

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Wednesday 12th February 2020

App. No. : 315/2018 JPG

Case No. : 22

KP

Vs

**Dr. Graziella Tanti and Legal
Procurator Madeline Firman
duly appointed as curators to
represent MM who is absent
from these Islands.**

The Court,

Having seen the application filed by KP, dated 5th December 2018, a fol 1 et seqq., where in it was held:

- 1. That the parties were in an intimate relationship from which relationship the minor KMP was born, who is currently X years old and this as can be seen from the birth certificate attached and marked as Dok A;*
- 2. That the relationship between them has broken down irrevocably;*

3. *That the Minor resides with the applicant and from the day she was born till today it is the same applicant alone who has always taken care of the needs of her daughter and in fact the defendant never contributed in any way towards his daughter and neither has he ever shown any interest to having any form of access other than, a few when the minor was only a few months old;*
4. *That only a few months after the Minor was born the defendant left the country without giving the applicant any information as to where he was going to reside other than telling her that he was going to live in the Y, permanently;*
5. *That the defendant never made any contributions towards the maintenance or towards the health and education of the same minor;*
6. *That it is in the best interest of the minor that the applicant is entrusted with the exclusive care and custody of the minor child KMP as shall be evidenced in the course of proceedings;*
7. *That since the defendant is not on the Maltese islands, mediation between the parties was not possible and as a result the applicant was authorized to initiate this case as is shown from the Decree of this Honourable Court dated 27th July 2018, number 1587/18, a copy of which is being attached and marked as Dok. B;*

Therefore in light of the above the applicant respectfully asks this Honourable Court to:

1. *Trust the care and custody of the minor child KMP in the hands of her applicant mother exclusively and to authorize the latter to perform those acts relevant with respect to the upbringing of the Minor child without the signature or consent of the defendant;*
2. *To fix an adequate sum for maintenance for the minor, which maintenance must also include education and health expenses for the minor;*

3. *To order the defendant to pay the said sum as liquidated directly to the applicant in a bank account provided by the same applicant on a date fixed by this Honorable Court every four (4) weeks;*
4. *To authorize the applicant to apply for a passport for the minor without the consent or signature of the defendant;*
5. *To authorize the applicant to go abroad out of Malta together with the Minor child without the signature or consent of the defendant.*

With costs and expenses.

Having seen that the application and documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen the reply filed by Deputy Curators Dr Graziella Tanti [ID. 96886M] and PL Madeline Firman, representing the interests of the absent MM, dated 1st March 2019, at page 12A, where in it held:

1. *That the exponents are not in a position to correspond with the absent MM as they don't have a clue of where he can be;*
2. *That the exponents curators are not aware of the facts of the case and are therefore reserving the right to file a further motivated reply together with a list of witnesses and documents as the case may be and in the case they will be able to communicate with the defendant and updated with the facts of the case.*

Save further reply

With Expenses

Having heard all the evidence on oath;

Having seen the exhibited documents and all the case acts;

Considers;

KP testified that the parties were in a relationship which started in 2015, from which relationship they had a daughter on X. She explained that defendant was controlling and abusive. He had in fact tried to strangled her and tried to break her nose when she was three months pregnant. She said that defendant was present in their life until the child was three months old and that she had ended the relationship because of defendant's abusive behaviour. She said that at the time she had told defendant that they needed to make arrangements regarding the child's custody but that ten days later he left the country. The last time they had any communication was when the child was about one year old. She added that communicating with defendant is impossible because he blocked her from Facebook, drops contact whenever she mentions court, and refuses to have anything to do with the child, he also refused to come back to Malta.

She testified that she works full-time and that she earns approximately one thousand, one hundred euros (€1,100) a month after taxes and National Insurance (N.I.). Regarding defendant, she testified that when he was in Malta he was self-employed and did scaffolding work, but that she has no information about what he is doing presently in Y.

Deliberates;

From the acts of the case, it appears that parties were in a relationship from which relationship they had a child who is now around X years old. According to plaintiff's uncontested testimony, the parties' relationship broke down and defendant left the island, leaving her to care for their child alone. By means of this action plaintiff is seeking to be entrusted with the sole care and custody of the parties' child and requesting an award of maintenance payable by defendant for the needs of their child.

Regarding the care and custody of the child

The Court recalls that according to the jurisprudence of the Maltese Courts, the care and custody of children is regulated by the principle of the best interests of the child, and the best

utility and best advantage to the interests of the child.¹

According to the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, the Court has the power to entrust the care and custody of a minor solely in the hands of one of the parents when this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights is a relevant consideration, the child's best interests are the Court's primary consideration.²

From the acts of the case it results that the parties had a relationship which started in 2015, from which relationship they had a child, K, born on X. From plaintiff's uncontested testimony, it results that plaintiff was forced to end the relationship due to defendant's abusive behaviour when the child was about three months old. It further results that shortly after the parties' breakup, defendant left the country and stopped all communication. From plaintiff's testimony it appears that defendant is refusing to take part in the child's care or to contribute in any way towards her care, or be in her life at all.

In this regard, the Court makes reference to the judgement in the names of **F T K P D vs R K P G** decided on the 22nd of March 2018 where, in circumstances similar to those in the case at hand, the Court had considered that Articles 56 and 56A of the Civil Code are applicable and relevant even in the context of a request made by a parent to be granted exclusive care and custody of the child outside of personal separation proceedings and had *ex officio* divested the

¹ **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civil Court, decided 27 November 2003:

“Apparti l-hsieb ta’ ordni morali u dak ta’ ordni legali, li ghandhom setgha fil-materja ta’ kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti ‘in subjecta materia’, li jiddetermina normalment u ġeneralment il-kwistjonijiet bhal din insorta f’dina l-kawża, huwa dak tal-aktar utilita’ u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl-isfond taċ-ċirkostanzi personali u ‘de facto’ li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...”

² *“Il-Qorti għaldaqstant, għandha s-setgha illi jekk ikun fl-ahjar interess tal-minuri, tafda wiehed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili. Illi kif kellha l-okkażjoni tenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. “Il-Qorti tirrileva illi filwaqt li dejjem tagħti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.””*

father of parental authority so that this authority be vested exclusively in the mother.³

The Court notes furthermore that according to Article 149 of the Civil Code:

“Notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.”

The Court recognises that in normal circumstances both parents have an important and fundamental role in the upbringing and life of their children, and therefore neither should be excluded from the child’s care unless there are serious reasons which lead the Court to take such a drastic measure. However, as has been said, in these matters the Court must be guided by the best interests of the child, and therefore the Court must examine whether, in the obtaining circumstances, it is in the best interests of the child for one of the parents to be divested of parental authority.

The Court has seen that defendant has completely abandoned his child, to the extent that, according to plaintiff’s testimony, he dropped communication with her when she mentioned court proceedings in regards to the child’s custody. The Court has seen that defendant does not contribute financially towards the child’s upbringing and takes no interest in the child. This abandonment puts plaintiff in a very difficult position with regards to vital decisions that need to be taken regarding the child, such as the child’s medical treatment or decisions of a medical nature, the enrolment in school or childcare, extra-curricular activities, the child’s attendance on school trips abroad, and other relevant important decisions regarding the child’s life and development due to the fact that defendant refuses to have contact with plaintiff. The Court considers that it would not be in the child’s best interests that her mother should be made to resort to court proceedings every time a decision needs to be made on behalf of the child simply because defendant decided to abandoned his child and refuses to communicate with the child’s mother.

³ ***“Il-Qorti, wara li ezaminat ic-cirkostanzi partikolari kollha ta' dan il-kaz, b'mod partikolari li l-missier abbanduna lill-minuri b'mod assolut, tiddikjara li jezistu l-estremi sabiex iccahhad lill-missier mill-awtorita' ta' genitur sabiex tali awtorita' tigi ezercitata esklussivament mill-omm.”***

In view of all this, the Court is therefore convinced that there exist the extremes necessary for defendant to be divested of parental authority over the parties' child, so that this authority is exercised exclusively by plaintiff.

Regarding maintenance for the child

The Court notes that as was stated in the judgement in the names **Maria Galea vs Mario Galea** decided by the Court of Appeal on the 31st of January 2019, maintenance for the children is not a right of the custodial parent but rather, a right of the child not to be deprived of those things that, in today's world, are considered necessary for his or her education and development.

The Court notes that no evidence was produced regard defendant's income or means. However, according to the jurisprudence of Maltese Courts, parents may not abdicate from their responsibility to maintain their children materially, irrespective of their income or their employment status because the Courts, cannot condone individuals who bring children into the world but abandon their responsibility as parents, such that these children are made to rely solely on the other parent or on the State.

From plaintiff's testimony it results that she is in full-time employment and earns approximately one thousand, one hundred euro (€1,100) net a month. The Court has seen that no documents were produced by plaintiff to corroborate this claim, however, no evidence was adduced to contest the content of plaintiff's testimony.

The Court makes reference to the judgement in the names of **Audrey Buhagiar pro et noe vs Daniel Schembri** decided on the 28th of May 2015 and confirmed by the Court of Appeal on the 25th of November 2016, wherein it was stated that in the computation of maintenance, the fact that the child resides with one parent is relevant because this limits the earning potential of that parent. Furthermore, the Court notes that the care and upbringing of the child by the custodial parent has been considered to be a contribution to maintenance in kind, and this according to the law.⁴ In this case, plaintiff is raising the parties' child alone, as defendant not

⁴ **Marina Galea vs Mario Galea**, Court of Appeal decided 31 January 2019:

only fails to contribute financially to the child's needs, but also refuses to be involved in her care and upbringing, to the extent that he left the country and refuses to communicate with plaintiff. This is therefore a factor to be taken into consideration in the computation of the maintenance due by defendant for the parties' child.

The Courts notes that plaintiff failed to produce any evidence regarding the child's needs, which according to the law is an essential element of the computation of maintenance. In light of this failure, the Court cannot but award maintenance at a minimum, which shall then be increased, taking into consideration the fact that plaintiff is raising the child alone. Furthermore, the Court considers that since defendant makes communication with plaintiff impossible, his share of educational, extra-curricular and medical expenses should be pre-liquidated and included in the maintenance award.

The Court therefore considers that the sum of monthly maintenance payable by defendant to plaintiff for the child's needs shall be in the amount of four hundred euro (€400), which sum includes defendant's share of the child's educational, extra-curricular and medical expenses.

For these reasons, the Court:

- 1. Accedes to the first request and entrust the care and custody of the minor child KMP in the hands of her applicant mother exclusively and authorizes the latter to perform those acts relevant to the upbringing of the Minor child without the signature, consent or presence of the defendant, including the issuing of passports and foreign travel;**
- 2. Orders *ex officio* that plaintiff shall exercises on her own and to the exclusion of defendant, parental authority over the minor child KMP;**
- 3. Accedes to the fourth and fifth request and orders defendant to pay the plaintiff the amount of four hundred euro (€400) every month as maintenance for the**

“tenut kont tal-fatt li, t-tfal qed ikunu aktar mal-attrici milli mal-konvenut, l-oneru tat-trobbija waqa’ kwazi kollu fuqha u minn dan l-aspett hija qed taghti kontribut sostanzjali, inkluz dak mhux finanzjarju, ghal-manteniment tagghom.”

child KMP, which amount includes defendant's share of the child's educational, extra-curricular and medical expenses. This monthly maintenance shall be paid by the defendant on the 1st day of every month directly to a bank account to be indicated by the plaintiff by means of a note to be filed within a week from today.

- 4. Abstains from taking further cognizance of the fifth and sixth request, since they are absorbed by the first and second award of this decision.**

All expenses of these proceedings are to be paid by defendant.

Read.

Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

**Lorraine Dalli
Deputy Registrar**