IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 11384/2024

In the matter between

N[...] T[...] M[...]	APPLICANT
AND	
B[...] E[...] M[...]	FIRST RESPONDENT
1012 THE BROOK PROPERTIES (PTY) LTD	SECOND RESPONDENT
BM PROPCO (PTY) LTD	THIRD RESPONDENT
PLAAS GOEIE HOOP (PTY) LTD	FOURTH RESPONDENT

Date of Hearing: 22 August 2024

Date of Judgment: 11 September 2024 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an opposed Rule 43 application wherein the applicant sought spousal and children's maintenance *pende lite,* a contribution to legal costs, return and delivery of furniture and household goods and a payment in respect of electronic household appliances. No relief was sought against 2nd, 3rd and 4th respondent. Only the first respondent opposed the application. The second respondent was the registered owner of the matrimonial property. The respondent denied that he held shares in that company. The first respondent was the only director of the 3rd respondent, but denied owning shares in the company. The first respondent held 50% of the shares in the 4th respondent. The applicant intended to appoint a forensic investigator to assist her in establishing the full extent of the first respondent's income and benefits derived from each and every company directly and indirectly and also to disclose the full extent of his shareholding in these entities. This was because according to her the first respondent was secretive and selective about the information that he would disclose.

[2] The applicant and the first respondent (hereinafter referred to as the respondent) met when he was her patient as a dietician in 2015 and were married on 27 April 2018 out of community of property, with the inclusion of the accrual system and were now involved in divorce proceedings. Both were previously married and had two children each from those marriages. No children were born of their marriage. The applicant's children were still minors, while the respondent had a minor and an adult child. When they met and married all the children were minors. The applicant's children lived primarily with the parties, and the primary care of the respondent's children was with their mother but the children regularly spent time in the parties' matrimonial home as the respondent had contact rights. They in whole formed a blended family. The applicant's case was that her children had become accustomed to a high standard of living over the last eight years of the marriage. The children were severely prejudiced by the actions of the respondent and his sudden withdrawal, emotionally and financially from their lives, which was not done on *bona fides.* The applicant's case was that her children were devoted to the respondent, formed a strong bond with him and his withdrawal from their

lives had caused undue trauma. The respondent's claim that he had no legal obligation towards the applicant's children would be shocking behaviour towards the children. The respondent never withheld any financial support from the applicant and her children and regularly spoilt them with only the best. They went on luxury holidays, including overseas holidays, lived in a beautiful large house valued at a minimum of R10 million, drove luxury cars and the children attended private schools.

[3] The respondent's position was that he did not have parental rights and responsibilities in respect of the applicant's children, that he did not have a legal duty to maintain them nor did he undertake or promise to maintain them. According to him the children had a strong bond with their father who had regular contact with them and who contributed towards their maintenance. It was the applicant who provided for her children from her earnings and he only assisted when she experienced cash flows from her practice. The applicant and the father of the child enrolled their eldest child in a school and he had no say in the matter. The respondent's case was that his children were made to feel unwelcome in his home and family with the applicant. The applicant wanted her children to be viewed as the parties' children and his children as visitors. Initially he thought the reluctance of his children to blend was due to his divorce from their mother or a sense of loyalty to their mother, but over the years he came to realise that it was because of the conduct of the applicant towards them. The applicant made his daughter feel like an outsider, and the applicant bullied his son. The respondent's daughter could no longer tolerate the applicant's belittling and criticizing him. By December 2023 the parties agreed on a trial separation. She was to move to Paarl where the eldest son was already in school and she and the father had intended to also enrol the second son, whilst the respondent remained in George. He paid for the rental in Herold's Bay including wifi, DSTV and solar electricity. It was in March 2024 that he started an affair with another woman, who the applicant blamed for the deterioration of their relationship.

RESPONSIBILITY OF A STEPPARENT TO MAINTAIN A STEPCHILD

[4] In *Heystek v Heystek* 2002 (2) SA 754 (T) it was said at 756D it was said:

> "According to the common law a stepfather is not *ex lege* subject to the duty to maintain a stepchild. (Spiro *Parent and Child* 4th ed at 58 - 9; Barnard *et al The South African Law of Persons and Family Law* 3rd ed at 314.)"

In this matter the parties were not married in community of property. A distinction should be drawn between household necessaries and who qualifies as a member of the household, and the duty to maintain [*Onderhoudsplig van stiefouer, Hystek v Heystek,* (2003) THRHR 301 at 303, LN Van Schalkwyk and A Van der Linde, University of Pretoria]. The applicant's children were part of the organized family establishment at which the applicant and respondent were at the centre, living together in a joint home, and the applicant's children benefited from what the joint household provided. The provision of household necessaries by the respondent, from which the applicant's children benefitted, did not translate into a duty to maintain the children. Whilst the provision for household necessaries is often part of the duty to maintain, it is not always the case that the presence of the former means the existence of the latter [*Clark & Co v Lynch* 1963 (1) SA 183 (N) at 186B; Hahlo *The South African Law of Husband and Wife* (1985) 212]. Without more, a stepfather has no legal duty to maintain a stepchild.

[5] The applicant sought the finding that the respondent stood in the place of the parent and voluntarily assumed that role in respect of the children that the applicant brought into the marriage and that was the basis for the court to find that the respondent was liable for the maintenance of her children. In essence the proposition was also that the respondent had no right to unilaterally withdraw from that role or put otherwise, the respondent had no right to terminate a relationship in which he had placed himself as a parent. This was a complex social policy issue and not easy to determine. In contemporary South Africa, is it still offensive to hold one person liable for the maintenance of another person's child? The further question that arises from the facts of this matter was whether the applicant's children should be allowed to "double dip" or put otherwise, to receive a double portion, to wit, from their natural father and from the

respondent. In our law, in matters involving children, the politics of the birth of the child yields to what is in their best interests. It is not in the best interests of children that a stepparent be permitted to abruptly abandon those children the moment they fall out of love with their parent. Whether the respondent took a properly informed and deliberate intention to assume the liability to maintain the applicant's children permanently, is a question that is best left for the trial court. This includes the question whether the respondent intended that the applicant's children should continue to benefit from a double portion from which they benefitted during the happy times in the marriage.

[6] On the facts before me, the parties formed a new family. The children of the applicant were part of that family and lived at the parties' common home in a Golf Estate, which was a spacious home with inter alia en-suite bedrooms including separate training and play rooms with a barbeque room next to the swimming pool. The respondent provided financial support and presented to the children, the family including the extended family members and the world that he was responsible as a parent of the children. The children moved to private school and were spoilt with luxury, including expensive birthday and Christmas gifts. The respondent paid for the children's medical aid. Most contemporary South African children came to know about, experienced or are used to having a Pa and a Daddy, both present and actively existing in the lives of those children or those close to the children, jointly co-parenting. The Pa being the biological father and the Daddy being the man in their mother's intimate life. I do not find that the maintenance of the children by their biological father and that father's contact with the children, in any way diminished the first respondent's representation that he considered the applicant's children as the children of the marriage. The basis of the respondent's liability for the maintenance of the applicant's children is the children's right to parental care [section 28(1)(b) read with subsection (2) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), which extends to stepparents [*Heystek* 757B-F; *Onderhoudsplig* 306 and 312]. The respondent in happier times cared for the applicant's children, with the care as defined in the Children's Act, 2005 (Act Not 38 of 2005). The respondent exercised parental responsibilities and rights especially those set out in section 18(2)(a), (b) and (d) of the Children's Act, 2005. A stepparent attracted

section 28(1)(b) liability when he or she assumed *in loco parentis* to the children [*n' Stiefkind se aanspraak op onderhoud van n' Stiefouer,* (2012) TSAR 205-227, N Van Schalkwyk]. The question whether the stepparent took an informed and deliberate intention to assume the liability to maintain the stepchildren should be answered by the facts of the matter. It cannot be left to the whims of one of the parties. It is not a gift from the generosity basket of a stepparent when they are no longer in love. Children are too precious to be left to chance, in circumstances where a stepparent in effect promised, through their representation upon which the child, its biological parent and others relied [*MB v NB* 2010 (3) SA 220 (GSJ) at para 21]. It cannot be left to the feelings of the stepparent at the end of the relationship where impulse often trumps reason. It is a consequence of their conscious decision as regards the child who is not their biological child at the solemnisation of and/or during the marriage. Marriage must give insight, when love is blind.

THE FACTS

[7] When the summons were issued, the applicant was only aware of the entities cited as 2nd to 4th respondent. It was only during a failed attempt at mediation which revealed the complex nature of the respondent's financial structure through entities including companies and trusts. For instance, The B[…] Trust was allegedly founded by the respondent's mother and had three trustees, both parties and another who respondent appointed as COO of one of the companies, F[…]. Both parties were the named beneficiaries. This trust was the 100% shareholder of the second respondent. Its sole director was the respondent and it owned the matrimonial home. The applicant did not know about the trust, and knew the matrimonial home to have been a donation. The other trust was M[…] Trust. It was founded by the respondent, both parties were the beneficiaries and the trustees were the respondent, the COO of F[…] and another employee of F[…]. This trust was linked to 5 companies, none of which was cited in the summons as the applicant did not know of this. The respondent was a director in 4 of the 5 companies. In one of these companies the applicant was named as a co-director and was subsequently removed, all without her knowledge. In one company another

person was the sole director whilst in the 4 others the respondent was a co-director with one or more others. In another web of companies to which M[…] was linked, the third and fourth respondent appeared. The respondent was the sole director of the third respondent whilst his friend, V[…] H[…] was a co-director in the 4th respondent. Both the 3rd and 4th respondent were linked to the holding company for both the first and second web of companies, to wit, Seventy-Two Seventy Two Investment Holdings (Pty) Ltd. This is the company which also had links to two other companies, Mr T[…] and Tcubed Property Holdings. The 3rd respondent owned 2 immovable properties whilst the 4th respondent owned 5 immovable properties. The respondent was a businessman and former CEO of T[….] which was sold to S[…] Group. After litigation he was reported to have received a settlement of R500 million together with R29.5 million P[…] shares. He was the CEO of F[…] which operated several retail stores and held South African and Sub-Saharan distribution rights of some well-known brands. The respondent derived an income and benefits from all the entities directly or indirectly. Because the respondent was secretive and selective on disclosure to the applicant, it was necessary for her to appoint a forensic investigator to assist her in establishing the financial position of the respondent.

[8] The applicant was a dietician in private practice since 2005 doing business in a registered company and she was the only shareholder and director. She employed 5 other dieticians and a practice manager. She disclosed her personal and business bank statements. I am persuaded that it will be good practice in this Division for parties in a Rule 43 application to file their papers including a completed Financial Disclosure Form. Whilst the applicant was able to save income earned from her practice during the marriage as the respondent maintained her and the children, she now had to pay for the living expenses. The business provides an average net income of R35 073-16. She also received R7 202-00 from the father of her children for maintenance. The 3rd respondent was the owner of the property from which she did her business. She was now expected to pay rental. The respondent gave her rent holiday until 31 May and from June she had to pay R6093-83. This will reduce her net to R28 000-00. The respondent also paid her R7500-00 for maintenance per month. The respondent paid monthly rent for her and the

children, which rental agreement ends in November 2024. The respondent also paid Discovery Health Comprehensive plan monthly medical contributions for her and the children which included a gap cover and he also paid for the monthly data for the children's iPads. The respondent stopped paying certain other expenses of the applicant and the children at separation.

[9] The applicant sought an order that the respondent continue to pay for monthly expenses for which he paid during the happy days in the marriage and these were food groceries, cleaning material, brad and mild at R15 800 for both her and the children, Toiletries at R1400, Haircare at R1300, R4000 lunches R1300, plants and herbs R500, short term insurance R400, clothes and shoes R6500, school uniform R700, school shoes R200, sport clothing R1000, car insurance R882-47, car maintenance, services, tyres and windscreens R600, fuel R4000, car licences R70, books and stationary R200, outings for children's extramural R1500, hockey R200, medicine R2000, entertainment R5000, holidays and weekend breakaways R4000, anticipated house maintenance R2000, household appliances R1700, gifts, R1500, pet food R400, Pet vet R400, school fees R6456 and hostel fees R5990-00. The applicant also has some further expenses which she added like her facials, nails, botox and other cosmetic purchases, bus fee for the son that is schooling away from home, study policy for the children, retirement annuity, household appliances and kitchenware as the respondent had them. The total expenditure for her and the children was R82 974-99, and less her monthly income of R42 275-16 the shortfall was R40 699-83. She was not in a financial position to support herself and the children. Mediation failed and the respondent had raised an exception to her joinder of the companies, and this was an indication that the respondent would keep her busy with litigation to destroy her financially. The respondent would litigate to avoid discovering documents that were necessary to proof her accrual claim against him and to avoid pleading to her particulars. She was not in a financial position to litigate against the respondent on the same level, unless the court intervened with a contribution to legal costs. Her past legal expenses were R106 493-96, and her estimated short term legal expenses amounted to R1322 364-44. The estimated costs for a forensic investigation were R500 000 excluding travel costs. The parties agree that the

respondent told the applicant that his income was R300 000 per month. The applicant, having regard to the expenses previously covered by the respondent and the lifestyle they maintained, believed that the respondent's monthly income was about R500 000. The respondent on the other hand said R300 000 was his gross and that his net was R185 000.

[10] The respondent admitted that he had a financial structure as set out by the applicant, which resorted under the two trusts. He denied using the structure to prejudice the applicant as she was the trustee and capital and income beneficiary of both trusts. He did not dispute the structure as set out by the applicant and only took issue with the valuation of the shareholding. He only had household goods and furniture and a Toyota Land Cruiser worth about R950 000 in his name. He had no other assets in his name. His three current accounts were overdrawn. He had no direct or indirect beneficial interest although he was a director of several companies. Save for F[…] where he was the CEO, he did not earn any income from any of the entities. His net income was R184 797-93. His total expenses were R200 530-84, and his shortfall was R15 732-91. He could not afford the interim maintenance that the applicant sought. He was contributing R17 500 for rental, cash maintenance at R7500 and medical aid premium at R7 927 to the applicant as interim maintenance. He was paying through a loan from the 3rd respondent. The 3rd respondent subsidized the applicant's rental at her business. The market related rental was R30 000 per month and her company only paid R6 000 per month which amounted to R24 000 per month subsidy. The respondent's case was that the applicant was accustomed to a certain lifestyle when he was CEO of T[…] T[…] and that she struggled to adapt to their changed circumstances after the Steinhoff collapse and his resignation from the S[…]. He implored the applicant to curb spending but she refused. She did not want to acknowledge that he was in financial distress and instead chose to keep up appearances which caused strain in their marriage. He was forced to take bonds to fund household expenses which applicant refused to curb.

FINDINGS

[11] It is difficult to accept the mere say so of the respondent. On 16 December 2023 the respondent announced his separation from the applicant to his colleagues at work amongst others. In that whatsapp message he amongst others said:

> "In as far as our kids go we have always strived to give them the best in terms of love, time, experience and education. None of this changes in my view and it will certainly continue. …
>
> Finally, I hope you have always seen that I am loving and supportive towards N[...]. This too will continue because that is the person I wish to be. From now on it will just be in a different role or capacity and with a different perspective."

This is the same man who suddenly stopped providing for the children at all and now said he is not their biological father, and their mother must look elsewhere for support. Abrupt change happened in that he stopped giving the children love, time, experience and education. He stopped his support for the applicant. The respondent said one thing in public and did the exact opposite in private. His denial of applicant's access to household appliances and necessary furniture is a demonstration of how low the respondent could stoop to hurt another and deny them a sustainable livelihood. It is impossible to rely on his words. If the mediation did not expect of him to disclose, the applicant would not have known about the financial structure and web of trusts and companies he built to manage his assets and estate. His reliance on the applicant being a trustee and capital and income beneficiary in the trusts is not helpful if the applicant did not even know that there were trusts where she was a trustee. The enlistment and removal of the applicant as a director in one of the entities without her knowledge further guarantees the secrecy and selective disclosure that she is worried about. It follows that the applicant's fears that unless there is a proper forensic investigation, she will never know the full extent of the estate to which she is entitled. I did not find anything on her expenses which sounds to be more than to maintain the lifestyle commensurate with what she and the children were accustomed to. I am not persuaded

that the respondent did not have the means. I am persuaded that the contribution for costs asked for would enable the applicant, who is comparatively financially disadvantaged in relation to the respondent to adequately place her case before the court. The web of trusts and companies that the respondent structured for the estate, his manner of doing things without the knowledge of his spouse and being a difficult and ruthless opponent added to the complexity of the matter.

ORDER

[12] For these reasons I make the following order:

1.1 Payment of R40 000, 00 (forty thousand Rand) to the Applicant on or before the 1st day of every month, first payment to be made or before the 1st day of the month following this order;

1.2 By keeping the Applicant and her children, B[...] and R[...] D[...] W[...], as depends on his comprehensive medical aid scheme and by payment of the monthly premiums in respect of such membership;

1.3 By payment of all the Applicant's her children's medical expenses not covered by his medical aid;

1.4 By making the following monthly payments in addition to the amount *supra:*

1.4.1 The Applicant's rent, limited to an amount of R35 000,00 per month;

1.4.2 Water and electricity for the rental property;

1.4.3 Wifi;

1.4.4 Security;

1.4.5 Domestic worker’s salary;

1.4.6 Gardener’s salary;

1.4.7 Toyota Cross vehicle installment;

1.4.8 Applicant’s Fancourt golf course membership fees;

1.4.9 Applicant’s Oubaai gold course membership fees;

1.5 By making full and timeous payments of any and all maintenance obligations stipulated above, without deduction or set off. Any expenses incurred and paid for by the Applicant which, in terms of the above payment, are to be paid by the First Respondent, shall be reimbursed by him to the Applicant within 5(five) days of receipt of an invoice.

1.6 By making a contribution towards the Applicant’s legal costs in the amount of R1 000 000,00 (one million Rand) payable to the Applicant’s attorney of record by way of 5 equal monthly installments of R200 000, 00(two hundred thousand Rand) each, the first installment to be paid within one month from the date of this order, and thereafter on the third day of each successive month deduction or set off into a bank account nominated by the Applicant’s attorneys.

1.7 Return and deliver to the Applicant her furniture and household goods referred to in Annexure NM 13 within 30 (thirty) days from the date of this order.

1.8 Pay the Applicant the amount of R102 597,00 (one hundred and two thousand five hundred and ninety seven Rand) in respect of electronic appliance referred to in Annexure NM14.

1.9 The first Respondent's to pay the costs.

DM THULARE

JUDGE OF THE HIGH COURT