



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTONY G. VELLA**

**Sitting of Wednesday 11th March 2020;**

**SWORN APPLICATION: 200/2019 AGV;**

**AB (Italian ID: CA76137AU) and CD (Italian ID : AV1440303)**

**vs.**

**EB (ID: 177316A) and FG (ID: 535213L)**

**The Court;**

**Having seen the application of EB and FG dated 30th January 2020;**

- 1** That by means of their sworn application dated 22nd August 2019, plaintiffs requested this Honourable Court to grant them visitation rights with their grand daughter HG, who is defendant's daughter.

- 2 That defendants objected to this request by means of their sworn reply dated 24th September 2019 wherein, apart from their pleas on the merits, they also raised a number of preliminary pleas, namely the plea of res-judicata, that plaintiffs have no locus standi or judicial interest to process with this case, that plaintiffs requests amount to a (potential) serious threat to Maltese public order and that parents cannot be forced to apply their absolute against their will unless, it is proven that they are unable to exercise their right of parental authority.
- 3 That the aforementioned preliminary pleas, raised by defendants were rejected by means of a partial judgement delivered by this Honorable Court on the 28th January 2020.
- 4 That defendants feel aggrieved by this judgement and wish to appeal.
- 5 That the judgement delivered by this Honorable Court, though a partial one, had decided on a matter of extreme importance; That grandparents have a right of access with their grand children. Defendants humbly contend that this conclusion is primarily based on a misunderstanding and mis application of Regulation 2201/2003 and European Union Law in general and goes far beyond the powers given to this Honorable Court by the law. In view of this, defendants respectfully submit that it would be prudent and just that this Honorable Court, grants them leave to lodge an appeal from the aforementioned judgement.
- 6 For these reasons, defendants' humbly request that they be granted leave to appeal this Honorable Court's judgement dated 28 th January 2020, in accordance with article 231(2), of the COCP ( Chapter 12 of the Laws of Malta).

**The Court having seen the reply** of AB and CD, dated 9th March 2020, humbly submit;

1. That by means of a sworn application, dated 22nd August 2019, the plaintiffs had requested this Honorable Court to inter alia, be granted access and visitation rights to their grand daughter, HG;
2. That defendants objected to this request by virtue of a reply filed on the 24th September 2019, where in a number of preliminary pleas, were raised, apart from their pleas on the merits of the action;
3. That after examining the contents of the note of submissions of the parties, on the preliminary pleas raised by defendants, and after having had the opportunity to hear the parties' oral submissions during a sitting held on the 28th November 2019, This Honorable Court, delivered a partial judgement on the 28th January 2020, by virtue of which all preliminary pleas raised by the defendants were rejected and decided that the proceedings should be continued for a decision on the merits ( here in after, the ' partial judgement' );
4. That the defendants felt aggrieved by this partial judgement and request this Honorable Court, to be granted leave to appeal to this partial judgement on the contention that this Court has reached its conclusions, on a misunderstanding and mis application of the European Union Regulations; and further more that this honorable Court went beyond the powers granted to it, by Law;
5. That the plaintiffs humbly object to this request made by the defendants, and contend that the partial judgements was in actual fact based on a correct application of the Law, and within limits of its authority;
6. That it is not fair and expedient, for the preliminary pleas to be brought before the Court of Appeal, as this would only lead to undue delays in the hearing and determination of such sensitive matter;
7. That this Honorable Court, provided ample reasons as to why the preliminary pleas were not upheld, and indeed quoted numerous European Union case-law and European Union regulations, which supersede all

domestic legalisation- to show that a decision as to whether visitation rights should be granted to the grand parents may only be reached after having assessed the whole facts surrounding the case;

8. That the plaintiffs humbly believe that the best interests of the minor grand daughter may be seriously prejudiced if they are denied the opportunity to at least bring forward evidence as to why they should be allowed to continue developing a nurturing, loving relationship with their minor grand daughter by being able to visit the same;
9. That this Honorable Court, primary responsibility in this regard is always to safeguard the best interests of the child, even when such interests of the child are in conflict with the parents' needs. So much so, that the protection of the best interests of a child is a matter of public policy. Only by granting the plaintiffs the opportunity to put forward their case, and by hearing and determining the merits of the action, would this Honorable Court, be duly fulfilling its duties at Law.
10. That in proceeding to hear evidence and determine the merits of these proceedings, does not prejudice the defendants' in any manner as they would still have a right of appeal from that final judgement and that appeal may be made even on the issues determined in the partial judgement. However, an appeal presented at this instance would prejudice the parties, since it would not only cause delay in the determination by this Honorable First Court, but would also bring about a situation where by even the issue of access to the grand daughter, and whether this is in the best interest will not be considered.

For the above reasons the plaintiffs, humbly request that this Honorable Court rejects the defendants' application, and to order the continuation of the merits of the Case.

## **CONSIDERS**

This Court delivered a judgment *in parte* on the 28 January, 2020, whereby the preliminary pleas raised by defendants in the case were rejected. Defendants have, rightly so, asked for leave to appeal from this decision, which, as far as this Court is aware, has never been treated in a Maltese Court before. Indeed, the whole subject treated in this case is a first, and the Court would be interested to know what the Court of Appeal would have to say on the matter. In this regard, the Court has already expressed its opinion regarding the possibility of filing such an appeal, even though the plaintiffs are objecting to the granting permission to appeal from this judgment. The Court is of the opinion that such a delicate matter merits the added scrutiny of a second tier. After all, if the defendants' pleas were to be accepted following a reversal of this Court's judgment, the whole process would stop there. If, on the other hand, the Appeal Court agrees with this Court's conclusion, then the case would have to enter into the merits. Furthermore, given the principle itself in discussion, that is, whether grandparents have a juridical right to be granted access to their grandchildren, and that there is no Maltese jurisprudence on this subject – as it has never been raised in a Maltese court before the institution of this case – the Court will allow such leave to appeal its earlier decision, even in the hope that both parties will be in a better position to treat their case in greater detail, and a final direction be given to the parties as to the status of their claims and objections.

## **DECIDE**

For the above-mentioned reasons, the Court is allowing defendants leave to appeal its decision *in parte* of the 28 January 2020.

Costs are being reserved for the final judgment.

**Antonio G Vella**

**Judge**

**Concetta Gauci**

**Deputy Registrar**