

“ANNEXURE 11”

Practice Direction 61

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>Hans Jurgens Steyn v Ilse Maria Steyn</i> <i>(born Kruger)</i>	Case No.: HC-MD-CIV-ACT-MAT-2019/02926
	Division of Court: High Court (Main Division)
Heard/trie before: Honourable Mr Justice B Usiku J	Date of hearing: 21 February 2020
	Delivered on: 21 February 2020
Neutral citation: <i>Steyn v Steyn</i> (HC-MD-CIV-ACT-MAT-2019/02926) [2020] NAHCMD 75 (21 February 2020)	
The Order: Having heard Adv Muhongo on behalf of the Plaintiff and Adv. Diedericks , on behalf of the Defendant and having read documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The applicant’s application for interim access to the minor child, is declined.2. I make no order as to costs.3. The matter is postponed to 22 April 2020 at 15:15 for status hearing.4. The parties must file joint status report on or before 15 April 2020.	
Reasons: Practice Direction 61(9)	

Introduction

[1] This is an application by the applicant (plaintiff in the main action) in terms of rule 90. The applicant applies for an order directing the respondent to afford the applicant reasonable access to the minor child in this matter. The applicant further seeks an order to the effect that such reasonable access be exercised as recommended in terms of the Interim Access Report compiled by Dr Van Rooyen and Dr Van Schalkwyk dated 18 November 2019, namely:

- (a) every Tuesday and Thursday after school until Monday morning before school.
- (b) every alternative weekend from Friday after school to Monday morning before school.

[2] Alternatively the applicant seeks such order granting him reasonable access to the minor child, as the court may deem fit.

[3] The respondent (the defendant in the main action) opposes the application.

The application

[4] In his application, the applicant states that the respondent and him are married out of community of property, which marriage subsists. There is one minor child, a son, aged 10 years old. On 03 May 2019 the respondent obtained a “temporary custody” order in respect of the minor child, in the Children’s Court in Grootfontein. The applicant instituted divorce proceedings against the respondent on 28 June 2019.

[5] By agreement between the parties, Dr Van Rooyen and Dr Van Schalkwyk were appointed to assess the applicant, the respondent and the minor child, with a view to prepare a report in regard to the best interests of the minor child, insofar as it relates to the minor child.

[6] On 01 October 2019 the respondent sought and obtained, in terms of the Combating of Domestic Violence Act (No.4 of 2003) (“the Act”), an interim protection order

against the applicant. Amongst other things, the interim protection order prohibits the applicant from:

- (a) coming near the respondent wherever she may be,
- (b) entering or coming near the respondent's residence, and,
- (c) communicating, in any way, with the respondent except through the respondent's lawyers.

In terms of section 9(3) of the Act, an interim protection order has the same legal effect as a final protection order.

[7] The two doctors aforesaid compiled a report, the essential component of which is summarised in para [1] hereof. However, the respondent refused to abide by the content of the report.

[8] The applicant submits that he is not a danger to the minor child and would never cause harm to the minor child.

[9] In response to the applicant's application, the respondent asserts that she has no objection to applicant having reasonable access to the minor child *per se*, but is opposed to applicant having access to the minor child unsupervised. According to the respondent, the applicant is involved in various inappropriate sexual relationships and encounters with other men and uses drugs. The respondent contends that, it is not in the best interests of the minor child for the applicant to be granted unsupervised access to the minor child.

Analysis

[10] The applicant did not set out how he intended to exercise the required reasonable access to the minor child, in view of the fact that the respondent exercises primary care over the minor child and the existence of the interim protection order. This is, in my opinion, a circumstance that the court has to consider when determining what is in the best interests of the child.

[11] In his application for interim access, the applicant refers to the interim protection order granted on the 01 October 2019 as “irrelevant to the consideration of the relief” he seeks. In my view, it is not correct to say that the interim protection order is irrelevant to the consideration present application. The allegations made by the respondent that led to the granting of the protection order may be irrelevant to the consideration of the interim access application. But the prohibitions that are imposed on the applicant, in terms of the protection order are relevant to the consideration of whether or not the interim access should be granted during the subsistence of the prohibitions imposed on the applicant.

[12] The granting of the relief that the applicant seeks, would of necessity, require the applicant to:

- (a) come near the respondent, by virtue of the fact that she ordinarily lives with the minor child, and to,
- (b) communicate, in some way, (other than through respondent’s lawyers), activities which are prohibited in terms of the interim protections order.

[13] The timing for launching this application, when the interim protection order is in effect, appears to me to be inappropriate. The granting of the interim access application is likely to put the applicant on the collision course with the prohibitions contained in the protection order. Moreover, there is no evidence on record on how the applicant would be able to exercise his right of reasonable access without contravening the prohibitions contained in the order.

[14] In the view of the existence of the interim protection order and the effect thereof, I am not prepared to grant the relief that the applicant seeks. For that reason the relief that the applicant seeks stands to be declined.

[15] Insofar as the issue of costs is concerned, it appears from the papers filed of record that the applicant has undertaken to contribute to the respondent’s legal costs. In these circumstances I do not deem it necessary to make an order as to costs. Instead, each party should bear own costs.

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

1. The applicant's application for interim access to the minor child, is declined.
2. I make no order as to costs.
3. The matter is postponed to 22 April 2020 at 15:15 for status hearing.
4. The parties must file joint status report on or before 15 April 2020.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Plaintiff	Defendant
Adv. T. Muhongo Instructed by Etzold-Duvenhage	Adv.J. Diedericks Instructed by Dr. Weder Kauta Hoveka Inc