

SOUTH AFRICA / JUDGMENT

TH v CH (14667/2022) [2024] ZAWCHC 100 (9 April 2024)

[2024] ZAWCHC 100**COURT**

Western Cape High Court, Cape Town

BEFORE

Nziweni

CASE / FILE NUMBER

14667/2022

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Source record**FLYNOTES:**

FAMILY – Children – Parental rights – Failure by parent to act in best interest of child may lead to termination or limitation of parental rights – Concerns over mother's temperament and drug and alcohol abuse – Mother assaulting child – Father removing child and approaching court – Expert's report discussed – Convincing evidence warranting interference with parental rights of mother – Phased approach for increasing contact between the mother and child – Each phase contingent upon attaining certain goals – Children's Act 38 of 2005.

IN
THE HIGH COURT OF SOUTH AFRICA
WESTERN
CAPE DIVISION, CAPE TOWN
CASE
NUMBER: 14667/2022
In

the matter between: TH
APPLICANT
and
CH
RESPONDENT
Date
Heard: 22 February 2024
Date
Judgment delivered electronically: 09 April 2024

JUDGMENT

NZIWENI, J:

Introduction

and Factual Background

- [1] This application concerns an eight year old, born in 2015 (“the child”). The biological parents of the child are divorced. During the divorce proceedings, the applicant [the father in this application] and the respondent [the mother in this application] (“the parties”) reached an agreement on a permanent parenting plan. In the agreed to decree of divorce, the mother was given the status of being the primary carer of the child and the father was awarded standard rights to maintain contact with the child.
- [2] The papers of this matter reveal that in 2019, the father (“the applicant”) obtained a protection order against the mother (“the respondent”), amongst others, prohibiting her [the respondent] from committing acts of domestic violence against the child at issue in this application. This application also palpably demonstrates that there had been a deterioration in the relations and communication between the parties.
- [3] This application was triggered by concerns and allegations of physical and emotional abuse (“the incident”) perpetrated by the respondent against the child. In his application, the applicant also wishes to vary the contact provisions as set out in the divorce order granted on 09 March 2017.
- [4] On 10 August 2022, the respondent’s sister sent the applicant a recording revealing that the respondent had assaulted the child and threatening to repeat the assault. On the very same day, the applicant removed the child from the respondent’s care. On 05 September 2022, the applicant launched this application in two parts on urgent basis to have the child remain in his [applicant’s] care pending care and contact assessment to determine the child’s interest.

[5] Following the application that was brought by the applicant; on 23 September 2022, Fortuin J, placed the child in the primary care of the applicant and the respondent was granted supervised contact. The court also ordered that a child expert should be appointed to carry out an enquiry and assessment and compile a report setting out her findings and recommendations regarding the following aspects:

- What contact and residence arrangements are in the child's best interest; and
- the functioning of both parents insofar as it may impact on their respective parenting skills.

[6] On 03 October 2022, Cloete J, inter alia ordered by agreement between the parties that:

- Dr Mathilda Smit be appointed in compliance with the order granted on 23 September 2024, to carry out care and contact assessment.

[7] The appointment of Dr Smit culminated in a comprehensive report dated 20 December 2022, that was duly presented to the court and the parties. Amongst others, the report of Ms Smit stated the following findings as far as the respondent is concerned:

- The child's parenting by the respondent was not up to standard;
- The respondent's shouting at the child and difficulty in disciplining her, influenced their relationship negatively;
- The respondent was not ready to have the child in her care for longer periods of time;
- The respondent first needed to prove her ability to change her parenting style and to provide the necessary sense of safety whilst the child was in her care;
- The respondent needed to engage in individual therapy where she could learn to control her impulses and frustrations;
- The respondent needed to learn ways to deal with anger in a more constructive way;
- She needed to withhold from taking any alcohol or drugs;
- The respondent's volatility needed to be addressed and she needed to maintain a drug free lifestyle;

[8] The parties returned to court on 22 February 2024. On the return date, it was evident that the parties were not irreconcilably too far apart on the issues between them. In her report, Dr Smit, stated that after she had taken the concerns raised and certain factors into consideration, she recommended a phased approach for increasing contact between the mother and the child. Each phase has its life cycle, with intended results. To that end, it appears that each phase is contingent upon attaining certain goal. To put the point another way, it seems to me that each phase has a program that leads to the next phase. The program of phases ends at phase four.

[9] According to Dr Smit each phase would be in place for three months before the next phase gets implemented through the approval and assistance of the parenting coordinator.

Dr Smit indicated that she deliberately did not indicate primary residence of the child.

Doctor Smit's phased approach

[10] Dr Smit's phased approach has four phases, structured as follows:

"Phase 1:

7.11 The child should travel with Mr I [. .] O [. .] and or Mrs C [. .] O [. .] to their holiday home in Kleinsbaai as from Wednesday the 21st of December 2022. The handover of the child should be at . . . or any agreed time. The child is to be taken to the home of Mr and Mrs I [. .] O [. .]. The mother can join them at Kleinbaai as soon as she is available. . . The child is to return with either the mother or the O [. .] to Brackenfell on 8th of January 2023. The handover to Mrs T [. .] H [. .] and J [. .] F [. .] should take place at 17h00 on 08 January 2023.

7.12 As from the weekend of 20 January 2023, the child should be in care of the mother for three consecutive weekends from the Friday after the school until the Sunday at 17h00. As the mother will be working on Fridays and every alternate Saturday, the child will be in the care of either her maternal grandmother on the Friday afternoon and Saturday morning whilst the mother is working or in the care of Mr and/or Mrs I [. .] O [. .].

7.13 The child will be spending Thursdays from directly after school until 17h00 in the care of Mrs C [. .] O [. .]. The child is used to spending one afternoon per week with her cousin N [. .] O [. .] who is the same age as her. Mrs C [. .] O [. .] is to collect the child from school and take her to the father's home at 17h00.

7.14 In the fourth week that the child is not to spend the weekend in the care of her mother, she will spend the Thursday afternoon in the care of her mother from directly after school until Friday morning.

7.15 During the time that Mr H [. .] is at home, the child will spend time every alternate weekend in the care of her mother and every Thursday from directly after school until Friday morning in weeks when the child is not going to spend the weekend in the care of her mother.

7.16 Telephonic or any other electronic contact between the child and her mother can be arranged for Wednesdays between 18h00 and 19h00. The child's mother should make the call and it must be facilitated by either the child's father or Mrs F [. .] or Mrs T [. .] H [. .] in his absence. If the child expresses the need to have electronic contact with any of her parents or extended maternal family, it must facilitate or extended maternal family, it must be facilitated.

Phase 2:

7.17 The child should be in the care of her mother for three consecutive weekends from the Thursday after school until the Sunday at 17h00. As the child's mother will be working on Fridays and every alternate Saturday, the child will be in the care of either her maternal grandmother on the Friday afternoon and Saturday morning whilst the child's mother is working or in the care of Mr and/or Mrs I [. . .] O [. . .].

7.18 During the time that the father of the child is at home, the child will spend every alternate weekend in the care of her mother and every Thursday from directly after school until Friday morning when the child is being dropped at school in weeks when the child is not going to spend the weekend in the care of her mother, the child will spend the Thursday afternoons with her cousin Nathan before a weekend in the care of her father. Mrs C [. . .] O [. . .] will fetch the child from school and child's father will collect her at 17h00 from the home of the O [. . .].

Phase 3:

7.19 The child should be in the care of the mother for three consecutive weekends from the Thursday after school until the Monday morning when the mother drops the child at school. As the mother will be working on Fridays and every alternate Saturday, the child will be in the care of either her maternal grandmother on the Friday afternoon and Saturday whilst the child's mother is working or in the care of Mr and/or Mrs I [. . .] O [. . .].

7.20 During the period the father is at home, the child will spend every alternate weekend from Friday after school after school until Monday morning in the care of her mother and every Thursday from directly after school until Friday morning when the child is being dropped at school in weeks when the child is not going to spend the weekend in the care of her father, she will spend the Thursday afternoon with N [. . .], her cousin. Mrs C [. . .] O [. . .] will fetch the child from school and the father will collect her at 17h00 from the home of the O [. . .].

17.21 If there is a public holiday before or after a weekend in the care of either the father or the mother, the same arrangement will be followed as described above depending on the phase that they are at. A school day off between a public holiday and a weekend will form part of a long weekend.

Phase 4:

7.22 When the parenting coordinator is of the view that both the child and the mother is (sic) emotionally ready, a week/week contact schedule will be followed. The child would be either in the care of the father or that of Ms F [. . .] and Mrs T [. . .] H [. . .] whilst he is offshore from after school on a Friday until the child is dropped at school the next Friday. Mrs C [. . .] V [. . .] will the collect the child after school on the Friday and the child will be in the mother's care until the next morning when she is dropped at school.

· Holiday schedule . . .

..

· General recommendations

7.24 No primary residence is indicated. . .

. . .

7.27 The co-parenting relationship between the father and the mother needs to be addresses as a matter of urgency. This is regarded as the main factor that endangers the emotional well-being of the child. . .” To protect the identity of the child I have redacted the names of the child, the mother, and the father from the extract and used nouns.

[11] As per Dr Smit’s phase four, it envisages equal contact with both parents.

Parties’ submissions on the implementation of phased approach to care and contact

[12] The applicant argues that Dr Smit is neutral. According to the applicant’s counsel, the mother of the child needs to prove that she has changed and there should be a mechanism in place to ensure that she has changed. It is conceded on behalf of the applicant that the phasing in of the respondent’s contact would protect the child. However, the applicant is diametrically opposed to the implementation of phase 4 as stated in Dr Smit’s report. The applicant’s proposal does not automatically progress to a shared residence arrangement. Hence, it was submitted that shared residency is case dependent. It is further submitted on applicant’s behalf that phase four is not a foregone conclusion. Thus, it is not a foregone conclusion that shared residence arrangement would be implemented in phase four.

[13] It is submitted on applicant’s behalf that the applicant proposes that the respondent’s contact be phased in over a period of time, not for the child to bond with her, but for the respondent to demonstrate that she can and is able to effectively parent the child. It is argued on behalf of the applicant that each contact phase should be eight weeks in duration and that the contact should increase in each successive phase. Additionally, it is submitted on behalf of the applicant that phase four cannot be implemented if the respondent fails to meet certain criteria for good enough parenting and her emotional issues remain untreated and unresolved. It was further submitted on behalf of the applicant that the recommendation by Dr Smit is there to make sure that there is some mechanism in place to prevent recurrence of the incident that happened in 2022.

[14] Ms Bartman developed these submissions in the heads of arguments as follows:

“After receipt of Smit’s report, the parties attempted to settle the matter. Each party made proposal as to how the respondent’s

contact with the child should be phased in. While the proposals appear similar, it is submitted that the main discrepancies lie in ensuring that the child is protected.”

[15] In response, counsel on behalf of the respondent submitted that the applicant refuses to include a fourth phase by which the parties will eventually enjoy equal contact with the child.

- [16] It was further submitted on the respondent's behalf that there is nothing that prevents this Court from implementing phase four, since the incident of 10 August 2022 was a singular, isolated occurrence rather than recurrent. Additionally, it was asserted on respondent's behalf that the singular event was taken out of context and did not warrant elimination of shared residency.
- [17] In essence, it is the respondent's contention that there should be an implementation of phase four that would allow the parties to ultimately share equal rights in terms of care and contact regarding the child. Alternatively, care and contact for each parent on week-to-week basis. Mr Walters on behalf of the respondent went on to explain that the corollary of not implementing phase four is that the parents would be stuck in phase three arrangement.
- [18] According to the respondent, phase four is in the interests of the child. Hence, the respondent further assert that it would be absurd not to implement phase four.
- [19] The applicant in his application states that in 2017, when he agreed that the child should live primarily with the respondent, he had concerns about the capacity of the respondent to be a competent parent for a range of reasons ranging from her temperament, drug and alcohol abuse. But because he spends long period of times at sea, he could not be the child's primary carer.
- [20] According to the applicant, he exercises contact in terms of the parties parenting plan read together with a directive from their [parties] parenting coordinator.

Evaluation

- [21] From the foregoing, it is evident that counsel for the parties were agreed that phasing in of the respondent's contact with the child is the appropriate course to follow. The parties could not really agree on the way to implement the different phases. Dr Smit's report evinces that the respondent in one way or the other has engaged in conduct that constitutes ground for interfering with her parental rights. As set out in context above, it is clear that the findings of Dr Smit do not cast the respondent's parenting skills in good light. Hence, in this application the parental rights that are at stake are those of the respondent.
- [22] Based on the foregoing findings of Dr Smit, I am of the view that there is clear and convincing evidence that warrants interference with the parental rights of the respondent, on grounds of the respondent's parenting standard.

Parental rights

- [23] It is trite that although parental rights are expressly protected in the Children's Act, Act 38 of 2005, they are not by any stretch of imagination absolute. A proven failure by a parent, to manifest willingness and ability to act in the best interest of the child may lead to termination or limitation of parental rights. Hence, the parents' behaviour as far as a minor child is concerned, should always be in alignment with the best interests of the child. Clearly, the best interests of the child are to be viewed from the child's vantage point, rather

than from the parent's angle.

- [24] There is little likelihood that the concerns raised by Dr Smit as far as the respondent is concerned, would be resolved without interference. This Court is also mindful that the sooner the concerns are remedied, the better for the child's wellbeing and stability.
- [25] The best interests of a minor child are entrenched in the Constitution of this country as a constitutional right of every minor child that is paramount. The High Court as an upper guardian of all children has a special duty to protect minor children. This explains the role of this Court as the upper guardian of all minor children. As such, this Court can interfere with parenting to prevent serious harm to a child and protect the welfare of a minor child.
- [26] In the present case, currently, both the parties are co-holders of parental rights and responsibilities.
- [27] There are different forms of parental contact with the child. In this case, as mentioned earlier on, the incident and other concerns had led to Dr Smit to recommend a phased in contact. As alluded before, the recommendation of Dr Smit envisages a gradual phase-in of implementation of parental care and contact of the mother.

The question in this matter relates to the extent of that interference. This court is called upon to determine whether the child's

interests will be best served by which phase program.

- [28] As mentioned before, the applicant does not raise an issue per se as far as the proposed Dr Smit's phasing in program, but, has a problem with the number of phases.
- [29] The point which has troubled me most is the fact that Dr Smit in her report states that the respondent reported to her that she had a drug relapse in March 2022. Further and significantly, amongst her recommendations Dr Smit recommended the following:

- A parenting coordinator be appointed to assist the family to act in the best interest of the child, addressing disputes between them and determining the readiness of moving from one contact phase to the next. She also recommended that the parenting coordinator must have the mandate to alter the contact schedule if it is in the interest of the child;
- That the respondent should start in early 2023 with individual therapy with a psychologist to address her unresolved trauma, to teach her to improve her ability to regulate her emotions, and to teach her skills to improve her impulse control;
- The respondent is to subject herself to random drug testing twice a month for at least the next six months and thereafter once a month for the following six months. Mrs C [. . .] would monitor that. The results would be sent to the appointed parenting coordinator.
- No supervision of contact between the respondent and the child is needed but contact must be monitored by Mr I [. . .] O [. . .] and/or his wife.

[30] Clearly, during the pendency of this application and with the effluxion of time, some of Dr Smit's phases and time frames have become defunct.

The incident

- [31] In this matter, it is not in dispute that the incident of 10 August 2022 took place between the respondent and the child. It is also not in dispute that the respondent has a history of using substances. In the circumstances of a case such as this, the admitted substance relapse by the respondent, poor impulse and frustration control, difficulty in dealing with anger, and inappropriate discipline techniques on the child are highly concerning. The parties in a way, are also in agreement that restrictions reasonably designed to protect the child are necessary.
- [32] On the other hand, gleaned from the evidence presented before me, there is nothing to convince this Court that the applicant is anything but a loving father towards his minor daughter.
- [33] Both parties have presented proposals for parental rights and responsibilities and parenting plans. Though there are differences between the two proposals, primarily, most of the language and clauses mirror one another.
- [34] Dr Smit stated that the respondent needs to learn ways to deal with anger in a more constructive way. She also recommended that she should withhold from taking any alcohol or drugs. Dr Smit also indicated that the respondent's volatility needs to be addressed and she needs to maintain a drug free lifestyle. Despite the shortcomings of the respondent, it appears from the report of Dr Smit that the respondent and the child still share a strong bond with each other.
- [35] However, more troublingly still, in this matter, there is sufficient evidence to suggest that the parenting skills of the respondent need attention and this Court cannot turn a blind eye to that. It is not open to doubt that the ultimate goal in this matter is to protect the child from physical, or emotional abuse or harm that could result if the child has unregulated contact with the respondent. Hence, I fully agree with the sentiments expressed on behalf of the applicant that the respondent needs to prove that she has changed, before she can have unrestricted contact with the child.
- [36] Thus, it is critical that she should continue with the individual therapy as recommended in paragraph 7.5 of Dr Smit's report and to follow all recommendations thereof. She should also subject herself to random drug testing as recommended in paragraph 7.6 of Dr Smit's report. It is in the interests of both the respondent and the child to successfully continue in therapy, to do the random drug tests. The respondent's failure to comply with the recommendation of Dr Smit [paragraphs 7.5 - 7.6] would demonstrate her inability to prioritise her child's best interest and the child as a priority in her life.

- [37] Thus, this Court takes comfort to the fact that it is stated in the heads of argument on behalf of the respondent that the respondent has undertaken to remain drug free and is willing to undergo periodical screening.
- [38] The decision as to what restrictions on the parent's contact with the child are necessary, ultimately lies with the court. I am mindful of the fact that limitations should not be more extreme than is necessary to protect the child. Though Dr Smit recommended a structure of four phases, in principle the parties are in agreement as far as phases one to three are concerned. Consequently, I am only going to follow some of Dr Smit recommendations.

Parenting Coordinator

- [39] Generally, the parties have not demonstrated an ability to communicate and make joint decisions regarding the child. So, it is unsurprising that the matter is a high conflict matter. There are still ongoing differences about parenting issues between the parties. I am of the view that a parenting coordinator would be of great assistance in this matter. At the same time, it is important to note that in this case, the parenting coordinator would also assist with the enforcement of the order of this Court, particularly when it comes to the implementation of the phasing in contact.
- [40] This case is a good example of a case that requires the services of a parenting coordinator to assist the parties with communication, with their visitation challenges, to help them to agree on issues, and to advise them what was in the best interests of the child.
- [41] Initially during the hearing, the respondent objected to the appointment of a parenting coordinator, however, later on it was submitted that the only concern the respondent has with the parenting coordinator pertains to the costs associated with the appointment of a parenting plan.
- [42] In the circumstances, it would thus be in the best interest of the child that a parenting coordinator be appointed. As alluded before, the parenting coordinator would also monitor the transition from one phase into the next.

The implementation of phase four and shared residence arrangement

- [43] As mentioned earlier, amongst others, the respondent acknowledged a relapse in using substances. One point emerging clearly from Dr Smit's report is that it is in the interest of the child that the respondent should be allowed an opportunity for return of shared residence. I am of the view that it is in the best interest of this child to gradually move towards a shared residence with the respondent.
- [44] The applicant also acknowledges and envisages that a shared residence arrangement may be the end result in future. The applicant is only opposed to an automatic progression to shared residence arrangement. Thus, according to the applicant, if the mother shows the ability to meet the conditions imposed on her before shared residence is achieved, then shared residence should be realised.

- [45] It was further submitted on behalf of the applicant that if the court is inclined to make the parenting plan to ultimately transition to phase 4, there should be checks and balances put in place. In the context of this matter these points raised by the applicant are valid.
- [46] This is why this Court fully aligns itself with the sentiments as expressed on behalf of the applicant that it is in the interests of the child that before the parties can transition to phase 4, which would permit equal contact with both parents, the respondent needs to demonstrate that she can live the path that would lead to shared residence with the child. It is my firm view that such transition should be based on the recommendation of the parenting coordinator.
- [47] In order to warrant a deviation from the recommendation of Dr Smit report, the applicant bears the burden to demonstrate that the deviation is warranted. With this in mind and based upon the evidence presented and the reasons stated by Dr Smit, I can find no reason why I should not implement stage four of the phasing in program as recommended by Dr Smit. Given the benefit of time that is available in the phasing in contact, the respondent would be afforded the opportunity to remedy her ways.
- [48] For that matter, Dr Smit's report recommended the appointment of a parenting coordinator, to assist the parties to act in the best interest of the child, addressing disputes between them and to determine the readiness of moving from one contact phase to the other. Dr Smit, further states that the appointment of a parenting coordinator is to avoid any parents or family members to litigate in future. It is also her [Dr Smit's] views that the parents would furthermore benefit from having a parenting coordinator to support them in their co-parenting of the child.
- [49] According to Dr Smit, the parenting coordinator must be mandated to alter the contact schedule if it is in the best interest of the child. It is also my view that the parenting coordinator would also be able to monitor as to whether the parties are ready to progress to the next phase. Thus, I see no reason why the proposed parenting plan should not progress in four phases. Of course, as mentioned before, the transition to phase four can only be reached or implemented when the parenting coordinator endorses it after being satisfied that the respondent has earnestly and adequately addressed her problems.
- [50] Obviously, if the parenting coordinator is not satisfied that the respondent has risen above her challenges, then the implementation of phase four would be delayed until such time the parenting coordinator is satisfied that shared residence can be implemented.

Duration and transition from phase one to phase three

- [51] Regarding the duration of phases one to three, it is evident from the parties' submissions that the parties agree that a parenting coordinator should not be given ultimate decision-making authority. The parties advocated that each of the first three phase should have its own time limit or span. In other words, each phase should have its expected date of completion and one phase commencing after the other.

- [52] There is common ground between the parties that each phase should last for two months. For that matter, as far as transition from phase one to three is concerned, nothing prevents the parties from agreeing regarding the duration of each phase.
- [53] The aim of the first three phases is to afford the respondent an opportunity to mend her ways in order to make way for shared residency. In my view, this is the best way to meet the needs of the child as well as those of the respondent.
- [54] Initially, I had reservation about fixing time frames for the duration of the first three phases. However, with the benefit of hindsight, I fully agree with the parties that a time span needs to be fixed for the first three phases. Thus, duration and transition from phases one, two and three is not going to be determined by the parenting coordinator. Only in the event that there are justifiable issues which have arisen which in the party's view militates against moving on to the next phase, such party may approach the PC who shall assist the parties to resolve the issue.

The parenting coordinator's fees

- [55] Obviously, appointment of parenting coordinator entails apportionment of the obligation to pay the parenting coordinator's fees. In this case, the applicant is of the view that the parenting coordinator fees should be shared between the parties in equal shares. On the other hand, the respondent is of the view that the applicant should pay more because he has deeper pockets than her.
- [56] Bearing in mind that there is high conflict involved between the parties, in the circumstances, it is important that the parties should share the parenting coordinator's fees, equally. This is so because, equal financial involvement of the parties towards the fees of a parental coordinator would ensure that the services of the parental coordinator would be resorted to when it is absolutely necessary to do so. I am of the view that this would also encourage the parties to make serious and sincere attempts to decide and work together to resolve their differences pertaining to their parenting issues. Cooperate with one another and find speedy resolutions to potential impasses; before resorting to the parenting coordinator.

Equal sharing of the fees would promote an effective and economical usage of parenting coordinator's services. Thus, it is significant that the cost of the parenting coordinator should be an equal financial stress for both parties. Hence, I am convinced that the parties should share equally in the parenting coordinator's fees.

Best interests of the child

- [57] The child's safety and the need for stability in her home life are currently the primary concerns in the determination of her best interests. In my mind, once the respondent takes care of her challenges, she would be in a position to provide for this child's health, emotional well-being, and needs. In my mind it is in the best interests of the child that the respondent continues to have contact with the child albeit limited and that will eventually culminate to shared residency with her.
- [58] Likewise, it is in the best interest of the child that a parent should be able to keep his or her sobriety, to avoid dangers associated with lack of supervision when a parent is under the influence of drugs or alcohol. Additionally, it is undeniable that, minor children's daily routines get significantly disrupted when a parent abuses alcohol and drugs.
- [59] The parenting plans drafted by the parents and Dr. Smit's report contain measures and conditions that are meant to protect the child from harm. It is established that the best interests of the child are always paramount above all other considerations when a court is faced with an ever challenging and difficult task of formulating an order for parenting arrangements and apportionment of parenting time. In the formulation of this Court's order, I am going to rely on what the parties have in mind and all evidence placed before me particularly the report by Dr Smit in her report.
- [60] I am also of the view that once the parties put an effort towards the new schedule, the relationship and cooperation between them as parents would improve. A better relationship between the parents is also in the best interests of the child.

The child Maintenance issue

- [61] This Court is not best equipped to assess whether variation of the maintenance order is warranted. Particularly, in light of the fact that there is an already existing maintenance order. The best equipped court to consider reduction of maintenance would be the Maintenance Court. Both parties readily agreed to this.

- [62] From all the foregoing considerations, I make the following order:

ORDER:

1. The contact provisions set out in the court order granted on 9 March 2017 under case no 2546/2007 are varied and replaced by the following provisions:
2. The parties shall within 7 (seven) days agree on a Parenting Coordinator ("PC") or approach FAMAC for the appointment of a PC.

2.1 The PC is authorised by the parties to consult with Lilley's therapist, Elmarie Van Rooyen, and any other collateral she may feel necessary to assist herein;

2.2 The PC is authorised to make recommendations in respect of any changes to the undermentioned phasing in of respondent's contact;

2.3 At the end of each under mentioned phases 1-3, in the event there are justifiable issues which have arisen which in the party's view militates against moving on to the next phase, such party may approach the PC who shall assist the parties to resolve the issue.

3. The costs charged by PC shall be borne by both parents equally.
4. The respondent shall submit herself to random urine drug screening at the request of the PC, to be conducted in such a manner satisfactory to the P.C. and the respondent shall provide the P.C. with the drug test results.
5. The respondent is to attend and complete a psychological assessment to help her with anger management and impulse control and should follow through with recommendations.
6. The respondent shall pay the costs of the drug screening tests and psychological assessment.
7. Respondent shall exercise contact with the parties' minor child LILLEY as follows:
 - a. Phase 1: commencing on 09 April 2024, to 09 June 2024
 - (i) Every Wednesday from after school overnight until Thursday morning when respondent shall take Lilley to school.
 - (ii) Every alternate weekend commencing at 15h00 on Saturday until 18h00 on Sunday.
 - (iii) Respondent shall ensure that Lilley completes her homework when she is with her overnight.
 - b. Phase 2: 10 June 2024 to 10 July 2024
 - (i) Every Wednesday from after school overnight until Thursday morning when the respondent shall take Lilley to school.
 - (ii) Every alternate weekend from Friday afterschool until Sunday at 18h00.
 - c. Phase 3: 11 July 2024 to 11 September 2024
 - (ii) Every alternate weekend from Friday after school until Monday morning when the respondent shall take Lilley to school.
 - d. Phase 4: From 11 September 2024 and thereafter
 - (i) Phase 4 shall not commence until:
 - (ii) The PC certifies that all the respondent's drug screening verify that she was drug free at the time of testing.
 - (iii) PC is satisfied that the respondent has completed her individual therapy with psychologist.

(iv) Once the respondent has successfully participated in all the recommended aspects her treatments and has no other allegations of child abuse and or substance relapse, she may have contact as set forth herein:

(v) Lilley will be in the care of the applicant for a full week from the Monday after school until the following Monday when the applicant will take Lilley to school and thereafter;

(vi) Lilley will be in the care of the respondent for a full week from the Monday after school until the following Monday when the respondent will take Lilley to school; and

(vii) When the applicant is overseas, Lilley will be in the full-time care of the respondent until he returns where after the above contact

arrangements will resume.

8. In respect of all the phases, the exchanges that are to take place during a school week, will take place at the school with one parent dropping Lilley off at school in the morning and the other collecting her after school.
9. Regarding exchanges over weekends and holidays, the parent in whose care Lilley is at, will drop her off at the other parent's residence at 08h00(or such other time to be agreed between the parties).
10. The shorter school holidays shall be divided into two equal uninterrupted periods so that Lilley spends the first half of a school holiday in one year with one parent, she shall spend the second half of that holiday with that parent in the following year;
11. The December /January and June July holiday shall be divided so that Lilley spends each alternate Christmas with each parent and New Year's Eve and New Year's Day with the other parent. In the event that the parents are in the same vicinity (100km or less) over Christmas, they shall arrange for Lilley to spend time with each parent in order to celebrate Christmas;
12. Easter weekend shall alternate annually between the parties;
13. Both parents shall be entitled to telephonic contact with Lilley at reasonable times of the day;
14. If the applicant is in the country on Father's Day, Lilley will spend the day with him. Lilley will spend Mother's Day with the respondent.
15. The parties will each spend an equal amount of time with Lilley on her birthday, with the understanding that:

15.1 Should her birthday fall on school day, the parties will reach an agreement regarding the times during which they will each spend time with her at least two days in advance;

15.2 Should her birthday fall on a weekend, the parent in whose care she is with, shall enjoy contact with her in the morning and then drop her off at the other parent's residence at 13h00 to enjoy contact with her until 18h00.

16. Each party shall pay their own costs.

NZIWENI, J

JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicant :

Adv M. Bartman

Instructed by :

Venter van Eeden Inc

Ref

:

VVE/lvdr/MAT27515

For the respondent :

Adv A Walters

Instructed by :

Hickman, Van Eeden, Phillips Inc

Ref

:

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