

SOUTH AFRICA / JUDGMENT

JVS v LVS (29720/2020) [2021] ZAGPJHC 458 (3 September 2021)

[2021] ZAGPJHC 458

COURT

South Gauteng High Court, Johannesburg

BEFORE

F Bezuidenhout

CASE / FILE NUMBER

29720/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NUMBER: 29720/2020

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO
REVISED.

DATE:

3 SEPTEMBER 2021

In

the matter between: -

MR

JVS

Applicant

and

MS

LVS

Respondent

JUDGMENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 3 September 2021.

F. BEZUIDENHOUT AJ:

INTRODUCTION

- [1] This application concerns the best interests of two minor children, a boy aged 8 and a girl aged 5, who were born of a former marriage relationship between the applicant and the respondent.
- [2] The applicant, the father of the children, approached this court with an application to make a parenting plan an order of court in terms of section 34 of the Children's Act, 38 of 2005 ("the Children's Act"). The parenting plan, although essentially an agreement between the parties, was not signed by either of them. It is for this reason that the respondent, the mother of the children, opposed the application.
- [3] By the time the application was enrolled for hearing before me during the week of the 26th of April 2021, counsel for the parties advised the court that the parties agreed to the appointment of clinical psychologist, Dr Pauline Mawson ("Dr Mawson") to act as case manager and to provide recommendations on the phasing in of sleepover contact between the applicant and the children.

Dr Mawson had only commenced her role as case manager at the time of the hearing of the application in April 2021 and

accordingly a report was not yet at hand. The parties requested the court to determine the issue of when the respondent's sleepover contact was to commence and the nature and extent of such sleepover contact. Judgment was reserved.

- [4] Before the court handed down its judgment, the parties informed the court on the 25th of May 2021 that the report by Dr Mawson had been prepared and was ready for consideration. In the circumstances, and in light of the fact that the events of the April 2021 hearing had been overtaken by the availability of Dr Mawson's report, I directed the parties to file supplementary affidavits and heads of argument and to submit oral submission to me at a virtual hearing that was held on the 30th of June 2021.

SALIENT BACKGROUND

FACTS

- [5] The applicant and the respondent were married to each other on the 4th of June 2011. The two children were born of the marriage relationship on the 10th of May 2013 and on the 3rd of October 2016, respectively.
- [6] The marriage relationship between the parties irretrievably broke down and during 2018, the respondent issued divorce proceedings. The parties resolved their disputes and reduced the terms to writing.
- [7] On the 1st of April 2019 this court granted a decree of divorce and incorporated the agreement of settlement concluded by the parties (“the agreement”).
- [8] The relevant terms of the agreement for present purposes were as follows: -
- [a] Both parties would retain full parental responsibilities and rights in terms of section 18 of the Children’s Act;
- [b] Primary residence of the children would vest with the respondent;
- [c] The applicant would exercise specific rights of contact with the minor children under supervision and without any sleepover contact;
- [d] The applicant’s right of extended contact with the children would be implemented and evaluated with the assistance of a social worker, Ms Jackie Griessel, in her capacity as parenting coordinator, or in the event of her unavailability, by a social worker or child psychologist, who would be mandated to structure and design the contact in a manner that would serve and protect the best interests of the children;
- [e] The parenting coordinator would in her discretion request the applicant to undergo any testing for alcohol, liver function, narcotics, prescription medication or substances that she deems necessary, the cost of which would be borne by the applicant;
- [f] The extended contact of the applicant would be revisited after the 1st of April 2020.
- [9] After the decree of divorce was granted, the applicant exercised contact with the children at the respondent’s residence every Tuesday and Thursday from 16:00 until 18:00. He also exercised contact with the children every alternate Saturday from 14:00 until 17:00. The Saturday visits allowed for the applicant to take the children away from the respondent’s residence, provided that such visits would be supervised by the applicant’s mother.
- [10] From January 2019 until June 2019 the applicant’s contact essentially remained the same, save for change in the times. The Tuesday and Thursday visits took place from 15:30 until 16:30 and the Saturday visits from 10:00 until 13:00.

- [11] During the period June 2019 until March 2020, the applicant continued to exercise his contact with the children on Monday from 16:00 until 17:00, Tuesdays from 15:30 until 16:30 and by agreement the respondent permitted him to exercise contact with the children on every Thursday from 15:30 until 16:30. The Saturday visits changed to 10:00 until 14:00 in order to allow the applicant contact with the children for one extra hour.
- [12] The restricted contact, more specifically the exclusion of sleepover contact, has its genesis in the applicant's alcohol addiction.
- [13] During October 2017, the applicant sought professional help not only for his alcohol addiction, but also for depression and anxiety. He consulted with Dr Corinne Johnson and has been under her care ever since. Dr Johnson treated the applicant for an extended period of over three years for his acute anxiety and depression and she referred him to Dr Pholly Zizi for further counselling to help him manage his drinking triggers and the consequences of the divorce. Both Dr Johnson and Dr Zizi rendered reports.
- [14] Dr Johnson's latest report attached to the founding papers is dated the 22nd of September 2020. By way of a covering letter, Dr Johnson confirmed that the applicant had been under her care as an outpatient since October 2017 and that he has made a full recovery and has been in remission since November 2019. He continued to function well in his place of work and he is committed to treatment and therapy to address triggers for relapse. Dr Johnson opined that the applicant is at low risk for relapse as he takes responsibility for his health, he has built a good support system and has remained compliant to treatment. She accordingly recommended the applicant for unsupervised "full shared custody" of the children.[1]
- [15] On the 3rd of July 2020, Dr Zizi prepared a psychological progress report which is attached to the applicant's founding papers.

Dr Zizi reported that the applicant indicates good emotional insight and has good judgment and that he is aware of how his

thinking patterns contribute to intense emotions and behaviours. The applicant has emotional insight into his triggers and dysfunctional

copied strategies used in the past and he has been able to recognise and report on healthier constructive coping strategies, has built constructive coping thoughts and has found activities to replace maladaptive behaviours. Dr Zizi confirmed that the applicant consistently attends sessions and that protective factors include good interpersonal support from his current partner.
[2]

- [16] On the 4th of November 2019 the applicant approached Ms Griessel in order to proceed with the extended contact which was to be implemented by April 2020. After Ms Griessel had conducted a number of interviews with the applicant and the children, which included observation interviews at the applicant's home, she prepared a draft parenting plan which was received on the 2nd of May 2020. The parenting plan was only in draft form because the

parties were required to provide Ms Griessel with certain information to enable her to finalise the parenting plan. Amongst other things, the parenting plan dealt with sleepovers which would be implemented after a period of three months.

- [17] On receipt of the parenting plan, the applicant's attorneys addressed correspondence to the respondent's attorneys. The respondent was reluctant to allow for the implementation of the draft parenting plan insofar as any extended contact between the applicant and the children was concerned. The respondent's main concern axled around the applicant's alcohol addiction and sobriety.
- [18] The applicant mentions in his founding affidavit that on the 29th of June 2020, Ms Griessel requested him to undergo various blood tests and on the 30th of June 2020 the applicant obliged by subjecting himself to an alcohol Gamma GT and alcohol CDT test.
- [19] In her answering affidavit the respondent amplified the applicant's allegations regarding the preparation of the parenting plan and informed the court that pursuant to the first draft parenting plan and uncompleted mediation, Ms Griessel prepared a further amended draft parenting plan which was presented for mediation on the 7th of July 2020. A comprehensive mediation session followed on the 22nd of July 2020 which resulted in the amendment of the draft parenting plan dated the 9th of July 2020.
- [20] Thereafter and pursuant to further mediation by Ms Griessel, a third draft parenting plan was prepared and presented for mediation on the 23rd of September 2020. Ms Griessel also released a report dated 23 September 2020 that accompanied the third parenting plan.
- [21] On the 21st of October 2020 Ms Griessel released a final report wherein she recommends that the applicant's contact be phased in and that midweek contact continued and be exercised at a neutral venue. Ms Griessel also recommended that a case manager be appointed to assist the parties to phase in the contact in the best interests of the children.[3]
- [22] Ms Griessel's evaluation contained in her report is instructive: -

"... Both parents love their children. Mr JVS has requested unfettered access to the minor children. Ms LVS has indicated that she has concerns about Mr JVS's addiction problem with alcohol and the he might relapse and the minor children will not be protected. This was discussed with both parties and it was agreed that some form of a safety net will be provided for the minor children.

Of some concern is that Mr JVS did not enter a formal programme for the addiction and that he is not in a support group which can prevent relapse."

- [23] Ms Griessel recommended that a case manager be appointed to assist the parents to phase in their contact in the best interests of the children and that contact on a weekend for the first month be conducted as evaluated contact by a supervisor. She also recommended that the case manager be clothed with specific powers, including but not limited to sending the parents for parental guidance, therapy, support as well as for any drug or alcohol tests that the case manager may deem necessary, and to send the children for assistance or

assessment or therapy.

DR MAWSON'S REPORT

[24] Dr Mawson's recommendation contained in her report published on 24 May 2021 reads as follows: -

"These recommendations are made with a view to foster a healthy and functional relationship between all parties involved, but specifically the children.

It is unfortunately not possible to manage the case as case manager at the moment due to Mr JVS defensiveness and guardedness. He is not open to feedback and/or further treatment regarding his difficulties. Substance abuse of an ongoing illness that requires constant treatment and management. Thus the following recommendations are made:

1. Mr JVS join an outpatient rehabilitation programme, where he is tested once a week for at least the 1st six months and thereafter as determined by the rehabilitation programme (Mighty Wings is recommended),
2. That the current parenting plan be reconsidered/paused until such time that the above has been met and Mr JVS tests clean for a minimum of three months and on a continuous and regular basis,
3. Thus, supervised contact with the children for Mr JVS is still recommended,
4. Parental guidance for both Mr and Ms LVS is recommended,
5. Individual therapy for both to assist in dealing with underlying issues, on a weekly basis,
6. To implement the play therapy for G as recommended by Ms Griessel and for L,
7. Mr JVS current partner would also need to be assessed."

[25] Dr Mawson's evaluation to be found at paragraph 8 of her report cannot be ignored by this court. Dr Mawson stated the following: -

"Mr JVS was guarded, argumentative and displayed poor insight and poor judgment into his behaviour. He was unable to reflect on his own behaviour and even though he apologised to Lauren in the joint session, this apology seemed more superficial. He seemed to present to the joint session as wanting one thing only (further unsupervised contact) and was closeminded to any alternatives.

It would appear that Mr JVS is struggling to cope with some underlying issues and finds it hard to process these. He seems to particularly struggle with authority figures. Unfortunately, this hinders his ability to be rational and act as a co-parent.

Mr JVS initially refused alcohol/drug testing as set out in paragraph 1.7 per amendment LF8. He also refused to attend inpatient and outpatient treatment for his substance dependency disorder. He then agreed to the testing by bargaining with the assessor. This is not in the best interest of the children and raises serious concerns about the mental stability of Mr JVS. He shows potential to be 'a good enough father', but his rigid and defensive thought patterns block this ability.

Ms LVS reported far worse alcohol misuse than Mr JVS reported.

Ms LVS would appear to also be struggling with the situation, became emotional and may be overprotective of her children as a result of the past difficulties between herself and her ex husband.

There is clearly a breakdown of communication between the two parties, and they are unable to co parent at this stage.

The children were not seen by the below-mentioned as after the sessions mentioned above, it was clear that co-parenting is currently not possible and there was no point in putting the children through a similar process than what they had already undergone.

In terms of the Children's Act, No 38 of 2005: '150.(1) A child needs care and protection if, the child - (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social wellbeing';

Mr JVS denied that his previous substance abuse had affected the children in any way and Ms LVS confirmed that it had...

Furthermore, his interactions in the sessions could cause harm, Ms LVS became visibly distressed, and the assessor experienced him as intimidating."

DR MARILYN DAVIS-SHULMAN

[26] The applicant was dissatisfied with Dr Mawson's report and recommendation. Accordingly he mandated Dr Marilyn Davis-Shulman

("Dr Davis-Shulman"), a clinical psychologist, to provide a critique report.[4]

[27] Pertinently, Dr Davis Shulman points out that Dr Mawson was appointed as a case manager but that her role evolved into a forensic evaluation process. A parenting coordinator, according to Dr Davis Shulman, should never simultaneously play another role in the same case.

[28] Dr Davis Shulman criticises Dr Mawson's qualifications in that her curriculum vitae indicates multiple areas in which she has gained her clinical experience, however, because child custody work is complex and very

specialised, it is crucial to show evidence of having had ongoing training in the broad reigns of psychological domains that are

essential to child custody investigations[5].

- [29] Dr Davis Shulman furthermore opined that Dr Mawson utilised a clinical approach as opposed to a forensic approach. The report omits the required detail and salient contextual information which should have been employed in the determination of the recommendations and findings. In this regard Dr Davis Shulman opined that it cannot be assumed that the applicant did not disclose new information to Dr Mawson in the interview that she had with him or that Dr Mawson possibly observed behaviour which she interpreted as his alcohol use not being under control. If this was the case, Dr Mawson does not inform the reader of her report accordingly.
- [30] Furthermore, Dr Davis Shulman opines that it appears that Dr Mawson ascribes Mr JVS emotional dysregulation during the joint meeting as being alcohol-driven and substance-induced. The report reveals this as an innuendo, without a definitive explanation of how she arrived at this determination.
- [31] Dr Davis Shulman criticises Dr Mawson for not clarifying on what basis she makes the deduction that the applicant is offensive and guarded, nor did she consider the many other reasons why the applicant would have presented in this way.
- [32] Dr Davis Shulman opines further that Dr Mawson did not provide sufficient detail regarding her methodology and techniques utilised in order to substantiate her findings, nor how she arrived at her conclusions given her flawed procedural approach.
- [33] Dr Davis Shulman points out that Dr Mawson in the forensic evaluation met with the applicant on two occasions, which includes the joint session and with the respondent on three occasions. She does not give an indication of the length of time she spent with each party and in Dr Davis Shulman's opinion it would have been helpful had Dr Mawson stipulated the time factor as this would have offered some insight into the reliability of her recommendations.
- [34] Dr Davis Shulman criticised Dr Mawson for having conducted one single psychometric test to gain an understanding of the personality, ability and limitations of each party. Dr Davis Shulman opines that it is a well-known and accepted caveat that information cannot be deduced from a single psychometric instrument and for this reason investigators make use of a full battery of psychometric tests to obtain accurate impressions of the person being assessed.
- [35] Dr Davis Shulman takes issue with the fact that Dr Mawson chose not to conduct age-appropriate interviews with the children, who are both at an appropriate age to participate meaningfully in such interview. Dr Mawson furthermore did not conduct a "voice of the child" to glean information that as a trained clinician, could have assisted her and the court prior to making the recommendations which she did.

THE PARTIES'

SUBMISSIONS

Applicant's

submissions

- [36] Ms Norman, appearing for the applicant, submitted that the applicant remains sober and has continued his therapy as well as regular blood and hair follicle testing. Although he does not agree with Dr Mawson's recommendation, he has complied with her recommendations in that he attended parenting skill classes and subjected himself to further alcohol testing. He has not attended a rehabilitation facility as recommended by Dr Mawson.
- [37] Ms Norman submitted further that the applicant is currently under the care of Dr Zizi and has not relapsed for almost two years. His sobriety and any triggers which may give rise to a relapse are part and parcel of such therapy. It was submitted on behalf of the applicant that given the fact that he has not consumed any alcohol for an extended period of time, the therapy is effective.
- [38] Ms Norman submitted that there has been an agreement that the applicant's girlfriend, Ms M[...] will at all times be present when contact occurs. Again this has continued without incident. However, for no reason Dr Mawson recommends the assessment of Ms M[...].
- [39] Ms Norman referred to the report prepared by Dr Davis-Shulman, the highlighted concern being that the children were excluded from the process in totality. They were not interviewed, their opinions were not sought and no interactional assessment between the applicant and the minor children was done.
- [40] Ms Norman submitted on behalf of the applicant that Dr Mawson's report should be rejected for the reasons as stated by Dr Davis Shulman and that the applicant's contact should be extended to include at least one sleepover every alternate weekend. Ms Norman also pointed out that a play therapist that the parties have approached may be employed to prepare the children for such a sleepover.

Respondent's

submissions

- [41] Ms Strydom appearing for the respondent submitted that the matter should be assessed in the light of the current relief requested by the applicant. Ms Strydom also emphasized that Dr Mawson was appointed by agreement between the parties to be the case manager with the view of phasing in the applicant's contact with the minor children.
- [42] The reason for the referral to Dr Mawson was for full parental coordination as the respondent was not adhering to the parenting plan prepared by Ms Griessel as she was not allowing the applicant sleepovers and holidays in respect of the children.

- [43] Ms Strydom pointed out in her heads of argument that the sole purpose of Dr Davis Shulman's appointment was to critique Dr Mawson's report and that the crux of her finding is that Dr Mawson confused her roles and that she did not follow the correct methodology to come to a finding as indicated in her report. Ms Strydom implored the court to consider Dr Mawson's report irrespective of the alleged shortcomings.
- [44] Ms Strydom again referred the court to Dr Mawson's observation of the applicant's defensiveness and guardedness in respect of his drinking behaviour. The attitude in respect of alcohol as noted in respect of the 40th birthday party of Ms M[...] and the keeping of beers in the applicant's house are commented on by both the respondent and Dr Mawson.
- [45] Ms Strydom pointed out the lack of a confirmatory affidavit by Ms M[...] and the applicant's failure to deal with these allegations and his presence at the birthday party.
- [46] Ms Strydom submitted that the court should have consideration of the following: -
- [a] That the applicant was an alcoholic for many years since his twenties;
 - [b] That the applicant's alcohol and substance abuse must have had an effect on the minor children and more particularly the parties' minor son as this was the reason for the breakdown of the marriage relationship;
 - [c] That the applicant's conduct towards alcohol is extremely worrying. He wishes to attend therapy at such times as it suits him and he does not want to make a clean break with alcohol;
 - [d] The drinking habit of the applicant is not where he requires alcohol every day, but he binge drinks and he can therefore easily binge drink during the non-contact weekends;
 - [e] The need to monitor the applicant on a weekly basis for an extended period has been expressed;
 - [f] The applicant exhibits certain conduct that is not in the best interest of the minor children such as not using booster seats or car seats and bringing the minor children back on Thursdays at 19:00 as he feels that the respondent keeps dictating the terms of his contact.
- [47] Ms Strydom expressed the concern on behalf of the respondent that having regard to the background in respect of the substance abuse of the applicant, there should at this stage be doubt whether the applicant would be able to care for the minor children in the absence of the respondent in a safe and secure manner.
- [48] Ms Strydom emphasized the importance of the appointment of a parenting coordinator due to the parties' inability to have a positive civil co-parenting relationship. Ms Strydom motivated the appointment of a different parenting coordinator than Dr Mawson.

- [49] Lastly, Ms Strydom argued that it should be left to the parenting coordinator to deal with the sleepover issue as this court does not have sufficient information to order that sleepovers should commence immediately. It was further submitted that the applicant must subject himself to outpatient treatment or a recovery programme to the satisfaction of the centre or therapist concerned. In addition, a testing regime should be adopted to constantly monitor the applicant's sobriety.

THE PARENTING COORDINATOR

- [50] Counsel on behalf of both the applicant and the respondent informed the court that the parties were in agreement that a parenting coordinator should be appointed. The parties were given the opportunity to agree on the powers of the parenting coordinator and in most instances they have been able to do so. The parties also agreed on the appointment of Ms Irma Schutte as parenting coordinator who confirmed in writing her availability and willingness to act as such.

THE LAW CONCERNING THE BEST INTERESTS OF CHILDREN

- [51] Courts ceased with matters concerning the best interests of children, are more than often required to apply Solomonic wisdom. This matter is no different.
- [52] Prior to the Children's Act, the best interest of child standard was considered a mere broad-brush tool providing no guidance to the fact finder. Mixed opinions surfaced over the years either praising best interests as the highest reliable standard or ridiculing the standard as being far too subjective.
- [53] With the advent of the Children's Act, the legislature sought to achieve greater consistency resulting in the development of the best interest factors as enshrined in section 7 of the Children's Act. These factors expressly provide to evaluate and balance each specific situation regarding a specific individual child. Moreover, they require an assessment of the family dynamics, family interactions, environmental variables, the child's preferences, the child's physical, emotional and psychological needs and other relevant factors.
- [54] Courts nowadays have a duty to ensure that their findings and conclusions align with these factors in order to put together the various pieces of the puzzle that makes up a child's life in an attempt to achieve decisions in the best interests of that child.
- [55] The breadth of the procedural powers of a High Court sitting as upper guardian is well-known: -

"(T)he High Court sits as upper guardian in matters involving the best interests of the child (be it in custody matters or otherwise), and it has extremely wide powers in establishing what such best interests are. It is not bound by procedural structures or by the limitations of the evidence presented, or contentions advanced or not advanced, by respective parties."[6]

- [56] Afterall, the overriding and paramount consideration in matters like this, is always what is in the best interest of a child. This is what is required by both section 28(2) of the Constitution and section 9 of the Children's Act.

DELIBERATION

- [57] I agree to a certain extent with Ms Norman and with the critique by Dr Shulman-Davis of Dr Mawson's methodology and the inherent deficiencies of her report. However, for the same reason, I must agree with Ms Strydom that the reports simply do not assist the Court in honing in on any definitive findings and conclusions on the issue of overnight contact.

- [58] One of the factors listed in section 7 of the Children's Act which weighs heavily with the Court in this particular matter, is the need for the children to be brought up within a stable family environment and, where this is not possible, in an environment

resembling as closely as possible a caring family environment, and the need to protect the children from any physical or psychological harm.[7]

- [59] Dare I firstly say that there is no doubt that both these parents love their children very much. This is demonstrated by the amount of time and legal costs spent on the current litigation as well as their various attempts to resolve their disputes by the employment of alternative dispute resolution mechanisms.

- [60] On the one hand, the respondent seeks to protect the children from any harm and to this end she may have been overprotective at times. This is understandable to some extent. On the other hand, the applicant desperately wishes to have more time with the children. This too is commendable. Of concern, however, is the applicant's oblivion about how his drinking may have affected his children. Although they may not have been directly exposed to his misuse of alcohol, their contact with him had inevitably been constrained as a result.

- [61] In my view it is a misconception harboured by many parents who misuse alcohol that their drinking is not affecting anyone else. In fact, children of parents who misuse alcohol, can be among those most impacted. Parents struggling with alcoholism or the misuse of alcohol for whatever reason, may be surprised to learn how their addiction can impact on their children now and throughout their adulthood.

- [62] The effects of growing up around the misuse of alcohol are sometimes so profound that they last a lifetime, affecting the way children see themselves and others and interact in relationships. Because they may not have a good example to follow from their childhood and potentially never experienced traditional or harmonious family relationships, adult children of alcoholics or parents who misuse alcohol may have to ultimately guess what a normal relationship looks like. Most of the time these children will end up feeling conflicted, confused and self-conscious when they realise that continuous drinking (or even periodic binge drinking as is the case in this matter) is not considered normal in other families.

- [63] Although it is comforting to observe the efforts that have been made by the applicant to address his drinking problem, I am not entirely convinced that he has completely come to terms with the impact that his drinking may have had on the well-being of his children. This is apparent from a reading of the affidavits filed in this matter and the reports compiled by both Ms Griessel and Dr Mawson. However, none of these experts have managed to persuade the applicant otherwise and I am concerned that the new appointed parent co-ordinator may experience the same difficulties.
- [64] The tender by the applicant that Ms M[...], the applicant's current life partner, will be present during all overnight contact, is cold comfort to this Court and in fact may demonstrate the presence some anxiety or doubt by within the own mind of the applicant of his ability to cope with overnight contact on his own, considering his personal challenges. The reality is that relationships come and go. The applicant must as the father of his children, ultimately be able to and be willing to take responsibility for the care of this own children without the need to be policed by a third party.
- [65] I express the hope that the order that I intend to make will equip the applicant with the tools and confidence he requires to be the responsible and involved father the children deserve.
- [66] The Court therefore has to intervene in order to safeguard the best interests of the children, which does not necessarily imply an indefinite restriction or deprivation of extended contact, but finding a way, in addition to blood or hair follicle testing, to monitor the applicant's progress, to prevent any relapses as far as possible with the view of ultimately affording the children their birth right which is extended and overnight contact with their father.
- [67] Under the circumstances, in addition to the appointment of the parent co-ordinator who will be clothed with certain powers, I intend to include an order compelling the applicant to successfully complete an out-patient rehabilitation programme with a reputable organisation and to attend regular meetings at Alcoholic Anonymous South Africa ("AA"). I leave it to the parent co-ordinator to identify an appropriate rehabilitation programme and centre and to assess, in liaison with the applicant's current therapists and those at the relevant rehabilitation centre to determine the duration of the rehabilitation programme and the frequency of attendance at AA meetings.
- [68] Whether and when overnight contact is to commence shall be within the discretion of the parent co-ordinator, which discretion shall be exercised after she consulted with the parties, the children and with any other experts or therapists she may deem necessary.

COSTS

- [69] There are no winners and no losers in matters of this kind. Both parents acted in the best interests of their children. Therefore, in my view any costs order against either party at this stage would only serve to aggravate the relationship between them, and would impact negatively on the children .

ORDER

I make the following order: -

- [1] Senior social worker, Ms Irma Schutte (“Ms Schutte”) is appointed to act as parenting coordinator with immediate effect.
- [2] The parties shall enter into a contract of engagement with Ms Schutte, such contract to be suitably amended by the parenting coordinator in terms of the specific demands of this matter.
- [3] The parenting coordinator will function as a mediator and a monitor in respect of any potential dispute that may arise between the applicant and respondent or in the event of any occurrence of unhealthy parenting.
- [4] The parties shall engage constructively with the parenting coordinator, who is tasked with gaining an understanding of the minor children’s maturing needs.
- [5] The parenting coordinator shall be clothed with the following powers:
 - [a] To assist the parties in drawing up an appropriate parenting plan and phasing in extended contact to be exercised by the applicant and the minor children after an assessment of the current contact;
 - [b] To facilitate and manage contact between the applicant and the minor children;
 - [c] To phase in extended contact between the applicant and the minor children, which extended contact shall include but not necessarily be limited to overnight contact;
 - [d] To determine the commencement date of the extended contact and/or overnight contact within her sole discretion, which discretion shall be exercised after consultation with the parties, the children and with any other experts or therapists she may deem necessary.
 - [e] To assist in the mediation of any disputes between the applicant and the respondent;
 - [f] To refer either party for any appropriate therapeutic interventions and/or parenting skills or training;
 - [g] To refer the applicant for random blood and/or hair follicle and/or urine testing to such institutions on dates and times in her sole and absolute discretion;
 - [h] To refer the minor children for any further appropriate therapeutic intervention;
 - [i] To consult with both the applicant, respondent and the minor children as well as their respective partners if the need arises;
 - [j] To liaise with the counsellors, therapists, psychologists, and psychiatrists of the applicant;
 - [k] To monitor the minor children’s care and well-being by, inter alia, being entitled and authorised to:

- (a) liaise, weekly or otherwise, with the minor children's therapist/s;
- (b) receive any information from said therapist/s relevant to his/her mandate.

[l] To refer the applicant as an out-patient to a rehabilitation centre of her choice and to identify a suitable rehabilitation programme and the duration thereof, under the guidance of the applicant's current therapists and those at the relevant rehabilitation centre.

[m] To monitor the applicant's registration at Alcoholic Anonymous South Africa and his attendance of meetings.

[n] To determine the frequency of the applicant's attendance of meetings at Alcoholic Anonymous South Africa, which determination shall occur under the guidance of the of the applicant's current therapists, the therapists at the relevant rehabilitation centre as well as the applicant's sponsor and counsellors at Alcoholic Anonymous South Africa.

- [6] In the event that either of the parties do not agree with the recommendations made by the parenting coordinator, they shall have the right to approach the appropriate court for relief, in which event either party shall be entitled to rely upon and make available to the appropriate court the recommendations made by the parenting coordinator and reasons advanced by her in support thereof.
- [7] The parenting coordinator shall in her sole and absolute discretion determine the procedure to be adopted in the case management process.
- [8] The parenting coordinator is specifically empowered to make any and all written recommendations that she deems to be in the interest of the minor children, except those matters specifically reserved for the jurisdiction of the High Court in terms of section 45(3) of the Children's Act, 38 of 2005.
- [9] The costs of the case manager shall be borne in equal shares by the parties, provided that the case manager may make any decision regarding the issue of costs in her discretion.
- [10] The applicant shall at all times provide his full cooperation to the satisfaction of the parenting coordinator, in complying with the directives issued by the parenting coordinator from time to time, more specifically those directives pertaining to the applicant's attendance at the rehabilitation centre and enrolment as an out-patient in the rehabilitation programme, random blood/urine/hair follicle testing, and the attendance of meetings at Alcoholic Anonymous South Africa.
- [11] Each party shall pay his/her own legal costs occasioned by the application and counter-application.

F BEZUIDENHOUT

ACTING JUDGE OF

THE HIGH COURT

DATE OF HEARING:

30 June 2021

DATE OF JUDGMENT: 3 September 2021

APPEARANCES:

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[1] CaseLines 001-31.

[2] CaseLines 001-32 to 001-35.

[3] Ms Griessel's report is attached as annexure "LF5" to the respondent's answering affidavit, CaseLines 004-88 to 004-153.

[4] Applicant's supplementary affidavit, annexure "SA6", CaseLines 006-54 to 0060-70.

[5] Paragraph 8.2 of Dr Davis-Shulman's report.

[6] Mpofu v Minister for Justice and Constitutional Development and Others (Centre for Child Law as amicus curiae) 2013 (9) BCLR 1072 (GG) at paragraph 64, quoted Kotze v Kotze 2003 (3) SA 628 (T).

[7] Section 7(k) and (l).

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