

SOUTH AFRICA / JUDGMENT

W.B v P.G.B (3053/2022) [2024] ZAFSHC 297 (12 September 2024) [2024] ZAFSHC 297

COURT

Free State High Court, Bloemfontein

BEFORE

Gusha, AJ

CASE / FILE NUMBER

3053/2022

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

IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not

reportable

Case

no: 3053/2022

In

the matter between

W[...]

B[...]

PLAINTIFF

(ID

NO: 8[...])

And

P[...]

G[...] B[...]

DEFENDANT

(ID

NO: 7[...])

Neutral

citation: W[...] B[...] v P[...] G[...] B[...]

Coram: Gusha, AJ

Heard: 13,14 and 16 August 2024

Delivered: This judgment was handed down and released to SAFLII. The date for hand-down is deemed to be 12 September 2024.

Summary: Divorce Act 70 of 1979 – dissolution of a marriage – entitlement to spousal maintenance post-divorce.

ORDER

1.
The bonds of marriage subsisting between the plaintiff and the defendant be and are hereby dissolved.
2.
The parental responsibilities and rights in respect of the minor children from the marriage between the parties, as contemplated in section 18(2)(a) of the Children's Act 38 of 2005 be awarded to both the parties.
3.
That the primary residency of the minor children be awarded to the plaintiff.
4.
That the specific parental responsibilities and rights in respect of the contact with the minor children as contemplated in Section 18(2)(b) of the Children's Act 38 of 2005 be awarded to the defendant in the following manner;
 - 4.1.
Contact on alternative weekends from 17h00 Friday to 17h00 Sunday.
 - 4.2.
Public holidays will alternate between the parties.
 - 4.3.
School holidays will alternate between the parties and long school holidays will be shared equally on the basis that the minor children will spend an alternative December holiday for Christmas with an alternate party.
 - 4.4.
At least three hours of contact is awarded to the defendant on the birthday of the minor children and that of the Defendant.
 - 4.5.
Contact on Father's Day from 09h00 to 17h00 if this day does not coincide with a normal access weekend.
 - 4.6.
Reasonable telephonic contact.
- 5.

The parental responsibilities and rights to the guardianship of the minor children as contemplated in section 18(2)(c) and 18(3) of the Children's Act 38 of 2005 is awarded to the parties jointly.

6.

The defendant will pay maintenance to the plaintiff in respect of the minor children in the amount of R2500 per child per month from the date of this order and thereafter on or before the 7th of each succeeding month until the children become self-supporting. Payment shall be made into the plaintiff's nominated bank account.

7.

The defendant is liable for payment of the children's reasonable pre-school fees, school fees, extra mural, cultural and sporting activities and all reasonable expenses related to pre-school, school and extra mural activities.

8.

The defendant will retain the minor children as beneficiaries of his current or similar medical aid scheme and is liable for payment of the monthly premiums thereof as well as the reasonable and necessary costs of all expenses in respect of medical, dental, ophthalmic, orthodontist, psychotherapeutic treatment expenses of the minor children not covered by the medical aid scheme.

9.

The defendant shall pay maintenance to the plaintiff in respect of herself in the amount of R10 000 per month from the date of divorce for a period of three months whereafter the amount will decrease to R5 000 per month for a further three months whereafter the defendant's obligation to maintain the plaintiff shall cease in toto. Payment shall be made into the plaintiff's nominated bank account.

10.

The defendant will retain the plaintiff as a beneficiary of his current or similar medical aid scheme for a period of 3 months from the date of divorce and is liable for payment of the monthly premiums thereof as well as the reasonable and necessary costs of all expenses in respect of medical, dental, ophthalmic, orthodontist, psychotherapeutic treatment expenses of the minor children not covered by the medical aid scheme

11.
The defendant shall pay to the plaintiff and amount of R50 000 within 30 days from the date of divorce.
12.
The defendant will sign all necessary documentation to transfer and register the Ford Kouga motor-vehicle into the name of the plaintiff when the installments on the outstanding balance in respect of the financing over the vehicle has been paid in full.
13.
Each party to pay his or her costs.

JUDGMENT

- [1] These are defended divorce proceedings. The parties were married to each other on 11 October 2008, out of community of property and with the exclusion of the accrual system, which marriage still subsists. Two minor children were born of their union, a 13-year-old girl and a 7-year-old boy. Their union hit stormy waters, resulting in the plaintiff launching these divorce proceedings on 1 July 2022, asserting that the marriage relationship irretrievably broke down and has reached such state of disintegration that no reasonable prospects for the restoration of a normal marriage relationship exists. The plaintiff cited the defendant's alleged infidelity, verbal and or emotional abuse, loss of mutual love and respect, their different personalities and lack of communication between the parties as reasons for the disintegration of the marital relationship.
- [2] She accordingly seeks a decree of divorce, the usual ancillary relief in respect of the custody and primary residency of the minor children, maintenance in respect of the minor children in the amount of R5 000 per month until the children become self-supporting, expenses related to school and all extra-mural activities, as well as retention of the minor children on the defendant's medical aid, at his cost. Further, in respect of herself, she seeks spousal maintenance in the amount of R10 000 per month until her death or remarriage, retention on the defendant's medical aid, payment of an amount of R1 000 000 in terms of an alleged verbal agreement entered into between the spouses, as well as transfer and registration of the Ford Kuga motor-vehicle, currently
in her possession, into her name.
- [3] The defendant, in turn, disputes the reasons for the breakdown and has launched a counterclaim wherein he also seeks dissolution of the marriage albeit disputing the reasons for the breakdown. He too seeks the usual ancillary relief in respect of the custody, care and residency of the minor children. Considering the reasonable maintenance needs of the minor children and the obligation resting on both parties in proportion to contribute towards the minor children's maintenance needs, the defendant seeks an order to pay maintenance in respect of the minor children in the amount of R2 500 per month per child

until the children become self-supporting; that he be liable for the payment of fees relating to the children's pre-school, school and extra-mural activities; to retain the minor children as dependents on his medical aid fund and to pay the monthly premiums as well as payment of all reasonable and necessary expenses in respect of medical, dental, hospital, ophthalmic and psychotherapeutic treatment required by the minor children which is not covered by his medical aid.

- [4] The defendant also seeks an order that he pay rehabilitative maintenance to the plaintiff in the amount of R10 000 per month for a period of 6 months whereafter the amount will decrease to R5 000 for a period of a further 3 months, whereafter the maintenance will cease. Furthermore, that he retains the plaintiff as a beneficiary of his medical aid fund for a period of 6 months and the plaintiff will be responsible for payment of all reasonable and necessary medical expenses not covered by the medical aid fund, to pay to the plaintiff and amount of R50 000 within 30 days from the date of divorce and lastly to transfer the ownership of the Ford Kuga motor-vehicle into the name of the Plaintiff when the installments on the outstanding balance in respect of the financing over the vehicle has been paid in full.
- [5] Subsequent to launching these proceedings, the plaintiff launched proceedings in terms of Uniform Rule 43. Pending the finalization of the main action, she was awarded relief in pendente lite with the monetary part, excluding contribution towards legal costs, totaling R19 500[1] She was further awarded furniture and household items as listed in Annexure AO2 of the defendant's (respondent in the rule 43 application) answering affidavit.
- [6] It bears mentioning that as early as 9 September 2022, the defendant, in terms of rule 34 tendered unsuccessfully to the Plaintiff with prejudice, a decree of divorce, the usual ancillary relief pertaining to the rights and responsibilities of the parties relating to the custody, care and residency of the minor children, maintenance in the amount of R2 500 per month per minor child, payment of all reasonable school, extra-mural, cultural and sport activity fees. Retention of the minor children on his medical aid and payment of all monthly premiums and all reasonable and necessary medical costs not covered by the medical aid. In respect of the plaintiff he tendered, R10 000 rehabilitative spousal maintenance for a period of six months from the date of divorce and thereafter R5 000 per month for a period of three months, retention of the plaintiff on his medical aid and payment of all monthly premiums and all reasonable and necessary medical costs not covered by the medical aid for a period of six months from the date of divorce, transfer of the Ford Kouga into the plaintiff's' name and lastly a once-off payment of R50 000 within 30 days from the date of divorce.
- [7] I am indebted to both counsel for successfully narrowing the issues before the commencement of these proceedings. From the exposition above, it is patent that that the marriage has irretrievably broken down and that an order of dissolution of the marriage should follow. The parties are ad idem with regards to the ancillary relief sought in respect of custody, care and primary residency of the minor children. The parties are furthermore

in agreement that the Ford Kuga motor-vehicle will be transferred into the name of the plaintiff when payment of the outstanding balance owed in respect its financing has been paid in full.

- [8] Despite the plaintiff contending that there is still a dispute with regards to the quantum of the maintenance in respect of the minor children, in my view there is no dispute with regards thereto. The plaintiff seeks in her particulars of claim R5000 per month, in total, in respect of the minor children, that amount corresponds to what the Defendant tenders in his counterclaim: R2500 per child per month. In my view therefore, the only issues which remain for decision are the plaintiff's entitlement to permanent maintenance, the quantum thereof, retention on the defendant's medical aid and lastly her claim for payment of R1 000 000.
- [9] On the reasons which led to the breakdown, the parties testified at length on the reasons which led thereto, I however do not deem it necessary to probe into those reasons. From the evidence led, it is patent that both parties, one way or the other, were responsible for the breakdown of their marital union. Suffice to say that the plaintiff alleges that the breakdown was largely due to the defendant's alleged extra-marital affairs and emotional abuse, the defendant on the other hand, alleges that the reasons for the break down were largely due to the plaintiff's unrealistic financial demands and expectations and their incompatible personalities. No one party can be singled out as the single most contributor. This much is borne by the fact that both parties, when they testified regarding the reasons for the breakdown, alluded to the fact that they, singly, contemplated ending the marriage some eight years prior to the institution of these proceedings. Therefore, whatever may have led to the breakdown in the marital union is for present purposes immaterial, what is, is the fact that indubitably, the marriage relationship has irretrievably disintegrated, the plaintiff even vacated the communal home in 2022. I am satisfied that in the circumstances a divorce decree ought to be granted.
- [10] With regards to the plaintiff's claim for spousal maintenance, it is a general principle of our law that a marriage creates a reciprocal duty of support between spouses. Equally, neither spouse has an automatic right to spousal maintenance after dissolution of the marriage.[2] Section 7(2) of the Divorce Act 70 of 1979 (the Act) however provides that a court may, having regard to the parties existing or prospective earning capacities, financial needs and obligations, their standard of living prior to divorce, their conduct in so far as may be relevant to the breakdown of the marriage make an order for spousal maintenance. The party desirous of spousal maintenance however will have to provide evidence as to why he or she requires such maintenance. [3]
- [11] It is established law that awarding post-divorce spousal maintenance is clearly discretionary. In exercising its wide discretion, a court may or may not make an order granting maintenance. Where maintenance is granted this may be for 'any period' whether a specified period of time or until the happening of an event. The factors that a court will consider when awarding post-divorce maintenance are not exhaustive and the court has a

very wide discretion whether or not to grant a maintenance, the amount payable and the duration of the maintenance.

[12] In order to determine whether a party is entitled to spousal maintenance, a balanced assessment of maintenance needs and ability to pay is required.[4] The duty to maintain post-divorce arises only when there is a need, not want,[5] and the other party has the ability to pay. It is, after all, an unfortunate and inescapable consequence of the dissolution of marriage that parties, post-divorce, often have to abate their pre-divorce standard of living and adjust to their post-divorce financial reality.

[13] In an endeavour to establish a need for spousal maintenance, the plaintiff testified that she earns an approximate monthly income of R15 000 from her business as a beauty therapist which she conducts from her current home and generates an additional R6077 per month from the rental of a house she inherited from her deceased mother.[6] She also inherited an assortment of expensive antique furniture from her deceased mother and grandmother which she used to furnish her erstwhile communal home. In 2019 they however lost the communal home when it was razed to the ground by a fire. As the communal home and its contents were insured, she asserts that she and the defendant reached an oral agreement that he would reimburse her to the tune of the R1 000 000 for the razed antique furniture. It is noteworthy that the plaintiff save to detail the antique furniture she lost in the fire, she failed to successfully quantify the loss.

[14] She and the minor children currently occupy a townhouse at a monthly rental of R8900. Their daily living monthly expenses average R45 000. She testified that she was entitled to spousal maintenance of R10 000 per month until her remarriage as her current income was not enough and she felt entitled thereto due the 'humiliation and verbal abuse' she endured from the defendant over the years. With regards to medical aid she maintained that, due to her insufficient income, the defendant should retain her

on his medical aid for a period of one year from the date of divorce whereafter she will get her own medical aid.

[15] Upon being quizzed in cross examination on increasing her earning potential, the plaintiff conceded that with proper planning of her daily responsibilities, she has the potential to service more clients per day, thus generating more income.

[16] The defendant testified that he is a dealer principal at a certain motor-vehicle dealership earning a gross salary of approximately R80 000 per month with an annual performance-based bonus paid every November. He testified that from his gross earning he serviced his own living expenses and the maintenance in terms of the rule 43 order. He maintained that he stood by the rule 34 tender he made and could not pay any more as he, too, practically lived in debt.[7]

- [17] With regards to the claim for R1 000 000. he maintained that there never was such an agreement entered into between him and the plaintiff. In fact, he testified that with the proceeds from the insurance for household contents from their razed communal home, he bought furniture for their then new communal home. As part order issued in terms of rule 43, the plaintiff was awarded the furniture as listed in Annexure AO2, she however took much more than when she vacated the new communal home. Notwithstanding that she took more than what was provided for in the rule 43 order, the defendant however maintains that she can keep all the furniture she took when she moved out of the communal home.
- [18] Save to re-iterate the terms of the rule 34 tender and to take issue with the reasons for the breakdown of the marriage, not much was canvassed to gainsay the evidence of the defendant regarding his income and expenditure.
- [19] In the present matter the plaintiff is 41-years old and is self-employed. In addition to the income she generates from her business and rental property, she receives an amount of R19 500 pendente lite from the Defendant; R12 500 for herself and R7000 in respect of the minor children. In addition to this, the Defendant pays for the minor children's school fees and related expenses as well as their medical expenses. Regard being had to her present expenses vis a vis her income, it is patent that the relief she was awarded pendente lite is what keeps her afloat. She definitely has in my view discharged the onus that she needs spousal maintenance. I am however not persuaded under the circumstances that she has made out a case for permanent spousal maintenance. She is still relatively young, with the necessary adjustments and planning, her business can grow and generate more income than it is now. She alluded in evidence

that pre-Covid-19, her business flourished and she generated much more income from it than she currently does. Coupled with this her financial position ought to improve further when the sale of her house is finalized. She will either then have much more disposable

income or have sufficient finances to obtain a dwelling in her own name, thus relieving her of the rental amount she currently pays. That being said, her current ability to earn an income and potential to augment that income, does not in my view disentitle her to earn rehabilitative maintenance presently.

- [20] With regards to her retention on the defendant's medical aid she has not made out a case for retention on the defendant's medical aid scheme for one year, in view of the order I make hereunder, I hold the view that she will have sufficient resources to obtain her own medical aid cover in about three months from the date of this order.
- [21] I am mindful of the defendant's financial position. In my view, his financial position cannot be as dire as he sketched it out to be during evidence. Notwithstanding spending approximately 80% of his monthly salary in servicing the rule 43 order, he has diligently complied with that order and somehow managed to stay afloat. Furthermore, his financial position notwithstanding,

he repeated in evidence the rule 34 tender he made. In my view considering his current earning capacity and his declared assets he is in a much stronger financial position than the plaintiff and has sufficient means to pay rehabilitative maintenance, at least in the amounts and time frames as per the rule 34 tender.

[22] With regards to the plaintiff's claim for payment of R1 000 000 I am not persuaded that she has made out a case for this relief. Her version with regards to the existence of this agreement was wobbly at best. In any event, whatever claim she may have had as against the defendant in respect of the value of her furniture lost in the fire, it remains the defendant's uncontroverted evidence that the plaintiff, took from the erstwhile communal home more furniture and household items than she was entitled to in terms of the rule 43 order. Neither the rule 43 items nor the additional items were quantified. In the circumstances I cannot find for her in this regard, her claim therefore stands to fail. I am, however, inclined to award her the R50 000 as tendered by

the defendant and repeated in his claim in reconvention.

[23] With regards to costs it was submitted by counsel for the plaintiff that an appropriate costs order in the present matter would be one where each party pays their own costs. This he amplified and submitted that due to the plaintiff's financial position and amounts she already spent litigating,[8] he opted to act pro bono for her and would thus not render any account for his services. Counsel for the defendant submitted and prayed that the court exercise its discretion judiciously bearing in mind the period when the rule 34 tender was made.

[24] In my view, in the circumstances of this case, considering the parties' respective financial positions and that each were partially successful in their respective quests, I hold the view that an appropriate costs order is to order that each party pays its own costs.

Order

[25] In the result, the following order is made:

4.4. At least three hours of contact is awarded to the defendant on the birthday of the minor children and that of the Defendant.

10. The defendant will retain the plaintiff as a beneficiary of his current or similar medical aid scheme for a period of 3 months from the date of divorce and is liable for payment of the monthly premiums thereof as well as the reasonable and necessary costs of all expenses in respect of medical, dental, ophthalmic, orthodontist, psychotherapeutic treatment expenses of the minor children not covered by the medical aid scheme.
11. The defendant shall pay to the plaintiff an amount of R50 000 within 30 days from the date of divorce.

12 The defendant will sign all necessary documentation to transfer and register the Ford Kouga motor-vehicle into the name of the plaintiff when the installments on the outstanding balance in respect of the financing over the vehicle has been paid in full.

13. Each party to pay his or her costs.

NG GUSHA, AJ

Appearances For Plaintiff: Mr GJ Bredenkamp Instructed by: Bredenkamp Attorneys For the Defendant: Adv R Van der Merwe Instructed by: Neumann van Rooyen Attorneys C/O Phatsoane Henney Attorneys

[1] Rule 43 order: Mpama AJ dated 20 October 2022.

[2] Strauss v Strauss 1974(3) SA 79(A).

[3] Section 7(2) of the Act, EH v SH 2012

(4) SA 164 SCA.

[4] Van Wyk v Van Wyk [2005] JOL 17228 (SE).

[5] Kroon v Kroon 1986

(4) SA 616.

[6] She has put the house on the market for R750 000.00.

[7] The defendant has various credit card and personal loan debt that he is servicing.

[8] The Plaintiff has had no less than 6 legal representatives in this matter, costs for which she still remains liable for.

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/ZAFSHC/2024/297.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/wb-v-pgb-unknown-topic-afshc-2024>

Prepared on 10 October 2026 · Esheria