IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: A3015/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED:

In the appeal of:

J [....] J [....] 1 B [....]   Appellant

versus

S [....] J [....] 2 B [....]   Respondent

Coram: Wepener J et van Niewenhuizen AJ

Date of hearing: 10th November 2022

Date of Judgment: 10th November 2022

This judgment is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge his secretary. The date of this Order is deemed to be 10 November 2022.

JUDGMENT

Wepener, J:

[1]   This is an appeal against the order of the magistrate of Vereeniging, dismissing a point in limine that the respondent was not entitled to launch a claim for maintenance against the appellant.

[2]   When the parties were divorced on 13 May 2019 they concluded a settlement agreement in terms of which it was stipulated that:

> 'The aspect regarding spousal maintenance shall be referred to the relevant maintenance court, by either party within 12 months from the date of the granting of the final order of divorce. In the event that neither party approaches the maintenance court for such relief within the period stated in this paragraph, the parties accept that their respective entitlement to lodge a maintenance claim shall fall away.'

[3]   The issue that looms large before us is the referral to the maintenance court. During argument before the learned magistrate, the respondent's legal representative stated that the matter was indeed so referred to the maintenance court before 13 May 2020. He stated that it was referred to court during April or early May 2020 and that there are court personnel who could confirm the date when the matter was first referred to the court. The reason why a court stamp was affixed later to the documents was due to the declaration of the 'covid-regulations'[1], which hampered usual and general court access. In heads of argument filed before us, it is said by the respondent that it is denied that the application was 'handed in' after 13 May 2020.

[4]   The issue of the date of the referral to the maintenance court was left undetermined by the magistrate and one assumes that this is due to a lack of evidence. The appellant relied on the court stamp, which was 27 May 2020, for the contention that

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[1] Regulations promulgated under the Disaster Management Act 57 of 2002, which commenced on 27 March 2020.

the application was brought out of time. But the date on which the court stamp was affixed to the document may not coincide with the referral date as stipulated in the deed of settlement. I am of the view that this issue requires further evidence. Both parties agreed that the matter should be remitted.

[5]   In the circumstances, and in terms of s 19 of the Superior Courts Act 10 of 2013, I make the following order:

> 1.   The matter is remitted to the magistrate for further hearing.
>
> 2.   The magistrate must receive evidence, whether viva voce or by way of affidavit, regarding the date when the aspect of spousal maintenance was referred to that court by the respondent.
>
> 3.   After receiving this evidence the magistrate must consider whether the aspect of spousal maintenance was referred to that court before 13 May 2020. If so, the aspect of the respondent's entitlement to maintenance should be considered on its merits.
>
> 4.   The costs of this appeal are costs in the cause.

W.L. Wepener
Judge of the High Court of South Africa

I agree.

S. Van Niewenhuizen
Acting Judge of the High Court of South Africa

Counsel for the Appellant: G.H. Ferrar

Attorneys for the Appellant: JB Hugo & Cronje Inc.

Counsel for the Respondent: S. Kroep

Attorneys for the Respondent: Wessels & Vorster Inc.