

SOUTH AFRICA / JUDGMENT

Botha v Muller (4859/2020) [2021] ZAFSHC 327 (2 December 2021)

[2021] ZAFSHC 327**COURT**

Free State High Court, Bloemfontein

BEFORE

Chesiwe

CASE / FILE NUMBER

4859/2020

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IN THE HIGH COURT OF SOUTH
AFRICA,
FREE STATE DIVISION,
BLOEMFONTEIN
Case number: 4859/2020

In the matter between:

RAYMOND
BOTH
APPLICANT
and
MARIZANNE
MULLER
RESPONDENT

JUDGMENT

BY: CHESIWE, J

HEARD ON: 18 NOVEMBER 2021

DELIVERED ON: 02 DECEMBER 2021

COST ORDER JUDGMENT

[1] The parties are the biological parents of two minor children, J who is 11 years old and A, who is 7 years old.

- [2] The parties have been involved in litigation since 2015 with regard to the minor children's best interest. There were several applications, beginning from the children's court in Bethlehem.
- [3] I would not go into the background of these matters as the parties eventually saw the light after I had ordered on 15 August 2021 that they must go for parenting skill sessions.
- [4] The sessions were attended to and yielded good results, as a consequence thereof, parties settled their dispute.
- [5] The parties agreed on an arrangement of shared residence in terms of a draft order that I endorsed on 18 November 2021 and subsequently made an order of court.
- [6] The only issue in dispute the parties could not resolve was the issue of legal costs.
- [7] Both Counsel argued in court, in respect of costs in the whole litigation.
- [8] Adv. Mitchley, on behalf of the Applicant submitted that costs should be awarded in favour of the Applicant as the Respondent failed to comply with the deed of settlement that the parties had signed. Counsel submitted that the papers are voluminous due to the conduct of the Respondent and as such, unnecessary costs were incurred.
- [9] Adv. De Beer, Counsel on behalf of the Respondent submitted that the Respondent acted in the minor children's best interest and should not be penalised for having relocated to Durban and to Saudi Arabia. As the respondent could have applied to relocate with the children, but instead left the children with her parents. Counsel submitted that each party should pay their own cost.
- [10] The general rule is that costs should follow the successful party. The purpose of costs being, to indemnify the successful party for having been put through litigation.
- [11] However, this being a family dispute, both parties cannot be faulted for having litigated vigorously over the years. The Respondent in hindsight may have realised that she went too far with litigation, which was all done in the minor children's best interests.
- [12] The parties have settled their dispute and it would be unjust to punish the Respondent and to have the conflict between them resume all over again. It will also be in their children's best interest that as parents, they must comply with the draft order that they have agreed upon.
- [13] The minor children at this stage need to have parents who are not at logger heads with one another and litigating in the minor children's best interest. Protracted litigation is not in the children's best interest.
- [14] I would therefore use my judicial discretion. Upon consideration of the family dispute, it is therefore in my view that each party pay their own costs.
- [15] I accordingly make the following order:

1. Each party to pay their own costs.

CHESIWE, J

On behalf of the Applicant: Adv. JF Mitchley

Instructed by: Peyper Lessing Attorneys

Bloemfontein

On behalf of the Respondent: Adv. JF de Beer

Instructed by: Kramer Weihmann Inc.

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