



moment OF TRUTH

Legal update 17 of 2020: Case law on the duty to maintain a spouse and a child

Introduction

There was a recent case decided by the Gauteng High Court, Pretoria relating to the maintenance obligations of a spouse to the other spouse during divorce proceedings and his obligations to their children. Below is a summary of the case and insight into how we would deal with this matter should it come across on the Momentum Retirement Annuity Fund, the Momentum Pension Preservation Fund and the Momentum Provident Preservation Fund. We have also included more detail on the case in the document.

Summary

Case: N vs N (61903/2019) [2020] Unreported (10 July 2020)

Where one parent's income is less than the other parent's, is that parent absolved from the duty to maintain their child?

- **The finding:** Both parents have the duty to support their children. The extent of the financial contribution may differ per parent depending on their means, but that does not automatically absolve the other parent from the duty to support for an indefinite period.

- **How we deal with this:** When it is brought to our attention that a maintenance order could potentially be made for attachment of a member's benefit in our funds, we do not enter the legal proceedings as that is for the member to do and for the court to decide the outcome. Should a valid subpoena be served on us, we will comply with it and provide the required information to the maintenance court. We also check all maintenance orders submitted to us to ensure that the order is valid and complies with the requirements for the deduction of the maintenance against the member's benefit.

More detail of the cases

Case: N vs N (61903/2019) [2020] Unreported (10 July 2020)

Where one parent's income is less than the other parent's, is that parent absolved from the duty to maintain their child?

This matter was heard in the Gauteng High Court, Pretoria, where an interim maintenance order was sought by the

wife pending finalisation of divorce proceedings.

The matters which the court had to decide on pending the divorce proceedings where the husband had to be ordered to pay -

- R30 000 per month for the maintenance of each child;

- R79 000 per month for the maintenance of his wife, the applicant, and
- R50 000 to the wife as a contribution towards her legal costs, or if the wife should be ordered to contribute to the husband's legal fees.

The wife is a practicing attorney and earns a net income of about R15 000 per month. Her monthly expenses are about R130 155, which includes her medical aid contributions, accommodation, school fees and general household expenses.

The husband (the respondent), in his response to the wife's claim, acknowledged that he earned about R170 000 per month and that he only spent about R17 500 per month on his personal expenses. He also stated that he was retrenched and would be unemployed from 21 May 2020. As his financial position was about to change significantly, the husband asked the court to order the wife to contribute about R31 500 towards the joint household expenses. In addition, he asked the court to order the wife to cash-in her investment policies.

The court found the following:

- For the wife to succeed in her application for interim maintenance, she has to provide evidence of her income and expenses and demonstrate a reasonable need for such expenses.
- The factors to be considered when determining whether to grant the interim maintenance sought by the wife include the parties' standard of living during the marriage, the applicant's actual and reasonable requirements and the income of the respondent. If the respondent proves that he is unable to pay maintenance, then the application must not succeed.

- Spouses have a reciprocal duty to support each other and this duty extends to their joint duty to support their children. The duty of supporting a child is an obligation that the parents have jointly, and the parents' respective shares of that obligation are apportioned according to their respective means. Therefore, an argument cannot be made that only one of the parents must carry that obligation exclusively.
- The amounts claimed by the wife for maintenance are excessive, given the husband's circumstances. The amounts were therefore reduced.
- The wife did not satisfy the court regarding her claim for the husband to contribute to her legal costs. The court questioned whether it was indeed necessary for her to employ senior counsel, and the court was not satisfied that she was unable to pay her legal fees. This claim was also reduced by the court. The husband's claim for the wife to contribute to his legal costs was rejected in total, and the court made an order that:
 - o Pending the divorce proceedings, the husband must pay the wife an amount of R47 000 for the joint household expenses, R20 000 for the wife's maintenance, and R5 000 per child for their maintenance;
 - o The husband must pay R30 000 to the wife as a contribution to her legal fees, which amount must be paid in instalments of R10 000 per month over three months.

The above confirms the legal principle that both spouses are liable to maintain each other and both parents of a child are liable to maintain their children.

Andrew Mothibi

Legal counsel: Wealth & Retirement Fund Legal

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