine with the respondent; although L complained it was "not fair" that she spends most of her time at the respondent's home, she did not express a wish to reside with the applicant; she did – however – indicate that she wants to live with the respondent and spend time with the applicant.

38] The Family Advocate found no evidence that the respondent was emotionally unstable. Her treating doctor did not diagnose her with a depressive or anxiety disorder but treated her for an acute stress reaction. The social worker who counselled the respondent also found no ongoing concerns affecting her parenting abilities.

39] It is important to note that the applicant told the Family Advocate that the respondent is a "good mother".

40] Whilst the applicant complains that the Family Advocate spent very little time with each party during the investigation, given the complete conspectus of information placed before me at this stage (and applicant's own inaction) I find no reason to appoint an expert.

41] In my view the facts demonstrate that it is, at present, unnecessary. The applicant himself has demonstrated this by his inaction and the conversation with the respondent on 25 February 2026. The application cannot therefore succeed.

Costs

42] Respondent argued that the application is founded upon an improper motive, that the opposition was reasonable and that she should not be out of pocket. She also argues that given that two senior counsel were employed by her until shortly before the hearing, costs should be awarded on scale C. But I am not persuaded by this argument. The scale of costs is not to be used as a punitive measure against a party – that is what attorney and client costs are there for. This application is not so complex that the employment of either senior counsel (let alone two senior counsel) or costs on scale C are justified. I, however, agree, that costs on scale B are well founded.

Order

The application is dismissed with costs, which costs are to be taxed in accordance with Scale B.

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B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10 June 2026.

Appearances

For Appellant	:	Adv B Bergentuin
Instructed by	:	Wolmarans & Susan
For Respondent	:	Adv I Vermaak-Hay SC
Instructed by	:	Arthur Channon Attorneys
Date heard:	:	14 April 2026
Date of Judgment:	:	10 June 2026