



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 21 July 2022
Status: Immediate

The following Summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

Z v Z (556/2021) [2022] ZASCA 113 (21 July 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs, including those of two counsel, an appeal against the decision of the Eastern Cape Division of the High Court, Port Elizabeth (the high court). The high court upheld with costs a special plea in divorce proceedings that a parent lacks *locus standi in judicio* to claim maintenance for and on behalf the parties' adult dependent children from the other parent.

The primary issue before the SCA concerns the interpretation of ss 6(1)(a) and 6(3) of the Divorce Act 70 of 1970 (the Divorce Act). Section 6(1)(a) provides that '[a] decree of divorce shall not be granted until the court . . . is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances'. Section 6(3) provides that '[a] court granting a decree of divorce may, in regard to the maintenance of a dependent child of the marriage or the custody or guardianship of, or access to, a minor child of the marriage, make any order which it may deem fit, and may in particular, if in its opinion it would be in the interests of such minor child to do so, grant to either parent the sole guardianship (which shall include the power to consent to the marriage of the child) or the sole custody of the minor, and the court may order that, on the predecease of the parent to whom the sole guardianship

of the minor is granted, a person other than the surviving parent shall be the guardian of the minor, either jointly with or to the exclusion of the surviving parent'.

An interpretative analysis, the SCA held, leads to the inevitable conclusion that ss 6(1)(a) and 6(3) of the Divorce Act vest parents with the requisite legal standing to claim maintenance for and on behalf of their dependent adult children upon their divorce. Given the words used in their ordinary grammatical meaning, properly contextualised, and the manifest purpose of s 6, an interpretation that preserves its constitutional validity is reasonably possible. It followed that the father's special plea must fail.

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