



**Civil Court
(Family Section)**

Mr. Justice Robert G. Mangion LL.D.
Dip.Tax (MIT), P.G.Dip. Mediation (Melit.)

Today the 31st January 2017

Sworn Application No 207 / 11RGM

Number on list: 11

X A
vs
C V

The Court,

Having seen the sworn application presented by plaintiff which reads as follows:

1. *Illi r-rikorrenti kellu relazzjoni ma' C V u mill-gherusija taghhom twieldet tarbija u cjoe' P A nhar id-29 ta' Dicembru 2003 skond ic-certifikat tat-twelid;*
2. *Illi r-rikorrenti ilu jara lill-bintu minn meta twieldet sallum il-gurnata, izda l-access tieghu baqa' dejjem ristrett fis-sens li ma jarax it-tifla iktar minn tlett sieghat kull nhar ta' sibt u darba fil-gimgha wara l-iskola ghal tlett sieghat;*
3. *Illi r-rikorrenti ma jistax jissaporti aktar dan l-access ristrett u din l-intransigenza kollha da parti ta' C V, meta t-tifla u cjoe' P A ghandha relazzjoni tajba ma' misserha;*
4. *Illi r-rikorrenti jixtieq li jkollu access aktar ghat-tifla fejn it-tifla tigi torqod mieghu flimkien ma' martu Rosalie A u ormai ohtha Francesca A;*

5. *Illi r-rikorrenenti ilu mizzewweg tlett snin ma' Rosalie A xebba Abela u jhobb lil P bhala parti mill-familja. Illi r-rikonenti dejjem mexa korrettement, dejjem ghallem it-tifla b'mod korrett u jixtieq li jkollu aktar hin ghall-access mat-tifla;*

6. *Id-diffikolta li qieghed jinqala' (u li issa ilu jinqala' ghal madwar sena) huwa minhabba l-fatt li din it-tifla qieghda tintuza bhala pedina f'saqajn ommha sabiex ommha takkwista b'xi mod jew iehor id-dritt li tmur mat-tifla P A barra minn Malta u senjatament l-Amerika mhux ghal xi btala imma sabiex tqatta snin shah tistudja hemmhekk minghajr ma jkollu ebda access ghall-bintu l-istess X A;*

7. *Illi din il-proposta ta' C V m'hijiex accettabbli ghal X A stante l-fatt li skond il-United Nations Rights of The Child Convention, l-Amerika m'hijiex signatarja ta' l-istess Konvenzjoni u l-imsemmi rikorrenenti ghandu l-biza li C V titlaq bit-tifla minuri u ma tigix lura;*

8. *Illi r-rikorrenenti jahseb li idealment l-attrici tattendi l-Universita' hawn Malta peress li hawn l-opportunitajiet kollha f'Malta stess. Pero' casomai u jekk biss C V trid bil-fors tattendi Universita' barra minn Malta, l-attur ma jridx jimpediha milli tmur imma jekk tmur, tmur f'pajjiz gewwa l-Unjoni Ewropeja;*

9. *Illi r-rikorrenenti mhuwiex qieghed jippretendi affarijiet kbar u mhuwiex qieghed ikun difficli sabiex ikun difficli, imma jrid li C V timxi b'mod responsabbli anki fit-trobbija tat-tifla minuri Chole A fejn ir-rikorrenenti huwa dispot ukoll li jzomm u jigi fdat il-kura u l-kustodja tat-tifla u li C V ikollha l-access anki b'mod liberu ghall-istess tifla P A, anki f'dawn ix-xhur tas-sajf meta tkun aktar libera;*

10. *Illi ta' min jghid li P gja saqsiet u talbet li tkun ma' missierha ghal aktar zmien u granet, liema haga r-rikorrenenti huwa dispot li jaghmel u huwa dispot li jassumi r-responsabilitajiet kollha;*

11. *Izda ma jistax ikun ghax C V ma taccettax dak li jkun qieghed jipproponi ir-rikorrenenti taghmel il-hajja tar-rikorrenenti infern b'mod li s-Sibt nhar is-7 ta' Mejju 2011 C V ghamlet xenata fil-pubbliku fejn sabiex tinki lill-istess rikorrenenti ghamiltha b'ta bir-ruhha li isha ma tafx fejn qieghed X A sabiex taghmillu hajtu difficli, u dana in vista u wara li nghalqu l-proceduri ta' medjazzjoni li ma waslu mkien stante l-fatt li r-rikorrenenti ma accettax li C V issiefer bit-tifla l-Amerika stante raguni li r-rikorrenenti jhoss li huwa validu;*

12. *Illi r-rikorrenenti jaf li l-konvenuta ghandha familjarji kemm gewwa l-Ewropa u kemm l-Amerika u beza li jekk it-tifla tmur l-Amerika flimkien ma' ommha ghal zmien twil, ir-rikorrenenti mhux ser ikollu opportunita, ghall-access*

adegwat ghat-tifla tieghu, u beza wkoll li din it-tifla tigi mehuda minnha u ma jibqax aktar in kuntatt bejnu u bejn l-istess C V u t-tifla;

13. *Illi l-attur ihoss li l-presenza tieghu hiaj mportanti ghall-bintu P u ma jhossx li C V ghandha bilfors tmur l-Amerika flimkien ma' P;*

14. *Illi huwa ovvju li hemm theddida serja li l-attur jitlef kull kuntatt ma' bintu u huwa ovvju li m'hi facli xejn li ggib persuna lura mill-Amerika fl-aghaz ipotesi;*

15. *Illi ghalhekk kienet ghal din ir-raguni li r-rikorrenti kien accetta bhala proponiment sabiex tmur tistudja gewwa Universita' l-Ewropa f'destinazzjoni fejn tixtieq hi gewwa l-Unjoni Ewropeja, basta pero' li minn Malta jkun hemm bzonn ta' vjagg b'ajruplan dirett wiehed;*

16. *Illi r-rikorrenti pero' jinsab mahsub li C V m'hijiex qieghed taccetta li jizdied l-access ghal X A ghall-bintu minhabba l-fatt li C V tixtieq biss tuza lil P bhala ghodda ghall-iskopijiet ulterjuri taghha.*

17. *Illi r-rikorrenti jaghti manteniment ta' Euros mitejn u tmenin (Euros 280) mensilment ghall-bintu P lil C V, u li oltre hekk X A jikkontribwixxi ghas-sahha u edukazzjoni ta' bintu. Illi ghalhekk huwa car u evidenti li l-attur huwa missier tajjeb li assumu sew ir-responsabilitajiet ta' missier tajjeb tal-familja u li ghalhekk ghandu jkollu dak il-kuntatt ma' bintu, li fl-ahhar mill-ahhar huwa demmu u huwa prezziuz ghalih;*

18. *Illi rrid inqid ukoll li ghal diversi xhur l-imsemmija P qieghda tigi mgħoddija minn omm it-tifla lil X A fil-hinijiet tal-access tieghu, b'mod dizutili u bi hwejjeg li m'humiex addattati ghail-istagun. Ma kienx l-ewwel darba li per ezempju fix-Xitwa P giet mgħoddija minn C V lil X A bi karkur, liema haga wiehed ma ghandux jagħmel u huma azzjonijiet magħmulin 'out of spite' li ma jwasslu ghal xejn aktar minn animosita' u li l-unika persuna li qieghda tbatu fic-cirkostanzi hija t-tifla;*

19. *Illi ghalhekk, din il-kawza qieghda tigi ntavolata quddien din l-Onorabbli Qorti sabiex dawn il-pendenzi jigu sorvolati;*

20. *Illi in vista ta' dan, l-attur qieghed jintavola din il-kawza quddiem din l-Onorabbli Qorti wara li ngħalaq l-medjazzjoni fl-ismijiet hawn fuq premessi, sabiex din il-Qorti zzid l-access ghall-istess attur;*

Għaldaqstant, tghid il-konvenuta prevja kwaisiasi dikjarazzjoni necessarja u opportuna l-għaliex din l-Onorabbli Qorti ma għandhiex –

1. *Taqta u tiddeciedi li taghti access adegwat lill-attur X A ghall-bintu P A li twieldet nhar id-29 ta' Dicembru 2003 u dan fuq bazi regolari fejn ikollu wkoll l-opportunita, li bintu torqod ghandu darba fil-gimgha bejn il-Gimgha u s-Sibt u/jew is-Sibt sal-Hadd, u dan that dawk il-provvedimenti opportuni u necessarji li din il-Qorti thoss li huma idoneji fic-cirkostanzi, u prevja u jekk hemm bzonn bl-ghajjnuna ta' periti nominandi;*

2. *Taqta' u tiddeciedi li taghti l-access lill-attur li darba fis-sena jkollu l-opportunita' li jiehu t-tifla tieghu P A ghall-btala barra minn Malta ghall-perijodu ta' mhux aktar minn hmistax il-gurnata fis-sena u dan taht dawk il-provvedimenti opportuni u necessarji li din il-Qorti thoss li huma xierqa fic-cirkostanzi u prevja u jekk hemm bzonn bl-ghajjnuna ta' periti nominandi;*

3. *Taqta u tiddeciedi li taghti access lill-attur ghat-tifla tieghu P A fil-gurnata tal-birthday taghha, fil-Fathers' Day, fil-Birthday ta' missierha (4 ta' Settembru), fil-Milied, fl-Ewwel tas-Sena, fl-Ghid u fil-birthday ta' ohtha Francesca (5 ta' Dicembru) u dan ghall-perijodu ta' mhux anqas minn tlett sieghat f'dawn il-granet rispettivi, u dan taht dawk il-provvedimenti opportuni u necessarji li din il-Qorti thoss li huma xierqa fic-cirkostanzi u prevja u jekk hemm bzonn bl-ghajjnuna ta' periti nominandi;*

4. *Taqta u tiddeciedi li taghti access ulterjuri lill-attur ghat-tifla tieghu P A frz-zmien il-vakanzi tas-Sajf u tal-Milied ghall-istess bintu, fejn bintu jkollha l-opportunita' li torqod ghandu mal-familja tieghu, u tqatta aktar hin ma' l-istess missierha u l-familja tieghu, prevja u jekk hemm bzonn bl-ghajjnuna ta' periti nominandi;*

Bl-ispejjez kontra l-konvenut, li hi minn issa ngunta ghas-subizzjoni.

Having seen that the Court ordered that these proceedings be conducted in the English language;

Having seen that defendant did not present a reply to plaintiff's sworn application.

Having seen the Court's partial judgment of the 11th December 2012, in proceedings 194/2011, whereby it decided by granting defendant sole care and custody of the minor child, ordered defendant (herein plaintiff) to pay plaintiff (herein defendant) by way of child alimony the sum of two hundred and eighty euros (€280) per month to increase on a yearly basis according to the official Maltese Index of Inflation, and to be paid until the child reaches the age of eighteen years in the event that she continues her full-time studies, up to the date she reaches her twenty third birthday, and ordered that defendant (herein plaintiff)

shall exercise his rights of access to P on a weekday and on one day of the weekend for three hours at a time.

Having seen the Court decree of the 9th December 2015, whereby it was decided that pending the final outcome of these proceedings, in addition to the previous decree regarding the father's access to the minor child, the father would have access to the minor child on Saturdays and Sundays alternatively from 9am till 1pm.

Having seen that during the sitting of the 9th December 2015, the parties agreed that the minor is issued with a passport by the Maltese Authorities to all the countries of the European Union and excluding all other countries, and thus the Court authorized defendant to file the relative application and subsequently to withdraw the passport.

Having heard the minor in camera.

Having seen the respective notes of submissions of both parties (fol. 311 and fol. 322).

Having seen all the acts of the case.

Having seen that the case was adjourned to today for judgment.

The Court notes that the issue of the child's relocation to the United States with defendant has now been finally decided upon by means of a Court of Appeal judgment of the 6th July 2015, and thus all evidence produced in relation to this issue has already been considered and definitely decided.

PROOF

In his affidavit (fol 18), plaintiff submits inter alia, that his daughter P was born out of a brief relationship that he had with defendant, and for whom he immediately assumed responsibility as a father. He states among other things that defendant has an aggressive character, domineering, pampered, immature and egocentric. She changes house very often and that is unsettling for the child. He states that on various occasions the child was dressed by her mother in clothes which were not her size or stained and torn, or was sent in winter wearing flip flops. She was also often sent without breakfast. He states that P has on various occasions expressed the desire to spend days with him and his other daughter Francesca. P has a good relationship with Francesca and his wife, and he makes it a point never to pass bad comments about defendant in the child's presence. He also states that the child has been abroad with the mother both in Europe and in

America but was never allowed to go on holiday with him or spend the weekend at his house. He thus would like proper access and proper access for the weekend and public holidays. He also states that he has always paid maintenance and also bought the child items over and above that.

Plaintiff also testified in open court on the 5th December 2015, following an application filed by him in which he requested a children's advocate to be appointed to represent the minor child, whereby he explained that following the court's judgment rejecting the mother's application to relocate with the child, his daughter changed completely from wanting to spend more time with him, to not wanting to see him. She used the phrase 'after what you did' and from these words, his conclusions were that defendant was putting the blame of the situation on the minor, who was in turn reacting badly towards him.

By means of an affidavit presented on the 9th December 2015, plaintiff further testifies that prior to the Court of Appeal judgment of the 6th July 2015, he was seeing his daughter on a regular basis. P was very happy and had a good relationship with him, Joanna Xuereb, Gabriel and Francesca. He presents a number of photos (Doc DB1-10) taken between Summer 2014 – June 2015 which show P enjoying everyday events with them. She was also talking about going to live with them, and even though they were looking into buying a house in Gozo, they bought a house in Bahrija because P said she wanted to live with them but not in Gozo. He also states that sometimes P would go to their house after school without her mother's permission. When this became a regular thing, he took a stand with P and she stopped going to him outside of access hours. When the appeal was decided, things changed dramatically, and from that date onwards, he barely had access to P. He also exhibits some photos taken on the 28th November 2015, which shows that in reality, even after the appeal, she was happy in their company.

Defendant presents her affidavit on the 23rd February 2016 (fol 250) whereby she states inter alia, that the main reason why P has taken things against her father is the uncertainty in view of the need to obtain his consent for travel and the opportunities that they have missed in the meantime. Her request is for P to have an open passport for Europe and a passport which allows her to visit the States for a maximum of 6 weeks per year. She states that if plaintiff wants to travel with her, she has no objection as long as P wants to go. She also requests the Court to look into the issue of maintenance, and to review the maintenance currently paid by plaintiff. She presents a number of receipts as proof of the expenses she incurs (Dok IRC-10). Since the child is no longer objecting to going to her father, she states that she is being more than open in allowing plaintiff even more access that he asks for, but she also requests focus on his obligations, mainly maintenance and the child's right to travel.

Upon cross-examination, plaintiff states, inter alia, that during the preceding 4 months, he saw the child about 5 times. There were also some sleepovers. He states that he is seeing lots of changes in the child, sometimes she answers back rudely. He states that he is worried about defendant and the child going for holidays outside Europe.

Upon cross-examination, defendant states inter alia, that she does not oppose plaintiff from having access to his daughter, from seeing her on holidays such as birthdays, Father's Day and Christmas, and as long as both of them can take her abroad on holiday, she does not oppose him taking her abroad on holiday. She states that when she went abroad recently, the child stayed with plaintiff for 5 days. She never limited his access, the issue is just between the child and plaintiff.

CONSIDERATIONS OF THIS COURT

In matters regarding minor children, this Court is driven first and foremost by what is in the best interests of the child. A Court of Appeal judgment of the 3rd October 2008, in the names **Miriam Cauchi vs Francis Cauchi**, stated the following in relation to access rights:

“Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m’hemmx dritt ghall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu ghall-izvilupp tal-minuri, li, ghal dan il-ghan, jehtigilha ikollha kuntatt ma’ ommha u anke ma’ missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access, jiddependi mill-htigijiet tat-tifla u mhux mill-interess tal-genituri.

Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux vice versa. L-importanti hu l-istabbilita` emozzjonali tat-tifla, u li din ikollha kuntatt mal-genituri taghha bl-anqas disturb possibbli.

....omissis....

Din il-Qorti lanqas ma trid li l-access jigi pprattikat bl-iskossi. It-tfal ghandhom dritt ghall-istabbilita` f’hajjithom u fil-programm ta’ kuljum u ta’ kull gimgha.”

The Court feels that the present proceedings are driven by a sincere wish on the part of plaintiff to see more of his daughter, and to spend more time with her. Defendant also declared that she has no objection to him spending time with the child and that she has also permitted the child to spend more time with her father than the stipulated access.

The Court notes that even though defendant failed to file a sworn reply and a counter-claim to plaintiff's sworn application, in her affidavit and submissions, she puts forward requests for a revision of the maintenance payable by plaintiff for the minor's needs, and also for her to be able to take the minor abroad, including to the United States.

The Court however notes that it is bound by the remits of the plaintiff's sworn application, by virtue of which he puts forward his requests for the regulation of his access hours and for taking her abroad on holiday. The Court shall thus limit its adjudication to the claims so brought forward by plaintiff.

After lengthy deliberations, after having considered and examined all the acts of these proceedings, and after having heard the minor child in camera, the Court is of the firm opinion that it is in the child's best interests to spend more time with her father and with her (half) siblings. Plaintiff has shown a sincere interest in the child, concern for her needs, discipline and upbringing, and his ability to take care of the child has never been contested by defendant who has always been willing to send the child to her father. The child also seems happy to spend more time with her father and his family, and the temporary issues that had arisen between them were due to the child's legitimate reaction to her parents' legal stands rather than to a relationship problem between child and father. This Court thus sees no reason why plaintiff's claims should not be upheld.

DECIDE

The Court therefore decides this case as follows:

1. Accedes to plaintiff's first request and grants him access to his daughter P on a weekday for three hours, and on weekends for a sleepover, alternatively from Friday afternoon to Saturday afternoon or from Saturday afternoon to Sunday afternoon.
2. Accedes to plaintiff's second request and allows plaintiff to go abroad with the child for a period not exceeding two weeks a year, and within any country of the European Union. In this eventuality, defendant should be informed in writing, not less than a month prior to the departure, and including all flight, accommodation and contact details.
3. Accedes to plaintiff's third request and grants plaintiff access to the minor child (1) for at least three hours, on the day of her birthday, on Father's Day, on plaintiff's birthday and on her sister Francesca's birthday; (2) three consecutive days with sleep overs during Easter holidays alternating the first year – three days prior to noon of Easter Sunday and the following year three days from noon of

Easter Sunday. (3) during the Christmas holidays alternating on a yearly basis: the first year from 10.00 a.m. of Christmas Eve to 10.00 a.m. of Christmas Day and from 10.00am of New Years Day till 10.00 am of the following day; the following year from 10.00 am of Christmas Day till 10.00 am of the day after and from 10.00 am of New Year's Eve till 10.00 am of New Year's Day.

4. Accedes partly to plaintiff's fourth request and grants plaintiff an additional access of another weekday, for a minimum of three hours, for the duration of her summer holidays, which additional access shall terminate upon the start of the child's new academic year.

Each party is to bear own costs.

Judge

Deputy Registrar