



**CIVIL COURT
(FAMILY SECTION)**

JUDGE ANTONIO G. VELLA, LL.D

Sitting of Thursday 11th November 2021

Application no: 223/20 AGV

AB

Vs

CD

The Court;

Having seen the application of the plaintiff dated 4th December two thousand and twenty were she sat out with respect and submitted the following under oath:-

1. That the parties were in a relationship, from which the minor child ED was born on the twenty-first of October of the year two thousand and eleven (21.10.2011) (see birth certificate hereby attached and marked as Doc A);
2. That the defendant has a drug addiction and was in fact admitted to hospital on various occasions. That in addition, during these past few years, he has always seen his son on a sporadic basis, during which he did not act properly and in his best interest. That this besides the fact that he did not

allow the minor child to return to Malta when the same child went to visit him in England in the year 2019;

3. That the defendant does not pay any form of maintenance for his minor child and consequently the plaintiff has to bear all financial responsibilities for the child;
4. That by means of a court decree dated 4th August 2020, this Honourable Court awarded the exclusive care and custody of the minor child to the plaintiff;
5. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable Court dated 9th October 2020 (see court decree hereby attached and marked as Doc B);
6. That the facts here declared are known personally by the plaintiff;

For these reasons the plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:

1. Awards the exclusive care and custody of the minor child ED to the plaintiff and authorises her to take any decisions relating to the minor child, including those relating to the health, issuing of passports, travelling, domicile and education of the minor child without the defendant's consent;
2. Orders that the minor child resides with the plaintiff;

3. Determines and liquidates an adequate amount of maintenance which should be payable by the defendant to the minor child and which should remain payable until the minor child ED reaches the age of eighteen (18) years if the minor child stops pursuing his studies and start working on a full time basis or payable up to the age of twenty three (23) years if the minor child decides to pursue his studies on a *full-time* basis; as well as ordering that the alimony be deducted directly from the salary or income of defendant or work or any other benefit that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living, as well as ordering that the plaintiff receives any benefits relating to the minor child, including but not limited to the children's allowance in its entirety;
4. Orders that the defendant pays arrears of maintenance towards his minor child ED as well as ordering him to pay arrears of health, education and any extra-curricular expenses;
5. Orders the defendant to pay half of the health and education expenses of the minor child, including but not limited to uniforms, transport, donations, fees, stationery, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities. In the absence, order that these expenses are reflected in the sum of maintenance.
6. Authorises the plaintiff to register the eventual judgement of this Honourable Court in the Public Registry of Malta.

With costs and interests against the defendant, who is demanded for a reference on oath.

Having seen that defendant was duly notified according to law but failed to file any reply to plaintiff's application.

Having seen all the documents exhibited.

Having heard all the evidence.

Having seen the acts of the mediation 974/19 attached to these proceedings.

Having seen that defendant failed to appear and to file his submissions.

CONSIDERS:

The Court first of all notes that defendant failed to file his reply or appear once in court, despite being duly served according to law. Since no evidence was given by defendant at any stage, the Court only has plaintiff's version of events. As these have not been countered by any evidence to the contrary, or by submissions to that effect, the Court will take plaintiff's version of events as having been proven at law.

The facts of the case are as follows. The parties had an intimate relationship between them, out of which was born a son, ED, in October 2011. The child is now ten years old. The relationship between the parties appeared to be a rather turbulent one from the outset. Plaintiff claims that defendant was a habitual drug abuser, and as a result his behaviour was always very erratic and unpredictable. When Elliot was born, defendant's behaviour and attitude didn't change. Plaintiff was the breadwinner of the family, providing for all three, while defendant was

still making use of illicit substances. She gives several examples of his behaviour in this respect, and repeatedly exposed defendant as being irresponsible with their child. Defendant tried to enter a rehab centre, supported by plaintiff, but did not finish the program. In fact, early in 2012, with their son barely a few months old, defendant left Malta and went to Moscow, and later settled in Dubai, where he stayed until 2017. During this time, he would visit sporadically. The drug abuse problem was still there, and plaintiff had to make sure Elliot was safe in defendant's presence. In this respect, she gives some examples of how the child was taken care of by the father, where defendant was probably still taking drugs in his son's presence. There was also a time in the Summer of 2019 when defendant kept E with him in England without plaintiff's consent, but the issue was resolved after a few weeks. If the Court is to take plaintiff's version as true, and there is no reason at law for not doing so, then it appears very clear that defendant was totally absent from his child's life. He never appeared able to sustain the family and provide for their needs. On the contrary, it was he who needed assistance with his drug abuse problem, but there is no record of his having attended a rehab program and completed it successfully.

The picture given by plaintiff, therefore, shows that both mother and child may actually be better off without the presence of the father, who is still residing in England, with little or no contact whatsoever with E. It is a shame that a father does not recognise his child's needs and does not rise to the occasion to be a father, present for his son. It is indeed a pity. The Court still hopes that defendant does not leave it too late to establish and build a relationship with his son, as this would surely be beneficial to both, and sincerely hopes that defendant may one day overcome his drug abuse problem.

CUSTODY AND MAINTENANCE

Plaintiff is requesting that she be given sole custody of the child, and that E continues to live in her residence. No opposition has been made to these requests, which shall therefore be upheld by this Court. Furthermore, plaintiff also requests that defendant be ordered to pay maintenance for his child's needs, together with the expenses incurred in education and in health, and other activities. Apart from these, plaintiff is also claiming arrears in maintenance and in expenses already paid by her. In her affidavit she quantifies all these expenses together with supporting documentation. Again, these were not contested, and are also backed by documents as aforesaid. These claims too will be upheld. The Court will liquidate maintenance as follows. Since there has been no evidence produced showing that defendant contributed to his child's upbringing in one way or another, such arrears in maintenance will be calculated from E's birth. For the first five years, maintenance will be liquidated at the bare minimum that is customary in such cases, in the amount of €200 per month. That would add up to €2,400 per annum, so for the first five years, arrears in maintenance add up to €12,000. For the subsequent five years, until E reached the age of ten last October, maintenance will be liquidated at €250 per month, totalling €15,000 for five years. The total due for these ten years, therefore, adds up to **€28,000**.

From October 2021 onwards, maintenance will be set at **€300 a month** for the next five years until the child reaches the age of fifteen (15), after which it will increase to **€350 per month**, and will remain so payable until the child turns eighteen, provided that such maintenance will continue to be paid if E continues his studies and is not in full time employment, and this until he reaches the age of twenty-three or terminates his studies earlier. This maintenance is being awarded apart from defendant's share of ordinary expenses incurred in health and education. Such expenses should, at the least, be shared by half between the parties.

EXPENSES ARREARS

Plaintiff moreover quantified all her expenses incurred to date, where defendant's share of these expenses totals €8,198.24, €274.13, and €574, as shown in her affidavit and supported by documents. These are also due by defendant.

In the final analysis, the Court hopes that this will serve as a wake-up call for defendant to assume his responsibilities as a father and participate in his child's upbringing by providing for him and for his needs.

DECIDE:

For these reasons the Court;

Upholds all plaintiff's requests.

1. Awards the exclusive care and custody of the minor child ED to plaintiff and authorises her to take any decisions relating to the minor child, including those relating to the health, issuing of passports, travelling, domicile and education of the minor child without the defendant's consent;
2. Orders that the minor child resides with plaintiff;
3. Determines and liquidates maintenance payable by the defendant to the minor child in the amount of €300 per month, which shall increase to €350 per month on the minor child's fifteenth birthday, and which shall

remain payable until the child reaches the age of eighteen (18) years if he stops pursuing his studies and starts working on a full time basis, or payable up to the age of twenty three (23) years if the child decides to pursue his studies on a *full-time* basis.

Orders that such maintenance be deducted directly from the salary or income of defendant or work or any other benefit that he would be receiving and deposited directly in a bank account that is to be indicated by the plaintiff.

Furthermore, orders that plaintiff receives any benefits relating to the minor child, including but not limited to the children's allowance in its entirety;

4. Orders that defendant pays arrears of maintenance towards his minor child ED as outlined in the judgment, as well as arrears for health, education and any extra-curricular expenses;
5. Orders the defendant to pay half of the health and education expenses of the minor child, including but not limited to uniforms, transport, donations, fees, stationery, private lessons and any other expenses related to the education, including expenses related to extra-curricular activities.
6. Authorises the plaintiff to register the eventual judgement of this Court in the Public Registry of Malta.

All costs are to be borne by defendant.

Hon. Justice Anthony G. Vella

Deputy Registrar