

SOUTH AFRICA / JUDGMENT

Q[....] v Q[....] (56429/2020) [2021] ZAGPPHC 766 (9 November 2021) [2021] ZAGPPHC 766

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

56429/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date:

9 November 2021

CASE NO: 56429/2020

In

the matter between: Q[....],
 J D
 A
 APPLICANT
 And
 Q[....]
 L
 RESPONDENT

JUDGMENT

Van der Schyff J

[1] This is an application for relief under Rule 43. The application was heard by Kollapen J on 11 January 2021. He postponed the application sine die, afforded the respondent the opportunity to file opposing papers and granted the applicant interim contact rights pending the finalisation

of the application. The respondent subsequently filed the opposing papers, and a counter claim for maintenance pendente lite for herself and the minor children inclusive of provision for a comprehensive medical scheme, as well as a contribution for her legal costs.

[2] The parties are married in community of property. The applicant is a music teacher and the respondent is unemployed. Neither of the parties indicated whether divorce proceedings were instituted since the respondent left the matrimonial home with the children, twin boys currently 4 years old, in June 2020.

[3] The applicant seeks that his current contact with the minor children, as regulated by the terms of Kollapen J's order, should be extended. Kollapen J's order, however, provides that the Office of the Family Advocate be approached to investigate the residency and contact regime and to file a report with recommendations. To date no report has been obtained. Counsel for the applicant could not indicate whether the Office of the Family Advocate was indeed approached to conduct the investigation. Counsel for the respondent indicated that it was his instructions that the Office of the Family Advocate was, to date, not approached with such

a request.

[4] In light of the above, and without the benefit of an expert's recommendations, I am of the view that Kollapen J's order remain in force, save for amending the contact hours as requested by the applicant. It provides for regular contact between the young boys.

[5] The applicant has been paying maintenance in the amount of R4 500.00 for the children. The respondent requests maintenance in the amount of R7000.00 per child per month. Although both parties completed the required financial disclosure forms, both counsel casted doubt on the correctness of the respective disclosures. The applicant doubts as to

whether the respondent is still unemployed, and if so, questions the disbursement regarding the expenses for a crèche. The respondent in turn, doubts whether the applicant truthfully disclosed his income and pointed out several discrepancies contained in the bank statements. I am not going to deal with the full extent of the submissions made in this regard, except to say that it is difficult to understand how any of the parties were able to survive economically since June 2020 if regard is had to their alleged respective incomes and expenses. I am of the view that neither party fully disclosed their true financial position. I can only repeat Ludorf J's expressed view as stated in *Levin v Levin*:^[1]

'I am compelled to draw inferences and to look to the probabilities as they emerge from the papers. Obviously, my findings are in no way binding on the Trial Court and indeed after hearing evidence, it may emerge that some or all of the inferences I have drawn are wrong.'

- [6] As parents, both parties are liable to contribute to the maintenance of their minor children. Taking into account that the undisputed monthly income of the applicant is between R20 000 and R25 000 per month but that the activity on his bank statements indicate the probability of undeclared income, that he contributed R4 500 per month since the separation and that the respondent is unemployed, I am of the view that it is just that he be ordered to pay maintenance pendent lite in the amount of R3 000 per child per month. This would constitute a maintenance contribution of R6 000.00 per month regarding child maintenance. This contribution should be seen in the context set out in paragraph 7 below, as it is not the only contribution that the applicant will be liable for.
- [7] The respondent states under oath that she is unemployed. The bank statements filed are outdated, but do not indicate a monthly income that can be associated with frequent salary payments. The fact that she enrolled the minor children in a crèche does not lead to the inescapable inference that she obtained employment. The evidence does not indicate that the respondent was employed before the parties separated. She is entitled to be maintained pendent lite until she is able to secure employment, which she must actively seek to do. In the circumstances I am of the view that an amount of R 5000.00 per month for six months is fair to both parties.
- [8] The respondent also seeks an order that the applicant must pay for a comprehensive medical aid for herself and the minor children. It is evident from the papers that the parties were not, to date, members of a medical aid. This can be dealt with during the divorce proceedings.
- [9] The respondent lastly seeks an order compelling the applicant to make a contribution in the amount of R20 000.00 towards her legal costs, 'same to be deducted from his half share of the joint estate, upon division.' The purpose of Rule 43 proceedings is to assist a party to meet pendent lite expenses. The respondent is entitled to afford legal representation, and it is irrelevant whether the attorney assisting her is a friend of her father's. I am of the view that R10 000,00 contribution to costs is fair and not exorbitant.

ORDER

In the result, the following order is made:

1. Both parties have joint parental rights and responsibilities as envisioned by Section 18(2) of the Children's Act 38 of 2005;
2. The primary residency of the minor children vests with the respondent subject to the following contact rights of the applicant:
 - 2.1. Every Tuesday from 14h00 to 17h30;
 - 2.2. Every Thursday from 14h00 to 17h30;
 - 2.3. Every alternative Saturday from 10h00 to 17h30;
 - 2.4. On father's day from 10h00-17h30;
 - 2.5. Three hours contact on the applicant's birthday if it falls on a non-contact day;
 - 2.6. Three hour's contact on the minor's birthday if the birthday falls on a non-contact day,
 - 2.7. One Sunday following a contact-Saturday, every four weeks, from 10h00 to 17h30
 - 2.8. Telephonic contact every Monday, Wednesday, Friday, Saturday and Sunday (when the children are not with the Applicant) between 18h00 and 18h30;
3. Maintenance pendente lite is to be paid by the applicant in respect of the minor children in the amount of R6000.00 (Six Thousand Rand) per month, subject to CPI annual increases;
4. Maintenance pendente lite to be paid by the applicant in respect of the respondent in the amount of R5000.00 (Five Thousand Rand) per month, into an account

she designates, payable on or before the seventh day of each month, for six months or until such time as the respondent obtains

employment which ever happens first. The respondent may approach the court again if she does not secure employment after six months;

5. The parties share medical expenses incurred in respect of the minor children equally;
6. The applicant must make a contribution to the respondent's legal costs in the amount of R10 000,00, which amount is to be paid over 10 months in instalments of R1 000,00 per month, the first instalment to be paid on or before 7 December 2021.

E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 9 November 2021.

Counsel for the applicant:

Adv. L. Van der Westhuizen

Instructed by:

Mundt Attorneys

For the respondent:

Adv. G. L. Kasselmann

Instructed by:

Couzyn, Hertzog & Horak Attorneys

Date of the hearing:

3 November 2021

Date of judgment:

9 November 2021

[1] 1962

(3) SA 330 (W) at 331D.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2021/766.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/q-v-q-unknown-topic-agpphc-2021>

Prepared on 11 October 2026 · Esheria