

SOUTH AFRICA / JUDGMENT

C.B v P.J.B (4790/2023) [2024]

ZAFSHC 58 (26 February 2024)

[2024] ZAFSHC 58

COURT

Free State High Court, Bloemfontein

BEFORE

M.T. Jordaan

CASE / FILE NUMBER

4790/2023

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:

NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

CASE NO: 4790/2023

In the matter between: C B Applicant And P J B Respondent

HEARD ON: 09 NOVEMBER 2023

CORAM:

JORDAAN, AJ

DELIVERED ON: 26 FEBRUARY 2024

- [1] The Applicant and Respondent entered into a marriage on the 21st of March 2020, with the marital regime being out of community of property including the accrual system. This marriage- from which two minor sons were born- still subsists.
- [2] The Respondent instituted divorce proceedings founding his action on the irretrievable breakdown of the marriage. The Applicant filed a Plea and a Counterclaim to the divorce action which is still pending in this Court.

[3] The Applicant subsequently filed this application in terms of Rule 43 of the Uniform Rules of Court[1] for maintenance and ancillary relief pendente lite, seeking an order in the following terms: -

3.1. That the Respondent pays maintenance for the Applicant in the amount of R20 000,00 per month

3.2. That the Respondent be liable for payment of all medical, dental and ophthalmic expenses in respect of the Applicant, such to include all costs of hospitalisation, surgical treatment, spectacles, contact lenses, prescribed medication and allied expenses as well as contributions towards any medical aid.

3.3. That the Applicant will retain the use of the Toyota Urban Cruiser pendente lite and that the Respondent will be liable for all maintenance and insurance of the said vehicle

3.4. That the Applicant be allowed to see the minor children five days per week from 8h00 to 13h00 at the residence of the Respondent.

3.5. That the Respondent contributes to the Applicant's costs in the amount of R15 000,00.

[4] The Respondent opposed the application and counter applied in terms of which he sought an order to be awarded with the residency and daily care of the minor children which the Applicant agreed to. The Respondent tendered the use and service of the motor vehicle in the Applicants prayers and the provisioning of medical costs cover, however it should be reasonable.

[5] The issues that remained in contention between the Parties were:

5.1 The quantum of the maintenance for the Applicant;

5.2 The quantum of contribution that Respondent must make to the Applicant's legal costs; and

[6] Rule 43 provides:

“ This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters-

(a) Maintenance pendente lite;

(b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;

(c) Interim care of any child;

(d) Interim contact with any child.”

[7] Rule 43 was not created to give an interim meal ticket to an applicant who quite clearly at the trial will not be able to establish a right to maintenance.[2] The purpose of Rule 43 is to provide a streamlined and inexpensive procedure for procuring the same interim relief in matrimonial

actions as was previously available under common law in regard to maintenance and costs.[3]

- [8] Turning to the facts of the case. The Applicant is unemployed and has since the birth of her first child suffered post-partum depression which caused her to be unable to cope with the minor children and recently diagnosed with bipolar 2 disorder.
- [9] The Applicant grounded her application on a tabulated list of monthly expenses[4] which in total amounts to R20 900,00. This list includes provision for pocket money, pet food and entertainment amongst other expenses.
- [10] The Respondent submits that he is employed at Bakkes Boerdery for which he receives a monthly nett salary of R25 773,60 and a monthly harvest bonus of R17 000,00, thus a total income of R42 773,60 per month. Counsel for the Respondent acknowledged that the Applicant had no income, but contended that the Applicant's expenses are excessive and unsupported. It was further submitted that Respondent's monthly expenses, incorporating the tendered payment of R7 000,00 per month maintenance and the instalment of R5 571,04 on the Toyota Urban Cruiser, amount to R48 855,73.
- [11] Having regard to what was submitted, it is common cause that the Applicant has a need for maintenance and though the Respondent is insinuating that it was self-created in that the Applicant is a qualified teacher and makes no effort to gain employment and chose to move to her parents, this Court finds that on the submitted facts it was not self-created, the Applicant moved to what she in her state of ill-health perceive and experience as a supportive environment. The Court also finds that the list of expenses indeed contains luxuries which in the circumstances the Respondent cannot meet and is not allowed in these proceedings. This Court finds that the Respondent clearly had the financial means to offer and pay more than what he tendered in light of the submission that had the Applicant asked for the R11 800,00 prior to approaching Court, they would likely not

have been at Court for this application. The Court nonetheless deducted the luxuries like pocket money, entertainment, petfood,

domestic help and reduced the excessive amounts provided for in the needs and established a need for R8 000,00 per month which by the Respondent's submissions, are affordable.

- [12] The Applicant having established a need to maintenance and being unemployed, has clearly shown her inability to pay for costs of legal representation. The Respondent in this regard made an offer which is not keeping with the realistic rising costs in having the necessary legal representation and in the absence of same, the aim of Rule 43 would be eschewed.
- [13] In the circumstances the Court makes the following order:

13.1. That specific responsibilities and rights regarding guardianship of the minor children P J B and C B as contemplated in Section 18(2)(c) and 18(3) of the Children's Act, Act 38 of 2005 is awarded to both parties pendente lite.

13.2. The Respondent, P J B, is awarded with the residence and daily care of the minor children as contemplated in Section 18(2) of the Children's Act, Act 38 of 2005 pendente lite.

13.3. The Applicant, C B, is awarded with interim contact with the minor children pendente lite in that the Applicant shall exercise contact with the minor children five days per week from 08h00 to 13h00 at the residence of the Respondent.

13.4. That the Respondent will be liable to pay for all reasonable medical, dental and ophthalmic expenses in respect of the Applicant, such to include all costs of hospitalisation, surgical treatment, spectacles, contact lenses, prescribed medication and allied expenses as well as contributions towards any medical aid pendente lite.

13.5. That:

13.5.1. the Respondent shall continue to pay the monthly instalment Toyota Urban Cruiser pendente lite;

13.5.2. the Respondent shall be liable for payment of all reasonable maintenance and insurance of the Toyota Urban Cruiser;

13.5.3. the Applicant shall retain the use of the same Toyota Urban Cruiser pendente lite.

13.6. The Respondent is ordered to pay the amount of R8 000,00 per month maintenance pendente lite to the Applicant with effect from the 30th day of March 2024 and thereafter on or before the 30th day of each succeeding month.

13.7. The Respondent shall pay R10 000,00 towards the Applicant's legal fees within twenty-one (21) days from the date of this order.

13.8. Costs of this application shall be costs in the cause.

M.T. JORDAAN

Acting Judge of the High Court, Free State Division

APPEARANCES: Counsel on behalf of the Applicant: Adv De La Rey Instructed by: Hendre Conradie Inc (Rossouws Attorneys) BLOEMFONTEIN Counsel on behalf of the Respondent: Adv. Ferreira Instructed by: Horn & Van Rensburg BLOEMFONTEIN

[1] Rules Regulating the Conduct of Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa.

[2] Nilsson v Nilsson 1984 (2) SA (C) 294.

[3] Zaphiriou v Zaphiriou 1967 (1) SA 342 (W).

[4] Paginated Bundle pages 13 to 16 Annexure "A".

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