

SOUTH AFRICA / JUDGMENT

Naisbitt v Road Accident Fund (85653/2014) [2015] ZAGPPHC 969 (24 August 2015)

[2015] ZAGPPHC 969

COURT

North Gauteng High Court, Pretoria

BEFORE

Strydom

CASE / FILE NUMBER

85653/2014

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 85653/2014

DATE: 24 AUGUST 2015

In the matter between:

MAGDALENA JOHANA NAISBITT.....PLAINTIFF

And

ROAD ACCIDENT FUND.....RESPONDENT

JUDGMENT:

STRYJDOM AJ

1. The plaintiff sued the Road Accident Fund for damages for the loss of support following the death of her divorced former husband (the "deceased") in a motor vehicle accident which occurred on 19 September 2013.
2. Negligence of the insured driver has been conceded by the defendant. The quantum was separated from the merits and postponed sine die.
3. It is common cause that on 19 September 2013 at or near Soutpansberg Makhado on the corner of Vlei and Kort Streets, the deceased was the

driver of a motor cycle bearing registration letters and numbers ABB 566 L, which was involved in an accident with a motor vehicle bearing registration letters and numbers CNT 954 L driven at the time by one Mr Mulaudzi (the "Insured Driver").

4. It is also not in dispute that defendant was at all relevant times responsible in terms of Act 56 of 1996 to compensate a third party for any loss or damages suffered as a result of the negligence and/or unlawful driving of a motor vehicle, of which the identity of the owner and/or the driver of such motor vehicle has been established.
5. The defendant pleads a general denial plea but contends that after plaintiffs divorce the deceased had no duty to support the plaintiff and that duty was extinguished when she divorced the deceased. No maintenance order was made in the divorce action in favour of the plaintiff.
6. It was contended on behalf of the plaintiff that before and after the plaintiff divorced the deceased they resided at the same premises and the deceased maintained the plaintiff. It was further contended that even after the divorce, the deceased voluntarily undertake to maintain the plaintiff for the rest of his life.

THE RELEVANT FACTS:

7. The relevant facts emerge from the evidence adduced by the plaintiff and her two sons, Deon Geyer and Fanie Geyer. The defendant adduced no rebuttal evidence.
8. Plaintiff testified that she was married to the deceased since 18 February 2000 until 3 June 2013 when she was formally divorced from the deceased. The deceased passed away in a motor accident on 19 September 2013.
9. During the divorce proceedings she moved out from the house and stayed in a room in the backyard on the same premises.
10. Prior to the divorce the deceased contributed fifty percent of the household expenditure and the plaintiff contributed fifty percent which include the rent of the house at 41 Kleynhans Street, Louis Trichardt. Her son Deon had also made a contribution of R2,000.00 (two thousand rand) towards the payment of the rent.
11. She testified that even after the divorce they lived together as if they were still husband and wife. She contended that the deceased was not a willing partner to the divorce proceedings, however, he did not oppose the divorce. He always informed her prior and after the divorce that she will always be his wife and that he will maintain her for the rest of his life. The only reason why she divorced the deceased was that he had abused alcohol over the weekends.
12. Plaintiff testified that although she earned a salary of R3,000.00 per month she was dependent on the deceased for his contribution. After the deceased passed away her two sons made contributions for her maintenance.

13. In cross-examination she was asked by counsel for the defendant why she did not claim maintenance in the divorce proceedings. Her response was that she was assisted by a legal aid attorney in the Magistrate Court and it was not explained to her that she is entitled to claim maintenance.
14. Deon Geyer, an adult male, testified that he is the stepson of the deceased and the plaintiff is his biological mother. He confirm that prior to and after the death of the deceased he stayed with the plaintiff and the deceased in the parental home. He also contributed R2,000.00 per month towards the payment of the rent.
15. He testified that the deceased maintained the defendant before and after the divorce until he passed away.
16. Fanie Geyer, an adult male, testified that the plaintiff is his biological mother and she was in his employment on a part time basis before the deceased passed away. He confirm that he is paying the plaintiff a salary of R3,000.00 per month. After the deceased passed away he provide her with a car and contribute R2,000.00 per month towards the maintenance of the plaintiff.

EVALUATION OF THE EVIDENCE:

17. The evidence adduced by the plaintiff was not seriously contested and no evidence was adduced by the defendant.
18. The plaintiff testified in a straight forward manner. She did not contradict herself or any of the two witnesses that testified on her behalf. The plaintiffs witnesses corroborated her version on all material aspects and did not contradict each other.
19. In considering the evidence in toto I cannot find any inherent probabilities in the evidence of the plaintiff. In my view the plaintiff and her witnesses were reliable witnesses.

THE LAW APPLICABLE TO THE PERSENT CASE:

20. The case for the plaintiff rests on two legs: first that an express or tacit agreement came into existence between the plaintiff and the deceased after their divorce which created a binding obligation upon him to maintain and support the plaintiff and second that the nature of the relationship was such that it is deserving of the law protection.[1]
21. The uncontested evidence adduced by the plaintiff leaves me in no doubt that there was an express agreement between the plaintiff and the deceased after the divorce to the effect that the deceased undertake to support the plaintiff for the rest of his life.
22. The obligations undertaken by the deceased in my view gave rise to a duty of support which the law must protect. The undertaking of the deceased had given the plaintiff a reasonable expectation that he will continue to maintain her even after their divorce.

23. It was decided in *Paixao and Another v Road Accident Fund* that "the right to support that may arise does not arise because it is a spousal benefit but rather because the obligation to support was assumed in a relationship to support akin to a family

relationship."^[2]

24. I came to the conclusion that by continuing to maintain the plaintiff after the divorce and to live together as husband and wife, the deceased had conferred on her enforceable right in respect of duty of support.

25. After considering the merits and demerits of the evidence and balancing the probabilities I am of the view that the plaintiff must succeed with her claim.

26. In the result the following Order is made:

26.1. Judgment is granted on the merits in favour of the plaintiff with costs.

JJ.STRIJDOM

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA DATE: 24 AUGUST 2015

[1] *Paixao and Another v Road Accident Fund* 2012

(6) SA 377 (SC A)

[2] See also: *JT v Road Accident Fund* 2015 (1) SA 609 (GJ)

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