

SOUTH AFRICA / JUDGMENT

L.B v C.B and Another (2650/2020) [2021] ZAFSHC 222 (28 October 2021)

[2021] ZAFSHC 222

COURT

Free State High Court, Bloemfontein

BEFORE

I van Rhyn

CASE / FILE NUMBER

2650/2020

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case no. 2650/2020

In the matter between:

L[....] B[....] Applicant

and

C[....] B[....]

1ST Respondent

THE FAMILY ADVOCATE, BLOEMFONTEIN

2ND Respondent

CORAM:

I VAN RHYN, AJ

HEARD ON:

2 SEPTEMBER 2021

DELIVERED ON:

28 SEPTEMBER 2021

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII.

The date and time for hand-down is deemed to be 14h00 on 28 September 2021

INTRODUCTION.

- [1] This is an application in which the applicant, a father has sought urgent interim relief pending the finalisation of the divorce action. The urgent application was issued and heard on 5 October, 2020. The court found the matter to be urgent and an order was granted in terms whereof a social worker, Mrs Heidi Joubert "(Mrs Joubert)" alternatively the Family Advocate, Bloemfontein (cited as the second respondent) was authorized and directed to investigate the circumstances, care, placement and contact of the minor child, L[...] B[...] ("L[...]") and to furnish the court with a report and recommendations regarding her best interests.
- [2] Pending the return day, the primary residence of L[...] was awarded to the applicant. The first respondent, the child's mother and the wife of the applicant, was awarded contact with her to be exercised under the supervision of the maternal grandmother, inter alia on every alternative weekend and alternative public holidays. The rule nisi was extended on several occasions. The parties filed further supplementary papers and the matter was ultimately heard on 2 September 2021.

BACKGROUND.

- [3] The parties were married to each other out of community of property, with exclusion of the accrual system on 7 March 2013. L[...] was born on 16 February 2017 and is currently 4½ years old. The parties experienced marital problems and obtained professional assistance in an endeavour to resolve the conflict in their marriage relationship. The marital problems came to a head during July 2019, whereafter the first respondent vacated the communal home and took L[...] along with her. The parties have been living separately since September 2019. The applicant instituted divorce proceedings against the first respondent on 21 July 2020.
- [4] On 5 December 2019 the parties agreed to implement a parental plan in terms whereof the both parties would remain co-holders of parental rights and responsibilities regarding L[...]. They agreed that both parties' consent would be required in respect of certain major decisions regarding L[...]. L[...] would reside primarily with the first respondent subject to the applicant's contact rights which, inter alia, entailed that the applicant has contact with L[...] on alternative weekends from Friday at 18h00 until Sunday's at 18h00 and on Wednesdays from 18h00 until the following morning when he would return L[...] to school. The applicant would furthermore transport L[...] to school every morning.

- [5] Initially the parties were able to exercise their parental rights and responsibilities in accordance with the terms agreed upon. During April 2020 the applicant became romantically involved with Mrs S[...] M[...] (“Mrs M[...]). Mrs M[...] was in the process of getting divorced, which in the meantime has been finalized.
- [6] During July 2020 the first respondent reduced the applicant’s contact right with L[...] subsequent to obtaining information that Mrs M[...] had from time to time stayed over at the applicant’s residence. Mrs M[...] and her two minor daughters had by then moved in to stay with the applicant. The first respondent argued that

the applicant failed to inform her of his “secret relationship” and due to his failure to discuss the possible consequences of his actions with her, she, as L[...]’s mother had no alternative but to act in her daughter’s best interests and to limit his contact rights pertaining to sleepovers until such time as the impact of the new arrangement on L[...], could be assessed.

THE INITIAL APPLICATION.

- [7] Subsequent to his access to L[...] being restricted to day visits only, the applicant, on 21 July 2020 launched an urgent application for the restoration of his contact rights. First respondent contended that, although the terms of the parenting plan had been implemented and that she even allowed more rights of contact as was specified in the parenting plan, a substantial change in the circumstances of the applicant occurred which necessitated her to curtail the applicant’s

rights of contact by not allowing the applicant to exercise his contact with L[...] in the presence of Mrs M[...] and her children.

- [8] First respondent contended that L[...]’s interaction with Mrs M[...] and her children had an extremely negative and traumatic effect on L[...] and she simply could not allow her daughter to be subjected to emotional trauma any longer. The parties had agreed to obtain a report from Mrs Joubert. Mrs Joubert’s report is dated

24 August 2020. It was recommended that L[...]’s primary residency be awarded to the first respondent and that her contact

with the applicant be restored. Overnight visitations should be gradually re-introduced over a period of several weeks.

- [9] The initial opposed application was heard on 27 August 2020 and the applicant’s contact rights were effectively restored. In terms of paragraph 3 of the initial order both parties were granted leave to approach the court on the same papers duly amplified if necessary for variation of the parties contact rights pertaining to L[...].

THE FACTS AND EVENTS WHICH GAVE RISE TO THE PRESENT APPLICATION.

- [10] The parties were still in the process of dealing with the interim arrangements regarding the applicant's contact rights when certain events occurred that gave rise to the present application. During a discussion between the parties regarding L[...]'s return to school on 2 September 2020, the first respondent indicated to the applicant that she was finding it difficult to continue residing with her mother and her mother's partner, Mr Steyn, and was looking for alternative accommodation. According to the applicant, the first respondent indicated that the constant arguments between her mother and Mr Steyn made cohabiting with them impossible.
- [11] The applicant erroneously stated that he, on 3 September 2020, attempted to contact the first respondent on eight different occasions in order to exercise telephonic contact with L[...] but received no answer. The correct date is 3 October 2020. Eight video calls were made from his cell phone between 18h15 and 19h25, as is evident from a printout of his WhatsApp calls. At approximately 20h36 he received a WhatsApp message from Mr Steyn who requested the applicant to immediately pay them a visit. Upon the applicant's arrival at his mother-in-law's residence, he found L[...]

crying. The applicant was informed that, due to the fact that the first respondent had been absent quite frequently, L[...]'s

grandmother had been left caring for her. Mr Steyn and L[...]'s grandmother were at their wits end regarding the first respondent's

behaviour and indicated to the applicant that they had in fact reached "breaking point". They requested the applicant to take L[...] with him and care for her as L[...]'s mother had been being out drinking from 16h00 that particular afternoon. They were unable to reach her telephonically.

- [12] Soon thereafter the first respondent arrived and started shouting at Mr Steyn. According to the applicant it was obvious that she had consumed alcohol, was hysterical and shouted: "Julle het my in die rug gesteek" and "Julle het vriende gemaak met julle grootste vyand". The applicant succeeded in driving off with L[...]. Later, during the same evening, he telephonically contacted the first respondent

who informed him that the real reason why she deems it necessary to vacate her mother's residence was due to the fact that she had been sexually assaulted by Mr Steyn. Applicant discussed this allegation with the first respondent's mother and Mr Steyn who, not only denied the allegation, but provided more information regarding the first respondent's lack of care towards her daughter, frequent abuse of alcohol, constant social interactions with friends and communications with unknown male companions via the internet.

- [13] The applicant concluded that the reason for the tension that existed between the first respondent and her mother as well as Mr Steyn was, as a result of their discontent with her behaviour. During the same evening, 3 October 2020, the first respondent left her mother's home. The first respondent only returned on 5 October 2020, subsequent to both, Mr Steyn and her mother pleading with her to return. Both Mr Steyn as well as the applicant's mother-

in-law later refused to depose to confirmatory affidavits on the grounds that it will inevitably result in the further breakdown of their relationship with the first respondent, who had by then returned to her mothers' residence.

- [14] The first respondent denies that L[...] had been in any danger. She opposes the application on the basis that it will not be in L[...]’s best interest to be placed in the primary care of the applicant. According to the first respondent, the applicant is a good father. She contends that she has never nor will she in future endeavour to attempt to cause strain on the applicant’s relationship with his daughter. However, the applicant has made untruthful allegations regarding her and she finds it paramount to set the facts straight in an effort to regain the primary care and residency of her daughter.
- [15] The first respondent indicated that she does not oppose the applicant’s application on the basis that she has ill-founded feelings towards the applicant or towards Mrs M[...]. The first respondent deny that she has a tendency of abusing alcohol. She indicated that she lived with her mother and Mr Steyn for a short while whilst trying to find suitable accommodation for herself and L[...]. She furthermore contends that L[...] is a happy little girl who has never been hurt or placed in harm’s way and clearly needs her mother. The first respondent denies that she blamed the

continuous arguments between her mother and Mr Steyn as the reason why she wanted to vacate her mother’s home and contends that her staying with her mother was a temporary arrangement which proved to be unsuitable for her due to a lack of privacy. She also denies the allegation that she had informed the applicant that Mr Steyn had sexually assaulted her.

- [16] The first respondent explains that the reason why L[...] was crying on the evening of 3 October 2020, when the applicant collected her from her grandmother, was due to the fact that she was tired. She also denies the allegation that her mother, and Mr Steyn had indicated to the applicant that they were at “breaking point”. First respondent attached two confirmatory affidavits deposed to by, respectively, her mother and Mr. Steyn to her answering affidavit. According to the first respondent, her uncle enquired from her on 3 October 2020 whether she had a used cell phone for him. At around 17h00 she took a cell phone to him at Ramblers Club. She then immediately returned home after receiving a call from her mother.

She concedes that she was upset due a misunderstanding between herself, her mother and Mr Steyn whose conduct caused the applicant

to remove L[...] from her care without sound reasons.

- [17] The allegations that she has been abusing alcohol, socialising with friends at bars and neglecting her role as care provider to L[...] are denied by the first respondent. The applicant’s alleged drastic step to obtain an interim urgent order has greatly affected the first respondent, her family as well as L[...].

THE LEGAL PRINCIPLES

[18] The fundamental constitutional principle consistently applied by South African courts in custody disputes is entrenched in section 28(2) of the Constitution, which provides that a child's best interests are of paramount importance in every matter concerning the child.[1] The Children's Act "(the Act)" was promulgated to give effect to this constitutional imperative[2]. Section 7 of the Act requires a number of factors to be taken into consideration when the best interest standard is applied in any matter governed by the Act. Included amongst those factors are the capacity of the parents, or any specific parent, to provide for the needs of the child, including emotional and intellectual needs, the likely effect on the child of any separation from both or either of the parents or any brother or sister, the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents or, any specific parent, on a regular basis and the need for the child to be brought up in a stable family environment, and where this is not possible, in an environment resembling as closely as possible, a caring family environment.

[19] The question of what a child's best interests is, must be determined according to the facts and particular circumstances of

each case. Undue weight should furthermore not be placed upon any one factor, but these factors, like all other relevant factors, must first of all be considered against the backdrop of the specific circumstances of each case and secondly weighted against all other relevant factors to be considered in determining what would be in the best interests of the child. The Constitutional Court in *AD & DD v DW*[3] held that:

"To apply a pre-determined formula for the sake of certainty, irrespective of the circumstances, would in fact be contrary to the

best interest of the child concerned".

[20] In *Chodree v Vally*[4] it was held that:

"... love and affection from both also enhance the security and stability of a child..."[5]

In *V v V*[6] it was held that:

"The old position where the custody of young children was invariably granted to mothers has changed. As far as young children are concerned, the pendulum has swung to accommodate the possibility of a father being a suitable custodian parent to young children."[7]

APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS.

[21] The papers are lengthy or voluminous and I am of the view that it is not necessary for me to deal with all the allegations presented by the parties. When the parties separated during August 2019 L[...]'s primary residence was with the first respondent. Both the applicant and

the first respondent considered each other as loving and caring parents and shared the responsibilities and parental rights in respect of their minor daughter. It is not disputed that the conflict in respect of the parental rights and obligation of primary residency as well as the contact rights of the applicant became an issue as soon as the first respondent learned about the relationship between the applicant and Mrs M[....].

[22] In the Family Advocate's report, dated 9 June 2021 it was recommended that both parties should be awarded equal holders of full parental responsibilities and rights as contemplated in Section 18 of the Act. Both parties should share the care, contact and residence of L[....] equally with the child rotating on a weekly basis. It was furthermore recommended that rotation should not take place on a Monday while L[....] is at school, but rather every Sunday afternoon.

[23] Pursuant to the mandate to investigate the situation regarding the best interest of L[....], the parties were invited to attend an enquiry at the Family Advocate's office on the 15th February 2021. Mrs E van der Westhuizen, a registered and qualified social worker appointed as Family Counsellor, assisted in the

assessment of L[....] and compiled a report. A follow-up consultation with the parties was held on the 9th of March 2021.

[24] During the initial consultation, the applicant indicated that he was of the view that the daily care and residence of L[....] be shared between the parties on a 50/50 basis. The respondent was not totally comfortable with the idea, but subsequent to the Family Advocate's proposal that the parties should at least implement a shared residence structure for an interim period, both parties agreed to the shared residence proposal. Subsequent to the drafting of an interim agreement and at the stage when the parties were requested to sign the document, the first respondent indicated that she is not willing to proceed with the interim agreement. The first respondent opposed the proposal on the basis that she did not deem the arrangement in the best interest of L[....].

[25] According to the Family Advocate's report, the reasons advanced for the shared residence recommendation were that Mrs Van der Westhuizen, in her informal assessment of L[....], noted an intense need to spend equal time with both parties and that both parties are equally important to L[....]. It is opined that both parties are able to fulfil in the needs of the child including the emotional, physical and intellectual needs. Mrs Van der Westhuizen, who has thirty-one years' experience as a Social Worker, indicated that L[....], at a very young age had been exposed to assessments by the said Mrs Joubert and play therapy by Mrs Chrismari Moolman (a social worker in private practise). L[....] is portrayed as a friendly, well cared for little girl who displayed a comfortable and positive interaction with both parents.

[26] L[....] indicated that she misses her mother and that she is currently staying with her father. She was able to provide positive information in respect of her interaction with Mrs M[....] and her two daughters, Halley and Skye. She told Mrs Van der Westhuizen that they do fun

activities, like artwork together. The first respondent indicated that L[...] is however still adjusting to the travelling between the different houses as she is constantly looking for her clothes and toys. Feedback from the school indicates that L[...] has adapted well, her academic progress and development is good and age appropriate. She, at times, become very emotional when her mother drops her off at school on a Monday by refusing to get out of her mother's motor vehicle. Then again, she exposes the same behaviour when her father drops her off on certain days. Her teacher confirms the finding that L[...] has a very stable and good relationship with both parents.

- [27] From the report it appears that the first respondent complained that the applicant does not want to share parental roles and wants to take 110% control. The applicant accuses the applicant of behaviour intended at aiming to destroy the relationship between mother and daughter. The applicant indicated that he realizes that a period of two weeks being separated from her mother is too long for L[...]. He opined that it will be in L[...]'s best interest to spend time with her mother more regularly.
- [28] Mrs Joubert, in a follow up assessment when L[...] was already residing with the applicant during November 2020, indicated that L[...] was able to identify two respective homes and refers to the mother's previous residence as she has not visited her mother at the new residence. L[...] identifies positive experiences at her father's home, including playing with Mrs M[...]'s two daughters. She furthermore relays positive experiences with Mrs M[...]. It is however noted that L[...] experiences a loss of her mother.
- [29] In his replying affidavit the applicant indicated that he will refrain from engaging in personal attacks on the first respondent, and will thus confine himself to stating that he lodged the application, now almost a year ago, due to his sincere concern for the wellbeing of L[...]. The applicant takes issue with the first respondent's allegation that he required a further investigation subsequent to the report of Mrs Joubert came to hand and contends that he indeed took issue with the recommendations made by Mrs Joubert. The Family Advocate was tasked to conduct a further investigation and the court, at the time deemed it apposite to make such an order. The applicant contends that whenever he noticed that L[...] missed her mother, he allowed L[...]' 'extra contact' with the first respondent.
- [30] As mentioned, the application was postponed on numerous occasions to provide for further investigations and the filing of further supplementary affidavits. Mr Snellenburg, counsel on behalf of the first respondent, contends that the scathing remarks and accusations regarding the first respondent's excessive drinking, social life and failure to adequately care for L[...], which is equated to a 'character assassination', ultimately bears no fruit as these allegations were not proved or found to be credible in any of the investigations. I do not agree with Mr Snellenburg's submissions in this regard. I am of the view that the investigations conducted by Mrs Joubert and the Family Advocate were not conducted with the view to prove or disprove the allegations regarding the reason for the applicant's launching of any of the two applications.

- [31] In the supplementary report filed by the Family Advocate, dated 1 September 2021 it is denied that the versions placed before court by either of the parties played a significant role in the Family Advocate's recommendations. The recommendations by the Family Advocate are based on a determination of the best interests of the child standard and thereby, in consideration all aspects and information impacting on the child's best interest. The allegation by the first respondent that the Family Advocate failed to formally assess L[....] is admitted. The Family Advocate explained that it was not deemed necessary due to the fact that Mrs Joubert had by then already conducted a formal assessment of L[....].
- [32] On 5 October 2020, at the hearing of the urgent application, Opperman J, found in favour of the applicant and granted an interim order in terms whereof the primary residence of L[....] was granted to the applicant pending the return date as well as further investigation as to the best interest of L[....]. I am of the view that the applicant acted as any normal father would have under the prevailing circumstances by urgently launching the current application for interim relief. He evidently received a call from Mr Steyn and found his daughter distressed and crying in her grandmother's arms. It is undeniable that the first respondent's mother had been caring for L[....] that particular afternoon/evening and had no qualms to hand L[....] to the applicant to take care of her due to her daughter's failure to respond to her calls. The first respondent's explanation that she merely took a cell phone to her uncle contradicts the evidence regarding the numerous calls to her cell phone and her absence of almost four hours.
- [33] The reason why the applicant was unable to append supporting affidavits from Mr Steyn as well as the first respondent's mother is understandable and credible. It is not disputed that the first respondent, at least at that stage, had an acrimonious relationship with her mother and Mr Steyn. The reason for the discontent however remains disputed. With the passing of time and the first respondent's relocation to her own place of residence, the issues between the respondent and her mother seems to be resolved.
- [34] Not surprisingly, the termination of the parties' marriage relationship caused uncertainty and turmoil. In respect of the first respondent, this was however further exacerbated by the applicant's romantic relationship with Mrs M[....]. To top it all, Mrs M[....] and her two daughters soon moved in with the applicant. Unfortunately, L[....] referred to Mrs M[....] as "mommy" during a conversation with the first respondent which, obviously and understandably so, further fuelled her feelings of jealousy and unhappiness. Notwithstanding the first respondent's statement to the Family Advocate that she is of the opinion that L[....] has adjusted well to the fact that the applicant has a new partner, that Mrs M[....] and her daughters reside with the applicant and even share a room with the youngest of the two daughters, clearly does not apply to the first respondent. She has not accepted the aforesaid circumstances regarding L[....]'s relationship with Mrs M[....] and her daughters.

- [35] In his argument, Mr Snellenburg contended that in law and in fact the basis for the change in the exercise of parental rights and obligations by means of the rule nisi was not justified and therefore the de facto situation preceding the application regarding the primary place of residency ought to be vested with the first respondent. The premise on which the applicant approached the court did not justify the engagement of the court's jurisdiction regarding a variation of the de facto arrangement regarding the care and contact of L[....].
- [36] On behalf of the first respondent it is argued that the applicant opted for a relationship with Mrs M[....] at a stage when both he and Mrs M[....] were still bound by the ties of marriage. The first respondent's decision to curtail the applicant's contact rights to his daughter was therefore not so unreasonable under the prevailing circumstances. Due to the applicant's failure to inform the first respondent of the substantial change in his living conditions and the introduction of Mrs M[....] and her daughters in L[....]'s life, the first respondent was deprived of information regarding the role of a "surrogate parent" on L[....]'s wellbeing.
- [37] Oddly, the first respondent did not indicate these concerns to Mrs Van der Westhuizen, nor the Family Advocate during their investigation. Quite the opposite, the first respondent indicated that she has accepted the relationship between the applicant and Mrs M[....] and wishes them all the best for the future. The first respondent furthermore indicated that she hopes they will return the same favour when she meets someone and becomes romantically involved.
- [38] What clearly caused an unnecessary upheaval in the already frail and complicated relationship between the first respondent and Mrs M[....], was the unfortunate event when Mrs M[....], in a rather uncalled for and thoughtless gesture forwarded a voice message to the secretary of the first respondent's current attorney. A transcription of the voice message was appended to the first respondent's supplementary affidavit. On behalf of the first respondent, it is contended that the contents of the transcription undoubtedly substantiate the first respondent's fears regarding parental alienation as well as Mrs M[....]'s disposition towards the first respondent.
- [39] Mr Snellenburg suggested that I should comment regarding the voluminous papers filed in this matter and the departure from the strict provisions of Rule 43(2) and (3). In several Rule 43 applications different divisions of the High Court held that the production of unnecessarily voluminous papers in such applications is an abuse of the procedure or process. The adequacy of the vintage Rule 43 procedure, in particular its prescription of brevity in the context of the Bill of Rights has been considered by a specially constituted full bench of the Gauteng Local Division, Johannesburg in *E v E* and related matters[8]. The different applications of the provisions of Rule 43 were discussed and examined. The full bench, *inter alia* suggested that, depending on the facts of each case and the court's discretion in terms of the provisions of Rule 43(5), the filing of supplementary affidavits and information may be requested, admitted and condoned by the court.

[40] It should in any event be kept in mind that the High Court is the upper guardian of minor children within the court's jurisdiction and on that basis make orders it finds to be in the best interest of the child or children.[9] In this matter, the filing of supplementary affidavits was necessary to allow the parties to respond to the recommendations contained in the Family Advocate's report as well as new facts and information relevant to the issues at hand. The procedure prescribed

in Rule 43 is not as comprehensive as an application in terms of rule 6, but a succinct application aimed at providing the applicant speedy and interim relief. The information provided in the additional affidavits and annexures filed in this application was relevant and assisted the court to decide and rule upon the best interests of L[...] pending the final adjudication by a trial court.

CONCLUSION.

- [41] I have given careful thought to the issues and arguments on behalf of the parties. I have perused the affidavits, reports filed by Mrs Joubert and the Family Advocate and considered the statutory and common law imperatives relevant in this matter. A divorce inevitably causes change in the lives of children such as adjusting to the daily absence of one parent, while living with the other and going back and forth between two different households. Each individual child also responds differently towards a divorce. L[...] has been subjected to several external changes within the past two years. Her primary residence with the first respondent was altered to residency with the applicant which also included the introduction of Mrs M[...] and her two daughters. It is of the utmost importance that the parties take heed of the advice contained in the Family Advocate's report to set aside their differences they have with each other, obtain the necessary professional guidance and support to ensure that they are exercising the same routine, discipline and parenting skills. Furthermore, it is in the best interest of L[...] to give her the opportunity to spend equal time with each parent.
- [42] The roles and responsibilities of parents within the family structure as well as social norms and patterns have changed and fathers have also taken up parenting roles. In *Van Pletzen v Van Pletzen*[10] it was held that mothering is not only a component of a woman's being, but is also part of a man's being, and that a father, depending on the circumstances, possesses the capacity and capability to exercise custody over a child as well the child's mother does. The first respondent's statement to the Family Advocate that L[...] should reside with her as she is better equipped to care for L[...] is not supported by the facts. L[...] has been in the care of the applicant for almost a year and has adapted to the circumstances.
- [43] Despite the opportunity during the beginning of the 2021, to spend equal time with L [...], the first respondent waived the opportunity and opted for a longer process involving more legal battles and reports. The first respondent portrayed an image that she, although she raised various concerns in an attempt to discredit the parental capacity of the applicant, is able to communicate effectively with the applicant. Furthermore, that she displays a positive insight and attitude towards exercising parental responsibilities and rights which resulted in the recommendation by the Family Advocate that they will be in a position to co-parent

L[....] on an equally shared residence basis. It is time for the first respondent to discard any resentful feelings against Mrs M[....] and focus on the best interest of L[....]. No doubt the legal representative acting on behalf of the applicant and the applicant himself, would have addressed a serious warning towards Mrs M[....] in respect of her actions which caused serious repercussions in an already troubled relationship. She should take great care in sustaining a healthy and loving relationship with L[....].

[44] I am convinced that, based on an overall impression and assessment of the facts, considering the arguments, circumstances, contents of the reports filed by the experts, their findings and recommendations regarding the best interests of L[....], that the only conclusion which can be drawn is that L[....]'s interests will be best served if an order is made in line with the recommendations by the Family Advocate, pending the adjudication of the divorce proceedings.

IT IS ORDERED THAT: Pendente lite

1. The applicant and first respondent are granted full parental rights and responsibilities in respect of the minor child, L[....] B[....] ("the minor child") as contemplated in section 18(2) (a) of the Children's Act 38 of 200.
2. The applicant and the first respondent shall share the care, contact and residence of the minor child equally with the child rotating on a weekly basis, with the rotation to take place every Sunday at 17h00.
3. During the week the residential parent will be responsible for taking and collecting the minor child to and from school and extra mural activities.
4. Telephonic contact with the minor child will be in the morning before school and in the evening, at an agreed time between the applicant and the respondent.
5. Long school holidays shall be shared equally between the parties with the proviso that 25 December and 1 January will alternate annually. Short school holidays shall rotate annually between the parties. Other public holidays shall alternate between the parties on a yearly basis
6. The applicant and first respondent shall have contact with the minor child on her birthday and the birthdays of the respective parents.
7. Contact on Father's Day with the applicant and Mother's Day with the first respondent, should this not coincide with a normal access weekend.
8. The minor child shall continue her therapy with Ms Moolman.
9. The costs of this application shall be costs in the main action.

I VAN RHYN, AJ

On behalf of the Applicant:

ADV R VAN DER MERWE

Instructed by:

HENDRÉ CONRADIE INC

BLOEMFONTEIN

On behalf of the First Respondent: N SNELLENBURG SC

Instructed by:

SYMINGTON DE KOK ATTORNEYS

On behalf of the Second Respondent: FAMILY ADVOCATE

[1] Jackson v Jackson 2002(2) SA 303 (SCA) at 307 I-308 A.

[2] Section 9 of the Children's Act, Act 38 of 2005.

[3] 2008

(3) SA 183 (CC).

[4] 1996

(2) SA 28 (W).

[5] at 32 F-G/H.

[6] 1998

(4) SA 169 (C).

[7] at p176; See also: Van der Linde v Van der Linde 1996 (3) SA 509 (O) at 515.

[8]

[2019] 3 All SA 519 (GJ); RM v AM [2019] ZAWCHC 86 (10 July 2019).

[9] LAWSA volume 28(2) (third Ed) Par 128.

[10] 1998

(4) SA 95 (O) at 101 B-D/E

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