

**Not reportable**

**Delivered: 16 May 2007**

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(TRANSVAAL PROVINCIAL DIVISION)**

**CASE NO: 10648/2005**

In the matter between:

**COETZEE, MAGDALENA PETRONELLA THERON**

**Applicant**

And

**COETZEE, GEORG FREDRIK**

**Defendant**

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**JUDGEMENT**

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**LEDWABA, J**

*INTRODUCTION:*

[1] This is a defended divorce action. Plaintiff and defendant were married to each other on 15 April 1989 out of community of property. Three males minor children were born out of the marriage relationship between the parties viz:

1.1 J.C.J.C. (C.), born [day/month] 1989.

1.2 S.F.C. (F.), born [day/month] 1991.

1.3 G.F.C. (F.R.), born [day/month] 1995.

[2] Both parties agree that the marriage relationship between them has irretrievably broken down and there are no prospects of reconciliation between them.

[3] As far as the custody, access and maintenance are concerned, the parties agreed that, subject to the court's approval, custody and control of F. and F.R. is to be awarded to the plaintiff and the custody and control of C. to be awarded to the defendant.

3.1 Plaintiff would have reasonable access to C. and defendant would also have access to F. and F.R..

3.2 The defendant would be liable to pay the school fees of F. and F.R. and would retain them on his medical aid scheme. The quantum of maintenance would be determined by the relevant Maintenance Court.

3.3 The defendant would not be claiming maintenance from the plaintiff for the minor child F.R..

[4] The issue to be determined between the parties Court is on the principle of whether the defendant should be held liable to pay maintenance for the plaintiff, whether the defendant should retain plaintiff on his medical aid scheme and the costs.

[5] Both parties testified and did not call any witnesses.

[6] Plaintiff's evidence to support her claims can be summarised as follows:

6.1 She said she has not been staying together with defendant as husband and wife since September 2006. What caused the irretrievable breakdown was lack of fruitful communication, regular quarrels and the defendant's extra marital affair with another woman.

6.2 Plaintiff was born on 29 November 1966 and has been married to the defendant for about eighteen years. She has the following academic qualifications: Bachelor of Arts (BA) in psychology and Masters in Business Administration (MBA).

6.3 She started working in 1989 as a bookkeeper, a clerk, and as a sales representative. In 1983 she joined the South Africans Police Service (SAPS) until 2004, when she was declared medically unfit to be employed because she was diagnosed with arthritis.

6.4 She is presently working half working hours for 'Ons Huis Trust' on a contractual basis for a salary of R 2 500, 00 per month, doing administrative work. She further earns a pension of R 1 300, 00 per month.

6.5 She further stated that because of her unhealthy condition the defendant should pay maintenance and submitted that the defendant could afford to pay

maintenance for her.

[7] Plaintiff closed its case.

[8] Defendant testified that he is a captain in the SAPS. He has been in the SAPS for twenty-one years. His monthly salary is

R 8 885, 97 net and he thinks because of the affirmative action program there were no prospects for him to be promoted to a higher rank.

[9] He submitted that the plaintiff's health condition has now improved because since they lived apart, plaintiff could now drive a motor vehicle normally. He further said the doctors were initially of the opinion that she could not be employed but, at present, she is working and can still work for several years.

[10] He said that the divorce proceedings were caused by lack of communication and love in their marriage relationship. After he left the plaintiff in July 2006 he became involved in a love relationship with another woman and they are still staying together.

[11] He further said that throughout their marriage they did not live an affluent life style and they struggled to make ends meet. They lived in a state house, had to apply for a subsidy for the school fees and had to obtain an overdraft facility from the bank.

[12] He further submitted that the plaintiff should be removed as a member on his medical aid scheme because her medication utilises the available funds too much to the extent that the available funds for the medication and medical treatment of the children may be depleted. Defendant submitted that the plaintiff could obtain her medication from the State's hospitals free of charge and essentially, the children's access to the medical aid funds would not be compromised.

[13] Defendant closed his case.

[14] To decide on the issues raised in this matter the court must consider the provisions of **section 7(2)** of the **Divorce Act 70 of 1979** which reads as follows:

*“7(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.”*

[15] The plaintiff's and defendant's ages are forty-one years and

forty-two years, respectively, and they have been married to each other for about eighteen years.

[16] It is common cause that the plaintiff left her permanent employment in the year 2004 when she was declared medically unfit to work and she is now earning a pension of R 1 300, 00 per month. It is further common cause that the plaintiff is now doing some temporary work and her monthly income is R 2 500, 00.

[17] The defendant is employed on a full time basis and has a regular monthly income of R 8 885, 90.

[18] Even though it has been testified that the plaintiff's health has improved since the defendant left her in 2006 there is no medical evidence to confirm that her position will improve to a level that she will be medically fit to work for normal working hours in future.

[19] Plaintiff said she had to work because she needed to



supplement her income. She further said she cannot work for normal working hours and cannot work being in one position for too long. Plaintiff's prospects of earning more than what she is now earning are not certain.

[20] She stated that she needed to be on defendant's medical aid scheme because she needs some reserved medication for her illness which medication is not supplied at State Hospitals.

[21] Defendant said that he phoned the hospital on the day of the hearing and was told that the required medication is supplied at State's Hospitals. Except for the evidence of plaintiff and defendant concerning whether the state hospitals supply such medication or not, neither of the parties led further evidence to support his or her allegation.

[22] What is clear is that the plaintiff is on the defendant's medical aid scheme through which she can obtain her medication. There is no dispute that plaintiff needs the medication for her chronic illness.

[23] The defendant's prospects of earning more than what he is presently earning, except for normal annual inflation increases, are not very good. However, he has been contributing towards his pension for many years. Presently, an amount of R 972, 20 is being deducted from his salary. He will in future benefit from his pension benefits.

[24] In assessing the standard of living of the parties when they stayed together they lived an average standard which involved having to be in arrears in respect of certain necessities in their family. They had to apply for a subsidy for the school fees and had problems with short falls on the medical aid scheme because the plaintiff and their minor child F. needed medication and treatment which depleted the medical aid fund.

[25] Since 2004 - September 2006, before the defendant left the plaintiff, defendant was supporting his family including the

plaintiff. The plaintiff and the children have been members on the medical aid scheme. Plaintiff testified that defendant is presently not maintaining her and she used to have some financial assistance from his father when his farm was operating profitably.

[26] It is indeed correct that one of the fundamental principles for an award of maintenance is the ability of the party from whom maintenance is claimed, to pay. See **Reynecke v Reynecke 1990 (3) SA 927 E at 932J – 933F**. The other important consideration is whether the need for maintenance exists.

[27] The defendant testified about his income and expenses, I will not, in my judgement refer to great details of the parties income and expenses

[28] Defendant indicated that he is now staying with his girlfriend, C., and three children of his girlfriend. He said that he is contributing about a third of the expenses in the 'new'

household.

[29] When defendant was asked about how he deals with his shortage, his response was that he had to sell his car to pay his expenses and his girlfriend was assisting him financially. I however, fail to understand why would the defendant owe the girlfriend R 65 000, 00 payable in monthly instalments of R 1 100, 00 for the vehicle purchased by the girlfriend cash, if he had more liabilities. He should have kept his vehicle rather than to sell it. It is also clear that the amount of R 862, 00 for payment of the medical aid scheme should not have been included as an expense because same is deducted directly from the defendant's salary. In my view, the defendant may reduce some of his unnecessary and inflated liabilities and I am of the view that he may be able to afford to pay maintenance.

[30] I have also considered the criticisms levelled against the plaintiff's expenses and I am still of the view that the plaintiff needs maintenance.

[31] In my view, there is no merit in the defendant's counsel's submission that because the plaintiff did prefer a criminal charge against the defendant and further that she reported him at the SAPS, for unlawful use of the State's vehicle, that is an indication that she wanted the defendant to be suspended or dismissed and that it should therefore be inferred, from her aforesaid conduct that she does not care about the maintenance because if defendant is dismissed he would not be able to pay maintenance.

[32] I have not been requested to determine the amount of maintenance and the period thereof.

[33] There is a dispute concerning the wrongfulness of the conduct of the parties in so far as it may be relevant to the breakdown of the marriage.

[34] I have thoroughly considered the provision of **section 7(2) Act 70 of 1979** together with the facts of this case. In my

view, it is just to find that the plaintiff is entitled to personal maintenance from the defendant. I have considered that the defendant can still rescind, suspend or vary this order in future should there be any substantial change in circumstances of each or both of them.

**[35] I therefore, make the following order:**

- (i) I grant a decree of divorce;**
- ii) Custody and control of the two minor children, F. and Fredric, is awarded to the plaintiff subject to defendant's rights to reasonable access;**
- (iii) Custody and control of the eldest child, C., is awarded to the defendant subject to the plaintiff's rights to reasonable access;**
- (iv) The defendant is ordered to pay the school fees and to retain all the minor children and the plaintiff**

**on his medical aid scheme;**

**(v) Defendant is liable to pay maintenance for the two  
minor children, F. and Fredric, and the amount of  
maintenance to be paid will be investigated and be  
determined by the Maintenance Court.**

**(vi) Defendant is liable to pay maintenance for the  
plaintiff in the amount to be investigated and be  
determined by the Maintenance Court.**

**(vii) Defendant is ordered to pay the costs.**

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**A. P. LEDWABA**

**JUDGE OF THE HIGH COURT**