Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 8780/2021P

In the matter between:

N[redacted] J[redacted] B[redacted] D[redacted] **APPLICANT**

and

C[redacted] D[redacted] **RESPONDENT**

Coram: Nicholson AJ
Heard: 25 October 2024
Delivered: November 2024

ORDER

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1. Ms Janette Hermann is appointed as a social worker case co-ordinator with the following functions:

(a) To facilitate and ensure that during the handing over of G[redacted] D[redacted], both to and from the respondent, which will be described below, either Elmarie Booysen and/or Li Anne Oberholzer must be present to ensure the wellbeing of G[redacted].

(b) To receive weekly update reports from Elmarie Booysen and/or Li Anne Oberholzer regarding G[redacted]'s wellbeing.

(c) At her discretion, ensure appropriate emotional support for G[redacted], if necessary.

(d) Decide, if after four weeks, it is in the best interests of G[redacted] for visitation to continue in terms of the divorce settlement agreement.

(e) Share all reports with Mr Bollo, who I refer to below.

(f) In the event of any further litigation, to provide the court with a report, whether the relief sought is in the best interest of G[redacted].

2. Claudio Bollo is hereby appointed as G[redacted]'s curator ad litem, with the following functions:

(a) To assess all the legal documents and liaise with Ms Hermann to determine what is in the best interests of G[redacted].

(b) With the assistance of Ms Hermann, to conduct interviews with G[redacted], the applicant and the respondent, and other persons he deems relevant.

(c) In the event of any further litigation, to provide the court with a report, whether the relief sought is in the best interest of G[redacted].

(d) To institute litigation, should he deem it in the best interest of G[redacted].

3. For the next four weeks after the granting of this order, the applicant may enjoy contact with G[redacted] D[redacted] as follows:

(a) Unsupervised visitation on alternate weekends on Saturday and Sunday from 8h00 to 16h00, and alternate Wednesdays and Fridays from 14h00 to 17h00.

(b) Daily telephone and/or video calls between 17h00 and 18h00, and the respondent is directed to ensure that G[redacted] is reasonably able to receive these calls.

4. On the expiry of the four weeks, unless Mr Bollo and Ms Hermann holds a contrary view, visitation will continue as agreed in the divorce settlement agreement.

5. Within five days of this order, the applicant and respondent, are directed to initiate the appointment of a psychologist, either by agreement or by recommendation of the Health Professions Council of South Africa, for group therapy with: the applicant, respondent and G[redacted], together with their romantic partners/spouses should they volunteer, with the view of the applicant and respondent accepting their new roles in G[redacted]'s life.

6. The costs of the social workers, Mr Bollo and the psychologist shall be paid by the parties jointly and severally.

7. The applicant, Professor Tanya Robinson and/or Ginette Hermann are directed to forthwith, provide to the respondent all materials, that did not find its way into the report, but used by the authors during the evaluation, and/or to record the evaluation.

8. The applicant is directed to pay 50 per cent of the costs of this application on a scale as to between attorney and client, and such costs to include the costs of senior counsel, where appropriate.

JUDGMENT

Nicholson AJ

[1] The Constitution of the Republic of South Africa echoes the importance of the concept of the best interests of the child. s28(2) of the Constitution reads as follows:

'A child's best interests are of paramount importance in every matter concerning the child.'

[2] S 28(2) has been interpreted as creating an 'expansive guarantee' and constitutes, not only a guiding principle, but also a right.[1] The principle of the best interests of the child has also been incorporated in s 9 of the Children's Act 38 of 2005 ('the Children's Act').

[3] The right to contact, or to be spared contact, vests primarily in a child. The statutory definition of parental responsibilities and rights includes 'the responsibility and the right … to maintain contact with the child.'[2]

[4] It is generally accepted, as was stated in *Terblanche v Terblanche*,[3] that a court:

'… has extremely wide powers in establishing what is in the best interests of minor or dependent children. It is not bound by procedural structures or by the limitations of the evidence presented or contentions advanced by the respective parties. It may in fact have recourse to any source of information, or whatever nature, which may be able to assist it in resolving custody and related disputes.'

[5] In *F.J v E.J*[4] it was held, at paragraph 20, that:

'…this Court is empowered and under a duty to consider and evaluate all relevant facts placed before it with a view to deciding the issue which is of paramount importance: the best interests of the child.'

[6] Initially, I intended to deliver a judgment with reasons to follow; however, after hearing the argument presented by counsel, and having taken some time to reflect and considered this matter, my view changed. I now believe that it would be in the best interest of G[redacted] that my order should provide a path for a more permanent solution. Therefore, I now provide reasons herewith.

[7] This matter is extensive, encompassing various applications, counterapplications, and a trial, resulting in a record exceeding 2 000 pages,

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[1] *S v M* 2007] ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC); 2007 (2) SACR 539 (CC) para 22.
[2] S 18(2)*(b)* Children's Act 38 of 2005.
[3] *Terblanche v Terblanche* 1992 (1) SA 501 (W) at 504.
[4] *F.J v E.J* [2008] ZAWCHC 27; 2008 (6) SA 30 (C).

including numerous expert reports. Upon reviewing all the documents, it is evident that both parents, the applicant and the respondent, deeply care for G[redacted] and are motivated by her best interests. The applicant seeks to establish a relationship with his daughter, while the respondent aims to protect her.

[8] Before me is an urgent application and a counter application. In the urgent application, the applicant seeks various orders to ensure cooperation between the applicant and the respondent regarding visitation, access, and the primary residence of his minor daughter, G[redacted] D[redacted]. This request is based on a court-ordered forensic psychological evaluation, which determined that the applicant does not pose a danger to G[redacted]. Given the history of this matter, the applicant also requests psychological intervention for the respondent to facilitate acceptance of the applicant's role in G[redacted]'s life. G[redacted], currently six years old, is the child of both the applicant and the respondent, who have since divorced.

[9] On the morning of this hearing, the respondent filed an answering affidavit and a counter application. Consequently, I was not provided with a replying affidavit. Accordingly, much that was said in opposition to the answering affidavit was not under oath but rather statements from the Bar. The answering affidavit opposes the relief sought by the applicant and seeks various ancillary relief, which includes the repayment of her portion for the court-ordered evaluation report, together with a direction that it is to be provided with materials used by the authors of the report used during the evaluation, and/or to record the evaluation.

[10] The respondent opposed the application both on urgency and the merits. The opposition on the merits is very crisp and may be summarised as follows: Pitman AJ requested a comprehensive forensic psychological evaluation; however, neither Professor Tanya Robinson nor Ginette Hermann, the co-authors of the report, are psychologists. Therefore, the report does not

meet the expectations of the parties, including Pitman AJ, and the findings are deemed incompetent due to the authors' lack of proper qualifications.

[11] Mr *Phillips,* who appeared for the respondent, further stated that the language used in the report suggests a psychological evaluation and diagnosis, and such diagnosis is incompetent because the authors are social workers and not psychologists. It is instructive that the fact that the two authors of the report are not psychologists is common cause and apparent from the report itself.

[12] Mr *Stokes,* who appears for the applicant, stated that Pitman AJ as well as the respondent had full access of the authors' CVs before their appointment and did not raise any queries as to the qualifications. Therefore, they cannot now claim ignorance of the authors' status as social workers rather than psychologists. The applicant avers that the authors are competent and qualified to provide the court with an opinion.

[13] While it is true that all the parties including the judge had access to the CVs of the authors of the report, one must bear in mind that the background to this is that this application was brought on an urgent basis, and therefore their scrutinising of the CVs of the authors, may not have enjoyed the detail required.

[14] On or about 2 September 2024, after a lengthy trial, where the respondent attempted to vary the terms of their divorce order in as far as access and visitation of G[redacted] is concerned, Shoba AJ handed down judgment, wherein she dismissed the respondent's application and found, inter alia, the respondent had manipulated an expert, who had produced an expert report for the trial, to make findings favourable to her version. The applicant was, accordingly, afforded unsupervised visitation with G[redacted].

[15] Prior to the judgment and while waiting for judgment to be handed down, in light of various allegations of sexual misconduct involving G[redacted] and the applicant, the applicant was afforded supervised visitation with

G[redacted] only. I understand that it took approximately one year to hand down judgment and during this time, the applicant was only afforded very limited supervised visitation with G[redacted].

[16] Given the fact that the applicant was only afforded limited supervised access over such a lengthy period, his anxiousness to have the visitation with G[redacted] r[redacted] is understandable.

[17] To better understand my conclusions and order below, a brief background of how this urgent came to be prosecuted is necessary:

(a) On or about 16 September 2021, after entering a settlement agreement, the applicant and the respondent divorced unopposed. The terms of the settlement agreement provided, inter alia, for appropriate unsupervised visitation by the applicant.

(b) On or about 7 October 2021, the respondent brought an application for a variation of the divorce settlement agreement. It was during this application that it was for the first time brought to the attention of the court, that the respondent suspected that the applicant may have perpetrated a sexual misconduct with G[redacted]. The evidence before Shoba AJ is that the respondent, notwithstanding as early as 26 November 2019 suspected the applicant of sexual misconduct, signed the settlement agreement in June 2021.

(c) On or about 10 April 2023, the respondent brought an application that, pending the variation application, all visitation between applicant and G[redacted] be suspended, which was granted.

(d) On or about 6 October 2023, when Shoba AJ reserved judgement, she directed that the applicant has contact with G[redacted], every alternative Saturday for three hours.

(e) On or about 2 September 2024, Shoba AJ handed down judgement, wherein she inter alia, dismissed the 2021 applications and reinstated the settlement agreement. Accordingly, the applicant was entitled to exercise unsupervised access with G[redacted], including overnight visits.

(f) On 6 September 2024, the applicant brought a contempt of court application against respondent for her non-compliance with the settlement agreement. The rule nisi was granted; accordingly, the applicant was granted unsupervised access to G[redacted].

(g) On 6 September 2024, the respondent filed an application for leave to appeal against the judgment by Shoba AJ and a counter application wherein they sought an interim order pending the appeal; that the applicant and G[redacted] be afforded supervised access every alternative weekend. The counter application was unsuccessful.

(h) The unsupervised access to G[redacted] was short lived; because on the return day of the rule nisi, 25 September 2024, due to a report made to the supervising social worker, the applicant was only afforded supervised access to G[redacted].

(i) On or about 25 September 2024, Pitman AJ handed down an order, to inter alia appoint experts to compile a psychological report, as follows:

'1. Both Prof Tanya Robinson and Ginette Hermann (hereinafter the appointee) are immediately jointly appointed by the Court, (all costs of whom are to be paid by the parties jointly and severally) with the following urgent mandate:

a. To conduct immediately and expeditiously a comprehensive forensic psychological evaluation of G[redacted] D[redacted].

b. …'

(j) On or about 23 October 2024, Professor Robinson and Ginette Hermann filed a report ('the Report'), regarding the evaluation of G[redacted], the applicant and the respondent. The report concludes inter alia that the applicant is not a danger to G[redacted], and therefore, the applicant should be afforded unsupervised visitation.

(k) On 24 October 2024, the respondent, per email advised the applicant that: it does not accept the findings of the report and seeks access to the documents used during the assessment leading up to the report, and intends bringing an urgent application for the documents, if they are not provided by the applicant.

(l) On or about 28 October 2024,[5] the applicant filed an urgent application, which was set down for 30 October 2024, wherein the applicant seeks to be afforded unsupervised visitation.

[18] In opposition to the matter being heard on an urgent basis, the respondent contends that the applicant has recently filed two urgent applications with very short notice. Consequently, the respondent has had insufficient time to adequately respond to the applicant's allegations and/or thoroughly review the expert report, leading to decisions being made hastily, which may not serve the best interests of the child. Mr Phillips also suggested that the matter was scheduled on short notice to provide the applicant with an unfair advantage, though I am uncertain of the accuracy of this claim. As previously mentioned, given that the applicant has only had limited supervised access to G[redacted] for over a year, his eagerness for prompt compliance with the settlement agreement is understandable.

[19] I do, however, agree with the other submissions on urgency. Setting these matters down on such short notice, is an abuse of the latitude afforded to practitioners in deserving cases, in terms of Rule 6(12) of the Uniform Rules, that regulate timeframes to prosecute matters ahead of pending cases on the court role. Urgency is not for the taking and is available only in deserving cases.

[20] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,[6] at paragraphs 6, it was held:

'[6] …the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due

[5] The notice of motion is dated 26 October 2024, and the Founding Affidavit was commissioned on the 25 October 2024.

[6] East *Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196.

course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[21] In *Maqubela v South African Graduates Development Association and Others*[7] at paragraph 32, the court observed:

'Whether a matter is urgent involves two considerations. The first is whether the reasons that make the matter urgent have been set out and secondly whether the applicant seeking relief will not obtain substantial relief at a later stage. In all instances where urgency is alleged, the applicant must satisfy the court that indeed the application is urgent. Thus, it is required of the applicant adequately to set out in his or her founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. As Moshoana AJ aptly put it in *Vermaak v Taung Local Municipality*:

"The consideration of the first requirement being 'why is the relief necessary today and not tomorrow', requires a court to be placed in a position where the court must appreciate that if it does not issue a relief as a matter of urgency, something is likely to happen. By way of an example if the court were not to issue an injunction, some unlawful act is likely to happen at a particular stage and at a particular date."'

[22] In *D.D v I.L and Another,*[8] at paragraph 26, the court asserts:

'I am not convinced that there are compelling reasons to have brought this matter on urgency. The urgency was self-created and does not meet the requirements set out in rule 6(12) of the Uniform Rules of Court, where a litigant is required to set forth its reasons why they cannot be afforded substantial redress at a hearing in due course. A few more months would not prejudice the minor who is barely 3 years of age and still on nappies. An additional few months or two, to allow for the processes to follow to enable both parties to consider what will be in the best interests of the child, should follow.'

[23] In this court, cases dealing with children are usually seen as inherently urgent, because this court is the upper guardian of all minor children, and

[7] *Maqubela v South African Graduates Development Association and Others* [2014] ZALCJHB 38; [2014] 6 BLLR 582 (LC); (2014) 35 ILJ 2479 (LC).
[8] *D.D v I.L and Another* [2024] ZAWCHC 215.

unlike in other cases, where the test for urgency is, ‘an absence of substantial redress should the matter be heard in the normal course’, in matters involving minor children the test is, ‘the best interest of the child’. However, in this matter there is no allegation that the child was in any danger or harm; accordingly, the urgency does not seek to serve the best interest of the child but seeks to serve the interest of the applicant.

[24] To clarify, it is not my opinion that this matter lacks urgency. However, I do not believe it warrants the extremely short notice given for the last two urgent applications filed by the applicant.

[25] In considering Rule 8 of the Labour Court rules, the Constitutional Court in *Jiba v Minister of Justice and Constitutional Development and Others*[9] at paragraph 18 stated that:

‘Rule 8 of the rules of this court requires a party seeking urgent relief to set out the reasons for urgency, and why urgent relief is necessary. It is trite law that there are degrees of urgency, and the degree to which the ordinarily applicable rules should be relaxed is dependent on the degree of urgency.’

[26] As I have already mentioned, the applicant understandably is keen to have unsupervised access with G[redacted]. However, and while I accept that it is in the best interests of G[redacted] to have a normal relationship with the applicant as soon as possible, the anxiousness of the applicant to resume normal visitation with G[redacted], is not, in my view, a relevant consideration, when considering urgency.

[27] Since, notwithstanding the very short service, the matter is already before me, I am of the view that it would not be in the best interests of G[redacted] to simply have it struck from the role but to rather provide a more permanent solution.

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[9] *Jiba v Minister of Justice and Constitutional Development and Others* [2009] ZALC 57; (2010) 31 ILJ 112 (LC); [2009] 10 BLLR 989 (LC).

[28] There are several issues in this matter that pertain to both applicant and respondent, that concern me, which do not seem to have been entertained in any of the reports:

(a) Firstly, the respondent, notwithstanding suspecting the applicant of sexual misconduct in November 2019, allowed the applicant unsupervised visitation with G[redacted] until October 2021, and even signed a settlement agreement in June 2021, allowing the applicant unsupervised access to G[redacted].

(b) Secondly, the respondent appears to have a distrust for any experts, even those that she appoints, and gives the impression the only answer that she will accept, is that the applicant is abusive. The applicant has been exonerated by most of the experts, the police, independent social workers who work with abused children, by a court appointed expert and by the court; yet the respondent does not accept the outcome.

(c) Thirdly, when the applicant was presented with potential evidence of a sexual misconduct[10] against G[redacted], he acted very nonchalant. While there may have been a very innocent explanation, his attitude seemed to be that it was not him, without considering that it may be someone else, perpetrating these despicable acts while G[redacted]a is in his care; and for the sake of G[redacted], taken some time to give it some consideration, and to put the respondent at ease.

(d) Fourthly, the applicant without considering the impact that immediate overnight access will have on G[redacted], appears to seek overnight visitation with G[redacted] without a settling period. I do not believe this to be in the best interest of G[redacted].

[29] The issue before me is narrow and can be summarised as follows. There has been quite serious and concerning allegations that have been made by G[redacted] as recently as September of 2024, and there are recent recordings that suggest some nefarious conduct, which took place after the Shoba AJ judgment. To thoroughly investigate these allegations, Pitman AJ ordered that

[10] The lipstick incident.

G[redacted], the applicant, and the respondent undergo assessments by Professor Tanya Robinson and Ginette Hermann, resulting in a comprehensive forensic psychological evaluation. The evaluation has been completed, and the report has been presented, exonerating the applicant.

[30] The respondent rejects the findings in the report, not on its content, but on account of the authors not been experts; because the court called for a 'psychological' evaluation, which suggests that the evaluation should be done by a psychologist, while the authors are social workers.

[31] Whether the report is a that envisaged by Pitman AJ, in my view, is irrelevant to the question of what is in the best interests of the minor child. A better conceptualisation is whether this report is helpful in determining the best interests of G[redacted]. Accordingly, I decline to consider that question as it is irrelevant.

[32] In an article appearing entitled '*The law and social work, with particular reference to the role of the private social work practitioner*'[11], the learned authors opined:

'The social work degree is awarded after four years of study at one of the recognized universities, with social work, psychology and sociology as major subjects. Ancillary subjects vary with the universities and include social law, communications theory, criminology, anthropology and philosophy. The main emphasis is on social work which is very broad in its scope.

The unique aspect of social work training is its focus on the functioning of clients within various social systems, such as the family, the workplace, school and broader social systems. It is the understanding of personal social functioning of clients within their environmental contexts which gives a dynamic quality to assessments done by social workers regarding human problems and the potential of people for change and growth. Particular attention is paid to the primary social system, the family, with all its cultural and sub-cultural variations, as well as the societal structures, economic,

[11] M A O'Neil and D M Connell '*The law and social work, with particular reference to the role of the private social work practitioner'* (1986) De Rebus 564-565.

political and social, which exert influence or evoke stress in the family or its individual members.'[12]

Further, it was further stated that:

'A social worker's intervention, investigation and report can assist the magistrate as regards the best interests of the children and division of assets. While reconciliation and conciliation work can be interdisciplinary involving other professionals such as psychiatrists and psychologists, the social worker as a social scientist is equipped in terms of experience and training to watch the interests of the family and to present psycho-social reports to a court of law. Social workers need the assistance of their legal counterparts to acquire a greater understanding of how they are expected to conduct themselves in a court of law.'[13]

[33] The credentials and the fact that the authors of the report are qualified Social Workers are common cause. A perusal of their CV's and profile demonstrate that both authors have extensive experience in dealing with complex family matters and 'vulnerable family dynamics'.

[34] Professor Robinson, apart from her undergraduate studies, where she majored in sociology, psychology and social work; has four PhD's, in the areas of: clinic and forensic social work, psychosocial legal science and forensic science, and criminal justice. She has also authored extensive academic work in this area of research and possesses strong expertise in this field.

[35] Ms Janette Hermann has various undergraduate qualifications and is in the process of completing a master's in social science in Criminal Justice Social Work focusing on Forensic Social Work. She has received international training in Forensic Interviewing of Children from the United Nations in Safeguarding Children, The Voice of The Child, Parent-Child, Attachment, Socio-Emotional Assessment, Parental Responsibilities and Rights, Gender-Based Violence and Femicide, and Sexual Exploitation and Abuse.

[12] Ibid at 564.
[13] Ibid at 565.

[36] It is apparent that, not only are the authors very qualified and accomplished in their fields, but they have also spent a large portion of their careers advocating for vulnerable groups with very complex issues, including sexual abuse. In the circumstances, I do find that they are competent to provide an evaluation in this matter.

[37] Fundamentally, a social worker is concerned with the welfare of individuals, often overlapping with the field of psychology. The report concludes that the applicant does not pose a risk to G[redacted] and that her wellbeing is maintained while in the applicant's care. However, the report also indicates that G[redacted]'s wellbeing is jeopardised by the ongoing evaluations and scrutiny, which should cease. Although I do not concur with the recommendations in the report, I agree with these conclusions.

[38] As I have already mentioned, I have read through the entire court file, and I do not get the impression that the applicant is a danger to G[redacted] or has perpetrated the acts he is alleged to have committed. Accordingly, I agree with the comments of Shoba AJ, when she states:

‘From the evidence tendered; the applicant wants the court to believe that despite the fact that the respondent was aware that the child was monitored or inspected, he escalated the abuse of the child to poking her vagina and bottom. It can be deduced from that evidence presented by Ms Cottrell, that the applicant wants the court to accept that the main reason the respondents would continue abusing the child, whilst knowing that he was being observed, was that he is a narcissist who does not accept responsibility for his actions.’

[39] My conclusion is reinforced by the fact that, not only was this matter assessed by experts appointed by the parties, but also by the South African Police Services, Child Protection Unit, an NGO, dedicated to the welfare of children who have been exposed to sexual abuse, and by a court appointed expert; all of which exonerate the applicant.

[40] Further, I have had some experience dealing with abused children. I have been a Magistrate in the family court, I have presided over rape matters

involving children and, as a policeman, I have investigated rape cases involving children. In all rape matters, without exception, my experience has been that the perpetrator would always threaten the child or bribe the child not to disclose the nefarious conduct. I have read through all the accounts to the experts, and I have perused the transcript; I have not found any account of the applicant either allegedly threatening G[redacted] or bribing her. This, leads me to believe that the abuse did not take place.

[41] Notwithstanding these findings, given the protracted timeframe it took to get to this point, mindful of the recommendations made in the report, who recommends a 'ripping the Band-Aid' approach to resume overnight visits; I do not believe it is in G[redacted]'s best interests that she immediately resumes contact with the applicant in terms of the settlement agreement, without a phased in approach, and without attempting to alleviate the anxiety of the respondent. To that end, I have structured an order below, which should promptly facilitate the applicant's access to G[redacted] in terms of the settlement agreement.

[42] G[redacted], during her short life, has experienced lots of change. From being an only child, living with both parents. She is now living with her mother and visits with the applicant. Both the applicant and respondent have moved on from each other, with the respondent remarrying and having a child, currently 16 months, with her new husband, and the applicant having a new romantic partner. In addition, G[redacted] has experienced the tragic loss of her maternal grandfather, with whom, she was very close.

[43] It is convenient to mention at this point, that I have considered the applicant's request for the sharing of the primary residence. While I am certain that once the applicant and respondent are in a better space, this may be considered in the future. However, considering that G[redacted] now has a younger sibling with whom she would need to bond, and all the prodding by social workers and psychologists that she has gone through over the years, I am not convinced that a case has been made out at this point for the sharing

of primary residence. My view is that G[redacted] should be given the opportunity to settle down and not endue yet another change.

[44] The report suggests that G[redacted]a has adjusted very well to all these changes, yet there are still the recordings and videos where G[redacted] accuses the applicant of sexual misconduct. The report suggests the respondent may, intentionally or unintentionally, be putting these ideas in G[redacted]'s head. Another possibility may well be G[redacted]'s way of coping with all these changes. Her parents have concerned themselves with visitation and seems to have paid little attention to the needs of G[redacted]; the respondent wants visitation to stop, while the applicant wants visitation with G[redacted]a to be normalised. Absent from all this, is G[redacted]'s voice.

[45] In *D.D.K v R.M.B.D.K & Van Aswegen NO,*[14] the court found at paragraphs 36 and 37 as follows:

'[36] A *curator ad litem* is appointed to safeguard the best interests of the child, usually when the child does not have parents or a guardian; or the parent or guardian cannot be found; or if the interests of the minor conflict with those of the parent or guardian; or if the parent or guardian unreasonably refuses or is unavailable to assist the child. Ultimately, the duty of a curator ad litem is to assist the Court and the child during legal proceedings, and to look after the child's interests. In doing so, it is likely that, in executing the court ordered mandate, that the *curator ad litem* will irk one or both parents.

[37] Unlike the Family Advocate, the role of the curator ad litem is not a neutral one. The curator is there to represent the interests and advance the case of the child concerned. A *curator ad litem* is to speak for the child concerned, and not just on the child's behalf, to enable their voice to be heard. A *curator ad litem* cannot and is not mandated to follow a child's instructions. This is the major difference between a curator and a legal representative, and perhaps the greatest source of disappointment for especially older children and their parents.'

[14] *D.D.K v R.M.B.D.K & Van Aswegen NO* [2023] ZAGPJHC 382.

[46] As I have already mentioned, this matter is voluminous, but up to this point, the litigation has been taking place without G[redacted]'s voice and or views. The appointment of a curator will in my view go a long way to assist and guide the court with a view that considers G[redacted]. I have perused the CV of Claudio Bollo and find him suitably qualified to act as curator ad litem in this matter.

[47] I further agree with appointments of Elmairie Booysen to provide G[redacted] with emotional support and Ms Janette Hermann as a coordinator.

[48] My view is that G[redacted]'s well-being is dependent on the well-being of both the applicant and the respondent, and more especially the respondent since she is the primary care giver. The respondent must accept the role of the applicant in G[redacted]'s life and be comfortable that G[redacted] is safe when visiting with the applicant. To achieve the aforementioned, and to allow G[redacted] to get use to the new schedule, my view is that overnight visitation should remain suspended for the next four weeks. Thereafter, visitation in terms of the settlement agreement will continue, unless wither Ms Hermann or Mr Bollo are of the view that the overnight visits remain suspended for a longer period.

[49] Regarding the counter application, the applicant has not made out a case for the money judgement, and accordingly, must be refused. However, regarding the alternative relief, from what I have read in the file, these issues appeared to have been agreed too, and I see no prejudice should the information be provided; accordingly, the counter application must succeed in that regard.

[50] Regarding costs, neither party received all the relief that they claimed, in the circumstances, normally an order will be made that each party pays its own costs. However, since this matter should not have been brought with a mere two days' notice, I am of the view that a punitive costs order is required against the applicant for at least some of the costs.

Order

[51] In the circumstances, I make the following order:

1. Ms Janette Hermann is appointed as a social worker case co-ordinator with the following functions:

(a) To facilitate and ensure that during the handing over of G[redacted] D[redacted], both to and from the respondent, which will be described below, either Elmarie Booysen and/or Li Anne Oberholzer must be present to ensure the wellbeing of G[redacted].

(b) To receive weekly update reports from Elmarie Booysen and/or Li Anne Oberholzer regarding G[redacted]'s wellbeing.

(c) At her discretion, ensure appropriate emotional support for G[redacted], if necessary.

(d) Decide, if after four weeks, it is in the best interests of G[redacted]a for visitation to continue in terms of the divorce settlement agreement.

(e) Share all reports with Mr Bollo, who I refer to below.

(f) In the event of any further litigation, to provide the court with a report, whether the relief sought is in the best interest of G[redacted].

2. Claudio Bollo is hereby appointed as G[redacted]'s curator ad litem, with the following functions:

(a) To assess all the legal documents and liaise with Ms Hermann to determine what is in the best interests of G[redacted].

(b) With the assistance of Ms Hermann, to conduct interviews with G[redacted], the applicant and the respondent, and other persons he deems relevant.

(c) In the event of any further litigation, to provide the court with a report, whether the relief sought is in the best interest of G[redacted].

(d) To institute litigation, should he deem it in the best interest of G[redacted].

3. For the next four weeks after the granting of this order, the applicant may enjoy contact with G[redacted] D[redacted] as follows:

(a) Unsupervised visitation on alternate weekends on Saturday and Sunday from 8h00 to 16h00, and alternate Wednesdays and Fridays from 14h00 to 17h00.

(b) Daily telephone and/or video calls between 17h00 and 18h00, and the respondent is directed to ensure that G[redacted] is reasonably able to receive these calls.

9. On the expiry of the four weeks, unless Mr Bollo and Ms Hermann holds a contrary view, visitation will continue as agreed in the divorce settlement agreement.

10. Within five days of this order, the applicant and respondent, are directed to initiate the appointment of a psychologist, either by agreement or by recommendation of the Health Professions Council of South Africa, for group therapy with: the applicant, respondent and G[redacted], together with their romantic partners/spouses should they volunteer, with the view of the applicant and respondent accepting their new roles in G[redacted]'s life.

11. The costs of the social workers, Mr Bollo and the psychologist shall be paid by the parties jointly and severally.

12. The applicant, Professor Tanya Robinson and/or Ginette Hermann are directed to forthwith, provide to the respondent all materials, that did not find its way into the report, but used by the authors during the evaluation, and/or to record the evaluation.

13. The applicant is directed to pay 50 per cent of the costs of this application on a scale as to between attorney and client, and such costs to include the costs of senior counsel, where appropriate.

[redacted]

NICHOLSON AJ

Date heard	:	30 October 2024
Handed down	:	27November 2024

APPEARANCES

Counsel for the applicant	Advocate Andre Stokes SC
Instructed by:	Venns Attorneys 30 Montrose Park Boulevard Victoria Country Club Estate Peter Brown Drive Montrose Pietermaritzburg 3201 Ref: C Blackmore/PM/55246527
Counsel for the respondent:	Advocate Dave Phillips SC
Instructed by:	Shepstone & Wylie 24 Richefond Circle Ridgeside Office Park Umhlanga Rocks 4319 Ref: EDW/sg/DAVE411180.1