IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NUMBER: 08/9066

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED

_____ _____

DATE SIGNATURE

In the matter between

ESPAG, ARNOLDUS LOURENS Plaintiff

and

ESPAG, CATHERINA ELIZABETH

(born VAN DER WESTUIZEN) Defendant

Neutral citation: *ESPAG AL v ESPAG CE (08/9066)*

Coram: EF DIPPENAAR AJ

Heard: 26-30 January 2015 and 5 February 2015

Delivered: 17 April 2015

Summary: divorce action dealing with declaration that ante-nuptial contract excluding community of property and accrual was induced by undue influence and is a nullity, declaration that marriage is in community of property with ancillary relief and spousal maintenance.

ORDER

The following order is made:

[1] A decree of divorce is granted;

[2] The plaintiff is directed to make the understated contributions to the maintenance of the defendant and to:

[2.1] make payment of an amount of R15 000.00 per month, into an account designated by the defendant for a period of five years commencing on 1 May 2015 and thereafter at the 1st day of each consecutive month, subject to an annual increase commencing on 1 May 2016 in accordance with the Consumer Price Index as published from time to time and applicable at that specific time;

[2.2] retain the defendant as a beneficiary on the existing comprehensive medical aid scheme and to make payment of the monthly premiums thereof directly to the service provider for a period of 5 years commencing on 1 May 2015;

[2.3] pay the outstanding monthly instalments and insurance in respect of the Hyundai I20 motor vehicle presently in possession of the defendant until such time as the outstanding balance has been settled in full after which the defendant shall be liable for the insurance in respect of the vehicle;

[2.4] purchase a house or townhouse of the defendant's choice with a value of no more than R1.7 million and to have the property registered in the name of the defendant, to cause a mortgage bond to be registered over the said property and to make payment of the costs and the monthly payments on the said bond until the mortgage bond has been settled in full and thereafter to cause the mortgage bond to be cancelled at his costs;

[2.5] take out and maintain a life insurance or other appropriate insurance policy to secure his obligations in respect of the mortgage bond referred to in [2.4] above and to pay the premiums in respect of such policy until the mortgage bond referred to in [2.4] has been cancelled;

[3] Each party is directed to pay his/her own costs.

JUDGMENT

EF Dippenaar AJ

[1] This is a divorce action in which both parties have sought dissolution of their marriage which was concluded on 30 March 1991 and costs. The parties' two daughters, Carien and Elana have both attained majority during the course of the divorce proceedings and the relief initially claimed in respect of them has become academic and does not require consideration. The divorce proceedings were instituted by the plaintiff in February 2008.

[2] The plaintiff relies on an ante-nuptial agreement concluded between the parties dated 2 March 1991 in terms of which community of property and the accrual system in terms of chapter 1 of the Matrimonial Property Act 88 of 1984, as amended ("the Act"), are excluded. The plaintiff seeks a costs order only.

[3] The defendant, Mrs Espag, seeks substantial additional relief in her claim in reconvention. She presently seeks declaratory relief that the ante-nuptial contract was induced by undue influence and is a nullity, alternatively that the parties' proprietary regime is regulated inter partes by chapter 1 of the Act together with ancillary relief. She further seeks substantial spousal maintenance until her death or remarriage.

[4] Plaintiff's special plea pertaining to the defendant's claim based on a universal partnership was separated and determined by Kathree-Sitloane J on 25 October 2012 in favour of the plaintiff[1].

[1] Exhibit C

[5] Pursuant thereto, the defendant by way of amendment raised the present claim pertaining to undue influence which induced the conclusion of the ante-nuptial contract excluding community of property and excluding the accrual system.

[6] A rule 43 order granting defendant interim maintenance and ancillary relief was granted on 15 October 2009, followed by a further rule 43 order in terms of which defendant was granted a contribution of R150 000.00 to her legal costs on 24 November 2010. At the time of the trial the plaintiff was contributing to the maintenance of the defendant in an aggregate amount of some R27 000.00 which included rental and ancillary costs in respect of the defendant's accommodation and the cost of maintaining her on a comprehensive medical aid. The cash portion of plaintiff's contribution was dependant on SAFL providing a minimum of R8 000.00 contract work per month to the defendant.

[7] The matter has a long and unfortunate history, which it is not necessary to recant in detail. The plaintiff has sought to argue that the various delays in the finalisation of the proceedings were occasioned by the defendant in an attempt to protract the existence of the rule 43 order granted in 2009 in terms of which she was afforded certain interim maintenance. I am however not persuaded that the various postponements can be squarely placed at the door of the defendant or that it impacts on her bona fides in pursuing the relief presently sought. For example, the plaintiff's reluctance to fully disclose the necessary documentation pertaining to his financial position contributed to the delays.

[8] There are no reserved costs orders which remain to be determined. The plaintiff at trial abandoned the costs order granted in his favour by Claassen J on 20 October 2011 when the trail was postponed at the instance of the defendant and she was afforded the opportunity to obtain legal representation, her previous representatives having withdrawn some three weeks before trial due to a lack of funds. The defendant's legal representatives have since November 2011 acted on a pro bono basis and both the attorneys and counsel acted pro bono during the trial.

[9] It is common cause between the parties that the defendant bore the onus on the issues raised in her claim in reconvention who accepted the duty to begin. The defendant testified and called Sister Elsa Steyn as an expert witness pertaining to her future employability and earning capacity. The plaintiff also testified.

[10] By agreement between the parties, two expert reports of Dr Kellerman, an industrial psychologist, were accepted into evidence and she was not called to testify. Dr Kellerman's evidence pertains to the future employability and earning capacity of the defendant.

[11] The issues which must be determined pertain to: (1) the validity of the ante-nuptial contract, and whether it was induced by undue influence and constitutes a nullity; (2) if so, whether the marriage is in community of property in which event the parties are ad idem that a referee should be appointed to divide the common estate; in the alternative (3) whether the accrual system under chapter 1 of the Act is to be declared applicable to the marriage inter partes; (4) whether the defendant should be granted spousal maintenance in terms of section 7(2) of the Divorce Act[2] and, if so, the nature and extent thereof; (5) costs.

[12] During the trial, the plaintiff unconditionally tendered to continue paying the instalments and insurance in respect of a 2011 Hyundai I20 motor vehicle which was acquired for the defendant pursuant to the rule 43 order, until such time as the outstanding balance of some R70 000.00 was paid. I understand the tender to mean that it will endure until the outstanding balance is paid in full.

[13] The plaintiff is a 48 year old businessman with substantial membership interests in seven close corporations, who holds a NST6 qualification from Germiston Technical College. He is an electrical contractor whose main business interest is in South Africa Fault Location CC ("SAFL").

[14] The defendant is a 47 year old nursing sister who attended Upington Technical High School, whereafter she obtained a four year nursing diploma at SG Lourens Nursing College in 1989 whilst employed at the HF Verwoerd Hospital as a student

[2] 70 of 1979 as amended

nurse. She is a registered nursing sister (general, psychiatry, community nursing) and midwife. From 1991 to 1997 she was employed as a nursing sister at the Union Hospital. Defendant left the nursing profession during or about November 2002. She has experience in neonatal intensive care obtained during the period 1990 to 2002 and from 2012 to present. Since 2012 defendant has rendered nursing services via an agency on an ad basis at the Clinton Hospital in its neonatal ICU between three and seven days per month. Subsequent to the defendant leaving the nursing profession on a full time basis, the plaintiff taught her how to assemble personal computer ("PC") boards with components provided by SAFL, whereafter she performed part time services for SAFL from 2003 as a technician doing PC board assembly work for a remuneration of R4 000.00 per month. She has no formal training in this field. Defendant is presently employed by SAFL as a contract worker. No formal agreement regulates defendant's employment with SAFL.

[15] The defendant met the plaintiff, the brother of one of her friends, during 1990 and the parties formed a romantic relationship during or about September 1990. They were married at Kathu in the Northern Cape on 30 March 1991. At the time of their marriage, the plaintiff was 24 and the defendant 23 years old.

[16] Shortly before their marriage and on 2 March 1991, the parties concluded a written ante-nuptial agreement excluding community of property and the accrual system under chapter 1 of the Act in Pretoria. Although the ante-nuptial contract attached to the particulars of claim is not signed by both parties it is common cause between them that such contract was concluded.

[17] Prior to their marriage, neither of the parties had substantial assets other than a motor vehicle and furniture and both parties needed to work to meet their household expenses. It is undisputed that the defendant at the time had more items of furniture than the plaintiff. The defendant was living in a rented flat whilst the plaintiff and his sister shared a rented flat. The plaintiff was at the time employed at Patented Devices in Johannesburg whilst the defendant was employed as a nursing sister at the Union hospital in Pretoria.

[18] Two daughters were born of the marriage during 1993 (Carien) and 1995 (Elana). At present they are respectively 21 and 19 years old. Carien is married and Elana is studying photography through a UK based entity. Both daughters live in Jeffries Bay. The plaintiff is contributing to their maintenance.

[19] No assets were registered in the name of the defendant during the marriage.

[20] The parties' marriage broke down during November 2007, with the plaintiff announcing to the defendant that he could no longer continue with the marriage during a session with a psychologist who had been treating him for depression since about mid 2007. The plaintiff advised defendant that he had met someone else and wanted to explore that relationship further. The plaintiff left the matrimonial home on 28 December 2007, since which time he has cohabited with his present girlfriend, Ms Oosthuizen, with whom it was undisputed he formed a relationship during or about mid 2007.

UNDUE INFLUENCE ISSUE

[21] In summary, the defendant pleaded[3] that during March 1991, and immediately prior to the marriage the parties verbally agreed that the operation of the accrual system would apply to their intended marriage[4]. Contrary to the verbal agreement and on 2 March 1991, the plaintiff acquired an undue influence over her, which weakened defendant and her resistance and made her pliable, which influence plaintiff used in an unscrupulous fashion/fraudulent manner in order to prevail on defendant to agree to the signing and conclusion of an ante-nuptial contract which excluded the accrual system, resulting in the conclusion of such contract. The defendant further contends that exercising a normal free will she would not have concluded the ante-nuptial agreement which is to her prejudice and that she is entitled to a declaratory order that the ante-nuptial contract is null and void. In the alternative, defendant claims a declaratory order that the parties' marital regime is governed inter partes as if the provisions of chapter 1 of the Act is applicable to the marriage.

[3] Plea para 5
[4] Plea para 5.2

[22] This claim was introduced by way of amendment after the upholding of the plaintiff's special plea to defendant's claim based on a universal partnership[5] by Kathree-Sitloane J.

[23] Despite initially objecting to the proposed amendment, plaintiff did not persist in his objection and the amendment was effected on an unopposed basis. During argument, after the evidence, the plaintiff contended that the claim was excipiable and fell foul of the parol evidence rule. No exception was however taken against the particulars of claim as amended. Had such exception been taken, it may have resulted in the duration of the trial being reduced, or a further amendment being proposed. This is a factor which is to be considered in awarding an appropriate costs order.

[24] The plaintiff in his plea[6] denies that he was in a position to or attempted to weaken the defendant and her resistance or used any influence in an unscrupulous/fraudulent manner or at all. He contends that defendant was at all times fully aware and in agreement with the terms of the ante-nuptial contract.

[25] The requirements to be met in order to succeed with the relief sought[7] are the following:

[25.1] that the plaintiff gained an influence[8] over the defendant;

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[5] Plea paras 5.8 to 5.17

[6] Paras 10-12

[7] Patel v Rabie 1974 (1) SA 532 (A); Gerolomou Construction (Pty) Ltd v Van Wyk 2011 (4) SA 500 (GNP)

[8] It is not necessary to prove that the influence was such as would have induced a reasonable person in the position of the defendant and it is sufficient to show that it in fact induced her. Preller v Jordaan 1956 (1) SA 483 (A) at 493G referring to a dictum of Lindley LJ in Alcard v Skinner (1887) 57 LT 61 72: 'Court of equity have never set aside gifts on the ground of the folly, imprudence or want of foresight on the form part of the donors. If the influence has been exercised in an unscrupulous manner it will not avail the influencer to say it would not have affected a reasonable person, but if the contract was due to the folly, imprudence or lack of foresight of the party seeking relief is claimed to set it aside will fail for lack of causation as the influence did not induce the contract. Lest it be thought that this limitation of the doctrine is insufficient to prevent the undue influence getting out of hand.' Fagan JA said immediately before the above quotation: 'Ek sien geen gevaar dat die regsbronne waarna ek hierbo verwys het en die vertolking wat ek daaraan gegee het, n Hof daartoe mag lei om bv. die oorredingsvermoe van n vernuftige verkoper. 'n geesdriftige kollektant of 'n welsprekende prediker as "onbehoorlike" beinvloeding te bestempel.'

[25.2] that this influence weakened the defendant's resistance and made her will malleable; and

[25.3] that the plaintiff used that influence in an unconscionable manner to persuade the defendant to agree to a transaction which operated to her prejudice and which she in normal circumstances would not have concluded.

[26] The defendant cannot succeed unless the contract is one which, but for the undue influence, would not have been made.[9]

[27] The effect of undue influence, as with fraud, is to make the contract void ab initio only if the influence induced in the mind of the party seeking relief was such a fundamental mistake that his/her apparent assent to the contract is in truth not assent at all. In all other cases this contract is voidable at the option of the party influenced.[10]

[28] A confidential relationship between persons such as prospective spouses is a relevant factor to consider but does not create any presumption of undue influence.

[29] On the defendant's version, she had no knowledge of marriages out of community of property and her parents were married in community of property. She had no experience of divorce or litigation in her family. She wished to be married in community of property. She and the plaintiff had a discussion about the issue prior to concluding the ante-nuptial contract during which he explained to her that it would be best for them to be married out of community of property as their family unit would be protected against third parties if anything went wrong in the new business he intended starting. He referred to the disastrous effects of his father's recent sequestration and mitigation of such effects as his mother was able to save certain of the furniture and assets as his parents were married out of community of property. The defendant was aware of the sequestration and its consequences as she was a friend of plaintiff's family at the time.

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[9] Katzenellenbogen v Katzenellenbogen and Joseph 1947 (2) SA 528 (W) at 541
[10] Preller v Jordaan supra at 496

[30] According to the defendant, the plaintiff indicated that his experience of the sequestration was traumatic and that he wanted to protect her from such a traumatic experience. This convinced her to accept the plaintiff's suggestion and she agreed to a marriage out of community of property. The plaintiff further promised that they would prepare wills and take out policies to protect each other. He promised that as between them 'everything that was his was also hers'. When this was done she was satisfied that everything was in place. The will and policies were however only finalised some 21 months later, after the plaintiff had started his new business (which ultimately grew into SAFL). According to the plaintiff the will and policies were executed in order to protect his business and not the defendant.

[31] The defendant testified that she implicitly trusted the plaintiff and accepted his promises and suggestions as being in their best interests. There was no discussion between them about the accrual system at the time.

[32] The defendant testified that the plaintiff made the arrangements to see an attorney in Pretoria whom they jointly consulted on one occasion when they signed the ante-nuptial contract. The plaintiff collected her from work and they went to see the attorney. The attorney asked how they were to be married and the plaintiff responded out of community of property. The plaintiff also indicated that it was to be without accrual when asked. The defendant at the time thought accrual meant children. The attorney did not explain to them what the various options meant. Defendant agreed to and signed the ante-nuptial contract. She did not query any of the regimes with the attorney.

[33] At the end of the defendant's case, the plaintiff sought absolution in respect of this claim, which I refused. I provided reasons for such refusal at the time.

[34] The plaintiff disputed the defendant's version in various respects. His version was that the parties had discussed the various benefits and disadvantages of the various systems. He provided no detail of exactly what they had discussed and did not testify specifically that he had explained the accrual system to the defendant. He denied attempting to influence the defendant and emphasised that she was a strong willed woman who stood by her principles and was not easily influenced.

[35] The plaintiff's version was that the defendant had found the attorney in Pretoria and had made the arrangements for the conclusion of the ante-nuptial contract. He agreed that they consulted the attorney once when they signed the ante-nuptial contract, during which visit the attorney explained the different ways in which the parties could get married. Both parties agreed to the ante-nuptial contract and signed it.

[36] The plaintiff contended that the ante-nuptial contract did not prejudice the defendant as she had more assets than him at the time. This contention is unsustainable as the uncontested evidence was that the defendant's assets at the time comprised of a VW beetle, kitchenware and a few pieces of furniture, with no considerable value.

[37] The plaintiff testified that the reason he wanted to be married out of community of property excluding the accrual system was because he started his career as a businessman at the tender age of 13 and knew how to do business. He was aware that it was necessary to take risks and that it was important to protect the people around him. He had discussed the proposed marriage with his father who advised him to get married out of community of property as it would protect them if something went wrong with plaintiff's business activities and should his estate be sequestrated. In cross-examination it was pointed out that at the time of the father's marriage the accrual system did not exist and it was improbable that defendant's father would have advised him on the intricacies thereof. He could not satisfactorily explain how he acquired knowledge of the accrual system.

[38] The plaintiff's evidence on this important issue is in various respects unsatisfactory. The plaintiff was in various instances evasive, glib and unconvincing in his evidence and did not squarely deal with pertinent issues such as the discussion of the accrual issue.

[39] Mindful of the applicable principles[11], and on the probabilities, I accept the defendant's version that the plaintiff convinced her to agree to get married out of

[11] Stellenbosch Farmers Winery Group Ltd and Another v Martell et Cie and Others 2003 (1) SA 11 (SCA), 14I-15E, para [5]

community of property. I further accept defendant's version that the accrual system was not discussed expressly between the parties and that she may not have fully understood the meaning and implications of the accrual system at the time. It is common cause on the parties' evidence that the consequences of the sequestration of plaintiff's father was pertinently raised by the plaintiff and formed an important part of their discussion. The plaintiff was far more commercially astute than the defendant and had clearly considered the various implications of the available marital regimes in the context of his future plans. It is improbable that the attorney only drafted the contract during the single consultation with the parties.

[40] I also accept that the plaintiff promised the defendant in the process that she would be protected. Plaintiff's denial that he had influenced the defendant in any way and his disavowal of any promises to the defendant in the circumstances ring hollow.

[41] The circumstances surrounding the termination of the defendant's nursing career and her subsequent contract employment at SAFL, her lack of salary increases and the retention of her salary by SAFL, which defendant accepted without demur until the divorce proceedings were pending, on the probabilities illustrate that the plaintiff was the dominant party in the relationship and not the defendant.

[42] The defendant's version that it was the plaintiff who arranged the drafting and consultation with the attorney accords with the probabilities. On his own version, the plaintiff was the party with definite ideas as to how the parties should get married and a knowledge of the meaning and implications of the various regimes. The attorney must have been provided with instructions at the time the consultation was arranged as to how to draft the ante-nuptial contract, which was signed during the consultation. It is improbable that the defendant would have done so and would specifically have provided instructions to exclude the accrual system as she was not aware of its meaning and import. It is more probable that the plaintiff took the initiative in this regard. It is however improbable that the attorney offered no explanation of the different marital regimes during the consultation unless he was

satisfied that both the parties understood the agreement they were concluding. If the defendant did not understand the meaning any of the provisions of the contract she could and should have queried it at the time.

[43] In Barnard v Barnard[12], Griesel J considered the propriety of a claim to set aside an ante-nuptial contract which excluded community of profit and the accrual system on the basis of, inter alia, undue influence on the part of the husband.[13] As in the present instance, Mrs Barnard contended that the entire contract was a nullity and that the marriage was one in community of property. Restitution was not claimed. Griesel J found that the relief claimed was misconceived and upheld the objection to the proposed amendment.

[44] Griesel J, after considering Ratanee v Maharaj and Another[14], Rakagiatis v Estate Rakagiatis[15] and Umhlebi v Estate of Umhlebi and Fina Umhlebi[16], cases relied on by the defendant in this matter, found them distinguishable on the facts. Moreover, such cases constitute authority for the proposition that undue influence may be relied on as a causa for restitution in integrum and not for the proposition that the voidibility of an ante-nuptial contract on the ground of undue influence inevitably results in a marriage in community of property.[17] I am in respectful agreement with this view.

[45] There is no automatic right on the part of a prospective spouse to participate in the accrual of the estate of the other spouse and such right accrues only by agreement[18].

[46] The defendant contends that the Barnard decision is incorrect. I do not agree.

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[12] 2000 (3) SA 741 (C), decided as an objection on the ground of excipiability to a proposed amendment launched by the wife to introduce, inter alia, a claim similar in nature to the defendant's present claim
[13] In Barnard, supra, various other issues arose which are not relevant to the current proceedings
[14] 1950 (2) SA 538 (D)
[15] 1939 NPD294
[16] (1905) 19 EDC237
[17] Para [30], 752B-D
[18] Barnard, paras [18] and [19], 748G-749B

[47] In the present instance, it is not the defendant's case that there was an agreement that the marriage would be in community of property and her evidence was expressly that she agreed to a marriage out of community of property as it would protect the parties against third parties. It was not the defendant's evidence that there was any prior agreement that the marriage would be in community of property, despite the contention in her plea. Defendant's complaint solely relates to the exclusion of the accrual system. Any lack of consensus, if proved, can at best only affect one severable clause of the ante-nuptial contract, being that pertaining to the accrual system and cannot result in the nullity of the whole ante-nuptial contract. The defendant's evidence that the plaintiff promised her that 'as between them, everything that was his would also be hers' cannot in my view be elevated to an express agreement that the parties would be married in community of property. It would rather form part of plaintiff's method of persuading defendant to agree to a marriage out of community of property.

[48] As in Barnard, the defendant is seeking to substitute a new and more favourable contract for the one allegedly induced by undue influence. This she cannot do absent any suggestion that there had been a prior agreement or understanding between the parties that their marriage was to be in community of property[19]. Her express evidence does not support such finding and such evidence may well have fallen foul of the parol evidence rule. It is however not necessary to express a definitive view on this issue.

[49] It follows that the defendant is not entitled to a declaratory order that the marriage was in community of property, whether on an inter partes basis or otherwise, even if she discharges the onus in respect of undue influence.

[50] The defendant contends that Barnard was wrongly decided given the default position of a marriage being in community of property in the absence of an ante-nuptial contract. I am not persuaded that such contention is correct. If anything, the undisputed evidence indicates that that there was an express discussion and

[19] Para [32], 753A-B

agreement on the marriage being out of community of property and not in community of property.

[51] I am further not satisfied that the defendant's evidence illustrates that the plaintiff's evidence was undue. On the evidence presented, the defendant has in my view not discharged the onus of proving that the conclusion of the ante-nuptial contract was induced by undue influence and that the requirements of such claim have been met. I am not convinced that the conduct of the plaintiff constituted unconscionable conduct as envisaged in Patel[20] or amounted to anything more than the eloquence of a talented businessman[21].

[52] I am further not satisfied that the defendant has illustrated that it was the conduct of the plaintiff which caused her to agree to the conclusion of the ante-nuptial contract. On her own version, the defendant was happy to conclude any agreement which would protect them against third parties if the plaintiff's estate was sequestrated.

[53] The defendant further took no steps to ascertain the consequences and implications of the accrual system and did not request the attorney for any explanation at the time of signature of the ante-nuptial contract. On her version, once she discovered its meaning in the nurses' tea room in 1997, she did not raise the issue with the plaintiff, nor sought to have the ante-nuptial contract amended or to obtain advice on the issue. She never insisted that any assets acquired be registered in her name. She was satisfied with the contract until the divorce proceedings were instituted.

[54] In the circumstances, I am not satisfied that the defendant has discharged the requisite onus and this claim of the defendant must fail.

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[20] Supra fn7

[21] 'vernuftige verkoopsman' in the words of Fagan JA in Preller v Jordaan supra at 493E-F

[55] The conduct of the plaintiff is however a factor which in my view should be considered in determining the defendant's entitlement to maintenance in terms of section 7(2) of the Divorce Act[22].

SPOUSAL MAINTENANCE ISSUE

[56] In the present instance no redistribution order in terms of section 7(3) of the Divorce Act was sought, nor would it have been appropriate to do so.

[57] Section 7(2) of the Divorce Act lays down the jurisdictional requirements which must be met to determine whether a Court, in the exercise of its discretion, should grant any order in respect of spousal maintenance. Section 7(2) provides: '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 the 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.'

[58] Absent such an order a spouse has no right to maintenance after divorce[23]. Section 7(2) provides a discretionary remedy[24] requiring a party to make out a factual basis for a maintenance award to be made before the quantum and duration thereof are determined[25].

[59] In the context of section 7(2) what is "just" entails a recognition that in an appropriate case the accommodation requirements of the spouse have to be met

[22] 70 of 1979 as amended
[23] Strauss v Strauss 1974 (3) SA 79 (A)
[24] Beaumont v Beaumont 1987 (1) SA 967 (A) at 987E; Katz v Katz 1989 (3) SA 1 (A) at 11A-C
[25] AV v CV 2011 (6) SA 189 (KZP) para [9]

as part of such spouse's reasonable maintenance needs[26]. An enquiry into what is "just" is directed at the interests of both spouses and the impact which the order will have on each.'[27] It encompasses a moral component of what is thought to be "right" and "fair"[28].

[60] Where there can be no equitable division of capital assets because there was no community of property nor sufficient ante-nuptial settlement to ensure fairness, application of the provisions of section 7(2) must be utilised to ensure that the parties are treated fairly vìs-a-vìs one another[29].

[61] As pointed out by Satchwell J in Botha v Botha[30]: 'the constitutional dispensation against which we must measure the impact of all court orders affirms principles of human dignity, the achievement of equality and non-sexism'.

[62] It is trite that medical expenses form merely one of the components embraced in the general concept of the duty to support[31]. The common-law duty to support has been described as entailing the provision of accommodation, food, clothing, medical and dental attention and whatever else the spouses require.[32] Although this duty to support terminates at divorce, it can survive in terms of a settlement agreement, alternatively a court order.[33]

[63] In determining a just award, I have considered the relevant factors without any factor being dominant.[34]

[64] At the date of the trial, the marriage had a duration of 24 years, the last 7 years of which the parties have been separated. The plaintiff is presently 48 years old and the defendant 47. During the marriage the parties enjoyed a relatively high

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[26] Zwiegelaar v Zwiegelaar 2001 (1) SA 1208 (SCA) 1212I-1213A, para [14]
[27] Botha v Botha 2009 (3) SA 89 (W) at 97 para [43]; Kroon v Kroon 1986 (4) SA 616 (E) and Rousalis v Riousalis 1980 (3) SA 446 (C)
[28] Botha supra, fn27
[29] Nilson v Nilson 1984 (2) SA 294 (C) at 297
[30] 2009 (3) SA 89 (W) at 97
[31] Thomson v Thomson 2010 (3) SA 211 (W)
[32] Sinclair, Law of Marriage Vol 1 at 443
[33] Rubenstein v Rubenstein 1992 (2) SA 709 (T) at 712F
[34] Grasso v Grasso 1987(1) SA 48 (C); Van Wyk v Van Wyk [2005] JOL 17228 (SE), Swart v Swart 1980 (4) SA 364 (O); Section 7(2) par [59] supra

and comfortable standard of living, which the plaintiff has been able to maintain, despite his substantial contribution to the interim maintenance of the defendant and the parties' major children.

[65] The defendant argued that the supporting documentation provided in respect of the plaintiff's assets, and specifically the value of his interests in the seven close corporations of which he is a member, is unreliable as it pertains to different years. During cross-examination, the defendant illustrated various of the inaccuracies in the schedules provided by the plaintiff in respect of his assets/liabilities and income and expenditure.[35] This resulted in an amended schedule being provided by the plaintiff during argument[36].

[66] The plaintiff according to his evidence and after cross-examination, presently has assets of R4 406 517.00, including a house of R1.725 million and a 2011 Nissan Navara VAX motor vehicle. R2 932 134.00 of his assets comprises of loan accounts to the various close corporations in which he has an interest and a loan of R80 000.00 made to his daughter, Carien, to start up a business. His liabilities at present are R3 040 218.83, leaving, on his version, nett assets in an amount of R1 366 298.17. Plaintiff's liabilities include an amount of R70 000.00 pertaining to the outstanding balance of the Hyundai motor vehicle tendered to the defendant and amounts of R143 487.36 and R91 961.34 in respect of Elana and Carien's motor vehicles. Plaintiff's liabilities further consist of various loans with different financial institutions, eight credit cards and other loans in respect of legal fees. The amended schedule provided during argument reflected an increase in assets of some R405 676.00 in relation to the loan accounts.

[67] Plaintiff testified that to date, excluding the trial, his legal fees had amounted to some R820 000.00. His legal fees in defending the defendant's claims may ultimately be in the region of some R1 million. In evidence, plaintiff complained that these legal fees have ruined him financially and has been the source of a substantial portion of his current debt.

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[35] Exhibit H
[36] "A" was updated to "B" as attached to plaintiff's heads of argument

[68] Plaintiff's monthly expenses amount to R101 979.43. Plaintiff's evidence was that he does not budget and spends his money until it is finished. SAFL pays for any expenses that his monthly salary from SAFL cannot meet. In plaintiff's view, his children consider him an ATM machine. It is clear that the plaintiff is a caring father and attempts to satisfy his children's needs, and on occasion, their whims, in excess of their necessary requirements.

[69] It does not appear that the plaintiff has substantial difficulties in meeting his monthly expenses, even when the additional expenses are substantial, as during the month of Carien's wedding where an amount in excess of R13 000.00 was spent on restaurants and entertainment and Elana's expenses increased to R17 300.00. Upon finalisation of the divorce proceedings, plaintiff will have no further legal expenses. Plaintiff sought to rely on a resolution of the members of SFL on 1 November 2011[37] in which the other members in SAFL complained of the plaintiff's drawings, which would 'put the company in dire straits'. I agree with the defendant's contention that this document appears orchestrated, as borne out by subsequent events. The plaintiff is the managing member of SAFL and did not reduce his expenses thereafter but increased them substantially. No further complaints appear to have been raised by the other SAFL members. During the past year, plaintiff's expenses in respect of Elana increased substantially to some R17 300.00 per month on occasion. It must be borne in mind that a parent's duty of support to a major child who is not yet self-sufficient is in relation to necessary expenses and not all expenses.

[70] The defendant's financial position stands in stark contrast to that of the plaintiff. No assets were registered in her name during the marriage nor did she independently acquire any assets.

[71] The defendant's assets[38], including the value of R119 000.00 in respect of the Hyundai motor vehicle, is R196 567.42 and comprises of furniture and two Old Mutual policies. Her liabilities are R208 187.53 (including the outstanding debt of R70 000.00 in respect of the vehicle) and R138 187.53 excluding the vehicle. Her

[37] Second rule 43 application, "X", p58
[38] Exhibit D, (exh A, p219V)

liabilities comprise of various clothing accounts, some of which on her evidence date back to a period prior to the breakdown of the marriage, a private loan with a balance of R16 695.91 utilised for university fees and related expenses for Elana and various liabilities with Absa and Nedbank. The defendant has a negative nett asset balance, if the vehicle which the plaintiff has tendered and the legal costs which plaintiff has abandoned are excluded.

[72] The plaintiff has adopted the approach that the loan in respect of Elana's aborted university expenses was a folly on the part of the defendant, for which she must bear the consequences. This view appears harsh, bearing in mind the plaintiff's own indulgent approach towards Elana.

[73] In evidence, the defendant testified that her present average monthly income is in the region of R8 000.00 earned from assembling PC boards for SAFL. Defendant further earns an average of R6 545.00 from part time nursing resulting in an average monthly income of some R14 545.00 per month. The threshold of an R8 000.00 income earned by the defendant from SAFL was a factor included in the rule 43 order.

[74] From the evidence, and as argued by the defendant, it is improbable that SAFL will continue to make use of the defendant's services. The defendant has no job security and no formal contract exists regulating the services she presently renders to SAFL on a contract basis. It is clear that the defendant was not treated as a normal contract worker, in that she has not received any increases in her remuneration since 2003 and a substantial portion of her income had been retained by SAFL until it became an issue after institution of the divorce proceedings. The income generated by defendant from SAFL subsequent to the granting of the rule 43 order was close to the threshold of R8 000.00 referred to in the rule 43 order. Defendant has during the course of the divorce proceedings not actively utilised her best endeavours to maximise her employment opportunities but has remained dependent on the PC assembly work she obtains from SAFL. The plaintiff's contention that the defendant is "in a comfort zone"', is an accurate summary of the

position. Upon divorce, it is not probable that the defendant will continue to derive this income and that her employment with SAFL, such as it is, will continue.

[75] The defendant in evidence expressed a wish to continue working for SAFL as in the past as her primary job. Her expectations in this regard appear unrealistic. The plaintiff testified that from his perspective, the position was 'uncomfortable'. Plaintiff's current girlfriend, Ms Oosthuizen is employed by SAFL which may exacerbate the discomfort. It is probable that the defendant was only provided with work as it was linked to the rule 43 order which was granted. I shall return to the issue of defendant's employment prospects later.

[76] According to Dr Kellerman, defendant's average income varied between R8 868.70 and R9 430.00 per month at the time of her assessment in 2011. This figure is in the region of the threshold set in the rule 43 order and, provided this threshold was met, the plaintiff did not have to pay an additional amount of maintenance to the defendant to make up the shortfall.

[77] The defendant's monthly expenses amount to R27 717.91, taking into consideration plaintiff's tender in respect of the Hyundai motor vehicle.

[78] The plaintiff did not strenuously contest the defendant's expenses. In evidence, he suggested that she could obtain cheaper accommodation in New Redruth in an amount of R7 000.00 per month, but no cogent evidence was presented supporting his view. Plaintiff further criticised defendant's telephone expenses as being too high and criticised her monthly church contribution of R1 000.00.

[79] Considering the nature and extent of defendant's expenses as presented, they do not appear excessive. Even stripped to the minimum, it is clear that the defendant on her present income will not be able to afford payment of her medical aid expenses, accommodation and ancillary expenses in order to sustain a dignified standard of living.

[80] Of the factors to be considered under section 7(2), the defendant's earning capacity was the most contentious.

[81] The report of Dr Kellerman concludes that the defendant is unlikely to obtain employment as a PC board assembly technician in the open labour market by virtue of her lack of qualifications. In her view, the defendant would be better suited to the nursing profession, although her age and break in experience could count against her. There is however a shortage of trained nurses which could increase defendant's prospects of obtaining a permanent position.

[82] According to Dr Kellerman's internet research, a professional nurse in ICU could earn between R5 787.00 to R24 110.00 per month. The quantum yearbook 2011 reflects that a professional nurse can earn between R9 464.00 and R16 846.00 per month. In her supplementary report[39], Dr Kellerman refers to available Netcare positions (in 2011) at between R12 850.00 and R17 000.00 per month. It is unclear whether these figures are gross or nett of any deductions. No current figures were provided. Dr Kellerman's view was that defendant would have to update her knowledge in the next 2 years to ensure employment at a reasonable rate. She would have to enter the labour market on a relatively low level of pay but could have the potential to progress to higher levels of compensation after about 3 years.

[83] During cross-examination the defendant was extensively cross-examined about various alternative options theoretically available to her, both in a direct nursing environment and in related environments. No tangible alternatives were provided and it is not appropriate to speculate about the likelihood of the defendant obtaining employment in any of the fields suggested.

[84] From the defendant's evidence it is however clear that she has made no concerted effort to upgrade her skills in the time that the divorce proceedings were pending and did not heed Dr Kellerman's recommendation that she update her skills in order to become commercially competitive.

[85] In cross-examination, the defendant was justifiably criticised for not utilising the protracted period it took to finalise the divorce proceedings to enhance her

[39] Notices bundle Vol 4, p469

skills and to fully investigate all possible employment opportunities. She was also criticised for providing her nursing services through an agency which receives 25% of her earnings and for not rendering nursing services for more than a few days a month.

[86] There is merit in this criticism and it appears that the defendant adopted a "wait and see" approach as to what the result of the divorce proceedings would be before she actively made alternative arrangements. She conceded this to be the case in cross-examination. From the defendant's evidence this attitude appears to have been underpinned by a strong sense of betrayal arising from the conduct of the plaintiff and a breach of the promises he had made. This does not however justify the approach adopted by the defendant. The defendant's approach is regrettable and unrealistic and illustrates a lack of foresight on behalf of the defendant. The defendant's attitude is in my view a factor which must be taken into account in considering the issues surrounding maintenance.

[87] The plaintiff argued that the defendant is effectively the author of her own misfortune in the circumstances and that she is well able to maintain herself but deliberately chose not to do so. This contention however disregards that the defendant's employment prospects at present are limited and it will take time to enhance her skills and become economically competitive. According to Dr Kellerman's report, even if the defendant utilises her best endeavours, it will take a period of some five years until her skills are upgraded and defendant can command a competitive salary which can meet her needs.

[88] The plaintiff contended that the defendant after resigning from her nursing position started her own business assembling PC boards. His evidence was that he attempted to support her in spreading her wings and growing the business but shat she was hesitant to do so as she was fearful and in a comfort zone. The plaintiff suggested that she did indeed start her own business after the parties' separated by creating an invoice reflecting herself as the 'managing director' of a business styled 'Perfecta'. The defendant denied ever commencing her own business as the creation of the invoice was merely to boost her sense of self-worth at a time when

she was at her lowest ebb, which letterhead had been created by her friend, Carien, the plaintiff's sister. It seems that the plaintiff was opportunistic in seizing upon the letterhead to contend that defendant had in fact started a business, as he must have been aware that SAFL's records referred to the defendant personally as the contract worker and not the business. The plaintiff, as the person who trained the defendant, must also be fully aware of her level of skill and any deficiencies therein. His evidence overstated the acumen and independence of the defendant.

[89] The plaintiff's approach further disregards the role he played in the defendant's relative economic inactivity during the marriage. On his own version, he suggested to the defendant to leave the nursing profession after an accident in 2002 and encouraged her to 'do her own thing'. The defendant's undisputed evidence that the parties had a separation of roles during the marriage in which she primarily supported the family household and children and the plaintiff worked to financially support the family. The defendant stayed at home and assisted the plaintiff in his business with the PC board assembly in her free time, utilising her pension funds to set up a workshop.

[90] Defendant's evidence was not disputed that the plaintiff suggested to her to commence the PC board assembly work so that the money came back to their family and did not go to a third party. Defendant utilised her income thus derived, not for her own benefit but to assist with household expenses. Plaintiff could thus subsidise his personal expenses towards his family from his business, whilst deriving the benefit of the assistance given to him by the defendant.

[91] Plaintiff spent his time and efforts in furthering his career as a businessman and built up a substantial estate. From his own evidence it appears that he has never budgeted but has utilised his businesses to subsidise his expenses where necessary. He has also been able to substantially support his major daughters in an amount in excess of R20 000.00 per month.

[92] Whilst the defendant can be criticised for not aggressively enhancing her skills base after the separation of the parties, the enquiry does not end there. The simple reality is that the defendant exited the nursing profession in 2002 and did not return

thereto until 2012 when she commenced nursing in the neonatal ICU unit of the Union Hospital on a part time basis during 2012.

[93] Sister Steyn's evidence is undisputed that the defendant does not possess, not only the skills, but also the youth, stamina and personality traits to obtain a full time position in order to train as a fully-fledged neonatal ICU sister and that she would not recommend the defendant for appointment in a permanent post, of which her hospital presently has two available.

[94] Sister Steyn's evidence that in order to acquire the opportunity of receiving further training, an individual must have a permanent appointment, was also not disputed.

[95] From the available evidence, the defendant will be able to work a maximum of 14 shifts per month, only if and when any opportunity is available. It is unlikely that so many shifts will be available.

[96] On the evidence it appears improbable that the defendant will obtain the opportunity to further her training in this field and it is likely that the defendant will have to make other choices as to what route to follow once she has properly investigated what options are available to her. It will be necessary for her to do so and to broaden her horizons in order to achieve the best quality of life possible. It is inappropriate to resort to speculation as to what the future may hold for the defendant's employment opportunities.

[97] A further factor which in my view must be taken into account is the conduct of the plaintiff, both prior to and during the marriage.

[98] Prior to the marriage the plaintiff convinced the defendant to get married out of community of property and promised to protect the family unit. I have already dealt with plaintiff's conduct in this regard.

[99] The plaintiff at no stage during the marriage alerted the defendant to the prospect that she was not economically active enough or should obtain gainful and substantial employment. He did not suggest that she acquire any meaningful

assets and did not make it clear that she had to provide for herself during the marriage. The income earned by defendant from SAFL of some R4 000.00 per month was not substantial. It is clear that neither of the parties relied on this income to meet the monthly household and other expenses, as illustrated by the retention of defendant's income by SAFL without demur. It is clear that the defendant was under the impression that her interests were protected in the marriage and she never queried the lack of any assets being transferred or acquired in her name. The plaintiff's conduct and assurances must have played a strong role in the defendant's perception, specifically if, as the plaintiff contends, she was a strong and forceful woman.

[100] It is also necessary to consider the plaintiff's conduct in the breakdown of the marriage and the reasons which led to the breakdown of the marriage.

[101] Fault is not a relevant factor and the consideration of the plaintiff's conduct is not examined in this context, but in the context of what a just order would be in the circumstances and whether defendant has established the jurisdictional requirements of her claim for maintenance.

[102] It is undisputed that the initiative to terminate the marriage emanated from the plaintiff. On his version, the defendant's strong and conservative approach to religion, her inability to maintain family secrets and her aggressive and domineering personality became unbearable, resulting in him seeking psychological counselling for depression, exacerbated by work stress during mid 2007. When he confided in the defendant that he was an atheist, the defendant's reaction was harsh and unforgiving. According to the plaintiff, the psychologist recommended that he terminate his marriage 'if he wanted to survive'.

[103] On his version, the plaintiff notified the defendant of his intention to terminate the marriage during a meeting at the psychologist's office in late November 2007. He further notified the defendant that he had met someone else and wanted to explore that relationship. He left the common home whilst the defendant was visiting her parents on 28 December 2014.

[104] The defendant on her version, was unaware of any problems in the marriage. She admitted to being distraught when the plaintiff informed her that he was an atheist. She hoped that they could overcome this issue. She was devastated when the plaintiff notified her of his intentions in November 2007. Upon her return from a visit to her parents over December 2007, she found that the plaintiff's personal effects had been removed from the common home. The plaintiff and Ms Oosthuizen were in a relationship by then, which relationship continues.

[105] It is necessary to consider the defendant's claim for maintenance, until her death or remarriage. Defendant claims the following: (1) an order directing plaintiff to provide her with a home of her choice at his cost and at no cost to her, with a value of no more than R4 million. (During the trial defendant reduced this amount to R1.7 million, being the value of the townhouse in which she presently resides); (2) payment of the rates, taxes, electricity and other municipal charges in respect of the home; (3) payment of levies if the home is a townhouse; (4) payment of household and householders insurance; (5) security in respect of the home; (6) a monthly amount of R20 000.00, including annual increases in accordance with the Consumer Price Index; (7) payment of all medical, dental, hospital and prescribed pharmaceutical expenses and expenses ancillary thereto and to maintain defendant as a beneficiary on a comprehensive medical aid scheme; (8) transfer of a motor vehicle of defendant's choice with a value of no more than R300 000.00, to be replaced every four years with a similar vehicle; (9) payment of an amount of R100 000.00 as a resettlement allowance; (10) payment of an amount of R300 000.00 in respect of household furniture, appliances and equipment.

[106] The plaintiff contends that the defendant is not entitled to any maintenance and that she is well able to look after herself and meet her own needs.

[107] In considering all the factors as envisaged by section 7(2) and the additional factors referred to above, and after considering the interests of both the plaintiff and the defendant, I am satisfied that the jurisdictional requirements of section 7(2) have been met and that it would be just that the defendant be awarded

maintenance. It is now necessary consider the nature and extent of such maintenance.

[108] The defendant contends for maintenance until her death or remarriage. She is presently 47 years of age and was 40 when the parties separated. The defendant thus has a conceptual economic life span of at least 18 years until the normal retirement age of 65. There was no evidence that she is presently in a romantic relationship or is likely to be married in the foreseeable future.

[109] Due consideration must be given to the so-called 'clean break' principle and the parties should become economically independent of each other as soon as possible after the divorce.[40] Despite the modern trend to accept marriage as being a partnership between two economically independent individuals, the facts of any particular matter must justify such conclusion. In the present matter, such conclusion cannot be readily drawn in light of the defendant's lack of assets and her relative economic activity during the past 13 years.

[110] It does not in my view appear appropriate that the defendant obtain a maintenance order which endures for the rest of her life or until remarriage. The defendant is not elderly and it is probable that the defendant will be able to procure appropriate gainful employment in order to maintain herself in due course. It would be manifestly unjust to the plaintiff to be financially responsible for the welfare of the defendant for such an extended and indefinite period.

[111] It is appropriate to award rehabilitative maintenance where a spouse who had been disadvantaged or disabled in some way by the marriage was enabled, through training or therapy or other opportunities, to be restored either to the economic position vìs-a-vìs employment which she enjoyed prior to the marriage or to be reintroduced to the ability to participate effectively and profitably in normal economic life[41].

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[40] Beaumont v Beaumont 1987 (1) SA 48 (C) at 53
[41] Botha v Botha 2009 (3) SA 89 (W) at 107F, para [106]

[112] Although the defendant has not been proactive in seeking to enhance her employment opportunities, it is in the interests of justice that she be afforded a proper opportunity to do so. In my view she has been disadvantaged in the marriage. It is necessary to afford her the necessary protection but simultaneously to incentivise the defendant to use her best endeavours to effectively and profitably participate in commercial life.

[113] In order to do so, the defendant must at least have the security of suitable accommodation and sufficient funds to ensure that her basic needs are met. The payment of instalments in respect of a mortgage bond over an immovable property constitutes periodic payments of maintenance and does not constitute a lumpsum[42]. On the other hand, the defendant must be incentivised to adopt a realistic and practical approach and to fully embrace a new chapter of her life and the plaintiff cannot be burdened with catering for her every need.

[114] No evidence was presented supporting defendant's claims for resettlement and furniture and I am not satisfied that the defendant has proved any entitlement thereto in the circumstances and pursuant to the substantial period the parties have been separated.

[115] The defendant has no meaningful assets which can be employed or invested to ensure a dignified lifestyle and her present financial means are, absent any contribution from the plaintiff, precarious.

[116] Considering the basic needs of housing and medical care, it would be just to direct the plaintiff to contribute to the provision of such needs.

[117] At present the defendant further requires some financial assistance from the plaintiff in order to assist her throughout the period of enhancing her skills and alleviating the disadvantages of her limited economic activity during the marriage. Thus far the plaintiff had focussed on enhancing his own interests, to the detriment of the defendant, a scale which must now be balanced, so that its result is equitable to both parties. The plaintiff's obligations to his major daughters will

[42] Zwiegelaar supra para [13] 1212H-J, para [16] 1213C-D

reduce in future, more so as Carien is now married and Elana's studies are not indefinite.

[118] Both parties in argument adopted diverging approaches to the issues of gender equality. The plaintiff has argued that it is insulting to treat women as incapable of carving their own way in the world, whereas the defendant has pointed out that the reality exists that women are often disadvantaged in their careers by adopting a supportive rather than a leading role in family life, focussing on creating a suitable environment for the rearing of children rather than economic success. There is much to be said on the issue but it ultimately distills into a consideration of the facts and what is "fair" in the circumstances and is dependent on the particular circumstances of each case.

[119] Considering the training period referred to in the report of Dr Kellerman and the possibility that in the present economic environment appropriate employment opportunities may not be immediately available, I am of the view that a period of five years would afford the defendant sufficient time and opportunity to enhance her skills in whatever field she is able to and to commence earning an income on which she can lead a dignified existence and to meet her financial needs.

[120] The only remaining issue is costs. The plaintiff argues that there is no basis to deviate from the normal rule that costs should follow the event. The defendant on the other hand contends that, even if unsuccessful in any of her relief, no costs order should be made in favour of the plaintiff in light of the defendant's precarious financial position as it would lead to her complete financial ruin.

[121] Having regard to all the relevant considerations and the findings on the various claims, I am of the view that the interests of justice will be best served if each party is directed to pay his or her own costs.

[122] I accordingly make the following order:

[122.1] A decree of divorce is granted;

[122.2] The plaintiff is directed to make the understated contributions to the maintenance of the defendant and to:

[122.2.1] make payment of an amount of R15 000.00 per month, into an account designated by the defendant for a period of five years commencing on 1 May 2015 and thereafter at the 1st day of each consecutive month, subject to an annual increase commencing on 1 May 2016 in accordance with the Consumer Price Index as published from time to time and applicable at that specific time;

[122.2.2] retain the defendant as a beneficiary on the existing comprehensive medical aid scheme and to make payment of the monthly premiums thereof directly to the service provider for a period of 5 years commencing on 1 May 2015;

[122.2.3] pay the outstanding monthly instalments and insurance in respect of the Hyundai I20 motor vehicle presently in possession of the defendant until such time as the outstanding balance has been settled in full after which the defendant shall be liable for the insurance in respect of the vehicle;

[122.2.4] purchase a house or townhouse of the defendant's choice with a value of no more than R1.7 million and to have the property registered in the name of the defendant, to cause a mortgage bond to be registered over the said property and to make payment of the costs and the monthly payments on the said bond until the mortgage bond has been settled in full and thereafter to cause the mortgage bond to be cancelled at his costs;

[122.2.5] take out and maintain a life insurance or other appropriate insurance

policy to secure his obligations in respect of the mortgage bond referred to in [122.2.4] above and to pay the premiums in respect of such policy until the mortgage bond referred to in [122.2.4] has been cancelled;

[122.3] Each party is directed to pay his/her own costs.

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E F DIPPENAAR
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING	:	26-30 January 2015 and 5 February 2015
DATE OF JUDGMENT	:	17 April 2015
FOR PLAINTIFF	:	Adv L Segal
	:	Marston & Taljaard Attorneys
FOR DEFENDANT	:	Adv T Engelbrecht
	:	Tim Fourie Attorneys