

SOUTH AFRICA / JUDGMENT

Delport v Road Accident Fund (16825/2016) [2020] ZAGPPHC 213 (24 April 2020)

[2020] ZAGPPHC 213

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis

CASE / FILE NUMBER

16825/2016

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Policy**REPUBLIC OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION, PRETORIA****(1)**

REPORTABLE:

NO

(2)

OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED

YES

CASE

NO: 16825/2016

24/4/2020

In the matter

between: DESIREE
DELPOR
PLAINTIFF
And
ROAD
ACCIDENT FUND
DEFENDANT

JUDGMENT

COLLIS J:

INTRODUCTION

[1] The plaintiff issued summons against the defendant in her personal capacity and in her capacity as the mother and legal guardian of the minor child born on 14 March 2013. The Plaintiffs claim is based on loss of support and maintenance arising from the death of Steven Van Zyl (the deceased) in a motor vehicle collision on 29 March 2014. The deceased suffered injuries as a result of the collision and passed away on the same day from these injuries.

LOCUS STANDI AS PLEADED BY THE PLAINTIFF

[2] In paragraph 7 of the particulars of claim, the following averments were made:
7.

'During or about

7.1 The year 2008 Plaintiff and the deceased entered into a romantic relationship from which relationship S[....] S[....] V[....] ("the minor") was conceived;

7.2 2010, Plaintiff and the deceased, while engaged in the abovementioned romantic relationship entered into a verbal agreement ("the reciprocal agreement") at Unit [....];

7.2.1 the Plaintiff and the deceased agreed to live together in a heterosexual love relationship an union in a common household being the deceased's house at Unit [....];

7.2.2 the deceased would attend to the financial need of the joint household as the breadwinner and the main source of financial support in the common household;

7.2.3 the Plaintiff would take care of the chores and/or duties in the common household including the care of the children (inclusive of the minor) born from the relation with the deceased;

7.2.4 the Plaintiff and the deceased established and maintained a reciprocal duty to support each other financially, emotionally and physically in their common household;

7.3 After entering into the reciprocal agreement the Plaintiff and the deceased lived together in their common home subject to the terms of the reciprocal agreement until the demise of the deceased;

7.4 the Plaintiff subsequently remained factually dependent upon the deceased for maintenance and support in respect of all living amenities until date of the deceased demise;

7.5 " ."

[3] In reply to the averments in paragraph 7 quoted above, the defendant pleaded as follows:

"The Defendant denies the allegation contained in these paragraph, as if specifically traversed and puts the Plaintiff to the proof thereof."

COMMON

ISSUES

[4] Based on the parties' opening addresses, the following facts are common cause between the parties:

4.1. that the plaintiff and Mr. Steven Van Zyl (the deceased) at the time of his untimely death, was in a romantic relationship;

4.2. that at the time of his death, the couple were staying together and from their relationship a minor child was conceived and born on 14 March 2013;

4.3. that on 29 March 2014, the deceased was involved in a collision wherein he sustained injuries, which injuries were the definite cause of his death; and

4.4. that there is a nexus between the said collision and the death of Mr. Van Zyl.

4.5. It was further common cause between the parties that the action falls within the ambit of the Road Accident Fund Act, Act No.56 of 1996, as amended in terms of the Road Accident Fund Amendment Act, No 19 of 2005.

[5] At the commencement of the proceedings this court was required to determine the issue of liability, more specifically whether the deceased prior to his death had a legal duty to support the plaintiff.

[6] In addition thereto, the court was called upon to award the quantum, which has been in principle agreed upon between the parties.

EVIDENCE

[7] Ms. Desiree Delport testified and her evidence can be summarized as follows: She stated that she first met the deceased during August 2007, when he was dating her friend. They eventually ended their relationship and on 14 February 2008, he formally asked her out to be his girlfriend. Their romantic relationship continued for several years which ultimately culminated in a proposal to get married. He proposed to her on her birthday on 17 July 2011.

She accepted his proposal. Their engagement was solidified by the exchange of rings which was celebrated on the occasion depicted in photograph A. Around March 2012 they decided to start staying together and in August of the same year, she found out that she was pregnant expecting their first child. At the beginning of 2013, they started making plans around their wedding and had tentatively decided on having their wedding celebrated around October 2014.

[8] At around the time of the fatal accident, she and the deceased had been staying together for approximately two years at Unit [...]. This house was shared with his grandparents and his mother. Their child was born on 14 March 2013 and in September of the same year she became employed and their child was subsequently placed in a creche. She stated further that Mr. Van Zyl was employed at Unitrans since 29 March 2010 and that since she became employed, they were both responsible for sharing in their joint household expenses, albeit that the deceased was the breadwinner and carried most of the expenses. If the fatal accident had not occurred, they would have entered into a union and would have continued their happy life.

[9] During cross-examination, Ms. Delport confirmed the following:

9.1 that at the time when they got engaged she was only 18 years old and that the family of the deceased was aware of their engagement;

9.2 before they got engaged the deceased had asked her mother for her hand in marriage as her own father was already deceased;

9.3 that initially when they moved in together, she was unemployed but she later became employed;

9.4 that when the deceased was buried she assisted with the funeral expenses, as she was regarded by his family as his surviving spouse;

9.5 furthermore, that after his burial she continued to stay with the deceased's relatives more specifically his grandparents who was responsible for raising him.

[10] Mr. Dwayne McCoy mont, the deceased's older brother, was the next witness called to testify on behalf of the plaintiff. It was his evidence that he met the plaintiff for the first time when she started dating the deceased in 2008. He was aware that during 2011 they became engaged and that immediately thereafter they started staying together. He confirmed the plaintiff's testimony that arrangements were made for the couple to get married around October 2014 and that this would indeed have occurred had it not been for the untimely death of the deceased.

[11] During his cross-examination, he confirmed that he knew of his older brother's intention to propose to the plaintiff before he did so on 17 July 2011. He was informed by the deceased of his intentions to do so, a few months prior thereto. Furthermore, he testified that although his parents were aware of the engagement, they were not per se involved in same. Mr. McCoy mont also confirmed the evidence of the plaintiff that the marriage date was tentatively set for October 2014.

[12] This was the sum total of the evidence presented by the plaintiff on the issue of liability.

[13] The defendant adduced no rebuttal evidence and its cross-examination of the plaintiff and her witness was aimed at impugning the plaintiffs assertion that the deceased had a duty to support her.

[14] Section 9 of our Constitution provides as follows:

.....

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience belief, culture language and birth.

[15] Now the legal basis for the entitlement of persons to claim from the defendant due to the death of or bodily injuries to any other person, is the existence of a legal duty of the deceased or injured person to support the claimant, without which the defendant would not be held liable for such a claim.[1]

[16] In the decision of Satchwell v President of the Republic of South Africa[2] the court dealt with the duty to support in same sex relationships. The court took the following facts into consideration in determining

whether the duty of support existed between the parties:

"[25].....Whether such a duty of support exists or not will depend on the circumstances of each case. In the present case the applicant and Ms Carnelley have lived together for years in a stable and permanent relationship. They have been accepted and recognized as constituting a family by their families and friends and have shared their family responsibilities. They have made

financial provision for one another in the event of their death. It appears probable that they have undertaken reciprocal duties of support."

[17] The defendant in refusing to recognize the plaintiffs loss of support claim had placed reliance on the decision of Paixao v Road Accident Fund 2012 (6) SA 377 (SCA) In paragraph 29 the following was held:

"A plaintiff's assertion, without more, that he or she was in a life partnership, cannot be taken as sufficient proof of this fact. (In this case the fund conceded that the relationship was a life partnership). Proving the existence of a life partnership entails more than showing that the

parties cohabited and jointly contributed to the upkeep of the common home. It entails, in my view, demonstrating that the partnership was akin to and had similar characteristics- particularly a reciprocal duty to support- to a marriage. Its existence would have to be proved by credible evidence of a conjugal relationship in which the parties supported and maintained each other." [3]

[18] Counsel further had placed reliance on the unreported decision *T obo The Minor v Road Accident Fund* delivered by Mokgohloa DJP on 29 June 2017. [4] This matter is however distinguishable from the facts of the present matter for the following reasons:

18.1 Before this court in casu, there is uncontroverted evidence that the deceased had introduced the plaintiff to his family. In fact the evidence presented before this court, is that the plaintiff and the deceased were prior to his death staying in the same household as his mother and that of his grandparents.

18.2 Furthermore, the decision by the plaintiff and the deceased to get married was not only conveyed to his mother, but also his grandparents who raised him and his younger brother Mr. McCoymont.

18.3 Albeit, that no formal arrangements were made for the actual wedding. Engagement rings were formally exchanged between the parties, which engagement was celebrated publicly.

18.4 The evidence presented before this court, is that the plaintiff although employed prior to the death of the deceased, was only earning R 3000 whereas the deceased was earning R 16 000 and as such he was still considered the breadwinner and responsible for her maintenance and that of their minor child.

[19] As mentioned firstly, this court had to determine whether there was a valid and binding agreement between the plaintiff and the deceased. An agreement may be made expressly or tacitly, and where it is made expressly it may be made orally or in writing. In order to determine as to whether a tacit agreement came into being, one would have to look at the surrounding circumstances and the conduct of the parties.

[20] Where the parties, are not in agreement, that a contract existed such as is the case in the present matter, it is for the court to decide whether a contract came into existence.

[21] The uncontroverted evidence presented by the plaintiff, was that prior to the death of the deceased they were engaged and had made plans to get married during October 2014. Furthermore, that the joint income which they were earning, albeit that the deceased was the breadwinner, was utilized to service the joint expenses of their household. In addition to this, these expenses not only related to the maintenance of their child but that it also related to the reciprocal duty which they carried themselves. It was the evidence of Ms. Delport, that throughout their relationship their respective families accepted them and they had regarded them as an engaged couple with plans to get married.

[22] The second question to be asked is whether the facts establish a legally enforceable duty to support arising out of a relationship akin to a marriage?

- [23] On the facts presented, I am satisfied that the deceased undertook to support the plaintiff with the intention to be legally bound by such undertaking. Not only did the deceased owe the plaintiff a contractual duty to support,[5] but she in turn attracted a reciprocal duty to support the deceased. On the uncontroverted evidence presented before this court and in line with her pleaded case, the plaintiff has discharged her onus.
- [24] As a result, once a dependent established the duty of support, it follows that the law ought to protect it.
- [25] It is precisely based on this reciprocal duty of support which the plaintiff has established as a matter of fact in a relationship akin to a marriage, that she should be afforded protection as a dependent.
- [26] The Plaintiff's relationship with the deceased, to my mind, was similar to a family relationship arising from a legally recognized marriage. Having found this, it therefore, follows that her dependents' action is to be afforded to her as an unmarried person in a heterosexual relationship and that she should not be discriminated upon as section 9 of our Constitution, affords her that protection.
- [27] As the parties were in agreement as to the quantum to be awarded to the plaintiff, in the event of the liability to be determined in her favour, the following order is then incorporated as part of the judgment by agreement between the parties:

ORDER

- [28] Consequently, the following order is made:

28.1 The defendant is liable to compensate the plaintiff 100% of her proven delictual damages in her personal capacity as a result of the motor vehicle collision which occurred on 29 March 2014.

28.2 The defendant shall pay the plaintiff the capital amount of R 2 381 315.00 (Two Million, Three Hundred and Eighty One Thousand, Three Hundred and Fifteen Rand) in respect of the plaintiff's claim calculated as follows:

Past Loss of Support

R 402 515.00

28.2.2. Future Loss of Support

R 1 978 800.00

28.2.3 Total

R 2 381 315.00

28.3 The capital amount is payable by means of direct fund transfer on or before 31 December 2019 into the trust bank account of the plaintiff's attorneys: Mills & Groenewald Trust Cheque Account, Absa Bank Vereeniging, Account Nr. [...], Branch code: 630 137, reference: A. Van Zyl / DK 7382

28.4 No interest will be payable except in the event of default of payment before or on 31 December 2019 in which case interest will be payable at the rate of 10% {percent) calculated on the capital amount from 1 January 2020.

28.5 The defendant shall pay the plaintiff's taxed or agreed party and party costs on a High Court scale up to and including 29 November 2019, which costs shall include, but not limited to:

28.5.1 Consultations when detailed instructions were given due to the complexities of the matter;

28.5.2 Costs of counsel including trial preparations and attendances on 12 August 2019, 6 September 2019 and 29 November 2019, including preparation and drafting of the Heads of Argument;

28.5.3 Any costs attendant upon the obtaining of payment of the capital amount referred to in paragraph 28.2 supra, as well as any costs attended upon the obtaining of payment of the taxed costs.

28.6 Subject to the following conditions:

28.6.1 The plaintiff shall, in the event that costs are not agreed upon, serve the notice of taxation on the defendant's attorney of record, and

28.6.2 The plaintiff shall allow the defendant 14 {fourteen) court days to make payment of the taxed costs.

28.6.3 No interest shall be payable except in the event of default of payment of such costs in which case interest will be payable at the rate of 10% from date of taxation.

C.J. COLLIS

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA

Judgment

electronically transmitted to the parties

Appearances:

For the Plaintiff:

Adv. Grobbelaar

Attorney of the Plaintiff: Mills & Groenewald Attorneys

For the Defendant:

Adv Mahome

Attorney for the Defendant: Mathipane Tsebane Attorneys

Date of Hearing:

6 September 2019 & 29 November 2019

Date of Judgment:

24 April 2020

[1] Brook v Minister of Safety and Security 2009 (2) SA 94 (SCA) [6]

[2] 2002 (6) SA 1 (CC_

[3] Ibid at para 29

[4] Unreported decision Case no. 1322/2016

[5] Du Plessis v Road Accident Fund 2004 (1) SA 359 para 16

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