

HEYSTEK v HEYSTEK 2002 (2) SA 754 (T)

Headnote : Kopnota

Where a wife within the bounds of a subsisting marriage in community of property seeks in a divorce action maintenance pendente lite, the inevitable concomitant of the marriage is the shared responsibility of both spouses for the maintenance of the common household, which, in the case of a wife who has children from a previous marriage, includes the wife's children since the husband has consortium with the children's mother. While the marriage subsists and until divorce is decreed, the consortium prevails and the husband has to provide maintenance for the wife, even if portion of that maintenance is utilised for the wife's children. (At 756I/J - 757B/C.)

Furthermore, by virtue of s 8(1) of the Constitution of the Republic of South Africa Act 108 of 1996, the Court, as the upper guardian of every child in the country, must be mindful of the child's rights, particularly the right to parental care in terms of s 28(1)(b) of the Constitution, the right to basic nutrition, shelter and basic health care and social services in terms of s 28(1)(c) of the Constitution, the right to basic education in terms of s 29(1)(a) of the Constitution and the right to basic care in terms of s 50(2) of the Child Care Act 74 of 1983, as well as of the constitutional imperative encapsulated in s 28(2) of the Constitution that the child's best interests are of paramount importance. There has been a shift from the tradition of parental authority and duty of support to parental and family care. (At 757B/C - G, paraphrased.)