

SOUTH AFRICA / JUDGMENT

J.A.R v L.LR (017913/2024) [2024] ZAGPPHC 910 (12 September 2024)

[2024] ZAGPPHC 910

COURT

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

017913/2024

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FLYNOTES:

FAMILY – Divorce – Children –
Acrimony
between parties causing child psychological harm – Harmful
parenting strategies which are in effect a vendetta
against each
other – Tantamount to psychological abuse to their own child
– Both parents causing psychological
damage to child –
Situation calls for a new parenting coordinator – Required
to assist parents and minor to enjoy
effects of parenting plan –
Parties are bound by terms of parenting coordinator's
engagement.
IN THE HIGH
COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)
Case No: 017913/2024
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHERS JUDGES: NO
(3)
REVISED
DATE:12
SEPTEMBER 2024
SIGNATURE

In the matter between:

J.

A. R

Applicant

and

L.

LR

Respondent

This

judgment is prepared and authored by the Judge whose name is reflected as such 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 handing down is deemed to be 12 September 2024.

JUDGMENT

RETIEF J

INTRODUCTION

- [1] It is apt to begin the introduction of this matter by quoting what Professor G Pretorius referred to in one of her reports authored by order of this Court, pertaining to this matter when she stated: “If one truly loves one’s child, one does not try to destroy the other parent. The matter of JJ reminds me of the African proverb:

“When two elephants fight, it is the grass that suffers”.

- [2] Against that, this application was initially brought by way of urgency by the applicant in which he sought contempt relief against the respondent. Such contempt relief relating to the adherence of the respondent in respect of paragraphs 6 and 7 of a Court order handed down by the learned Magistrate Van Niekerk in the Tembisa Children’s Court under file number 14/1/40/2022 [the order] in respect of the applicant and respondents’ minor child, JJ LR [minor] [contempt relief].
- [3] Over and above the contempt relief the applicant sought to amend the order by limiting the respondent’s contact rights to the minor to supervised contact with the assistance of a social worker [supervised contact relief]. The supervised contact relief was couched as final relief. The application was not heard on the urgent roll and is now placed before this Court as a special motion due to the voluminous papers filed and subsequent supplementary affidavits.
- [4] The trigger event for the contempt and supervised contact relief was described as being as a result of inappropriate conduct by the respondent. Such being the ‘sex talk’ and kidnapping, drugging and sexual molestation of children talk which took place between the respondent and the minor.

- [5] Subsequent upon the launching of this application but, before the hearing urgent application, the applicant under case number 069652/2024 launched a further urgent application against the respondent in which the applicant before Swanepoel J now obtained the supervised relief he appeared to seek in this matter, the social worker Estelle Basson was duly appointed. The supervised relief was granted as interim relief until the finalisation of this application [urgent interim relief].
- [6] The trigger event for the urgent interim relief was an allegation of the ‘kidnapping’ of the minor by the respondent subsequent upon an allegation of ‘assault’ of the minor by the applicant.
- [7] The applicant was successful before Swanepoel J who, inter alia, also ordered that both the applicant and the respondent submit themselves for a follow-up evaluation by Professor Gertie Pretorius

[Prof Pretorius] who was ordered to file a report within six weeks from the date of order. That report was duly authored and filed.

- [8] Notwithstanding, according to the filed practice note of the 8 July 2024, the matter before this Court was not strictly contempt relief but now according to Counsel, was a suspension of respondents contact rights pending her fulfilment of prayer 6 and 7 of the order. No amended notice of motion was filed in support hereof. There was however an opposed rule 28 application in which the applicant sought to amend his contempt relief by expanding its prayers.
- [9] The respondent’s Counsel did not file a practice note, his heads of argument were not filed in time as per the Deputy Judge President’s directive of the 7 June 2024 [directive] and no joint minutes were filed by the parties as per the directive. This Court required Advocate Marx who was appearing for the respondent to address it on a possible conflict of interest he may have evident, ex facie the papers filed. Advocate Marx withdrew on his own accord and the junior counsel, Advocate Ferris assisted the respondent.
- [10] In consequence, and on the morning of the hearing which was specifically set down to assist and accommodate both parties, the relief sought by the applicant was not a model of clarity and the papers far exceeded 600 pages.
- [11] If the applicant’s case was the contempt relief, it was unamended and moot as the respondent had complied. Furthermore, if his relief had morphed into what Counsel had stated in her practice note, namely: suspension relief pending the fulfilment of the order, it too had been fulfilled, become moot and begged the answer to the question, on fulfilment didn’t the suspension surely falls away? Why was this application before this Court?
- [12] Therefore, on the morning of the hearing this Court required clarity of what needed to be addressed and what could be addressed on the papers filed. To commence, the respondent withdrew her opposition to the proposed rule 28 amendment without tendering costs, the applicant did not wish to move its amendment relief and confirmed that the contempt relief

at prayer 2 of the notice of motion had become moot. Counsel made no mention of the disconnect between the couched prayer 3 (supervised contact) and the interim suspension relief indicated in her practice note. Both overtaken by events.

- [13] This Court too having regard now to the narrow issue (unamended prayer 3) albeit, 'no issue' on the papers, now turned to the directive which included strict compliance of the service of any further supplementary affidavits. Beyond the directive the Court was clear that it would only take cognisance of yet further supplementary affidavits served if leave was sought, leave considered and granted. No leave was sought from the papers nor from the bar and in consequence none granted.
- [14] Advocate Foord, the minor's legal representative filed a report in June 2024 a date before the compliance by the parties of the terms of the urgent interim relief order. The report was not updated. Advocate Foord none the less supported the suspension of contact between the minor and the respondent going forward as a general proposition and as will be discussed herein the appointment of a new parenting co-ordinator Dr L Roux. None of these submissions were made having regard to the actual prayers which were brought by the applicant before Court.
- [15] The matter proceeded on the unamended pleadings. The Court acutely aware that the minor's best interest to be considered notwithstanding

the state of the papers.

THE ORDER

- [16] On 14 August 2023 the Presiding Officer in the Children's Court for the district of Ekurhuleni North held at Tembisa, made an order in respect of the minor. The content common cause. The order too operated, in part, as against Mr J Joubert, the respondents previous partner.
- [17] The order dealt with, inter alia, the appointment of a parenting coordinator to assist the parties to give effect to and comply with the order. The parenting plan dated 4 November 2019 was confirmed however paragraphs 6.2.1, 6.2.4 and 6.2.5 relating to contact rights to be exercised between the minor and the respondent was suspended.
- [18] The suspension referred to was operated until the respondent complied with paragraphs 6 and 7, the subject matter of the contempt relief. Paragraph 6 and 7 directed the respondent so submit herself to a psychologist to equip her with the necessary parenting skills to discipline and guide the minor other than resorting to physical disciplining or chastisement or by delegating her responsibilities of disciplining and guiding the child to another person and that both the respondent and the minor should be assisted by a psychologist to rebuild their relationship of trust in each other and how to manage conflict, discipline and respect.
- [19] The order did not set out a time frame within which the respondent had to comply with paragraph 6 or 7. However, upon the certified successful completion of the interventions the suspension would lapse, where upon the parenting plan should be made fully operational.

[20] The order also required the applicant to subject himself to a psychologist to acquire the necessary skill on how to better self-manage disputes between himself and inter alia the respondent.

[21] It is common cause that respondent has now complied with paragraph 6 and 7 of the order.

SUPERVISED CONTACT (UNAMENDED PRAYER 3)

[22] Notwithstanding the obvious albeit, oblivious of the relevance, the applicant's junior Counsel trudged on in support of an argument for further supervised contact pending the respondent undergoing intense psychotherapy. This was done without having regard to the actual relief sought nor the practice note and as against the effect of the common cause facts of due compliance of paragraph 6 and 7 of the order and due fulfilment of prayer 3 by a 'directive' issued by the parenting co-ordinator, Ms Wolmarans. Furthermore, that an observation account of such supervised contact sessions had been recorded in an observation report by Ms E Basson, the social worker.

Without support by the recommendations recorded in the addendum August report file by Prof Pretorius, Counsel based the argument of supervised contact and psychotherapy on, inter alia, the chronology of the events from the 22 January 2022 to 24 June 2024 to illustrate that the respondent although not in contempt, was contemptuous in her conduct and that it was in the best interest of the minor that supervised contact persists. The remaining submissions relating to extract from Prof Pretorius addendum report was considered in that light and weight having regard to her final recommendations.

[23] This would explain why the applicant's more senior Counsel later did not move for prayer 3 but moved for relief couched in a draft order containing prayers which, in part, save for now phased contact, was in line with the recommendations made by Prof Pretorius in her addendum August report.

[24] From that moment, the case the respondent was asked to meet changed. This was done without warning by the applicant nor his legal team. It however was a way forward and accommodated certain recommendations made by Prof Pretorius which was before this Court by order.

[25] The Court accepted that it was considered by the applicant when his legal team proposed it. The respondent was, in principle in agreement with the content of the proposed draft order save, that the respondent objected to 'phased in' contact with the minor. She requested this Court to consider the terms of the order, the fact that a parenting plan dated the 4 November 2019 was in place and made an order of Court and that no report filed subsequent to the urgent interim relief supported supervised nor phased contact with her son. The respondent also required this Court to be cost sensitive when appointing a new parenting co-ordinator

which she supported should take place.

[26] It is against this background that this Court considers the proposed draft as against the order itself as not to disturb its effectiveness in so far as its terms apply and the addendum report of Prof Pretorius who recommended a new parenting co-ordinator and all the evidence to appreciate the best interest of the minor as regards final contact with the respondent.

REPORT BY PROFESSOR GERTIE PRETORIUS

[27] On 20 August 2024, Prof Pretorius authored an addendum report to the psycho-legal report she had authored in the matter before dated 20 July 2023. At this stage it must be recorded that the report of 20 July 2023 was extensive, and in addition to the psychological and psychometric procedures performed Prof Pretorius perused no less than 142 documents supplied as preparation. The report consisted of 204 pages and is insightful, balanced and clearly demonstrated that the minor is affected by both the conduct of the applicant and the respondent. In short to summarise the minor's aspirations and voice in 2023 she revealed that:

27.1. He harboured the wish that his parents would reunite, and they could be a core family;

27.2. He wished he could spend more time with his mother, the respondent; and

27.3. The current litigation between his parents, with him as the subject of it, is harming him psychologically.

[28] Notwithstanding the aforesaid, acrimonious litigation between the parties has continued since the report and after the 23 August 2023 order. The papers too, without the necessity to single out any party hereto, are littered with remarks of discontent and criticism wielded against therapists, professionals in their field, the appointed parenting co-ordinator and even the content of Prof Pretorius reports. No introspection by either the applicant nor the respondent in the "I" conduct has occurred. The consequence and effect on the minor is concerning and is clearly illustrated in her addendum report.

[29] In Prof Pretorius' addendum report which again, was extensive consisting of 118 pages and after considering further updated

documents, she places the trigger for the contempt relief and urgent interim relief in context. Context is given after all voices were heard including the minors. This is an exercise in subject matter and in context which was well worth doing by her as it assists a Court to observe the full picture from a distance.

[30] Of significance too are the results of the further psychological interviews and psychometric tests done on the minor, if summarised:

"It would be safe to say that he (the minor – own emphasis) has been immeasurable harmed by the acrimony between his parents, the litany of accusations, and court cases between the parents and the way in which his parents include him into the warfare between them and triangulates him. JJ suffers from induced psychological splitting and has aligned himself with the Ms LR against Mr R. JJ's psycho-social well-being has deteriorated since the psycho-legal report dated 20 July 2023."

- [31] Prof Pretorius reiterated and expressed that the minor felt discomfort with the “sex talk” and was traumatised by the discussion about the child abduction and child rape. He has been traumatically sexualised in that now, he is reminded of “sex” when he looks at dolls and wishes to “get it out of his heart and brain”. The need for Nadine Kuyper to address further therapy with the minor she states becomes a matter of urgency.
- [32] The minor experienced the incident (“assault”) between himself and the applicant on 22 June 2024 as abusive. The consequence of the aforesaid is that he expressed a wish to reside with the respondent and rather visit the applicant.
- [33] Prof Pretorius confirms that both the reactive and emotive ways in which the applicant and the respondent reacted to the event of 22 June 2024 (“assault” and thereafter the “kidnapping”)

was not done to protect the minor, but rather to get the upper hand on each other. She goes as far as saying that most of this could have been avoided and the minor having been spared a lot of trauma and emotional damage had both the applicant and the respondent regulated their emotions, managed the situation and co-parented. She records that both the applicant and the respondent do not demonstrate insight into this dynamic and that both their harmful parenting strategies which is in effect a vendetta against each other is tantamount to psychological abuse vis-à-vis their own child. The inability of the applicant and the respondent to control and/or bracket their intense dislike for each other has unfortunately also spilled over into the minor’s schooling and academic development. A most unsatisfactory consequence.

- [34] Of importance she stresses that the use of the attendance of professionals like psychologists which is the history in this matter seems to be unfruitful and that the attendance of strong mediation and arbitration with specific goals seems to have not been exhausted and in this way the introduction of a strong and seasoned parenting coordinator is a consideration. Before making her recommendations, Professor Pretorius makes the following remarks:

“It is tempting to recommend that, if the parents continue with their abuse of their minor child, JJ, to the ongoing harmful parenting strategies and their continued warfare, that Section 150 of the Children’s Act 38 of 2005 be considered and JJ be conceptualised as a child in need of care and protection.”

- [35] The proposed draft order, albeit in part is understood and seen in context.
- [36] She opines that both parents are causing psychological damage to the minor and that that no amount of therapy or psycho-education has changed the applicant nor the respondents’ capacities to co-parent. For this reason, nothing is going to be achieved by “supervised contact” or by altering the minor’s residence and care. Neither will anything be achieved for the minor by taking a punitive approach to either of both parents. The only way that the minor will be protected against both parents’ wish to “get the upper hand against the other parent” will be by the appointment of a parenting coordinator who will micro-manage the best interests of the minor.

[37] This Court wishes to achieve a more desirable, permanent outcome for the minor pertaining to contact with both the applicant and the respondent.

OBSERVATION REPORT BY ESTELLE BASSON

[38] Estelle Basson, a social worker authored a report dated 26 August 2024 in which she by order supervised the contact between the minor and the respondent subsequent upon the order of Swanepoel J. According to Estelle Basson's observation, the minor appeared happy in his mother's company, she appeared attentive and sensitive and his physical and emotional needs were met during such visitations.

[39] These observations are noted in context.

SUPERVISED CONTACT

[40] A basis for further supervised contact, however couched has not been established. However, this Court acting as the upper guardian of the minor and dealing with this matter through the lens of the best interest right of the minor considers supervised care and even phased in contact in the proposed draft order as against paragraph 9 of the

order which is triggered by the common cause facts.

[41] This Court does that by having regard to all the evidence, all the complaints, levied, all the "he said and did" and the "she said and did." What is abundantly clear is that the needs of the minor, amidst the applicant and the respondent enjoy taking the high moral ground claiming his 'best interest',

have not been fully appreciated by them.

[42] Prof Pretorious addendum report has summed it up. The lack of appreciation, lack of ability to co-parent, lack of ability to enjoy and appreciate the advice of a parenting coordinator and therapists, may result in the minor being taken away from the applicant and the respondent in the future and placed in a place of safety.

[43] In consequence the situation does call for a new parenting coordinator who has more powers than proposed in paragraph 3 of the order to assist both the parents and the minor to enjoy the effects of a parenting plan. For the minor, the sooner the better. This will be a means to achieve balance.

[44] In circumstances if and when such balance should be disturbed by the applicant or the respondent or Mr Jacobus Joubert, this Court will ensure that if the minor is affected, as he has been in the past, the parenting coordinator will be in a position to trigger section 150 of the Children's Act 38 of 2005.

[45] In consequence paragraph 9 of the order is triggered and the parenting coordinator will be directed to assist the parties to implement the signed parenting plan as soon as possible, subject of course to the remaining paragraphs of that order which apply, are not disturbed.

COSTS

- [46] It is trite that costs follow the result. Having regard to the trite principle and accepting that costs are in the Court's discretion, exercised judicially, this Court set out the factors it considered.
- [47] With regard to the costs occasioned by the proposed amendment, the Court at the hearing gave its prima facie view that such costs should be borne by each party. The view was held in light of the fact that it had been withdrawn and as at the date of the fulfilment of paragraph 6 and 7 of the order it became moot. A consideration the Court did not take into account was the date of the respondent's fulfilment being in August 2024. In other words, the opposed relief was still alive a week or so before the matter was to be heard and therefore capable of resolution and preparation costs existed. In this regard the Court's prima facie view reconsidered. The reconsideration too was bolstered by the timing of the withdrawal of the opposition. Such triggering wasted costs. In consequence this Court will grant the wasted costs occasioned by the amendment relief to the applicant.
- [48] As far as the costs of the contempt and supervisory relief is concerned the applicant did not succeed as prayed for and the order had already been implemented and fulfilled. The respondent accepted the proposed draft order in principle save, as dealt with, without requesting a postponement to consider the changed goal post. It was however a goal post she could and should have anticipated the need for the proposed draft order once she fulfilled paragraphs 6 and 7 of

the order and had considered her timing she did it in. The fact that she tried to obtain counter relief, although inappropriately executed on the papers, is testament to that fact and realisation.

The papers are unnecessarily lengthy and no one party should be burdened with paying for the others costs. Each party to bear their own costs.

- [49] Wherefore the following final determination of the contact between the parties with the minor child follows.

- [50] The following order:

1. That the roll and appointment of Adell-Mari Wolmarans as the present Parental Coordinator in terms of paragraph 3 of the Court order of the 14 August 2023 in file number 14/1/4-40/2022 [2023 order] is hereby terminated.
2. Dr Lynette M. Roux, a Clinical Psychologist is hereby appointed as the Parental Coordinator [PC] as at date of this order.
3. The Applicant and Respondent are bound by the terms of the PC's engagement and by the powers and purpose as set out herein and as complimented by the 2023 order.

4. If the PC is for whatever reason unable to accept her appointment or becomes unavailable to continue her role as PC, she shall nominate a suitably qualified professional to replace and such suitably qualified professional must be a psychologist or attorney or advocate with at least 10 years' experience practising in the field of family law [nominee] Such nominee to be vested with the same powers set out herein.
5. The suspension referred to in paragraph 4 and 5 of the 2023 order has lapsed and paragraph 9 is triggered and effective, the Amended Parenting Plan made an order in the Children's Court on the 4 November 2019 is confirmed and fully operational from date of this order.
6. The PC is mandated with the powers and functions in the exercise of her mandate, such powers and functions to compliment those she is mandated to do in terms of the PC's own terms of engagement with the parties. The PC is empowered to:
 - 6.1 Implement the provisions of this court order, provisions of the order dated 28 June 2024 by Swanepoel J (prayers 9-11) and the terms of the 2023 order in so far as such terms apply, albeit in part and, are not disturbed by the provisions of this order;
 - 6.2 Implement the care, the contact and residency in respect of the minor child as contained in the Amended parental plan between the parties dated 4 November 2019 referred to in prayer 5 hereof and/or any subsequent parental plan which may, by agreement be entered into by the parties and which is made an order of Court;
 - 6.3 Assist the parties with the resolution of any future disputes in relation to any matter arising from their parental rights and responsibilities in respect of the minor child;
 - 6.4 Make recommendations and/or issue directives in respect of any issue concerning the welfare and/or affecting the best interests of the minor child and to facilitate and ensure the ongoing therapy of the minor child and the parties;
 - 6.5 Make recommendations and/or issue directives in respect of any other therapeutic intervention needed by either or both of the parties and the minor child, if necessary, and to appoint a suitable professional to provide such therapeutic assistance/intervention needed;
 - 6.6 Resolve disputes relating to the clarification and implementation of the parties' parental rights and responsibilities, including holiday contact and/or contact on special days and/or special holidays, but not limited to facilitating a process of mediation when there is a dispute between the parties in respect of the exercise of their parental rights and responsibilities, and should the process of mediation fail, to make a decision by way of the issuing a directive, which shall be binding on the parties until such time as a court overturns such directive;
 - 6.7 Refer the parties to a suitably qualified mediator to assist the parties in mediating a new parental plan, if found necessary by the PC;

6.8 Require that either one of the parties, or both of them, shall participate in parental guidance courses, and/or participate in psychological evaluations and assessments by a person/s nominated by the PC, with or without the minor child, if necessary and in the best interest of the minor child. For the sake of clarity such participation would be in addition to the parenting courses, therapy and assessments in which the parties have already participated. In respect of the minor child the parties will be equally liable for the costs of such intervention;

6.9 Consult with the minor child, the legal representative of the minor child, the parties, any expert or collateral source to assist the PC in the performance of her duties;

6.10 Assist and facilitate the parties in co-parenting the minor child;

6.11 Approach the court for the extension of her powers and duties if deemed necessary;

6.12 Oversee that the best interests of the minor child are served at all times, including being empowered to issue a directive after consultation with the minor child's therapist whether therapy should continue;

6.13 Obtain information and/or to consult with the minor child's legal representative;

6.14 Take all steps necessary in the best interests of the minor child, including the right to approach the court and/or to initiate and to take investigative steps envisaged by section 150 of the Children's Act 38 of 2005.

7. To the extent that the parental coordinator has the power to issue directives in respect of the parties' parental rights and responsibility of the minor child, the power shall be exercised in the minor child's best interests and may be subject to confirmation by the Court.

8. The PC's services are not limited to mediation, the issuing of recommendations and/or directives, but are to be borne out by her purpose and powers.

9. The PC is required to provide feedback to the parties and the legal representative of the minor child, Adv Caroline Foord, if and when the PC deems it necessary.

10. Any decision-making powers that have been conferred on the PC shall not include the right to alter the substance of this order or any subsequent order or involve a permanent change to any of the rights and obligations of the parties.

11. The parties shall be liable to pay the fees of PC as follows:

11.1 The party who raises the dispute shall bear the PC's costs in respect of such dispute, subject thereto that the PC shall have the authority to direct either one of the parties, to pay the full or another specific portion of her costs, should she find that such party acted or acts obstructively, mala fide, vexatious, on own accord contrary, unreasonably or not in the best interest of the minor;

11.2 The PC's costs are to be paid within 30 (thirty) calendar days of her rendering such an invoice, alternatively on terms agreed upon with her.

12. The legal representative for the minor child, Adv Caroline Foord shall remain the legal representative of the minor child and will consult with the minor child at least once a month or as she deems appropriate in the circumstances, to obtain instructions, feedback and to monitor the well-being of the minor child.
13. The Applicant and the Respondent are to each pay 50% of the costs of Professor Pretorious referred to in prayer 7 of the 28 June 2024 order.
14. The Respondent is to pay the wasted costs occasioned by the opposed rule 28 application on a party and party scale from date of opposition, such costs to be taxed on scale B including the employment of one Counsel on this issue.
15. Each party to bear their own costs occasioned by this application.

L.A. RETIEF

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant: Adv M Van Niekerk Cell: 082 789 7702 Email: natashavn@lawcircle.co.za Adv M van der Westhuizen Cell: 079 175 2018 Email: mariq@clubadvocates.co.za Instructed by attorneys: OPPERMAN ATTORNEYS Tel: 082 780 3708 Email: chenique@opperman.law C/O RAATH LAW Tel: 012 343 9384 Email: info@raathlaw.com For the Respondent: Ms L LR (in person) Cell: 082 921 5059 Email: lizelle6feb@gmail.com For the Minor Child: Adv C Foord Cell: 083 822 9206 Email: carolinef@legal-aid.co.za Date of hearing: 05 September 2024 Date of judgment: 12 September 2024

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Prepared on 10 October 2026 · Esheria