



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY J. VELLA

Sitting of Thursday 20th January 2022

Application number: 177/2016 AGV

ABCD

vs

EFGH

The Court;

Having seen the application confirmed on oath by ABCD , dated 4th August 2016, respectfully submits and confirms on oath:-

1. That from an extramarital relationship between the parties, IJKL was born on the fifth (5th) of October of the year two thousand and five (2005) who therefore today is ten (10) years of age - Birth certificate annexed and marked as **Document 'A'**.

2. That the parties regulated pending issues regarding the minor IJKL by virtue of a public deed in the acts of Notary Doctor Charmaine Sant dated second (2nd) of July of the year two thousand and twelve (2012), annexed and marked as **Document 'B'**.
3. That before and even after the signing of this deed abovementioned the defendant made it very difficult for the plaintiff to see his daughter so much so that she left for England.
4. That when the relationship between the parties ended, the defendant married MN in England and from this marriage the minor OPN was born and who today is six (6) years of age.
5. That subsequently the defendant ended her marriage with MN and returned to the Maltese Islands however despite her return to Malta, the defendant still did all she can to cut off all contact between the plaintiff and his daughter IJKL .
6. That after the defendant ended her marriage wit MN, she married QR.
7. That subsequently, in the year two thousand and fourteen (2014) the defendant informed the plaintiff that she together with her husband, the said QR and her minor children I and O, would be establishing themselves in Australia.
8. That the plaintiff on seeing that QR was a man that could be trusted and was in a position to provide a stable family environment accepted that the abovementioned contract of 2nd of July 2012 be amended for the benefit of

his daughter and in fact an amendment was made by virtue of a public deed in the acts of Notary Dottor Dorianne Arapa dated fourteenth (14th) of July two thousand and fourteen (2014) annexed and marked as Document 'C'.

9. That the circumstances changed drastically from the day when the contract dated fourteenth (14th) of July two thousand and fourteen (2014) was signed and from when the relative decree was given, since the defendant ended her relationship with her husband QR and now the minor is in the care of the defendant and thus in clear danger.
10. That the plaintiff found out that the defendant has been certified mentally unstable so much so that she has expressed on several occasions the wish to end her own life.
11. That as shall be proven in the course of these proceedings the defendant is not at all of good example to her children and nor is she in a position to carry on bringing up IJKL.
12. That it is also a must that the defendant's behaviour be stopped immediately so that the psychological damage that is being caused to the minor IJKL ceases, and also so that this Honourable Court's orders are not ignored - and the only remedy for all this is that the care and custody of the minor IJKL no longer be vested in the defendant, and that the care and custody be vested in the plaintiff, with access exercisable under supervision in favour of the defendant if such is the case.
13. That the plaintiff filed a warrant of prohibitory injunction that was acceded to by this Honourable Court – decree dated twenty-fourth (24th) of

February two thousand and sixteen (2016) annexed and marked as Document 'D'.

14. That the defendant never appeared for the mediation sittings and never showed the slightest interest in the same and thus these proceedings had to be instituted.

15. That the plaintiff requested and obtained the necessary authorisation required to proceed in this instance against the defendant as it results from the decree dated 13th of June 2016 - Document 'E' annexed.

Thus the defendant is called upon to state, why, for the above mentioned reasons, this Honourable Court should not:-

- i. Order that the care and custody of the minor IJKL be vested exclusively in the plaintiff, and order that the minor lives with the plaintiff, and thus gives all those opportune and necessary measures amongst which reforms the decrees dated twenty-seventh (27th) of June two thousand and twelve (2012) and third (3rd) of July two thousand and fourteen (2014) and the contracts that resulted in said decrees since these are incompatible with this plea, and this with the right of access under supervision in favour of the defendant only if this is the case;
- ii. Order the defendant to pay unto the plaintiff for the minor IJKL due according to law with all modalities of payment, including a provision for the periodical increase to make good for the cost of living increase, together with half the expenses related to health and education for the minor daughter, and order the direct payment from her salary, that should be fixed by this Honourable Court, and thus reforms the decrees dated twenty-

seventh (27th) of June two thousand and twelve (2012) and third (3rd) of July two thousand and fourteen (2014) and the contracts that resulted in said decrees since these are incompatible with this plea;

- iii. Subordinately and only in the eventuality that this Honourable Court decides to leave the care and custody exercisable by the two parties, review the modality of access of the plaintiff to the minor IJKL and this in the best interests of the said minor.

With costs against the defendant, who is hereby being called upon to respond.

Having seen the sworn Reply of EFGH respectfully submits and on oath declares:-

1. That on a preliminary note, the respondent submits that the parties had agreed to regulate amongst others the care and custody, the access and the maintenance of the minor IJKL, born on the fifth (5) of October two thousand and five (2005), by means of public contract published in the acts of Notary Dr Charmaine Sant, dated second (2) of July 2012;

2. That subsequently, the parties amended the said contract by means of a public act in the acts of Notary Dr Dorianne Arpa, dated fourteenth (14) of July 2012;

3. That in the second instance, contrary to what the plaintiff is alleging, the plaintiff's demands in his sworn application are all unfounded in fact and law for the following reasons:-

a. That the first and third demands related to the care and custody of the minor child should be wholly denied given that the respondent always took care of the needs of the minor I and gave her the best care from the moment she was born. That besides this, the plaintiff abandoned the minor for eight whole years with hardly trying to make any effort to make form of contact or showing some interest about the minor's upbringing;

b. That the respondent submits that the plaintiff suffers from drug addiction and is an irresponsible person;

c. That it is only now that the plaintiff decided to file a case against the respondent, coincidentally in the moment she escaped her ex husband, a certain QR, for her safety and that of her children, and came to live in Malta with her relatives and a few weeks ago obtained legal separation;

d. That in this regard, the respondent feels that it is her duty to inform the court that her ex husband, QR, is a dangerous man who is obsessed with her, to the point that the respondent had to escape from Australia and come back to Malta with her minor children IJKL and OPN. That in fact, the same QR had psychologically and physically abused her numerous times over the course of a few months. The respondent had found the courage to leave Australia after one incident were QR tried to terrorise the respondent by calling the Australian police, who after talking to the parties, issued charges of domestic violence against Mr. R and took no action against the respondent, but instead encouraged her to leave the house;

e. That instead, the plaintiff is trying to allege that the minor is in clear danger. That the respondent asks how he arrived at that conclusion when he himself had chosen to stop all contact with his daughter and abandon

her, to the point that he never asked the respondent to talk or see her after she arrived in Malta;

f. That finally, if in reality the plaintiff felt that the respondent is in any way impeding him from having access to his minor daughter, he had all the opportunities to regulate this when the parties were amending the public contract referred to above. However, the plaintiff not only did not do this, but accepted and entrusted the respondent to decide about the minor's travelling and about the issuance of her passport without the need of his consent;

g. That for these reasons, contrary to what the plaintiff is alleging, the respondent submits that it is in the best interests of the minor that her care and custody remains entrusted exclusively to her, as regulated by the said public contracts given that she is the ideal parent to take care of the needs of the minor; the minor should also remain living primarily with the respondent given the lack of responsibility and total abandonment of the plaintiff towards his daughter as explained above;

h. That with regards to the second demand of the plaintiff relating to maintenance, the respondent heavily objects given that although in the contract dated second (2) of July 2012, the plaintiff had to give the amount of fifty Euros (€50) a month for the minor child, he ignored this agreement completely and never gave her any maintenance. For this reason, the respondent contends that it is the plaintiff that should be ordered to pay maintenance for his minor daughter, whilst the maintenance as regulated by the contract has to be revised to reflect the actual needs of the minor;

i. That with regards to the third demand relating to the access of the minor, the respondent has no object that the plaintiff starts to have some form of access to their minor daughter, however this has to happen once it is clear that this is in the minor's best interests, even through specific assessments, given that the plaintiff chose to abandon the minor and stop having any contact with her.

Save other pleas.

With costs against the plaintiff, including the Mediation Letter and the Mandatory Injunction number 19/2016, who is demanded for a reference on oath.

The Court having seen the counterclaim of EFGH that respectfully submits and on oath declares:-

1. That from a relationship between the parties the minor IJKL was born on the fifth (5) of October 2005;
2. That the relationship between the parties broke down and the parties regulated the care and custody, access, travel and maintenance by means of a contract published in the acts of Notary Dr Charmaine Sant, dated second (2) of July 2012; which contract was subsequently amended by means of a public act in the acts of Notary Dr Dorianne Arpa dated fourteenth (14) of July 2012;

3. That the parties have been authorized to proceed at this instance by virtue of court decree of this Honorable Court dated thirteenth (13th) June of the year 2016 (See Dok C);

4. That the fourth paragraph of clause number three (3) regulates the maintenance of the minor which holds that the parties agree that the father at this moment obliges himself to maintain his daughter for the amount of fifty (50) Euros a month which has to be revised when the father starts working *full-time*;

5. That the plaintiff counterclaimed never passed over any maintenance for his minor daughter, although there were several attempts by the respondent calling upon him;

6. That furthermore, nowadays the plaintiff counterclaimed works on a *full-time* bases and thus, since as will result in the course of the proceedings, there was a change of circumstances as stipulated in the contract, the amount of maintenance should be revised so that he starts contributing to the needs of the minor in an adequate way and as the law requires;

7. That the facts here declared are known personally by the plaintiff;

For these reasons the plaintiff counterclaimed should state, saving any necessary and opportune declares, why this Honourable Court should not:-

1. Change the amount of maintenance in a way that it is increased to reflect the needs of the minor, which should be paid by the plaintiff counterclaimed to the said minor and remain payable until the minor reaches the age of eighteen (18) years if the minor stops pursuing their studies and starts working on a full time basis or payable up to

the age of twenty three (23) if the minor decides to pursue their studies on a *full-time* basis; as well as ordering that the alimony be deducted directly from the salary or income of plaintiff counterclaimed or work or any other benefits that he would be receiving and deposited directly in a bank account that is to be indicated by the respondent and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living;

2. Orders the plaintiff counterclaimed to pay half the expenses related to the health and education of the said minor until she is studying; including and not limited to transport, donations, private lessons and any other expenses related to education, including expenses related to extra-curricular activities of the minor;

With costs and interests against plaintiff counterclaimed reference to the oath of the other person.

FACTS

1. Plaintiff met Defendant in 2003 at a night club in Paceville. She had just come out of a difficult relationship where her partner was violent. From the start he states that Defendant used to drink excessively, and she was also into drug abuse when under the influence of alcohol. She used to work as a stripper and as a dancer and to cope she used to find solace in alcohol. She had a tormented past, since previously she was in a relationship with a certain Dean

who worked in pornography and with him, she had started abusing of drugs. She had also accused her brother of molesting her, however Plaintiff admits that he felt this was a lie, as he knew her brother and he was not the type.

He reiterates that Defendant always wanted things to be her way and if she did not manage, she would become violent and aggressive. She had a dual personality, as there were moments when she would be friendly and happy go lucky. He was patient with her, hoping that her temperament and attitude was only something temporary, since she was passing through a bad time. He also tried to help her overcome her drinking problem and during such a period they moved to Uxbridge, United Kingdom. However, once they were living there, things did not improve, because Defendant became more cruel who wanted nothing more, but to dominate their relationship. If they argued she would either ask him to leave the house, or he would leave to avoid further incidents. They had financial problems because until then Plaintiff was finding it hard to find a job.

He explains that when he had decided to stop their relationship, Defendant informed him that she was expecting his child. She wanted to abort the child, but somehow, he managed to convince her to give birth to I. During her pregnancy, although Defendant became worse, he used to remain quiet to avoid conflict with her. She was not prepared to look after the child and after an episode, where Defendant was neglecting the child because she could not cope with her tantrums, he had to take time off from work, until he was convinced that Defendant was prepared to look after the child alone.

He believes that Defendant has a dual personality, on a first impression, she comes across as a nice and fragile person, but in actual fact, she is a cruel person and she used to lack any form of empathy with their daughter. However, he used to do his utmost to ensure that his daughter was well taken care of.

When Defendant went back to work, her friend and her job became her priority, to the detriment of their daughter. He had spent some time as a stay-at-home father, and he built a strong bond with his daughter I and Defendant was jealous. On the other hand, she would go out at the weekend, dressed indecently and she would return home drunk. Defendant had also become aggressive with her daughter.

Plaintiff states that although they had agreed that at some point, they planned to move back to Malta permanently, but after they came for their daughter's first birthday, and Defendant fell out with his family, she refused to move to Malta. After returning to the UK, their relationship turned for the worse and Defendant had become dangerously violent and intolerable, to the extent, that he had to defend himself from her aggressiveness. It was at this point that he decided to leave her after three years and a half and when the situation calmed down between them, Defendant let him have access to his daughter, however each time they argued, she would threaten him with not seeing their daughter, but then when she wanted to go out to party, she would turn to him to keep their daughter.

Plaintiff had agreed to pay her €400 as maintenance for their daughter, as well as paying for half the education and health expenses. However, after paying this maintenance for a year and a half and he was finding it hard to cope, he realised that he was paying Defendant too much maintenance and as a consequence he asked to reduce it to €300. Initially, Defendant objected, however when she realised that it was better than her child welfare she accepted it,

He admits that Defendant was always in and out of relationships and had he been in a better financial position he would have fought for the care and custody of the child at the time. Meanwhile, MN moved in within Defendant and he made it very clear that their daughter had to be aware that he was her father. Defendant kept on insisting that she wanted her daughter to refer to M as “daddy” and he would be known as “S” If he refused, he would not see her any longer and that is what she did. She kept to her word. To make matters worse she even started lodging false reports against him for alleged violence and she managed to get a court order against him.

Since he was not seeing his daughter, Plaintiff explains that it was useless for him to remain living in England and he returned to Malta. He denies that Defendant used to run after him telling him that his daughter was missing him. It was only after two years that Defendant let him see his daughter. She had since broken up with her partner and she returned to living in Malta. However, he realised that his access was limited, and he was given the child only when it was convenient for Defendant.

Plaintiff states that he had given in to Defendant's request to sign a contract where she would have full parental rights and she would grant him access. She also requested maintenance and he agreed to pay €50 monthly. The contract was signed on the 2nd July 2012. Irrespective of what was agreed, Plaintiff states that he used to pay more maintenance when his finances allowed him to do so. As a consequence, he ended up not seeing his daughter, because Defendant was always looking for excuses. He decided to stop effecting maintenance and he did not see his daughter for a whole year.

Defendant's continuous lying and manipulations continued when she introduced him to QR. She informed him that they would be getting married and moving to Australia and she would be taking their daughter with her. She promised that within three years they would be returning to Malta. He explains that R seemed to be a reliable person and one who was willing to have a family. However, he fell into Defendant's trap and he lost all contact with her and also with his daughter.

R had later contacted him to inform him that Defendant had left him, and she had returned to Malta with her children. He realised that she had not changed one bit and she was a person with a dual personality. One moment she looked crazy and the next she would be very calm and give the impression that she could not recall any arguments. He believed that she had psychological problems.

He also admits that Defendant had very strange sexual tendencies and he suspects that she worked as a prostitute for a time. She also

used to dress provocatively. She had also admitted to him that she fantasizes about women and he recalls that when they were together and he would be at work, she would go out with T and they had a relationship,, like she had with other women. He also added that Defendant had a fetish for sex objects and she had also no inhibitions for having sex in public, to which he outrightly refused.

QR and also MN believed that Defendant had psychological problems and for this reason he believes that she is not the appropriate parent to have care and custody of the child.

2.Defendant met Plaintiff when he worked as a DJ at Havana club in Paceville and they had a common friend TU. At the time she was 22 years old and she lived with her parents. She worked as a hotel cashier for the Westin Finance Department.

She states that when she started courting Plaintiff, their relationship in Malta was fine. At one point, she was fed up with the limitation in Malta and she decided to move to the UK in search of better opportunities. She had not included Plaintiff in her decisions, but he decided to follow her and try to pursue an international career as a DJ.

She had left for the UK before Plaintiff and she tried to find a place for them and she had borrowed money from her father for this purpose. When Plaintiff went up he barely had any money and he had financial difficulties, but since she cared for him, she admits that she had no problem with helping out.

They lived in a shared property and Defendant explains that soon she had found a job as a credit controller. She also worked as a baby sitter, so she had a busy schedule from 6 am till 11 pm,

Defendant explains that Plaintiff was having problems finding work and when he did, he did not last long, because of his tardiness and attitude. She offered to pay for him to return to Malta, but he refused.

To cope with their finances, they had moved in with her brother, paying a small rent. By this time, they were not romantically involved physically, mainly because Plaintiff had hygiene issues. She believed that they got on better as friends, but nonetheless, on one of the few occasions they were intimate, she was expecting their daughter, I. She was concerned because of their financial problems.

When she came to Malta to give the news to her parents that she was expecting a child, they had hoped they were planning to get married, but she had no intentions to. Meanwhile, although they were both very excited to become parents, Plaintiff was not so respectful towards her needs during the pregnancy and he had a lack of compassion towards her home sickness. At the weekend he would sleep till the afternoon and he wouldn't even help out.

After I was born, she adds that Plaintiff was a good father. There still existed financial problems since she was forking out most of the expenses and everything had to be in her name, since Plaintiff was in no position to get credit in the UK.

Defendant explains that the last straw with Plaintiff arose when she received their mobile phone bills and the latter's alone was £350 and this was because whilst she was at work, he would download pornography or pornographic material. She asked him to leave the house at that point,

She had spoken to Plaintiff's sister to help out with the phone bills and there she was made aware that his family had been sending him money and they had even sent money to him for I, but apparently he was keeping all this money to himself.

When Plaintiff left home, Defendant states that they were very pleased and I settled very well into a nursery whilst she was at work. They had agreed that Plaintiff would pay £400 a month, £20 for I's welfare and £200 as a contribution to the collected debt and to pay part of the nursery fees. He was not always consistent in the payment of this maintenance, because he could not cope, but since he was helping her out and also being a good father to I, she was always prepared to help him. However, he moved around a lot and could not settle in a place and this was because he would either fail to pay his rent or cause damage.

When he was once again sent away from the property he rented, Defendant was not prepared to help him. As a result he was angry and it effected their relationship as parents to I.

It was in December, 2010 that Defendant married MN and they had a child O, she explains that Plaintiff complained continuously about this marriage, but did nothing to see I. He had only ever made three

payments towards his daughter since he moved out and although she did not pursue him for the payment, she used to encourage him to meet his daughter and at least to buy her an ice cream or stickers that she enjoyed collecting. Meanwhile he had started a new job and was making money.

After she married M, he did not help her out with I and so she took an additional digital freelancing job to earn some more money, since her daughter was her sole financial responsibility, In July 2010 Plaintiff's sister had informed her that her mother was dying and she agreed to take I down to Malta to see her grandmother for the last time since she was living in the UK at the time.

By the 16th October, 2010, her marriage with MN broke down and he left her with both children. Since she could not cope she decided to move back to Malta. On her return, Plaintiff did start to help her support I, but it was inconsistent. He would also not keep to his promises, like trying to organise I's schooling in Malta. He was also uncooperative when it came to signing documents that concerned I. By the time she was 6 years old, Plaintiff had cut off all ties with his daughter and this had an impact on her.

Later Defendant explains that she had met QR and after dating each other for a year they moved in together and he financed her legal fees to fight for the care and custody of both her daughters. He then convinced her to move to Australia with him. Here he controlled them completely and he treated I badly. They were living in fear and she had no money for her and two daughters to leave Australia and

to move to Malta once again. It was with the help of the police that she had managed to leave Australia.

On her return, Plaintiff did not contact her to see I, but on the other hand he was in contact with Q who assisted him in this case, and this was as a revenge for having left Q. She was suffering from post-traumatic stress disorder and had to seek the help of a psychologist, who referred her to Appogg.

She also admits that I grew up into a good girl, who does fairly well at school.

|As to the maintenance payments she claims that Plaintiff only contributed towards I, for a period of three months, the sum of €50 each time. She also incurs other expenses on her behalf, including €24 monthly for self-defence classes that she attends.

3. VWD, Plaintiff's sister explains that she had not taken a liking to Defendant as she was always there to start an argument, as well as being very vindictive. On the contrary, her brother was a good man and very altruistic.

She adds that Defendant is a very difficult person and she always seemed to be unhappy. When they went to England, it seemed that their relationship was improving and when they had their daughter I and her parents went to visit them, she states that her mother had told her that Defendant made it very clear she was not happy with their presence there. She also explains that when Plaintiff told him

that he was going to marry Defendant, they had given him some money to help out with the preparations, but her brother had told her that Defendant had spent all the money. They had paid around €1000 to €1500.

Even Defendant's mother was wary about this marriage, because she knew that her daughter was difficult.

It was after an argument that her mother had with Defendant, after the former returned the child slightly late, that Defendant returned to the UK and she and her family never heard from I again. She tried to communicate with her.

Defendant had also started to become violent and after an incident, where Plaintiff had to lock himself in the bathroom because Defendant was threatening him with a knife. She was a witness to all this, because whilst it was happening, he was on the phone with her and she heard all the insults and shouting. It was from this moment onwards that Plaintiff decided to come to Malta, but meanwhile, Defendant threw him out of the house. Eventually he found an apartment where to stay in the UK to be close to his daughter, However, the problems did not stop since Defendant was neglecting the child and each time he argued with Plaintiff she would threaten not to let him see their daughter. She used to contact Defendant through Messenger to ask her about I.

At a point in time, Defendant married MN and she informed her that he was insisting so that she stops all contact between I and her father

and also with her. Since Plaintiff had given up seeing his daughter ever again, he decided to come back to Malta.

Around October 2010, Defendant contacted her to excuse herself for all the things she had told her and this was because she had now separated from her husband. She also informed her that she planned to return to Malta permanently and she and all her family were overjoyed because in this way they would see I once again.

She remarks that this did not last long, as Defendant left for England once again and then returned back to Malta. She would allow them to see I for a while and then she started to find excuses to avoid meeting them or Plaintiff. The last time she met I was when they happened to bump into each other at Kennedy Grove.

She states that later she found out that Defendant was leaving for Australia, with her children and her partner QR. She tried to contact her to see I before they left, but Defendant insisted that she wanted her and Plaintiff to pass on I's share of her paternal grandmother's inheritance. When she refused, Defendant made sure to remove her from Facebook and she lost all kind of contact with her. It was a few months later when she was contacted by QR, who had informed her that Defendant had left him and Australia once again.

Today she explains that Plaintiff does not pay maintenance as he has not seen his daughter for the last 10 years.

3. QR, was married to Defendant between 2014 and 2016. They met in 2010. He confirms that Defendant is a very manipulative person and has a different personality to the one she tries to transmit.

He believes that the minor daughter I has psychological problems as her mother has been violent with her, she has manipulated her and she has also threatened her.

He lists various incidents that depict Defendant's violent character, her fetish for sex, the several times she lied to him, as well as he lists the various episodes that convince him that Defendant is not a fit mother.¹

R also confirmed that Defendant abused of drugs and she continued to do so even when she was married to him. He also explains that their relationship suffered due to Defendant's violence, her sexual perversions and her non-exemplary behaviour in front of the children. It was only because Defendant kept on insisting that he married her and he felt that he could offer some safety and security to the children.

He adds that Defendant used to complain about Plaintiff and that he was a bad father. She had also wanted to hound him for maintenance and make him agree to sign an agreement, wherein he would give up his rights as a father, but Plaintiff had disagreed.

¹ Docs 130-134

Eventually they got married and decided to move to Australia. He explained that Defendant wanted to get Plaintiff's consent to move I to Australia, which he did as he was aware that he would look after her. Once they were in Australia he explained that Defendant became worse and more and more unstable, so much so that he had to take her to a psychologist, who informed her that Defendant was suicidal and she was not to be left with the children alone as she was a threat.

She also made up a scene that he was trying to strangle her, with the result that he ended up being arrested until they investigated domestic violence, but then they did not charge him with anything. He also contacted Defendant's father and insisted that he makes arrangements to get Defendant back to Malta because she was at risk of losing her children in Australia. It was for this reason that he contacted Defendant's previous husbands. He feared the children's lives because she was also violent with them.

4. Bernard Vassallo, in rappresentanza ta' Jobsplus ipprezenta l-employment history tal-partijiet.²

5. Karen Cremona, in representation of Transport Malta confirmed that they found one vehicle registered in plaintiff's name CBG 247.³

² Doc. BZ1 and BZ2

³ Dok. KC 1

6. Rose Cortis, in representation of Bank of Valletta plc. confirmed that she found one account in plaintiff's name which is still active.⁴

7. Inspector Joseph Xerri exhibited four reports lodged by Sandra Federica Morgan at the St.Julians police station.⁵

8. WPC Rachel Mckay exhibited four reports filed by Defendant.⁶

9. Colette Maskjevic Senior Social worker in the Domestic Violence Unit at Agenzija Appogg states that Defendant was her client and she had gone to speak to her in November, 2015 because she was having domestic violence issues with her husband QR. Infact she had left him and came back to Malta.⁷ She admits that they did not speak to R, but she had seen an email with vulgar content.

10. Margaret Azzopardi, in representation of HR Havana Club Malta confirmed that Plaintiff worked with them as a part-timer between 15 to 20 hours a week. She exhibited his FS 3's and pay slips.⁸

11. Graziella Mercieca, Defendant's clinical psychologist between November 2015 and May 2017. She met her after Defendant said she had escaped from an abusive relationship with her husband QR and she was psychologically destroyed,

⁴ Dok. BOV 1

⁵ Dok. JS1 – JS4

⁶ Docs. RM 1- RM 2

⁷ Dok. CM1

⁸ Doks. MA 1 – MA 10.

Although she did not meet Plaintiff, Defendant had told her that she wished he was more involved in I's life. She feared that her husband Q would interfere with these proceedings and she was aware that he had contacted Plaintiff in 2016.

12. XY Defendant's aunt states that the main problem the parties had, was that at the beginning of their relationship, Plaintiff struggled to find a job, whereas it was Defendant who was the main breeder. This led to problems between them.

In 2006, Defendant returned to Malta with her daughter I. Plaintiff did have contact with the child., but then eventually it fizzled out. She confirms that Defendant married a certain MN. Initially, things seemed to work out between them and he was nice to the children, however, when his daughter was 4 months old he left her, leaving her alone, so much so that her parents wanted her to return to Malta.

Defendant and her daughters I and O settled in Malta. She explains that Plaintiff would visit I, but many times he would let her down and not appear at all. It was very evident that he had his own problems.

She adds that when Defendant met QR, he was so possessive over her, that they did not see her and the children much and when they did he always ensured that he was there too. After emigrating to Australia with him, it seems that the marriage didn't work out and Defendant returned looking really unwell,shattered and it was clear that she had undergone a lot of stress.

13.Z12 a friend of Defendant states that she has always known her to be a good mother, who was always supportive of her children's needs. She knew Defendant's husband, but she explains that it was always Defendant who was the main caregiver and she has always been altruistic.

14. 34, a friend of Defendant, also confirms that she knows her as a responsible mother, who cared very much for her children and she acted in the same way with her friends.

She also knows her to be a very hard working person, who always ensured that her children lacked nothing. She had two jobs to make sure she made ends meet.

She denies that Defendant is a sexual addict and also abuses of drugs. On the other hand, she has brought up her daughter I into a bright girl who worked very hard at school.

15.MN, was married to Defendant and he states that he was contacted by QR to inform him that he had evidence to show that his daughter O was not in safe hands. However, he believed that QR wanted to extort money from him to open the proceedings to take his revenge on Defendant, whereas today they have a good relationship and he sees his daughter whenever he can come to Malta.

CONSIDERATIONS

CARE AND CUSTODY

Plaintiff filed the case asking to acquire care and custody of their minor daughter I on the grounds that Defendant is not a suitable mother to bring up I.

He brought forward evidence to show that ever since he got to know her she has a dual personality. One moment she acts crazy and puts up a tantrum and the next she is a very loving and caring person. When he met her, she had just come out of a very difficult relationship and was doing drugs and drinking excessively.

He tried to help her and remained in a relationship with her and she ended up pregnant with I. Plaintiff explains their migration to the UK and the difficulties he faced to settle into a job. Their relationship only lasted three and a half years and as Plaintiff pointed out, Defendant had become aggressive and when she started working, she was more interested in her friends and work. She tended at times to prefer going out and she used to neglect their daughter and he used to stay with her. The more time passed, the more Plaintiff felt that Defendant was aggressive and that their relationship could not work out. When he left, Defendant used to let him see his daughter, unless he was in disagreement with her. In such a case, she would threaten him with not seeing his daughter and this with the scope of always getting her way.

Plaintiff explains that he started seeing his daughter inconsistently. There were issues with his finding a job, but when he could, he tried to help out Defendant.

Plaintiff tries to portray the incompetence of Defendant as a mother, through her marriage to M and then through QR, who he produced as a witness. Defendant insists that Plaintiff filed the case on the insistence of QR, who had befriended him, to have his revenge on her since she had left him. R confirms Plaintiff's version, that Defendant has a dual personality, manipulative and she had a fetish for sex.

Plaintiff denies that he was in agreement with QR and that he had helped him financially to institute proceedings. However, he did produce him as a witness. R states that he only contacted Plaintiff because he was concerned for the children, since Defendant had psychological problems. He also explains that she convinced Plaintiff to sign an agreement, whereby he gave up his custodial rights over their daughter, since she was moving to Australia with R. Nonetheless, Plaintiff confirms that he had accepted to sign such an agreement due to the fact that he liked and trusted QR and felt that his daughter was going to be in good hands.

Having examined the evidence and documents produced, the Court has reason to believe that the incidents that happened between QR defendant led to her post-traumatic depression as she admits herself and though there were incidents of arguments that led R to be detained by the Police for domestic violence, all charges were withdrawn. Their relationship remains a civil one as can be determined from the various messages that have been exhibited by QR in his evidence.

To a lesser extent is the involvement of Defendant's first husband M, who confirms to have been contacted by QR who told him against Defendant as a mother, but admits that today he has a good relationship with Defendant and his daughter, O, who he sees regularly.

This Court understands that Plaintiff's claims are that of ill-reputing Defendant and he turned to her ex-husband QR who was there to support him in every case, but it must also be emphasized that the case is not QR but Plaintiff's.

There seems no doubt, that Defendant might not be the ideal mother, in that she had several men in her lives and this is corroborated by the various documentation produced that confirms these chats she had with different men, as well as her enrolling to sex dating chats, apart from what Plaintiff and R confirm. It transpires also that she is very temperamental and has a dual personality and as her own sister describes her she has a Dr. Jekyll and Mr. Hyde personality, so much so that she manages to even deceive her parents.

However, the good qualities of Defendant have also to be remarked upon. She worked hard and she always did her utmost to provide for her children, despite that there were always shortcomings from the Plaintiff's end vis a' vis Maria.

Having considered all this, there is still one important consideration to be made. Plaintiff wasted all his energy in bringing forward QR evidence when, as has already been suggested this case is a care and custody case and not the separation between R and Defendant. What

this court would be interested to hear would be what impact does Defendant's behaviour have on I!

Today, their minor daughter is nearly sixteen years old and has practically lived all these years with her mother. No child assessment has been requested, nor has Plaintiff produced any evidence to show the negative effect Defendant has had upon Maria. Instead, the evidence in this regard is minimal and all that can be gathered is that I is a girl who tries her utmost at school and in her studies.

Plaintiff did not ask for the appointment of a child's advocate or any representative from Appogg to consider the circumstances of the case, so as to assist this Court in assessing whether a change in the minor's care and custody would be in the supreme interests of the child.

The child, I was practically side-lined, and all the emphasis was placed on Defendant and her life first with Plaintiff and then her two husbands, so as to depict her inadequacy as a mother. True, Defendant is far from the perfect mother, but who is! Plaintiff was not always there for his child. Admittedly he did have his problems and to date he states that he has not seen his daughter for the last ten years. It is by far not an easy task to uproot this child from her life and suddenly place her with her father, who was happy to leave her in her mother's sole care and custody for such a long time.

This Court does not envisage any type of danger to which the child can be exposed. Had that been the case, definitely the Plaintiff would have sought remedial action in that respect, which he failed to do.

Moreover, the child today is a sixteen-year-old and already capable of taking decisions, whether she would prefer to stay with her mother or her father.

Having considered all the above, this Court feels that the care and custody of the minor child shall remain solely in the hands of Defendant. Plaintiff is to be granted access to the child, twice a week, with a direct agreement with the minor child and at the weekends, access shall be alternate, between Friday at 6pm till Saturday at 6pm for the first week and for the second week, between Saturday at 6 pm till Sunday at 6pm.

MAINTENANCE

Plaintiff's employment was never very consistent, and it results that he struggled to settle into a definite job. A reflection of all this is the fact that he failed to contribute towards the maintenance of his daughter Maria regularly. There were very few occasions when he did.

The Courts have always been restrictive in their interpretation when it comes to the obligation of alimony, irrespective of the fact that one of the parents has a low income.

In the judgment **Martina Galea vs Mario Galea** decided by the Court of Appeal on the 31st January, 2019 it states as follows:-

“Il-manteniment tat-tfal, fil-verita’ izjed milli dritt tal-genitur li qed jrabbihom, huwa dritt tat-tfal minuri li ma jisfawx mcahhdin

minn dawk l-affarijiet li d-dinja tallum tikkunsidra bhala necessita' ghall-edukazzjoni u ghall-izvilupp taghhom.

Again, in the judgement **TC vs RM** decided on the 24th June, 2019, Rik. No. 272/2018 gie the Court went further and stated as follows:-

“...il-Qorti dejjem irritereniet illi l-genituri ma jistghux jabdikaw mir-responsabbilita' taghhom li jmantnu lil uliedhom materjalment, hu kemm hu l-introjtu taghhom, Dejjem kienet tal-fehma illi kull genitur ghandu l-obbligu li jmantni lil uliedu anke jekk il-mezzi tieghu huma baxxi jew jinsab dizokkupat. Il-Qorti ma tista' qatt taccetta li persuna ggib it-tfal fid-dinja u titlaq kull responsabbilita' taghhom fuq il-genitur l-iehor jew inkella fuq l-istat.”

Presently, Plaintiff works on a part-time basis at Havana Club and Margaret_Azzopardi, in representation of HR Havana Club Malta confirmed that Plaintiff worked with them as a part-timer between 15 to 20 hours a week. She exhibited his FS 3's and pay slips,⁹ and his income that does not exceed €400 monthly.

However, as Defendant points out, the bank statements do not tally with this income, in that there result two substantial deposits in the bank and there is no justification for these amounts, one in the sum of €44,110.33 and the other of €19,000.¹⁰

⁹ Doks. MA 1 – MA 10.

¹⁰ Fol. 356-366

Whether or not Plaintiff is trying to hide further income or not, the fact remains that in all probability, his part-time job is not his only source of income and thus there exist means to contribute towards the maintenance of his daughter.

According to the contract the parties signed between them, Plaintiff was bound to pay maintenance in the sum of €50 monthly, provided that the said sum would be reviewed if Plaintiff is in a full-time employment. In addition, Defendant presented a list of expenses related to their daughter claiming that she spends approximately €700 monthly.¹¹

The said Court agrees with Defendant's submission, that the amount of maintenance agreed upon is too little. However, Defendant did not produce further proof to justify what could actually portray Plaintiff's income. In the said circumstances and considering the evidence brought before the said Court, the contract as far as maintenance is concerned, will have to be reviewed and hereby obliges Plaintiff to pay the sum of €300 monthly, as well as half the education and health expenses, until the said child, starts to work, or is eighteen or until the age of 23 years if the minor child continues to further her studies on a full-time basis.

DECIDE

Having considered all the merits of the case, the Court concludes and decides as follows:-

¹¹ Fol. 96

1.Rejects the first and second claim of Plaintiff.

2. Partially upholds Plaintiff's third claim and grants access as
aforementioned.

COUNTER-CLAIM

1. Upholds Defendant's two counter-claims as far as
applicable in the sub-titles "**Maintenance.**"

All costs are to be borne by Plaintiff.

Hon. Mr. Justice Anthony. J. Vella

Registrar