

IN THE HIGH COURT OF SOUTH AFRICA
[TRANSVAAL PROVINCIAL DIVISION]

Case No: 21531/08
Date: 22/05/2008

UNREPORTABLE

In the ex parte application of:

JOY STERNE

APPLICANT

[FOR THE APPOINTMENT OF A *CURATOR AD LITEM* AND
CURATOR BONIS ET PERSONA ON BEHALF OF RICHARD
SELMAR STERNE
(IDENTITY NUMBER: 460721 5061 084) (HEREIN "THE PATIENT")]

JUDGMENT

MAKGOKA AJ

[1] This is an application brought ex parte wherein the Applicant seeks an order appointing curators *ad litem et persona* on behalf of the Respondent. The Respondent came to know of the ex parte application and opposes same.

[2] The brief background to the application is as follows: the application was launched on 5 May 2008, on an *ex parte* and urgent basis. The second prayer of the Notice of Motion sought the matter to be heard in camera and the Registrar requested to keep the Court file in the matter sealed and under its direct control, pending finalization of the matter. Mr Erasmus, for the applicant, approached me in chambers about the above request, which I declined.

[3] The matter was then mentioned in an open court, and upon

consideration of the application, I ordered that the views of the Respondent's two daughters who are in the country, be sought. The matter then stood down, and in the afternoon of the same day, 5 May 2008, I was approached by Mr Erasmus, for the Applicant, together with Mr. N. de Jager, who informed me that the matter had become opposed and that Mr. de Jager appeared for the Respondent. The matter then stood down to 9 May 2008. When the matter was heard, a full set of affidavits had been filed on behalf of all the parties, including the affidavits setting out the views of the Respondent's daughters referred to above.

- [4] With regard to the merits, the Applicant and the Respondent were married to each other until their marriage was dissolved by this court on 22 April 2008. They have four children, two daughters and two sons, three of whom are all major and self-sufficient. The youngest of the children is 21 years old and mentally retarded.
- [5] In September 2006, while the parties were still married to each other, the Applicant obtained an order in this Court for appointment of a *curator ad litem* and *curator bonis et personam* for the Respondent. The said order was uplifted on 16 November 2007, on the recommendation of the *curatrix ad litem*.
- [6] The Respondent is a successful businessman, his estate with over R30 million rand. He suffers from a bi-polar disorder and has been prescribed medication treatment and medication for his bi-polar

disorder. The trigger to the present application is the purchases made by the Respondent during the period 5 April – 25 April 2008.

The following were the purchases made by the Respondent, as well as the purchase prices:

(a)	Mercedes Vito mini- bus	R355 664.04;
(b)	Leather seats mag wheels to the said vehicle	R 20 000.00
(c)	Immovable property Equestria	R203 000,00
(d)	Shares	R145 000,00
(e)	Exotic birds	R 30 318.00
(f)	Liquor	R 7 709.37
(g)	Telescope	R7 500.00
(h)	Champagne	R120 000,00
(i)	Bicycle	R 47 000,00
(j)	Motorcycle	R 78 000,00

(k) Garden furniture

R 20 000,00

[7] The Applicant contends that the above mentioned spending, as well as other conduct of the Respondent, is an indication of an irrational behaviour. Attached to the Applicant's affidavit, is among others, a report prepared by Dr. Wilhelm Bodemer, a psychiatrist who has treated the Respondent since 15 January 2007. In his report, Dr Bodemer, concludes that the Respondent is not in a position to manage his own financial affairs.

[8] The Respondent opposes the application and raises several points in his answering affidavit. First, the Respondent places urgency in dispute, second, that the Applicants lacks the *locus standi* to bring this application, and third, that the purchases complained of, are all with a plausible explanation. As regards urgency, I am satisfied on the papers that the matter is urgent. I now deal with the remaining points in dispute.

[9] Applicant's *locus standi*

On behalf of the Respondent, Ms Olivier argued that the Applicant has no *locus standi* to bring the application as she has no direct interest which entitles her to bring the application. She referred me to *Judin v Wedgewood & Another* 2003 (5) SA 472 (W). In that matter, the applicant was a creditor of the person sought to be declared to be

unable to manage his affairs. At 475 I-J, Blieden J said:

"It is well-known principle of our law that someone who claims relief from a court in respect of any matter must establish that he or she has a direct interest in the matter in order to acquire the necessary *locus standi* to seek such relief. That interest must not be too remote and must not be academic in nature..."

It was thus submitted that the Applicant has failed to establish such an interest.

- [10] It is so that an application of this nature is usually brought by one of the patient's next-of-kin. In the present case, the Applicant is a former spouse of the Respondent, having been in a marriage which endured for about thirty 30 years, out of which four children were born. One should also bear in mind the following factors:

In 2006 the Applicant obtained an order similar to the one sought in the present application, and secondly, she is supported by the parties' two major children. The third child, also a major, in all probability, supports the application, regard being had to an e-mail, Annexure "FF1 ", to the Applicant's attorney dated 15 April 2008.

- [11] On the facts, the present application is distinguishable from those in *Judin v Wedgehood*, *supra*. In that case, the application was opposed by the Respondent, his wife, the Respondent's adult children, his

attorney and various friends of the Respondent, all of whom filed affidavits opposing the application. In this matter, on the consideration of the factors mentioned in the preceeding paragraph, I am satisfied that the Applicant has established an interest sufficient to bring this application. I therefore find that the Applicant has *locus standi*.

[12] I turn now to consider facts upon which it is alleged that the Respondent is unable to manage his own financial affairs. I would start with established facts, and those are the following: first, the Respondent suffers from a bi-polar disorder, second, the Respondent is on prescribed medication for this disorder, third the Respondent admitted to having omitted certain medicine, fourth, the Respondent has spent just over R720 000.00 in a period of 20 days. The Applicant had estimated this figure to R1.5 million. I have however, taken out from this figure, the amount paid towards purchase of immovable property in Equestria. The transaction fell through and I assume that this amount would revert to the Respondent's credit. I have also reduced the amount paid for liquor at Johnny's Liquor Market from over R20 000,00 to R7 709.37. This seems to be common cause the amount actually paid.

[13] The Respondent has sought to explain in detail the necessity of each purchase. I must say the most startling of all the transactions is the purchase of the Mercedes Benz Vito vehicle for R355 664.04 and its exchange for two American made motor vehicles of 14 years. The explanation by the Respondent in this regard is that the said motor

vehicles were worth about R280 000.00, plus the jewellery be received, valued at R184 159.00. I find this explanation extraordinary and bizarre. The Respondent mentioned three reasons for the purchase of the Vito bus, namely to use same as a shuttle service for the business of Villa Sterne, secondly for his private use, and thirdly, for transportation of the son of the Respondent's girlfriend, who is crippled. All these would be plausible reasons, but the exchange of the Vito for the above-named items, then becomes difficult to comprehend. One must take into account the fact that the Respondent spent a further R20 000,00 on leather seats and mag wheels for the said vehicle.

[14] One can go on about other purchases as well. The impression one gets upon reading the Respondent's answering affidavit is that, the Respondent did not properly reflect the need for each purchase before same was made. For example, it is beyond comprehension why the Respondent found a need to spend a total amount of R30 318.00 on exotic birds. There is also manifestly something amiss in a person spending R47 000.00 on a bicycle for exercise purpose. I am therefore satisfied that a *prima facie* case has been made out.

[15] I am therefore inclined to grant the order. During argument, Mr Erasmus placed on record that the Applicant persisted only with prayers 3 and 4 of the Notice of Motion, that is, the appointment of a *curator ad litem* to report to the Court on the capacity of the Respondent to manage his affairs. Such an order was made in *Ex parte Thomson: In re Hope v Nope* 1979 3 SA 483 (W). Ms Marinda

Veldsman, an advocate of this court, has agreed to act in such capacity.

[16] In the premises I make the following order:

[16.1] Advocate Marinda Veldsman is hereby appointed a *curatrix ad litem* to RICHARD SELMAR STERNE (lithe patient") with a view to report on an urgent basis to this Court in respect of the following:

[16.1.1] The patient's mental capacity;

[16.1.2] Whether the patient is capable of managing his affairs; and

[16.1.3] The appointment of a *curator bonis* and/or *curator ad persona*.

[16.2] The *curatrix ad litem* is granted the following duties and powers:

[16.2.1] To consult with the patient and/or an other person in order to establish the patient's mental state and his capability to handle his own affairs;

[16.2.2] To instruct any further experts, including but not limited to a psychiatrist, to evaluate the patient and

to assist the *curatrix ad litem* in making a recommendation;

[16.3] The costs of this application are reserved, to be determined upon the report of the *curatrix ad litem*.

TM MAKGOKA
ACTING JUDGE OF THE HIGH COURT