



**CIVIL COURT
(FAMILY SECTION)**

JUDGE ANTONIO G. VELLA, LL.D

Sitting of Friday 12th of November 2021

Application no: 30/16 AGV

AB

Vs

CD

The Court

Having seen the application of the plaintiff dated 17th February two thousand and sixteen were she sat out with respect and submitted the following under oath :-

1. Whereas the parties are the unmarried parents of two minor children, EB, born on the 20th of February of the year two thousand and seven (2007), and FB, born on the 18th March of the year two thousand and twelve (2012), vide attached birth certificates, marked as Dok A and Dok B;
2. Whereas among the numerous traumatic experiences that the children had to endure, the father mentions one episode in which the mother took the younger daughter back to her country origin, leaving the elder daughter

behind, for approximately a year. To this effect, the father then requested and obtained a warrant of prohibitory of injunction so that the children will not leave these islands, to ensure that this abusive manoeuvre does not happen ever again.

3. Whereas the relationship between the parties deteriorated during the past months and despite their attempts at reaching an amicable agreement, said agreement has never been reached hence the applicant had no option but to file these proceedings.
4. Whereas the parties have made numerous attempts at resolving the issues pending between them, namely those related to the care and custody, access and maintenance payable in respect of the needs of the said minor children, said attempts failed persistently. Furthermore, the parties have also submitted a draft to this Honourable Court, and despite its authorization according to law, the defendant failed to appear on the final publication of the relative deed.
5. Whereas at present the said minor children are residing at the father's residence who practically provides for their entire needs, including but not limitedly the transportation to and from school and any/all of the payments incurred for education purposes, without any form of contribution of the mother, as shall be evidenced during the hearing of these proceedings.
6. Whereas the father has made various attempts so as to ensure that the minor children are able to freely communicate with their mother, the mother repetitively abdicated from her parental responsibilities and often goes for days without phoning, and she rather networks in her social circles social

than spending time with her daughters, as shall be proven in the hearing of these proceedings.

7. Whereas the minor children experienced this indifference first hand, after calling their mother on a Sunday when out and about with their father at Bay Street Complex, only to be told by their mother, that she was sick and wasn't able to leave the house. Surely enough, a few minutes later whilst walking down the road from Bay Street, E and F saw their mother socializing and drinking with men in an entertainment establishment in the proximity of Bay Street. This unfortunate incident happened on a Sunday evening; a day usually spent with family. As a direct result of this episode and others the relationship of the mother with the minor children has turned sour, to say the least.
8. Whereas the father is aware that the defendant mother is residing together with numerous other individuals in an apartment – including men, which circumstances do not nourish a healthy upbringing of minor children as shall be proven in this case. Furthermore there was one episode where the father received a telephone call from the B' Bugia Police Station whereby he was told that his children were in the company of a foreign couple in a bar and that someone had taken them to the police, all this happening while the minor children E and F were meant to be with their mother.
9. Whereas the mother was on numerous occasions called upon to reach an amicable agreement which, while allowing free access of the mother to her minor daughters and acknowledging all other rights afforded to her as a parent at law, ensures that she needs of the minor children are respected in their best interest, a state of affairs which only the father can provide.

10. Whereas the parties have been duly authorized to proceed in this instance as per the Court decree attached and marked as Dok. C, which Court decree is dated the 16th February 2016.

The defendant is being therefore requested to state why this Honourable Court should not;

- i. Order that the care and custody of the minor children E and FB granted exclusively to the applicant father AB;
- ii. Order that the minor children EB and FB reside in ordinary residence of the applicant father, with access to the defendant mother, which shall be exercised on specific days and times established by the Honourable Court in the case of disagreement, which access shall respect all respective extra-curricular commitments which the minor children may have;
- iii. Establish an adequate alimony payable in respect of the said minor children EB and FB payable by the defendant, and condemn the same to pay the said amount to the applicant, including further payment of one half of all expenses related to the health and education of the minor children;
- iv. Order that the amount established as adequate alimony be revised every calendar year according to the rates of inflation published by the National Statistics Office;
- v. Give any other orders and directives that deem it deems fit so as to regulate further aspects of the minor's circumstances including and not

limited to those related to travelling arrangements, attendance of school and other extra-curricular activities, save for any further provisions it deems fit in the circumstances.

With costs against the defendant, as of now being summoned for oath.

Having also seen the sworn reply of the defendant CD dated 11th March two thousand and sixteen, where she set out with respect and submitted the following by oath:-

- 1) That plaintiff's demands are all opposed for the following reasons:
 - i. Plaintiff's behaviour in so far as both the defendant and the minor children is concerned is such that he should not be awarded exclusive care and custody of the said minor children;
 - ii. Plaintiff has deliberately and maliciously kept the children away from their mother and, logically, the defendant away from her children, for a number of months. Defendant believes that somebody who begrudges two young children of the love and care and attention of their mother should never be awarded sole care and custody and nor should the children be made to live with such a person. Defendant has already presented her own case (15/2016RGM) stating precisely this, and requesting the Court to award her the care and custody of the minor children as well as maintenance to be paid to her for the needs of the said minor children;

- iii. The minor children are currently being brought up by the plaintiff's aunt and not by plaintiff who spends the vast majority of his time working.

2) Save further pleas.

With costs, comprising those incurred in the mediation proceedings against plaintiff who is hereby summoned to reply.

Having heard all the evidence produced by the parties.

Having seen all the documents exhibited.

Having heard the submissions made by the parties.

CONSIDERS:

This case is being heard and treated concurrently with application 15/16 in the opposite names, between the same parties, and therefore all the considerations made in the former are applicable to this same case. The Court will thus avoid repeating the same considerations, and simply refer to those as outlined in the other judgment being delivered today.

DECIDE:

For these reasons, therefore, the Court;

1. Denies the first claim, in that the children will fall under the joint custody of both parties, save that their primary and permanent residence shall be that of Defendant. All decisions related to the health and education of the children have to be taken jointly by the parties;

2. Upholds this claim and orders Plaintiff to pay the sum of €300 monthly for both children, which sum shall be increase annually according to the cost of living.

All education and health expenses have to be divided between the parties.

3. Abstains from this claim considering that this Court has already pronounced itself on it.

4. Upholds this claim in that both parties may attend all child-related activities and travelling, shall only take place with the prior consent of the respective spouse.

All costs are to be divided equally between the parties.

Hon. Justice Anthony G. Vella

Deputy Registrar

