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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 008910/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 6 February 2025

E van der Schyff

In the matter between:

L[...] P[...] W[...] R[...]

Applicant

and

P[...] C[...] S[...] R[...]

Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] The applicant approached the urgent court with what can essentially be typified as a Rule 43 application. He sought an order regarding the care and contact of his minor child, and ancillary relief in the form of investigations by the Family Advocate and other relevant experts.

[2] The respondent opposes the application and raised two points *in limine*. The first is that the application is premature as no divorce summons has been issued. The second is the absence of urgency.

Urgency

- [3] It is trite that a party should only approach the urgent court when that party can make out a case that it would not be afforded substantial redress if the matter is not heard in the ordinary course. *In casu*, the context within which the facts need to be evaluated to determine whether the applicant was justified in approaching the court on an urgent basis, includes the reality that a Family Court Roll exists in the Gauteng Division of the High Court. In Pretoria, parties issuing papers in Family Court matters, are generally before the court in four to six weeks.
- [4] The parties are the parents of an 11-month-old boy, who was born prematurely at 28 weeks. As a result, he is vulnerable to lung infections. The applicant informs that the marriage relationship between him and the respondent has broken down irretrievably and that he has instructed his attorney to issue a divorce summons. He contends that he is the child's primary caregiver but informs that a full-time nanny was appointed three months ago.
- [5] When the applicant returned home from work on 20 January 2025, he found that the respondent vacated the family home and took the minor and the helper (nanny) with her. Since she vacated the family home, he had no contact whatsoever with the minor, and the respondent refused to take his calls and ignored his messages. He states that the respondent refuses to inform him where she and the minor reside. On 21 January 2025, his attorney forwarded a letter to the respondent's attorney demanding that the status quo be restored and that the parties implement a joint residency regime, failing which an urgent application would be launched. The respondent replied by requesting that he provide suggestions for 'age-appropriate contact'.
- [6] He subsequently approached the court on the basis of urgency. The application was issued on Friday, 24 January 2025. The respondent was called upon to file an answering affidavit by Tuesday, 28 January 2025, and the matter was enrolled to be heard on 4 February 2025.

- [7] The applicant avers that his concerns for the minor child's well-being were exacerbated by the fact that the respondent suffers from depression, which severely interferes with her ability to care for the minor.
- [8] The applicant conveniently failed to inform the court that the respondent requested that the applicant vacate the family home in a letter dated 13 January 2025. A follow-up letter was emailed to his attorney of record on 20 January 2025, informing that the respondent decided to vacate the family home with the minor because the applicant failed to vacate. The applicant's attorney was also informed of the address where the respondent and the minor found themselves and intended to reside pending the outcome of a Rule 43 application she intended to institute. In this letter, the respondent was invited to provide reasonable and age-appropriate contact proposals pending the outcome of the Rule 43 application.
- [9] The respondent acknowledges that she suffers from depression but claims to have it under control. She informs the court that she qualified as a psychiatrist after having been diagnosed with depression.
- [10] The applicant does not explain why he decided to approach the court on an urgent basis instead of engaging in discussions with the respondent's legal representative regarding the minor's residency and contact. In these circumstances, I cannot find it was justified to approach the urgent court for the relief sought. There is no reason why the applicant must be afforded preferential treatment, so to speak, for his application to be heard urgently. In all the Rule 43 applications heard on a weekly basis in the Family Court, the interests of children are at stake. In all those matters, concerned parents anxiously await the court to decide on their and their children's fates, and in all those matters, the issues of residence and contact are important.
- [11] In light of the offer to engage in discussions, and in the absence of any explanation as to why that offer was not taken up but the decision instead made to approach

the court on an urgent basis, it was not justified to enroll the application on the urgent roll.

Best interest of the minor child

[12] Having said that, the parties are before me now. I am of the view that it is in the minor child's best interest to regulate his parents' rights regarding his contact and care since it might motivate the parents to take a breather and approach the issues more objectively.

[13] In the result an order is granted that deals with the minor's primary residency, care, and contact pending an investigation by the Office of the Family Advocate. The issue of maintenance is not addressed in this order and in the event that the parties cannot amicably settle the issue of maintenance, the existence of this order shall not be an obstacle to the respondent to approach the court for an interim maintenance order.

[14] As for costs, the costs of the application are to be borne by the Applicant, who approached the urgent court without sufficient justification. The issues are, however, not overly complex, and since both parties may benefit from the stability that the order will bring, it is justified for costs to be as between party and party on Scale A.

ORDER

In the result, the following order is granted:

1. The parental responsibilities and rights with regard to the guardianship of the minor child, **K[...]** **Z[...]** **N[...]** **R[...]**, ("K[...]"), as contemplated in Section 18(2)(c) and 18(3) of the Children's Act 38 of 2005, are awarded to both parties;
2. The parties retain full parental responsibilities and rights with regard to the care of the minor child, as contemplated in Section 18(2)(a) of the Children's Act, 38 of 2005, subject to the terms of this Order;

3. The minor child shall primarily reside with the Respondent;
4. The Applicant shall be awarded contact in respect of the minor child on the following basis:
 - a. Contact every Monday, Wednesday, and Saturday for a period of 3 (three) consecutive hours;
 - b. Contact on the birthdays of the Applicant and the Respondent, respectively, as arranged between the parties;
 - c. The aforesaid contact is to be exercised with the assistance of a nanny/ childminder when such assistance is available and if necessary;
 - d. The Applicant shall be entitled to exercise his contact in the flatlet on 3[...] A[...] Avenue property, subject to giving at least 6 hours prior notice to the Respondent;
5. The Applicant shall keep the minor child and the Respondent as dependents on his medical aid fund;
6. The Respondent and the minor child shall return to and reside in the communal home at 3[...] A[...] Avenue, Waterkloof Pretoria, Gauteng, as of Saturday, 8 February 2025;
7. The applicant shall vacate the 3[...] A[...] Avenue property by 20h00 on Friday, 7 February 2025;
8. This order does not prevent the Respondent from approaching the court for an interim maintenance order;
9. The Family Advocate is requested to investigate and report on the care and residency regime that is in the minor child's best interest. The Applicant is to deliver a copy of the papers filed and the order to the Office of the Family Advocate within 5 days of the order been granted;

10. The Applicant must pay the costs of the application on Scale A.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant:	Adv. N. Breytenbach
Instructed by:	Du Preez Attorneys
For the respondent:	Adv. B. Bergenthuin
Instructed by:	Adams & Adams Attorneys
Date of the hearing:	5 February 2025
Date of judgment:	6 February 2025