

SOUTH AFRICA / JUDGMENT

J.P. v E.S.P. (790/2011) [2014] ZAECPEHC 25 (8 April 2014) [2014] ZAECPEHC 25

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

E Smith

CASE / FILE NUMBER

790/2011

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION – PORT ELIZABETH

Case

no: 790/2011

Date

Heard: 01/04/2014

Date

Delivered: 08/04/2014

In

the matter between:

J.P.

APPLICANT

AND

E.S.P. RESPONDENT

JUDGMENT**SMITH J:**

- [1] This is an application in terms of Rule 43 of the Uniform Rules of Court for an order: declaring that certain paragraphs of an order granted by Makaula J shall remain in force; compelling the respondent to contribute the sum of R15 000 towards the applicant's costs; and ordering the respondent to pay for the tertiary studies of the parties' minor son.
- [2] The parties have subsequently reached substantial agreement on the form and substance of the order, and the only issue that remained for decision is the prayer for contribution towards costs.
- [3] The applicant has averred that she required the contribution to enable her to appoint an appropriate expert to do a forensic audit in respect of the respondent's financial affairs. She has asserted that the respondent had not been forthright with regard to the income that he derives from a block of flats and business premises owned by him. The audit will also cover his banking accounts, certain documents disclosed by him, property in Greece as well as a disputed loan from family members. The applicant contends that these issues impact upon the determination of the respondent's true earning capacity and are thus germane to her claim for maintenance for herself and the minor child.
- [4] The amount of R15 000 is based on an estimate provided by the accounting firm, Grant Thornton Chartered Accountants, and excludes the costs of the expert's testimony,
- [5] Ms Beneke, who appeared for the respondent, submitted that the forensic audit is unnecessary, and that the report of the Receiver and Liquidator will suffice. She has submitted, in the alternative, that in the event of the Court finding that the forensic report is unnecessary, the respondent should not be required to pay the full amount, but only a portion thereof.
- [6] I agree, however, with Mrs Potgieter, who appeared for the applicant, that the report of the Receiver is intended to deal essentially with the issue of the accrual of the parties' respective estates, and will thus not suffice for the purposes required by the applicant. Furthermore, the contribution claimed by the applicant excludes further costs in respect of expert testimony and preparation for trial. The respondent is thus only required to contribute a portion of the applicant's costs.
- [7] Having regard to the papers before me, as well as Makaula J's judgment, I am satisfied that the respondent can afford the contribution claimed by the applicant.
- [8] In the result the following order issues:
 - 1. Paragraphs 5 and 6 of the order of this Court granted in this matter on 17 September 2013 remain of force and effect;

2. The respondent shall make a contribution to the applicant's legal costs in the sum of R15 000, which amount is payable within 14 days of the date of this order;
3. The respondent shall pay for the tertiary studies of the parties' son, Andrew, until such time he has completed his tertiary studies, which includes, but is not limited to, his City and Guild International qualification course as well as all further costs relating to his studies at Images 1 Hair Academy;
4. The costs of this application shall be costs in the divorce action between the parties.

J. E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant

: Advocate Potgieter

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Date Heard

: 01 April 2014

Date Delivered

: 08 April 2014

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Prepared on 9 October 2026 · Esheria