

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, PORT ELIZABETH)**

Case no: 3908/2016

Date heard: 15th December 2016

Date delivered: 17th January 2017

In the matter between

A. L. S.

Applicant

vs

C. A. S.

Respondent

JUDGMENT

TSHIKI J:

[1] The applicant (wife) herein is an adult female person employed as the Human Resources manager at S.'s M. G. at no [...] U. R., S., Port Elizabeth. She is presently residing at no [...] K. K. R., L., Port Elizabeth and is currently married to the respondent, both are to be referred to as the parties whenever it is convenient. In these proceedings, the plaintiff will be referred to as the respondent and the defendant as the applicant.

[2] The respondent (husband) is an adult male business person with various business interests presently residing at no [...] O., [...] L. R., L., Port Elizabeth.

[3] The parties are married out of community of property by virtue of a duly registered Antenuptial Contract in terms of the accrual system, as envisaged Chapter 1 of the Matrimonial Property Act 88 of 1984. There are two children born of

the marriage between the parties, whose names are *D. A. D. D. S.* (“*D.*”) a major male born on [...] 1997, and a student at NMMU and not yet self-supporting. The second child is *J. A. C. S.* (“*J.*”) a minor male, born on [...] 2006. Whenever it is convenient the children will be referred to as the children. The children referred to above reside with the applicant at no [...] K. K. R., L., Port Elizabeth. According to the applicant, the children and the applicant require maintenance and support.

[4] The erstwhile common home belongs to the respondent’s parents, who in turn reside in a property that belongs to the respondent and the respondent vacated the erstwhile common home on or about the 1st September 2015. On the 17th February 2016, the respondent instituted an action for divorce against the applicant and in that case the pleadings are already closed and the trial date has been allocated for the 29th March 2017.

[5] In the respondent’s second amended particulars of claim in the divorce action, the respondent has claimed the following:

“[5.1] a decree of divorce;

[5.2] orders with regard to guardian, care and contact;

[5.3] rectification of the antenuptial contract;

[5.4] an order that for the applicant to furnish to the Court a statement with supporting documents including particulars of estate to enable a proper calculation of the accrual and debatement of the order;

[5.5] payment to the respondent of any amount he may be entitled to in terms of the accrual, and debatement of the order;

[5.6] payment to the respondent of any amount he may be entitled to in terms of the accrual;

[5.7] an order that he pays the sum of R5 000.00 per month per child as maintenance, as well as all educational and medical expenses in respect of the children as well as the costs”.

[6] In the counter-claim the applicant seeks orders for, *inter alia*:

“[6.1] a decree of divorce orders, for guardianship, care and contact;

[6.2] maintenance for herself in the amount of R60 000.00 per month;

[6.3] maintenance for D. and J. of R15 000.00 per child;

[6.4] children’s medical and school expenses in so far as those had not been claimed from the respondent including those referred to in paragraphs 13.5 - 13.7 listed in paragraph 13”.

[7] The applicant has also listed the respondent’s various business interests which include:

[7.1] 48% members interest in *Seamond Investments CC* trading as *S., a Renault, Kia and Chery Motor* franchise with a branch in Sydenham, Port Elizabeth. The respondent is also said to have owned various business interests listed in paragraphs 31-37 listed on pages 10-12. The applicant has also listed her own interests which are listed in paragraphs 38.1-39. Her liabilities have been disclosed in paragraph 40 and 41 of the papers.

[8] The applicant has also requested the Court to order the respondent to contribute to the payment of the costs for D.’s driving lessons and testing together

with the payment by the respondent of the sum of R265 000.00 as an interim contribution towards his legal costs.

RESPONDENT'S OPPOSING AFFIDAVIT

[9] In his opposing affidavit, the plaintiff states that he is the plaintiff in the divorce proceedings and is residing at no [...] O., [...] L. R., L., Port Elizabeth. He denies the contents of paragraphs 2 and 3 of the applicant's affidavit including the contents of the allegations made by the applicant in those paragraphs. In his view, the expenses set out by the applicant in that annexure are reasonable, and that the expenses set out by the applicant in that annexure are her current expenses. He also denies that the contents of paragraph 7 of the applicant requires maintenance and support and that the rest of the contents of the contents therein are admitted. In his view, the expenses set out by the applicant in her affidavit are reasonable and that the expenses set out by the applicant in that annexure are her own current expenses. Such expenses would be usually between R18 000.00 and R22 000.00 per month with odd exceptions. In the view of the respondent his expenses would not exceed the figure of R22 000.00. This Court is aware that the maintenance *pendente lite* is intended to be interim and temporary and cannot be determined with the same degree of precision as would be possible in a trial where detailed evidence is adduced (**Taute v Taute** 1974 (2) SA 675 (E)).

[10] In this case the representatives of both parties have submitted to me the two draft orders which indicate similarities in that.

[10.1] Both parties have agreed that the respondent should be ordered to pay R10 000.00 per month per child as maintenance to the applicant for the two

children born from the marriage between the parties with effect from the 15th September 2016, payable on the 15th of each month, the first payment to be made on the 15th December 2016.

[10.2] That the applicant has accepted the offer as set out in [10.1] above without prejudice to her claim for permanent maintenance and her rights in that regard are fully reserved.

[10.3] That the respondent is ordered to continue with the payment of the expenses listed in paragraphs 45.2-45.6 of the applicant's founding affidavit dated the 2nd November 2016.

[10.4] The respondent is ordered to contribute R50 000.00 to the applicant's legal expenses, payable to the applicant's attorney in two instalments of R25 000.00 each, the first payment to be made on the 15th January 2017, the second payment to be made on the 15th February 2017.

[10.5] Costs of the main proceedings are to be determined at the trial.

[11] The same or similar draft order as in paragraph 9.1-9.4 was also submitted to the Court by the respondent's counsel.

[12] The above draft orders were submitted to the Court with a view to assist the Court about the intentions of the parties regarding the order that the Court should consider in this matter. I have no reason to believe that the parties have not at some stage of the proceedings by way of a consideration of the conclusion of the matter in the form as stated in the manner stated in the draft order referred to above.

[13] Having said the above, I am mindful of the general approach in similar cases that the applicant, who is normally the wife is entitled to reasonable maintenance

ending the finalisation of the divorce. This, in turn, is dependent upon the marital standard of living of the parties, her actual and reasonable requirements, and the capacity of her husband to meet her requirements. According to *Erasmus on Superior Court Practice Volume 2*, D-579. The Court will weigh all the circumstances of the particular case. The quantum of maintenance payable must in the final result depend upon a reasonable interpretation of the particular case as stated by the person claiming maintenance, who must establish a need to be supported by the respondent.

[14] I must say though that a claim supported by reasonable and moderate details carries some weight than one that includes extravagant demands (see *Erasmus on Superior Court Practice supra*).

[15] I must comment on the amount of R265 000.00 which has been claimed by the applicant for contribution for costs. The initially suggested amount was set at about R50 000.00 for the same legal expenses which was to be paid in two instalments of R25 000.00.

[16] In a previous affidavit in support of her claim, the applicant sought an amount of R265 000.00 for a contribution for legal expenses which were to be paid in three instalments of R100 000.00 each, the first payment to be made on the 15th January 2017, the second on the 15th February 2017 and the third instalment of R65 000.00 to be made on the 15th March 2017.

[17] The respondent has filed an affidavit in which he states that he denies that his total monthly maintenance amounts to R100 615.00 per month for himself and

children. Instead he contends that he can only afford a sum of R52 215.09 per month. Every month he has to pay his monthly expenses amounting to R52 215.09 which is an amount he can afford *pendente lite*. The respondent has also admitted that his gross income is R41 500.00 per month. He concedes that some of his monthly expenses are paid for by *Seamond Investments CC* and receives cash from the close corporation for business related entertainment expenses. He has also tendered the amount of R5 000.00 per child to the applicant at the present time.

[18] The respondent contents that the applicant has more than sufficient funds to maintain herself and the children *pendente lite*.

[19] Respondent has also informed the Court that the applicant will in the near future receive approximately R2 200 000.00 from the sale of land to the developer, which will be paid to her at the rate of R30 000.00 per unit and there is to be a total of seventeen units which will be sold in which project the applicant is likely to receive slightly just about R2 490 000.00 and the project will start of pay the applicant a sum of R30 000.00 per townhouse sold from approximately in the middle of 2017.

[20] From what has been explained by the respondent he does have some properties as stated in paragraph 26 of his affidavit. The respondent has also tendered a sum of R25 000.00 as contribution towards the applicant's legal costs in the amount of R25 000.00 and that the costs be costs in the divorce action.

[21] In matters of the same nature as the one in issue, each case has to be decided on its own particular facts (*Taute v Taute supra*). It has also to be noted

that maintenance *pendente lite* is intended to be interim and temporary and cannot be determined with the same degree of precision as would be possible in a trial where detailed evidence is adduced. What is important though is that the applicant is entitled to reasonable maintenance *pendente lite*. This always depend upon the marital standard of living of the parties. The same will have to apply in the case under discussion.

[22] Having dealt with the issues in this case, I am of the view that the respondent has to be ordered to pay maintenance to the applicant *pendente lite* as follows:

[22.1] The respondent is ordered to pay R10 000.00 per month per child as maintenance to the applicant for the two children born from the marriage between the parties with effect from the 15th December 2016.

[22.2] The respondent is ordered to continue with the payment of the expenses listed in paragraphs 45.2, 45.3, 45.4 and 45.5 of the applicant's founding affidavit dated the 2nd November 2016.

[22.3] The respondent is ordered to pay the costs of D.'s driving lessons and testing if and when it is payable either to D. or to the facility offering the driving lessons.

[22.4] The respondent is also ordered to pay R265 000.00 to the applicant's legal expenses payable to the applicant's attorney in five (5) instalments each, the first payment to be made on the 15th January 2017 for five consecutive months.

[22.5] The respondent is ordered to pay the costs of the divorce action to the plaintiff's attorneys.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

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