

**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

Today, 2nd May 2022

Application no. : 256/2021 JPG

Case no.: 18

**EJ
Vs
LL**

The Court:

Having seen the sworn application filed by EJ, dated 25th of October 2021, at page 1, where in it stated:

- 1. That the parties were in an intimate relationship and a child by the name of ZLJ was born on X, who is thus still a minor, as per attached document marked Doc A.*
- 2. That the mediation between the parties was terminated since the Defendant did not attend any mediation sitting and was not represented by his legal representative; thus the Plaintiff was authorised to proceed with the sworn application, as per the attached document marked as Doc B;*
- 3. That Defendant was never involved in the minor's life and therefore he is not the ideal person to assume the care and custody of the minor;*

4. *That from birth until the 19th of April 2021, i.e. for thirteen (13) months, the Defendant did not pay any maintenance for his minor child;*
5. *That in virtue of decree dated 21st May 2021 in the acts of the mediation with effect from the 19th of April 2021, the Court ordered Defendant to pay unto Plaintiff by way of maintenance for the minor child ZLJ the fixed sum of €250 per month, together with half of the ordinary and extraordinary medical and educational expenses and half of the extra-curricular activities which Plaintiff incurs from time to time, which maintenance is deducted directly from Defendant's salary, as it results from a copy of the attached decree marked as Doc C.*
6. *That although the Defendant was ordered to pay half of the ordinary and extraordinary medical and educational expenses and half of the extra-curricular activities, the Plaintiff lost all contact with the Defendant and as a result he is failing to pay his share of the said expenses which the Plaintiff incurs from time to time.*
7. *That for this reason, it will be more reasonable for the maintenance to be a fixed sum which will include the Defendant's share of the ordinary and extraordinary medical and educational expenses and of the extra-curricular activities*
8. *That the Plaintiff knows these facts personally;*

Thereby, the Defendant should argue why this Honourable Court should not:

1. *Order that the care and custody of the minor ZLJ be exclusively assumed by Plaintiff.*
2. *Order that any social benefits, including childrens' allowance with respect to the minor child that may be due, will be payable exclusively to the Plaintiff;*

3. *Condemn the Defendant to pay a fixed sum of maintenance to Plaintiff in the sum of €400 or any other sum, per month for his minor son which will include his share of the ordinary and extraordinary medical, educational and extra-curricular expenses;*
4. *Order that the fixed amount of maintenance increases every year at the rate of 2% per annum on the previous years;*
5. *Order that the maintenance be directly deducted from the salary of the Defendant or from the social assistance as the case may be, such that the employer of the Defendant or the director for Social Security be ordered to execute the order and be ordered to transfer the said maintenance directly to the Plaintiff's bank account.*
6. *Order the Defendant to pay unto Plaintiff a lump sum by way of maintenance in arrears for the duration of 13 months that is from the 8 of March 2021 till the 19th of April 2021.*
7. *Authorize the Plaintiff to apply for and renew the identity card, the passport and the residence permit of the minor ZLJ as well as any other document involving the minor without the authorisation of Defendant;*

And this notwithstanding any other provision or declaration that this Honourable Court deems fit and opportune.

With expenses including the expenses of the mediation proceedings number 398/21 EC.

Having seen that the application and documents, the decree and notice of hearing have been duly notified in accordance to law; (notified on the 25th of November 2021, vide fol 23);

Having seen that Defendant, duly notified failed to file a sworn reply and failed to appear and is therefore contumacious at law;

Having seen the faculty given to the Defendant to file written submissions according to Art.158(10) Chapter 12 of the Law of Malta;

Having seen that notwithstanding this, Defendant failed to file written submissions. (vide fol 39);

Considers:

Plaintiff testified (vide affidavit fol 26) that she was born in Philippines on the 13th of January 1978, and moved to Malta in 2018. She stated that she embarked on a relationship with Defendant, a Filipino national, and that from this relationship they had a child ZLJ on X. Plaintiff testified that Defendant lives in Malta but he has never shown any interest in their child, has never contacted her or inquired after their son. Moreover, she declared that although Defendant work at ‘Advent Lift Services’ he does not want to pay any maintenance regarding their son and this in spite of the fact that Plaintiff has a Court decree, ordering Defendant to pay the sum of €250 as well as half the medical and educational expenses (vide Doc A, at page 30). Plaintiff testified that she works with ‘OZO Malta Ltd’ as a cleaner with a salary of €950 per month. She testified that she pays the sum of €225 as rent for the apartment that she lives in together with her son, such sum includes share of the water and electricity bill payments. From a detailed list of expenses Plaintiff declared that her expenses for the minor son amount up to €493 euros monthly and stating that she is requesting Defendant to pay maintenance as a lump monthly since keeping receipts could prove difficult. Plaintiff confirmed that she is the sole carer of the minor child and is requesting the Court exclusive care and custody because of the difficulties encountered with Authorities regarding child care, hospitals, medical health, education and travel documents regarding the child, since the father’s consent and signature is always required but not forthcoming.

Plaintiff furthermore gave viva voce evidence before this Court and testified that she met Defendant through a common friend and that their relationship developed so that Plaintiff bore a child ZLJ on X. She testified that after the birth of the child Defendant never paid maintenance nor did he ever seek to see the child or have any contact with him. Infact she was constrained to seek legal redress through the Courts. The Court ordered a maintenance allowance of 250 Euros a month which was automatically deducted from Defendant’s pay by his employer. The maintenance was paid in this manner for about ten months until February

2022 when Defendant decided to resign from his employment. Indeed, this is confirmed by Advent Lift Services in their note filed on the 18th February 2022 (Vide Fol 35) and as well as by Louis Buhagiar, JobsPlus representative.

Louis Buhagiar testified (vide fol 40 ad 41) and filed document LB1 which shows Defendant's employment history and that Defendant was in full time employment as a Senior Installation and Assembly Assistant with Advent Lift Services until the 14th February 2022 when Defendant chose to resign from his employment (Vide Fol 41).

Deliberates:

This is a judgement following an application filed by EJ requesting this Court to; 1) order that Plaintiff be awarded exclusive custody of ZLJ; 2) order that social benefits including children's allowance be payable to herself; 3) order Defendant to pay a fixed sum of maintenance in the amount of €400 per month, or other sum which includes also his share of the ordinary and extraordinary medical, educational and extra-curricular expenses of the minor son; 4) order that such maintenance increases every year at 2% per annum on the previous years; 5) order that maintenance be directly deducted from Defendant's salary or social benefits and be transferred in her bank account; 6) order Defendant to pay lump sum of maintenance arrears of 13 months (from the 8th of March 2021 till the 19th of April 2021); 7) authorise her to apply or renew the identity card, passport and the residence permit of the minor ZLJ, or any other documents without the authorisation of Defendant.

Defendant duly notified failed to file a sworn reply and failed to appear and failed to produce any documentation or evidence;

Considers;

The Court recalls that according to the jurisprudence, all decisions regarding the care and custody of children are regulated by the fundamental principle of the best interests of the child - the best utility and best advantage to the interests of the child.¹

¹ **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civil Court, decided 27 November

According to the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, the Court has the power to entrust the care and custody of a minor solely in the hands of one of the parents when this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights are a relevant consideration, the child's best interests are the Court's primary consideration.²

In spite of the fact that Defendant was duly notified, he failed to file any sworn reply to give the Court his version of events, to prove his income and his personal expenses.

With regard to the question of care and custody, the Court makes reference to the judgement in the names of **F T K P D vs R K P G** decided on the 22nd of March 2018 where, in circumstances similar to those in the case at hand, the Court had considered that Articles 56 and 56A of the Civil Code are applicable and relevant even in the context of a request made by a parent to be granted exclusive care and custody of the child outside of personal separation proceedings and had *ex officio* divested the father of parental authority so that this authority would be exercised exclusively by the mother.³

The Court notes furthermore that according to Article 149 of the Civil Code:

“Notwithstanding any other provision of this Code, the Court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.”

The Court recognises that in normal circumstances both parents have an important and

2003: “Apparti l-*ħsieb ta' ordni morali u dak ta' ordni legali, li għandhom setgħa fil-materja ta' kura u kustodja tat-tfal in generali, il-prinċipju dominanti 'in subjecta materia', li jiddetermina normalment u generalment il-kwistjonijiet bħal din insorta f'dina l-kawża, huwa dak tal-aktar utilita' u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl-isfond taċ-ċirkostanzi personali u 'de facto' li jkun jirriżultaw mill-provi tal-kaz li jrid jiġi riżolut...”*

² “Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wiehed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili. Illi kif kellha l-okkażjoni tenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. “Il-Qorti tirrileva illi filwaqt li dejjem tagħti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.””

³“Il-Qorti, wara li ezaminat ic-ċirkostanzi partikolari kollha ta' dan il-kaz, b'mod partikolari li l-missier abbanduna lill-minuri b'mod assolut, tiddikjara li jezistu l-estremi sabiex iccaħhad lill-missier mill-awtorita' ta' ġenitur sabiex tali awtorita' tigi ezercitata esklussivament mill-omm.”

fundamental role in the upbringing and life of their children, and therefore none of them should be excluded from the child's care unless there are serious reasons which lead the Court to take such a drastic measure. However, as has been said, in these matters the Court must be guided by the best interests of the child, and therefore the Court must examine whether, in the circumstances, it is in the best interests of the child for one parent to have the full responsibility of all the decision-making where the child is concerned.

In this case, in the light of the fact that the Respondent chose not to reply; in view of the fact that Defendant failed to take the slightest interest in his child; failed to provide for him until forced to do so by Court order; failed to see or have any contact with his child; it is this Court's considered opinion that it is in the child's best interest that exclusive care and custody be granted to the mother who shall decide all matters relating to the health, education, passport, residence permits and travel of the minor child without the consent, signature, or presence of the Defendant.

Deliberates:

With regard to the Applicant's request for maintenance, the Court makes reference to the following:

The legal principle regulating maintenance is based on **article 7(1) of the Civil Code** which provides as follows:

“Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.”

The parents, therefore, have the same legal obligation towards their children, with both parents having to contribute to the upbringing of their children. The quantum of this obligation of a child's maintenance is calculated according to the parents' needs, and the criteria set out in article 20 of the Civil Code.

Article 20 of the Civil Code provides that:

- (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.*
- (2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.*
- (3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.*
- (4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.*
- (5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust*

In the case in the names of **Georgina Schembri pro et noe vs Dino Schembri** (413/2000/1) decided on the 28th November 2002, the Court held that:

“L-obbligi ta’ manteniment tal-konjugi huma regolati bl-artikolu 3 tal-Kap 16...jirriżulta mid-disposizzjonijiet tal-Liġi, li l-ġenituri għandhom l-istess obbligi versu l-ulied tagħhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f’posizzjoni ta’ ugwaljanza u għandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, “jerfghu responsabbiltajiet indaqs matul iż-żwieġ tagħhom” (Ara ukoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deċiża fil-25 ta’ Ġunju 2003).

Therefore, the Jurisprudence cited illustrates that the obligation of the parents is **an absolute obligation** and persists even where the parents are unemployed (Vide **Maria Bugeja pro et noe vs Spiridione sive Stephen Bugeja First Hall Civil Court (FD)** (154/94).

The Court finds that according to law, both parents have an obligation to maintain their children according to their means. The record shows that the Defendant is far from being unable to pay maintenance for the upkeep of his minor child, having had an indefinite employment as a Senior Skilled Labourer with Advent Lift Services. It is evident that Defendant failed to voluntarily provide any maintenance to his son until he was forced to do so by Court order. Indeed, after a few months (less than 10) of having the maintenance allowance deducted from his wages by his employer according to the Court order, Defendant simply chose to resign from his employment and infact is no longer in regular employment. (Vide page 35 note of Advent Lift Services and Vide page 41 testimony of Louis Buhagiar).

The Court also notes that apart from the monthly maintenance of 250 Euros Defendant was ordered to pay half the medical and educational expenses of the child against receipts. It is evident that the total absence of corroboration between the parties makes this arrangement unworkable and futile and therefore the Court is constrained to pre-liquidate such medical and educational and extra-curriculum expenses in a monthly sum and this in the light of Defendant's reluctance to measure up to his obligations. The Court also took note of the list of costs incurred by the Plaintiff on her minor child, as per prospectus filed with her application which costs do not appear to be exaggerated. Therefore the Court liquidates the medical, educational and extra-curriculum expenses of the child of the parties to one hundred Euros (100) Euros per month.

Therefore, the Court limitedly upholds the requests of the Plaintiff and:

- 1. Orders that Plaintiff shall have the exclusive care and custody of the minor child ZLJ;**
- 2. Orders that any social benefits, including childrens' allowance with respect to the minor child that may be due, will be payable exclusively to the Plaintiff;**
- 3. Condemns the Defendant to pay a maintenance allowance to Plaintiff on behalf of the minor child in the sum of €350 per month for his minor son which shall include Defendant's share of the ordinary and extraordinary medical, educational and extra-curricular expenses of the child;**

4. Orders that the fixed amount of maintenance increases every year according to the Cost of Living Index;

5. Orders that the maintenance be directly deducted from the salary of the Defendant or from any social assistance due to him, such that the employer of the Defendant or the Director for Social Security is ordered to transfer the said monthly maintenance allowance directly to the Plaintiff's bank account.

6. Orders the Defendant pays the Plaintiff the arrears in maintenance in the sum of five hundred Euros (500) Euros being the maintenance due to her on behalf of the minor child for the months of March 2022 and April 2022.

7. Authorize the Plaintiff to apply for and renew the identity card, the passport and the residence permit of the minor ZLJ as well as any other documentation involving the minor child without the authorisation, signature, consent or presence of the Defendant;

All costs shall be borne by the Defendant.

Read.

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

**Lorraine Dalli
Deputy Registrar**