

**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Hearing of Wednesday 7th November 2018

Application no. : 247/2018/2 JPG

Case number : 11

F

Vs

M

The Court:

Having seen the sworn application dated 19th October 2018 (Vide fol 1), filed by the plaintiff, requesting the Court to issue a warrant of prohibitory in junction against the defendant prohibiting her from taking their minor child outside the islands of Malta;

The child's name being C, X years of age, born on the Y, in P, a holder of passport X1;

Having seen the Court's decree dated 19th October 2018, provisionally upholding the demand for the prohibitory in junction, ordering notification and a right of reply to the defendant, and appointing the application for hearing for the 31st October 2018;

Having seen the reply of the defendant M dated 30th October 2018 (Vide fol 9) wherein it was held:

That the respondent is objecting to the issuing of this warrant of prohibitory injunction against her and this for the following reasons:

That it is firstly being stated that the warrant of prohibitory injunction referred to above is simply a puerile retaliation on the part of the applicant F in regards to his wife M, and this after the same respondent M, in the days preceding this warrant, and namely on the 15th October 2018, herself filed a warrant of prohibitory injunction against her husband F in order to prohibit him from travelling outside Malta with their minor daughter C (Warrant Number 245/2018 JPG), which warrant has also been set for hearing before this Honourable Court in the sitting of the 31st October 2018, precisely because of abduction of a minor committed by the applicant to the detriment of the minor C and of her mother the respondent, and there are no reasons prima facie according to law for which this Honourable Court should uphold this request for a warrant of prohibitory injunction to be issued against the same respondent M;

That it is firstly being stated that the parties are married – they got married on the 18th February 2008 in Beijing, China, from which marriage they have two children, C who was born on the Y and X years old, and who is the subject of this warrant of prohibitory injunction, as well as CI who was born on the YI and is still of the tender age of XI. It is also being stated that the applicant (the Father) is of Ukrainian nationality and the mother is of Chinese Nationality, they have been living in Beijing, China already from before the children were born, and even after the elder daughter was born for the past five years. It is also being indicated that the minor C was born in P and hence has P citizenship however she has always lived with her mother and her family in China. The habitual residence of the same minor C is thus China, as it is after all the habitual residence of the respondent and of the whole family. The applicant F also has his habitual residence in China where he has been living for several years, and he also has a Family Reunification Visa in order to be able to live in China together with his family, which visa he renews every year, and this can be attested from his own

passport. None of the parties have any family in Malta, and none of them is a Maltese citizen;

That it is being submitted that the applicant F abducted the minor C from her mother the respondent, and he is refusing to return the minor to the mother and her family in the habitual residence of the same minor in China. Originally F had been given consent from the minor's mother M, to take the minor on a holiday from China to Malta, as he had told her that he wished to take the minor for a holiday out of China, and this between the 10th July 2018 and the 3rd August 2018. This trip to Malta was also intended for the applicant to apply for a Family Reunification Visa (Q1 Visa) of the minor daughter C from the Chinese Embassy in Malta, and this in order for the minor child to be able to return to China with her family and also in order to start studying in an international school over there and this owing to the fact that the minor is a P citizen and therefore it is necessary for her to have a visa.

That what happened however is that while F failed entirely to go to the Chinese Embassy and hence failed to apply for his daughter's visa, and this notwithstanding the fact that he was well aware that he had to do this and the respondent was fed up of asking him whether he had done the visa for his daughter whilst she was in Malta and he never bothered to give her a reply because in reality he was not going to ask for a Visa in order to keep his daughter with him against the law in what is called a wrongful retention and against the will of her mother, outrightly and at the moment that F was supposed to take the flights back from Malta to China on the 2nd August 2018, which flights were pre-established, paid and the tickets issued (see copies of the tickers hereunder annexed as Dok. WS1 and Dok. WS2), he failed to return his minor daughter to her country and to her mother in China.

That instead on the 2nd August 2018 itself, against the will and without any consent or approval from the mother, instead of returning together with the minor in China, he sent the minor out of Malta to Ukraine, that is the country of his citizenship, with a third party, namely his sister G. The applicant did not go to

Ukraine with his daughter and he was happier sending her with his sister in Ukraine rather than returning her to her mother in China.

*That the actions of the applicant were so premeditated that on the 18th July 2018, that is just one week after his arrival in Malta with the minor, he even made a declaration **UNDER OATH** before Notary Dr. Clinton Bellizzi and on the letterhead of the same Notary by virtue of which he was expressly authorising his sister G to take the minor out of Malta and travel with her to Ukraine and this supposedly for the period between the 2nd August 2018 and the 5th September 2018, and this in violation of the law and against the consent, approval and the authorisation of the mother who together with the father has joint custody of her minor daughter C. By virtue of the mentioned declaration, the applicant outrightly gave full care and custody of the minor child to his sister for this period in which the child was sent to Ukraine, and this when he had no right at law nor the consent of the mother to do this. A photo of this declaration which was found by the respondent since she came to Malta for these proceedings, is being annexed as Dok. WS3;*

That what happened however is that the minor child did not come back to Malta on the 5th September 2018 as this same declaration indicates but a month after, on the 2nd October 2018, at which point when the respondent got to know that her daughter had arrived in Malta, the respondent made all the necessary plans in order to come to Malta to start legal procedures for the return of the minor back to her habitual residence in China and to her family, and in order to stop with immediate effect the applicant from trying to take the law into his own hands again, from conferring rights to third parties over the minor or from outrightly finding some other destination and this time disappear with the minor daughter in such a manner that the mother can no longer trace her;

That furthermore from the 10th July 2018 to the 17th October 2018, the applicant stopped all communication of the minor child with her mother, in a vile attempt to abruptly end all contact of X year old child who was always brought up by her mother and with her mother, and this for his own exigencies only and at a substantial detriment to his minor daughter's interests. On the 17th October 2018

then, with the intervention and assistance of the undersigned lawyer, the respondent turned up outside the house where the applicant is living with his daughter in Z and from that day onwards she started taking care of her daughter like she has always done;

That it is the applicant's despicable behaviour towards his daughter who he is depriving of her mother and the family in which she has always been brought up with so much love, which should be punished by this Court and the minor child should be safeguarded from none other than her own father who took her away from her habitual environment without any valid reason at law and under false pretences and with premeditated deceit, intended only to steer his daughter away from her family;

That on the basis of these occurrences, it is therefore F who did wrong when he left China under false pretences as his true intentions were to leave China and never return his daughter and he even outrightly went to the length of sending her to a third country without him and gave rights to third parties over her who could therefore take any decision in relation to the minor including to make her disappear however they want and wherever they want, and it is the respondent who is the victim of this despicable incident committed against her and her minor daughter of X years, and certainly there exists no reason why it should be the mother who is prohibited from leaving Malta with her minor daughter, but this prohibition should be applied exclusively against the father as is being requested in the warrant of prohibitory injunction number 245/2018 referred to above;

That without prejudice to that stated above, the respondent would like to draw the attention of this Court to the fact that the minor's passport number X1 issued by P was and still is in the applicant's possession, and the respondent does not know where it is nor does she have any access to it. In fact, were it not for the fact that this warrant of prohibitory injunction was filed and there is the child's passport number written therein, the respondent did not even have the correct number of the minor's current passport, because the applicant never gave her their daughter's current passport number and the respondent only had the old passport number X1, which expired in August 2018;

Saving further submissions which may be made during the hearing of this warrant before this Honourable Court;

This is what the respondent has to submit to the sage and superior judgement of this Honourable Court;

Having heard oral submissions of counsel to both parties;

Deliberates:

In the course of counsels' oral submissions before this Court, it became increasingly evident that both parties, for very divergent reasons, agree that the minor child Karmel C, X years of age, born on Y, in P, a holder of passport X1, should not be permitted to leave the Islands of Malta and Gozo, until such time as the Maltese Courts, in a final judgement on the merits of the case, have decided the various questions relating to the said minor child.

Indeed in the note of the proceedings dated 31st October 2018, the parties to the case had no objection to the issuing of both warrants by this Court.

Article 877 of Chapter 12 of the Laws of Malta provides:

877. (1) *A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.*

(2) *The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.*

(3) *The warrant shall also be served on:*

(a) *the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the*

minor's legal representatives or in the passport of any other person; and

(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.

Therefore this Court, having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta and the joint note in the records of proceedings dated the 31st October 2018, is of the opinion that all the essential elements of the prohibitory injunction concur. Furthermore, the Court took note of the fact that the plaintiff has duly deposited the passport X1 of the minor child under the authority of this Court according to this Court's decree dated 16th October 2018.

For these reasons the Court, orders that the defendant M, mother of the minor child C, X years of age, born on Y, in P, a holder of passport X1, be prohibited from taking the said child out of the Maltese Islands.

To this end the Court orders that a copy of this decree be notified to the Director (Civil Registration) as Officer in charge of the issuance of passports within the Passport Office and Commissioner of the Police as Principal Officer of Immigration.

In view of the fact that a similar procedure has been filed by M regarding the same minor child, the Court deems it fit and just that each party bears his own costs.

Read.

Mhallel Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

Lorraine Dalli
Deputy Registrar