

SOUTH AFRICA / JUDGMENT

**Purnell v Purnell (576/91) [1993]
ZASCA 22; 1993 (2) SA 662 (AD); [1993]
2 All SA 153 (A) (11 March 1993)
[1993] ZASCA 22**

COURT

Supreme Court of Appeal

BEFORE

Hoexter, Eksteen, F.H. Grosskopf, Goldstone,
Krieger

CASE / FILE NUMBER

576/91

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Case number 576/91607/91/alIN THE SUPREME COURT OF SOUTH AFRICA(APPELLATE
DIVISION)In the matters between:DAVID J. PURNELL AppellantandLYNETTE V.P. PURNELL
Respondent

CORAM: HOEXTER, EKSTEENT, F.H. GROSSKOPF, GOLDSTONE

JJA, et KRIEGLER AJADATE OF HEARING : 22 February 1993

DATE OF JUDGMENT : 11 March 1993

JUDGMENT

KRIEGLER AJA/ 2 KRIEGLER AJA:

The issue in these two related appeals

is maintenance by a man to his former wife. The parties were divorced on 1 July 1986 by order of the Witwatersrand Local Division of the Supreme Court ("the WLD"). The present respondent was the plaintiff in that action and the appellant was the defendant. It will be convenient to retain their original designations in what follows. The order of court inter alia' contained the following provision:

"3. The defendant is ordered to pay maintenance for the plaintiff at the rate of R1 000,00 per month from 1 August 1986 to 31 July 1988."

In November 1987 the plaintiff, by consent, obtained an order in terms of the Maintenance Act No 23 of 1963 ("the Maintenance Act") from the Johannesburg Maintenance Court ("the magistrate") for an increase in such maintenance to R1 500,00

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per month. Then in July 1988 she applied to the WLD for relief couched as follows in prayer 1 of the notice of motion:

"That Clause 3 of the Court order under Case No. 11294/84 [i.e. the divorce action] in the matter between the applicant and the respondent is varied by the deletion of the words 'to 31 July 1988'."

Although the plaintiff's founding affidavit made mention of the order by the magistrate, and annexed the relevant record, the order sought to be varied was that of the WLD.

The factual foundation advanced in support of the application was that the plaintiff was chronically ill and permanently disabled from earning a living. Affidavits were filed on that issue. An opposed application came before Roux J on the preliminary point whether the WLD was competent to grant the relief sought under s 8 of the Divorce Act No 70 of 1979 ("the Divorce Act").

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