

**CIVIL COURTS
(FAMILY SECTION)**

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

Today, Thursday 13th of August 2020

App. No.: 94/2020/2 JPG

**AD
Vs
SF**

The Court,

Having seen the application filed by AD dated 7th of July 2020, wherein it stated:

That the applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;

That the respondent/s is/are the persons having, or who might have, the legal or actual custody of the said minor;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the respondent/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;

Particulars of the minor

*OD who is X years old, born to the parties on X in P and VD who is Y years old, born to the parties on Y in P – a copy of the children's respective French identity cards attached herewith and marked as **Dok. A** and a copy of the children's respective French Passports attached herewith and marked as **Dok. B**. That application filed Mediation proceedings before this Honourable Court number 470/20 on 3rd June 2020.*

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 the Director (Civil Registration) as the Officer in charge for the issuing of passports and of the Commissioner of Police as the Principal Immigration Officer dated 8th of July 2020, through which he requested this Honourable Court to order the parents to deposit the passports of the minors under its authority; (see page 19);

Having seen this Court's decree dated 8th of July 2020; (see page 21);

Having seen the reply file by SF dated 16th of July 2020, at page 25, wherein it stated:

This response is being presented in terms of the decree of this Honorable Court of the 7th July 2020.

Whereas the Applicant's request for the issuance of this Warrant is frivolous and undue and is to be declined. Moreover, it is unnecessary and not justified.

Whereas the Applicant is requesting the Courts to order Respondent not to leave Malta with the minor children O and V siblings D, not due to the fear of abduction from Malta or legal retention whilst in another country, but purely and solely to secure another goal; thus exploiting the purposes of this Warrant as an instrument to reach another goal – the end justifies the means.

Whereas on the 3rd of June 2020 the Applicant himself filed an application (Rik Gen 144/2020) whereby he is requesting the Court to order the said minors to continue their studies at Verdala School in Malta rather than in Haileybury

Boarding School where both parties applied for the children to attend, besides also being the wishes of the minor children. After a number of admission examinations the said minors were duly accepted and are due to be in the United Kingdom on the 27th August 2020 as per email received on the 13th of July 2020 (Dok A).

Whereas this sudden change of heart of the Applicant with respect to his children's wishes and the family plan initially appeared to be motivated by his fears of COVID-19 as well as a change in the financial plan due to the sale of an immovable property¹ which fell through and allegedly effected the parties' liquidity.

Whereas both excuses are deemed pretty lame given that he himself travelled for the weekend with fiends on the 10th of July 2020, despite his fears of COVID-19. Moreover, the parties own numerous properties, a number of which are also on the market, as results from the documentation filed by Respondent in her reply to the application No 144/2020 dated the 16th of June 2020.

The abovementioned file has been reconstructed and is now pending the Court's decision.

Whereas in the meantime the Applicant has incessantly insisted with the Respondent to reach an amicable settlement in their personal separation, suggesting that this be done in France, despite having instituted proceedings in Malta, and that if this isn't reached by the end of July 2020, under his terms and conditions, the children would not be travelling to the United Kingdom to further their studies. If, however, she accepted, the children would be able to travel to the United Kingdom as originally planned. This threat was utilized because the Applicant is well aware as to how keen Respondent and the daughters are on the Haileybury plan and would be the key to him getting the financial settlement he is planning.

¹ This particular property was up for sale and the revenue of which was intended to finance the education of the parties' children. The sale fell through due to COVID-19 and is still on the market. Moreover, there are other properties still on the market which can make good for this cost which in any case is spread over ten years as explained in Respondent's reply.

In the meantime, this warrant of Prohibitory Injunction was filed.

Whereas the passports of the said minors have been deposited under the Authority of the Courts as per Court Order.

Respondent has travelled on numerous occasions alone with the children and Applicant has never felt the need to stop her from doing so. She has always returned and has no intention of not doing so now. The children's passports were in his possession and he could have ensured they remained so, without the need for these extreme measures, also given the fact that the minors are 14 and 16 years of age and not helpless infants. It is only within the context of the personal separation and to ensure that by hook or by crook the children do not leave for the United Kingdom unless he knows that his separation deal is set and concluded, that this Warrant was filed.

To this effect and in the light of the reasons given above the request being put forward by AD is to be rejected by this Honourable Court.

Having seen the application filed by SF dated 16th of July 2020, wherein it stated:

Whereas there currently are ongoing proceedings in connection with the issuance of the Warrant of Prohibitory Injunction upon the request of AD, which Warrant has been provisionally upheld by this Honourable Court on the 7th of July, 2020.

Whereas in her reply, the Respondent has given the reasons why the said warrant should not be definitively upheld.

Whereas, the parties had planned to send their daughters O and V siblings D to Haileybury Boarding School, United Kingdom, as from the scholastic year commencing end of August 2020.

Whereas, as results from the records of the General Application No 144/2020AL filed by AD on the 3rd of June 2020, the parties intended to sell a property, the revenue of which was to cater for the financing of the children's education

spread over the span of ten years. The sale fell through and Applicant decided that they shouldn't go ahead with their plans and thus filed the above cited application requesting the Court to halt the departure of the children to the UK and for them to remain attending Verdala School in Malta.

The minors already had the opportunity to file their declarations in the records of the said General Application.

Whereas, the Respondent, SF is in a position to advance a payment to cover both minor children's full scholastic year at Haileybury Boarding School, United Kingdom commencing end August 2020, which funds may be subsequently recovered from the sale of the property² mentioned in the application filed by AD on the 3rd of June 2020, or the sale of any other properties mentioned in the response filed by SF on the 16th of June 2020.

This will ensure that the minor children will not miss out on this opportunity which was planned for and together with the said O and V siblings D, and which was applied for by the parties.

Consequently, and subject to any direction which this Honorable Court deems necessary in the circumstances, the Applicant humbly requests the Court to

- 1. Order the suspension of the effects of the Warrant of Prohibitory Injunction 94/2020 thus enabling her to travel with the minor children O and V siblings D, exclusively, in order to accompany them to the United Kingdom, namely the Haileybury Boarding School, on the 26th of August 2020 for the reasons above stated.*
- 2. Authorize the applicant to withdraw and collect the passports of her minor children O and V siblings D from the Registry of the Civil Courts (Family Section) for the purpose above mentioned.*

² *This particular property was up for sale and the revenue of which was intended to finance the education of the parties' children. The sale fell through due to COVID-19 and is still on the market. Moreover, there are other properties still on the market which can make good for this cost which in any case is spread over ten years as explained in Respondent's reply.*

3. *Order the notification of the relative decree to the authorities/entities listed in the Warrant of Prohibitory Injunction.*

With costs to be borne by AD.

Having seen the reply filed by AD, dated 29th of July 2020, at page 38, wherein it stated:

In this application, respondent has sought an exemption to the warrant issued (provisionally) by this court restraining the travel of the minor children in order to allow the children whose travel is restrained by this order to attend school (Haileybury Boarding School) in the United Kingdom in August 2020. Respondent is opposed to this request and is filing this reply in order to explain his opposition.

1. *In the first place, applicant has – as is becoming customary for her in all proceedings filed by her – omitted to inform this Court of central issues which are of crucial importance to her request. In this case she has not informed the Court that pending before the Court, otherwise presided, is an application regarding whether or not the said children should attend school in the United Kingdom³. This information has been deliberately withheld since respondent wished to by-pass (and effectively ignore) those proceedings and send the children to the United Kingdom anyway as she wishes, such that the children would be in the United Kingdom when the Maltese Courts decide that they should not be there. This warrant has frustrated her plans to ignore the Maltese Courts and with this application she is now requesting the Maltese Courts to assist her in ignoring the Maltese Courts. Further comment escapes respondent.*
2. *In the second place, applicant has clearly not understood the purpose of this warrant. The warrant is intended to restrain the travel of the children indicated in the warrant. By requesting that the children travel from Malta to attend school abroad – thus not furnishing an intended date of departure or return – the applicant is asking the Court to ignore its own orders and – after having ordered that the children do not leave Malta indefinitely –*

³ *Mainly because of the acknowledged certainty of a second wave in the United Kingdom of the Covid-19*

proceed to authorise the children to leave indefinitely. Again further comment escapes respondent.

Having seen the Note filed by SF dated 4th of August 2020;

Having seen the Note filed by AD dated 6th of August 2020;

Having seen the Note filed by AD dated 7th of August 2020;

Having seen the Note filed by SF dated 13th of August 2020;

Having seen all documents exhibited in the proceedings;

Having heard final oral submissions;

Considers:

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.

The Court notes that in proceedings for the issuing of a precautionary warrant, the Court may not delve into the merits of the case, but it must be satisfied that the person asking for the warrant to be issued has a *prima facie* right and that the warrant is necessary in order to preserve that right. (See **Panorama Company Limited vs Enemalta Corporation** decided by the First Hall of the Civil Court on the 14th of February 2013; **Emanuel Sammut vs Josephine Sammut** decided by the First Hall Civil Court on the 5th of June 2003). The two elements must subsist and if they do not subsist, the Court has to reject the claim for an issue of a warrant of Prohibitory injunction. (See **Mary Borg vs Commissioner of Lands** decided by the First Hall Civil Courts on the 15th of December 2008; **The Golden Sheperd Group Limited vs Enemalta Corporation** decided by the First Hall Civil Court on the 17th March 2009).

These proceedings were filed by the Plaintiff, in order to request the Court to issue a warrant of Prohibitory Injunction against the Respondent to prohibit her from allowing the two minor children OD and VD from leaving Malta to continue their education in Haileybury Boarding School United Kingdom. The Plaintiff contends that in view of the global pandemic Covid-19, it is not desirable that the minor children be sent over to a Boarding school in the UK. Moreover, the Plaintiff mentioned that in spite of the fact that the parties had agreed on the financing of the children's education abroad by selling a property they own in France, this property has not yet been sold due to the pandemic Covid-19.

On the other hand, the Respondent replied that in spite of the fact that the Plaintiff's claim appears to be motivated by the Covid 19 pandemic, but he has recently travelled abroad. She also mentioned that the Plaintiff has proposed an 'amicable' settlement between the two parties, using the children's desire to study abroad as leverage on the Respondent for her to buckle and sign the separation contract. Thus, the Respondent also mentioned that the parties own numerous properties, a number of which are on the market, consequently there are no lack of funds as implied by Plaintiff. Moreover, Respondent is prepared to advance payment of

school fees until such time as the property is sold, whereupon such advanced payments will be reimbursed to the Respondent from the proceeds of the sale.

From the acts of the case, the Court observes that in his application dated 3rd June 2020 and prior to the decree given by this Court presided by the Hon. Mdm. Justice A. Lofaro on the 16th of July, the Plaintiff admitted that the parties **had agreed** in December 2019 to send the minor children O and V to a boarding school in the U.K.

Moreover, this matter has been the subject of a decree by that Court which upheld the decision for the children to travel abroad to continue their education and for the Respondent to advance payment of the boarding school fees of the two minor children on her own saving her right for reimbursement.

It is this Court's considered opinion that the plan to send the two minor children to a U.K. boarding school, most specifically to Haileybury Boarding School was a joint plan taken by both parents. The fact that the property has not yet been sold is almost irrelevant to the issue since the Respondent is ready to advance the school fees, save her right to reimbursement from the proceeds of the sale. This Court notes that the Plaintiff has filed proceedings for the reconsideration of the decree dated 16th of July 2020. However, to date there is no final outcome of the reconsideration proceedings and this Court is bound by time-limits imposed on the present proceedings.

Having considered the law and jurisprudence on the matter, and having considered the previous Court decree, the Court is of the opinion that Plaintiff's request should be denied. Indeed, the Plaintiff did not adduce evidence to illustrate that the two minor children have or suffer from any medical condition that will expose them to a greater risk than other children.

Consequently, the Court orders that the passports of the said minors that had been deposited under the Authority of this Court, be released to the Respondent.

In view of the above, the Court orders that a copy of this decree be notified to all officials and Authorities according to Law.

All costs are to be borne by Plaintiff.

Given in camera.

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

**Lorraine Dalli
Deputy Registrar**