

No legal duty to disclose an extra-marital affair, says judge

By [Tania Broughton](#)

21 Jun 2023

Man loses bid to get back money he paid for a child who is not his.



A High Court judge has rejected a man's attempt to get back support he paid for a child who turned out not to be his. Photo: Brian Turner via [Flickr](#) (CC BY 2.0)

- One spouse has no legal duty to disclose to the other an extra-marital affair, a High Court judge has said.
- Judge Corné van Zyl in the Bloemfontein High Court dismissed a damages claim brought by a man against his former wife.
- The man accused his wife of fraud because she did not disclose an extra-marital affair which led to the birth of their third child.

A man who claimed damages against his ex-wife for “fraud”, because she did not disclose that she had an extra-marital affair resulting in the birth of their third child, has lost his case.

The man, identified only as MN in the ruling handed down by Bloemfontein High Court Judge Corné van Zyl, was claiming R1.4m for the support he had paid for the youngest child following the couple's divorce.

The matter was heard during 2017, and Judge van Zyl dismissed the application with costs in 2018. But the judge only gave his written reasons last week. He gave no reason for the delay.

[Read the judgment](#)

Judge van Zyl said there was no legal duty on one spouse to disclose the existence of an extra-marital affair to the other.

“The defendant [the ex-wife] therefore had no legal obligation to have informed the plaintiff [MN] of her one-night sexual encounter. Her failure to have done so consequently did not constitute a fraudulent non-disclosure,” the judge said.

The judge also found that MN's claim was “against public policy”.

The couple married in 1991. Their youngest child was born in December 1997.

They divorced in 2012 and a deed of settlement, which included child support, was made an order of court.

However, about three years later, it was established through blood tests that the youngest child was not MN's biological child.

MN, in his pleadings, said he had raised the child under the impression that she was his own.

His ex-wife denied she had acted fraudulently and said they were both under the “mutual impression” that the child was his.

His claim was contrary to the best interests of the child, she contended.



Could your boss having an affair with your spouse be deemed a constructive dismissal?

Johan Botes 6 Mar 2017



In his evidence, MN said fidelity was important to him and had he known at the time of the birth of the child that she was not his, he would have “walked away from the marriage”. He said the child had a medical condition which was not in the health history of their family. Her features were also “different”.

While he wanted peace of mind that his children were being well cared for, when his ex-wife applied for an increase in maintenance, he decided to request the paternity test – “a decision he took with a heavy heart, since he did not wish to upset the children”.

He said he loved the child as if she were his own, but he had no obligation to maintain her.

While he suspected that his ex-wife had had a relationship with a pastor, in her evidence she said she had had a one-night stand with a man she met through work.

However, she always believed that MN was the father of the child.

She had been “shocked” by the DNA results.

Judge van Zyl said there was no evidence that the mother “actively or pertinently made any representations or lied” to MN.

“She simply kept her silence.”

On MN's own version, he never confronted her about a possible affair, even when he suspected she was having a relationship with the pastor.

The judge said he could not find, on the evidence, that it had been proved beyond a reasonable doubt that the mother knew that the child was not MN's biological child.

Citing international and local case law, Judge van Zyl said there was no legal duty on a spouse to disclose the existence of an extra-marital affair to the other.

The judge said the irreparable emotional damage the case had caused to the child, to her relationship with MN, and to the whole family relationship, was “very evident from the totality of the evidence”.

This article was [originally published](#) on [GroundUp](#).

For more, visit: <https://www.bizcommunity.com>