IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 13973/2020

In the matter between:

D[…] J[…] B[…] (born M[…]) Applicant

and

M[…] B[…] Respondent

Date of hearing: 12 February 2021

Date of judgment: Delivered electronically on 18 February 2021

REASONS FOR ORDER DATED 12 FEBRUARY 2021

PANGARKER, AJ

INTRODUCTION

[1] On 12 February 2021, I granted the following Order on an urgent basis after hearing argument from counsel for the parties:

1. *Leave is granted for the parties' two minor children to relocate with the Applicant to Centurion, Gauteng, where they will continue to primarily reside with her.*

2. *The Applicant, with the Respondent's assistance if necessary, is authorised to enrol the children at the following schools in Centurion, Gauteng, in order that they commence schooling as from 15 February 2021:*

    2.1 Midstream College (daughter)
    2.2 Midstream Ridge Primary School or Midstream College Primary School (son).

3. *The remaining relief sought by the Applicant shall stand over, pending the Court's written reasons which shall be furnished electronically to the parties' legal representatives.*

[2] These are my reasons for the above order and for the remaining relief sought by the Applicant. For purposes of this judgment, the children are referred to by their initials, *I* and *M*.

[3] The parties are the divorced parents of two minor children, a 13 year old daughter and a 12 year old son. The parties divorced on 8 December 2011 under case number 15770/2010. The Parenting Plan incorporated in the Final Divorce Order, granted primary residence of the children to the Applicant (mother) and reasonable contact to the Respondent (father). The parties are co-holders of parental responsibilities and rights and co-guardians as envisaged by section 18 of the Children's Act[1].

[1] 38 of 2005

TWO-PART APPLICATION

[4] In March 2020, the Respondent's attorneys informed the Applicant that the former does not consent to the children's relocation to Centurion nor the schools which the Applicant wished to enrol them in. Mr Schneider was appointed as mediator and after consultation, suspended the mediation pending an assessment by Dr Martalas, a clinical psychologist, to determine what would be in the children's best interests. Early in the doctor's assessment, the Respondent consented to the children's relocation to Centurion. The assessment was consequently suspended and mediation of the remaining disputes regarding the Respondent's contact and maintenance, continued. In mid-December 2020, the Respondent withdrew his consent to the children's relocation and withdrew from the mediation process. The result of this about-turn was that Dr Martalas' assessment had to proceed.

[5] In her attorney's correspondence dated 16 September 2020[2], the Applicant requested the Respondent's co-operation in respect of an urgent assessment to be done by Dr Martalas. The co-operation was not forthcoming and on 2 October 2020, the Applicant delivered an urgent Notice of Motion which was also served on the Office of the Family Advocate, seeking relief in two parts:

[6] Part A - an order that Dr Martalas investigates and assesses the care and contact arrangements, the children's relocation, and recommends schools the children should attend in 2021. On receipt of her report, either party may set the

[2] Record, pages 67-70

matter down for hearing on at least 7 days' written notice for a determination of Part B.

Part B - that leave be granted to the Applicant to relocate with the children to Centurion; that the children shall attend schools in 2021 as recommended by Dr Martalas; that the Applicant shall be liable for one economy return ticket per child per month for purposes of the children visiting the Respondent in Cape Town for a weekend that the Court Order granted on 8 December 2011 (incorporating the Consent Paper and Parenting Plan) be varied in accordance with Dr Martalas' recommendation or as the Court deems appropriate; that the Respondent be directed to provide the Applicant with dates and times for purposes of attending at the Department of Home Affairs in order to renew the children's passports; and, costs on an attorney and client scale.

[7] On 8 October 2020, the Applicant obtained an Order by agreement in terms of which Dr Martalas was appointed to continue her investigation and assessment, which included recommending appropriate schools for the children to attend in 2021.

[8] On 15 January 2021, the relocation assessment report of Dr Martalas and medico-legal report by psychiatrist, Dr Czech, in respect of the Respondent were filed. In her lengthy report, Dr Martalas recommends that the children be allowed to relocate with the Applicant to Centurion, and that they should attend dual medium private schools. She proposes Midstream College (Primary and High Schools) and Pierre van Reyneveld Christian Academy, and that the Respondent should continue weekly therapy with clinical psychologist, Ms Plank. Furthermore, in

the event of a relocation, the Respondent should have progressed sufficiently in therapy and parenting guidance before visiting the children in Centurion, initially under supervision of an adult familiar to and trusted by the children. Dr Martalas also recommends that mediation with Mr Schneider should be attempted before either parent approached the Court[3].

[9] On 15 January 2021, the Applicant set the matter down for determination of Part B[4] for hearing on the urgent roll on 1 February 2021. The application was served on the Respondent's attorney on 14 January and on the Office of the Family Advocate on 27 January 2021. In her supplementary affidavit served on the Respondent's attorneys and Family Advocate, the Applicant suggests that the children attend Wierda Park Primary School and Aldoraigne Secondary School respectively, which are Afrikaans medium schools as these would provide a similar environment to what the children were used to in Worcester. These schools are a relatively short distance[5] from Copperleaf Golf Estate where she and her husband, Mr H[…], would live with the children. Furthermore, the Applicant withdrew her tender regarding the payment of one return air ticket per month per child, and requested a payment holiday of a year.

[10] The Respondent delivered a Notice of Opposition on the eve of the hearing[6] and an answering affidavit, wherein he withdraws his opposition to the relocation. He agrees with Dr Martalas' recommendation regarding the dual medium schools but takes issue with the Applicant's request for a payment holiday in respect

[3] Record, par 6.4, page 109
[4] I refer to the application which forms the subject matter of this judgment as "Part B"
[5] 9 and 14 km respectively from Copperleaf Golf Estate
[6] On 29 January 2021

of the return ticket per month per child. He seeks a further contact weekend on notice, plus costs of the application.

[11] On 1 February 2021, the relocation of the minor children, the Respondent's further contact and variation of the Parenting Plan, were no longer in issue. The aspects which remained in dispute were the schools which the children were to attend, the air flight ticket tender and costs of the application. Given the time constraints and urgency as schools were due to commence on 15 February 2021, it was decided that Dr Martalas be requested to provide further input as the Applicant persisted that the children attend Afrikaans medium schools and held the view that the doctor’s proposed schools are impractical given travel and distance issues. The matter was postponed by agreement to 9 February 2021 for the further expert report and argument. The parties were requested to consider settlement of the issues.

[12] On 9 February, I was advised that the issue regarding the schools was still not resolved. The Respondent had delivered a further supplementary answering affidavit which deals mainly with updates regarding the recommended dual medium schools, simultaneously attaching a report by Ms Pettigrew, an educational psychologist in Kenilworth. Ms Heese indicated that she needed to take instructions from her attorney as the further affidavit and Ms Pettigrew’s report were served late. The matter was then postponed for argument to 12 February 2021 and I requested the legal representatives to keep me abreast of any settlement agreement. In view of what the Applicant considered to be accusations of bias by Ms Pettigrew, she filed a replying affidavit to the Respondent’s supplementary answering affidavit of 8 February 2021.

[13] By Friday 12 February, there was still no resolution on the schooling issue and the matter was argued. Counsel provided various proposed Draft Orders which are similar in respect of the Respondent's contact and the variation of the Parenting Plan. The parties differ in respect of the air ticket issue, the schools and costs. The applicant is represented by Ms Heese and the Respondent is represented by Mr van Embden. After hearing the various submissions and having the matter stand down to consider the Order to be granted urgently in view of the looming start of the school year, I granted the relief as set out in paragraph 1 above.

[14] The Office of the Family Advocate provided an Annexure to the Notice of Motion indicating that due to the urgent nature of the proceedings and as they were not placed in possession of certain affidavits in the Part B application, and as the Court is the upper guardian of minor children, it was requested to make a value judgement in respect of the relief sought.

COMMON CAUSE FACTS

[15] After the parties divorced in 2011, the children were living with the Applicant and her family in Worcester where they attended Afrikaans medium public schools. The children were involved in various extramural and sporting activities. Dr Czech reports that the Respondent displays anger at his ex-wife whom he believes influences the children against him. The respondent's suicidal thoughts (suicidal ideation) occurred in September 2020 when contact with the children seized following an angry outburst towards *M*. The Respondent has no appreciation for the

children's feelings nor the impact which his conduct has on them. Dr Czech recommends weekly sessions with a clinical psychologist (Ms Plank), assistance with parenting skills and resumption of unsupervised contact with the children after psychotherapy and appropriate medication. The relationship between the children and the Respondent is rather strained. He removed financial support of the children in November 2020[7] and 8 February 2021 respectively, seemingly as a form of punishment because the children had blocked him and do not want to have contact with him.

[16] The Applicant married Mr H[…] in November 2020 and relocated to Centurion. At the time of launching the Part B application in January 2021, the children were living with her in Centurion during the school holidays. The Applicant, with the assistance of her husband, would be responsible for transporting the children to school.

[17] In her supplementary report, Dr Martalas further motivated and stood by her recommendation that the children should attend a dual medium school notwithstanding further information provided by the Applicant[8]. Ms Pettigrew's report supports Dr Martalas' recommendation that the children attend dual medium schools. The proposed dual medium schools have an Afrikaans stream and if accepted, the children would enter the Afrikaans stream. Midstream College confirmed per email on 8 February 2021 that both children could be accommodated at their secondary and primary schools respectively[9].

[7] Record, paragraph 4.8.5, page 95
[8] Record, pages 206-214
[9] Record, Annexures MB4 and MB5, pages 219-220

ISSUES IN DISPUTE

[18] The remaining issues in dispute in the Part B application are: the children's schooling; who should do the supervision in respect of the Respondent's contact; whether a payment holiday should be awarded to the Applicant in respect of the air ticket tender, and costs.

SUBMISSION OF FURTHER AFFIDAVITS AND MS PETTIGREW'S REPORT

[19] In view of the impending return to school on 15 February 2021, a pragmatic approach was called for. Generally, the provision of the respondent's supplementary affidavit should have been done by way of an application for leave to file a further affidavit. Similarly, Ms Pettigrew's report should also not have been sprung on the Applicant and her legal representatives without any prior notice. While Ms Heese took issue with the above on 9 February 2021, the Respondent's supplementary answering affidavit and Ms Pettigrew's report were accepted provisionally subject to argument as to whether it should be allowed as part of the proceedings. At commencement of the proceedings on 12 February, Ms Heese confirmed that she was not taking issue with the submission of further affidavits and the report. An enquiry in terms of section 4 (1) (b) of the Mediation in Certain Divorce Matters Act[10] was not necessary.

LEGAL PRINCIPLES

[10] 24 of 1987

[20] Section 28(2) of the Constitution of the Republic of South Africa[11] states that a child's best interests are of paramount importance in every matter concerning the child. Similarly, sections 7 and 9 of the Children's Act (*the Act*)[12] promote the best interests of the child standard in all matters concerning children. In terms of section 10 of the Act, the views expressed by the child of an appropriate age and maturity must be given due consideration. In F v F[13] it was held that the custodial parent has the right to dignity, privacy and freedom of movement, when regard is had to his/her right to pursue a career and a life after divorce. In terms of section 29(2) of the Constitution, everyone has the right to receive education in the official language of their choice in public educational institutions.

AFRIKAANS OR DUAL MEDIUM SCHOOLS?

[21] The Applicant takes various issues with the expert reports filed in the application. Dr Martalas is the agreed counselling psychologist appointed by the parties' mediator, Mr Schneider. Furthermore, she was ordered to continue her assessment and make recommendations by virtue of a Court Order granted on 8 October 2020. Ms Pettigrew was appointed by the respondent's attorney on or about 4 February 2021 with a specific mandate to review Dr Martalas' recommendation. When the evidence of an expert is expressed on an issue which the Court can decide, then the opinion is irrelevant and inadmissible[14]. If the issue at hand is of such a nature that the witness is better placed than the Court to form an opinion on

[11] 1996
[12] 38 of 2005
[13] 2006 (3) SA 42 SCA at par 11; see also B v M 2006 3 All SA 109 (W)
[14] R v Vilbro 1957 3 SA 223 (A)

it, then the opinion is admissible as it is relevant[15]. The main issue is which schools the children should attend as from 15 February 2021. The opinions of Dr Martalas and Ms Pettigrew can only be of assistance to the Court and this makes their views relevant.

[22] Ms Pettigrew's expertise spans over 22 years and she has often testified in High Court matters and done numerous relocation assessments. She has qualified her approach in this matter by indicating that she was provided with all the papers up to 3 February 2021 including the Applicant's supplementary affidavit, and expert reports. She is at pains to indicate that her approach is not her usual methodology used, but given time constraints, urgency and the fact that the Applicant did not accept the school recommendation, she adopted a different approach and reserved the right to supplement her report if necessary. No consultations had occurred with the parties and children. I disagree with the Applicant's submission that Ms Pettigrew aligned herself with the Respondent and expressed a biased view. Due to the manner in which the litigation evolved, Ms Pettigrew's report was finalised prior to the Applicant's delivery of her replying affidavit to the Respondent's supplementary answering affidavit. Ms Pettigrew was alive to the very real and untenable situation that with the commencement of the new school year on 15 February, the children would not be able to commence school due to the school choice still being disputed. There was simply no time for interviews with the parties and the children. She contacted the various schools in the limited time available and reported her findings. The Applicant does not question Ms Pettigrew's experience on the topic of relocation assessments.

[15] See Principles of Evidence, 3rd edition, PJ Schwikkard et al, page 87

[23] Ms Pettigrew correctly holds the view that the Respondent's voice should also be heard on the choice of schools. She is cognisant that he is the parent who will lose contact and daily connection with the children because of their relocation to another province. Viewed in the context of the matter, I agree with Mr van Embden's submission that the accusation of bias directed at Ms Pettigrew is without merit.

[24] The Applicant's main issue with Dr Martalas' recommendation of Midstream College and Pierre van Reyneveld Christian Academy is that she does not consider the practical difficulties related to the schools she recommends. Ms Heese submits that the doctor chose different schools than those recommended by the parties and failed to canvass her choices with them. The fact that Dr Martalas did not canvass her recommended schools with the parties does not render her opinion and report less valuable or inadmissible. Furthermore, I agree with Mr van Embden's submission that once the doctor made the finding that a dual medium school was in the children's best interests, she had thus excluded those schools suggested by the parties and need not have sought their approval in respect of the schools she recommended. After all, she was tasked with investigating, assessing the relocation issue and making recommendations regarding schools the children should attend.

[25] The Applicant submits that she does not have an objection to the schools recommended by the expert and acknowledges that they are private schools with good reputations, but the distance from the golf estate is an issue which will impact upon the children. Similarly, travelling to these schools for extramural,

sporting activities and school functions over weekends will also impact on them. The children would have to experience the inconvenience of rising an hour earlier, sitting in peak hour traffic and travelling long distances for several years. The Applicant and Mr H[…] would have to navigate these practical transport and peak hour traffic problems daily. It is submitted that neither Dr Martalas nor Ms Pettigrew could address the practical problems related to distance and travelling in their reports.

[26] To emphasise the practical issues, the Applicant submits that it would take approximately one and a half to two hours per day in traffic to and from the proposed Midstream College which is situated in a large private estate. Travelling will involve the freeway between Pretoria and Johannesburg. The Applicant has safety concerns in that the children would be dropped during winter when it is still dark. There is no public transport contract available from the golf estate to either of the dual medium schools proposed. The fact that the Applicant and Mr H[…] would be responsible for the daily transport of the children to and from school would affect her work, her employability and income as well as that of her husband. She could not find anyone at her estate or nearby whose children attended Midstream College. Most of the children on the estate attend the schools she proposes and this would benefit the children socially. Similarly, there is the possibility of sharing transport amongst parents on the estate. The cost of the proposed schools as opposed to those she wants the children to attend (former model C schools) would be more. The Respondent has shown by his conduct that he cannot be trusted when it comes to making payment in relation to the children.

[27] Mr van Embden has emphasised that the Applicant decided not to abide by Dr Martalas' recommendation, which she initially sought and agreed to. The Applicant is the parent who decided to relocate with the children and should accept the logistics and practical difficulties which accompany such relocation. Furthermore, the advantages of a dual medium school outweigh the travelling difficulties which the Applicant will encounter. Even at the dual medium schools proposed by the expert, the children will be taught in the Afrikaans stream to begin with and Midstream College caters for this eventuality.

[28] As the Part B application primarily centred around the relocation and a determination of the schools, I must stress that the best interests of the child should be the pre-eminent consideration in matters involving their relocation[16]. The children will form part of the Applicant's new life with Mr H[…] and have already forged a close relationship with him. As a candidate attorney, the Applicant intends to seek future employment and embark on her legal career. From the evidence, I accept that the Respondent is well off financially speaking. The Respondent has offered to pay for the children's private school education in Centurion.

[29] I accept that Midstream College[17] and Pierre van Reyneveld are further from Copperleaf Golf Estate than the Applicant's proposed schools and that the children would need to rise earlier and travel further to reach the dual medium schools. No negative connotation can be drawn from Dr Martalas' admission that she cannot provide any input on the aspect related to travel[18]. From a travel-transport

[16] Jackson v Jackson 2002 (3) SA 303 (A)
[17] In view of the Order granted on 12 February 2021, I have mainly focussed on Midstream College rather than Pierre van Reyneveld
[18] Record, page 212

perspective, the Afrikaans schools would be better options as they are closer to the children's new home. On the issue of safety of the children in winter, Midstream College is in a private gated estate. It is thus not unreasonable to conclude on a balance of probabilities that it would have security at the school during the year. The fact that in January, there was no transport available to Midstream College, does not exclude the possibility that the situation may well change once school starts or later during the year. I appreciate that young children require their sleep, but the fact that they are required to rise early for school is unfortunately part of daily school life for learners across the country who have to use private or public transport, or walk some distance to school. While the Applicant is entitled to enjoy and look forward to embarking on a new life with Mr H[…], the reality and consequences of relocation are that she cannot expect the situation to be without sacrifices and adjustments to her schedule. As the primary carer, she is indeed responsible for the children, but the travel inconvenience can surely not be a basis to reject Dr Martalas' recommendation of a dual medium school.

[30] The fact that many children living at the golf estate attend the schools which the Applicant suggests, is also not a reason to reject the expert's proposed schools. Regardless of which school is attended, both children would have to socialise with other children. The reports do not indicate that they are shy or withdrawn children. In my view, attending a school other than the one most of the children on the estate attend, could certainly benefit the children and enhance their experience of a diverse South African society.

[31] While the Respondent has moved from his stance of an English medium school to accepting a dual medium school, the same cannot be said of the Applicant. The schools which the children attended in Worcester are Afrikaans medium and the Applicant's contention is that the children expressed a desire to attend Afrikaans medium schools in Centurion. Prior to the looming relocation, and during a period when the relationship between the children and respondent was fairly good, they were both excited at the prospects of attending English schools in Cape Town. The children then expressed a desire and wish to live with their mother in Centurion and this corresponded with the deteriorating relationship with their father. Both children obtained good marks in English and Afrikaans and Dr Martalas' report indicates that she conversed with them in both languages. *I* stated that she wished to start in an Afrikaans school and later consider moving to an English medium school in Centurion. The parties find common ground in respect of the range of subjects offered, sport activities and availability of extra lessons. In spite of her insistence on an Afrikaans medium school for the children, the reports indicate that the Applicant and the children consider that the children's language preference may change to English medium schools once they have settled in Centurion.

[32] Another basis for the Afrikaans school choice is that the Applicant also wishes the children to attend schools which have a Christian ethos as they are brought up in the Christian faith. Having regard to Annexure MB2[19], Midstream College ticks this box as it is Christian-based. The school day starts with a prayer and a Christian-based message.

[19] An information booklet on Midstream College

[33] The Applicant concedes that dual medium schools would benefit the children and in principle, there is no objection to either of the schools recommended by Dr Martalas, but for the practical aspects listed above. Ms Heese conceded that the practical difficulties/travel issue as a single factor, is not an overriding objection. It is however suggested that the children change to English medium schools[20]. The investigation further indicates that the student body at Midstream College is a diverse one, which is more similar to the previous Worcester school than the Afrikaans schools proposed by the Applicant. The college is also on the same campus as the primary school and sport is part of the extramural package. As for academic achievements, the investigation indicates that Midstream's Matric results indicated a 100% pass rate in 2019[21].

[34] Dr Martalas' investigation is thorough and detailed, and her findings are motivated, so too the recommendation regarding dual medium schools. Both children are reported as being adaptable and should not be expected to struggle to adjust to a new environment. Both are academically strong. The experts advocate a dual medium school in a multicultural, multi-racial and diverse South African society. I agree with the experts that a dual medium school creates possibilities and options for the children in future, which may include tertiary education abroad. To restrict the children to Afrikaans education on the basis that it is better suited because those schools are closer to their residence, ignores the possibilities and opportunities available to the children and the easier transition to an English medium education at the appropriate time. While managing peak hour traffic daily will be an inconvenience and may in the long run impact on the Applicant's working hours, I am not convinced

[20] There are English medium schools opposite the estate
[21] As at date of the application, the 2020 Matric results were not available in the Pettigrew report

that her rights to dignity and freedom of movement trump the advantages for the children in attending a dual medium school. The children would not need to change to an English school at a later stage if they commence their education at a dual medium school now.

[35] In respect of the accusation by Ms Pettigrew that the Applicant, by referring to *"Model C schools"*, has a questionable value system when it comes to exposing the children to multicultural and multiracial education, I find that I respectfully disagree with her. Clearly from the evidence, the Applicant's reference was not intentional. She has exposed the children to a multicultural society by enrolling them in a public school in Worcester.

[36] The final aspect relates to the fact that the proposed dual medium schools are private schools and more expensive than the public schools the children previously attended. This is indeed the case, but I am mindful that the Respondent has clearly offered and undertaken to pay for the children's schooling at these schools, and he should be kept to this undertaking. The investigation by Ms Pettigrew indicates that the Applicant seeks a prestigious school for the children, and the proposed schools are indeed such schools.

[37] The best interests of the minor children in this instance would be better served by allowing them to attend dual medium schools, which would enable them to continue their education in the Afrikaans stream yet enter the English stream without changing schools at a later stage. The children will be able to interact with English and Afrikaans speaking children from diverse backgrounds and in so doing, would be

better equipped at universities/tertiary level and in the workplace. The proposed dual medium school also promotes the Christian ethos which is important to the Applicant and the children.

[38] I am accordingly satisfied that the reports of Dr Martalas and Ms Pettigrew indeed take the children's best interests into account. In light of the above findings, I consequently granted the order on 12 February 2021 authorising the applicant to enrol the children at Midstream College, Centurion.

RETURN ECONOMY AIR TICKET

[39] At the time of delivering her supplementary affidavit, the Applicant had incurred expenses in respect of legal fees, mediation, and the assessment. In addition thereto, the Respondent had failed to make payment of certain expenses in line with the Parenting Plan and removed the children from his medical aid, which resulted in additional expenses. The Respondent's argument is that the Applicant is not entitled to renege on her tender.

[40] I do not agree that a payment holiday for a year is reasonable, but I am mindful that the evidence indicates that the Respondent has failed to make certain payments in terms of the Parenting Plan, thus placing the Applicant in a position where her finances were burdened to a certain extent. It would be fair and reasonable to provide the Applicant with a grace period before the payment of the return ticket is to be implemented. It is in any event the case that Dr Martalas would still need to make a determination regarding the Respondent's contact.

THE RESPONDENT'S CONTACT

[41] The parties are essentially in agreement regarding an amendment of paragraph 4.1 of the Parenting Plan which allows the Respondent reasonable contact with the minor children during term time at every alternate weekend. I have had regard to the suggested amendments included in the Draft Orders proposed by counsel. I am inclined to amend paragraph 4.1 to allow the Respondent to have reasonable contact with the children with a measure of flexibility given that there would be extramural and compulsory school events to be taken into account.

[42] From Dr Martalas' recommendation, the Respondent needs to have progressed sufficiently in therapy and parenting guidance before visiting the children in Centurion, initially under the supervision of an adult familiar to and trusted by the children. From the evidence and the 3 February report of Ms Plank[22], it is indicated that the Respondent is sufficiently committed and has progressed to have unsupervised contact with the children. Dr Martalas reports in her supplementary report that email communication from the Respondent indicates that he did not intend to appoint anyone other than Ms de Klerck to assist him with parenting guidance. It is evident that Dr Martalas must be satisfied that the Respondent has progressed sufficiently well before he can exercise reasonable contact with the minor children. The parties cannot agree on whether the Applicant or Dr Martalas should choose or determine who the supervising adult should be. Given the acrimonious

[22] Record, MB6, page 221

nature of the parties' relationship, I believe the supervising person should be determined by Dr Martalas.

COSTS

[43] I agree with counsel that generally in matters of relocation, the Court either grants no order as to costs or that each party pays his/her own costs. Both parties have argued that costs be awarded in their favour. This is not a matter where there is a successful litigant. In fact, and with respect to both parties, neither have impressed in respect to their approach to this matter, despite the valiant efforts by their legal representatives.

[44] Firstly, the Applicant cannot be blamed for marrying during these proceedings and relocating to Centurion. She is entitled to continue her life. In the circumstances of the matter, she was entitled to approach the Court as the Respondent had opposed the relocation, then consented after the assessment commenced, then withdrawn from mediation and opposed the relocation again, resulting in the continuation of the relocation assessment. Ideally, the parties should have agreed on what was a thorough assessment and enrolled the children at a dual medium school, what with the commencement of the new school year a few weeks away. However, that was not to be. The Applicant did not accept the recommendation of dual medium schools on the bases set out earlier herein. The Respondent, on the other hand, is criticised for waiting until the eve of the hearing to consent to the relocation and accept the school recommendation. While I appreciate that a litigant is not obliged to accept an expert's opinion, the Applicant obtained the

Order appointing Dr Martalas to make the recommendations. In principle, she had no objection to the dual medium schools except for practicalities and that the recommended schools would be more expensive than the schools she proposed. The Respondent has not been co-operative, has cut the children from his medical aid and refused to pay for certain extra murals. The parties have also agreed in the main on contact. In exercising my discretion, I am of the view that each party should pay his/her own costs.

CONCLUSION

[45] I am not inclined to amend paragraph 6.1.6 of the Parenting Plan[23]The Applicant is reminded that in terms of paragraph 6 of the Parenting Plan, both parents are required to make joint decisions about the important aspects regarding the children's lives. In the context and history of the parties' relationship, this would require a degree of co-operation, compromise, and a conciliatory rather than confrontational approach. It would surely be in the children's best interests that their relationship with the Respondent is improved sooner rather than later. The children have relocated to a different province, having to uproot and adjust to a new environment, new schools and establish new friendships. This urgent application revolving around the choice of their schools on the eve of the new school year might well have caused them anxiety and great uncertainty. The continued acrimony between the parties who divorced 10 years ago, is in my view not conducive to the children's adjustment. The parties are respectfully reminded that their interests,

[23] This is requested in the Applicant's Draft Order

notwithstanding the relocation, should not be put before the best interests of their children.

ORDERS GRANTED

I grant the following Orders in addition to those granted on 12 February 2021:

1. The Parenting Plan which is incorporated in the Final Divorce Order dated 8 December 2011 under case number 15770/2010, is amended as follows:

   By replacing the existing paragraph 4.1 with the following wording:

   During the term time, the Plaintiff (father) shall have reasonable contact with the children on the first weekend of every month from Friday after school to Sunday evening. If possible and subject to available flights, attempts should be made to ensure that the children arrive no later than 20h00 at Lanseria Airport, alternatively, no later than 18h00 at OR Tambo Airport. The Plaintiff is entitled to the second weekend contact on at least 14 days' notice to the Defendant (mother) and such request shall be accommodated reasonably. The above weekend contact should not interfere with compulsory school events.

2. The Applicant shall pay the cost of one economy return air ticket per child per month for the purposes of the children having weekend contact with the Respondent in Cape Town as referred to in paragraph 4.1 of the amended Parenting Plan, as from the first week of June 2021.

3. The reasonable contact referred to in paragraphs 4.1 (as amended) to 4.9 of the Parenting Plan is suspended pending a determination by Dr Martalas that the Respondent's contact can commence under supervision of an adult duly approved by her. The supervised contact

shall be uplifted upon written confirmation by Dr Martalas that such supervised contact is no longer necessary, whereafter the Respondent's contact shall proceed in terms of the Parenting Plan as amended.

4. The Respondent shall attend the Department of Home Affairs together with the Applicant on a day elected by him from one of three proposed dates chosen by the Applicant, within 48 hours of being requested to do so, in order to renew the children's passports.

5. Each party shall pay his/her own costs.

M. PANGARKER
ACTING JUDGE OF THE HIGH COURT

For applicant:	Adv A Heese
Instructed by:	Muller Terblanche Beyers Inc.
For Respondents:	Adv S van Embden
Instructed by:	Fairbridges Wertheim Becker Attorneys
Family Advocate:	Amanda Stemele
	Office of the Family Advocate, Cape Town