



**FIL-QORTI CIVILI  
(SEZZJONI TAL-FAMILJA)**

**L-ONOR. IMHALLEF ANTHONY VELLA**

**Seduta ta' nhar it-Tlieta 22 ta' Frar 2022**

**Rikors nru: 212/2017 AGV**

**J F F S f'isimha proprio u f'isem  
bintha l-minuri S B F S li twieldet  
fl-1 ta' Ottubru 2016.**

**-vs-**

**M K B**

**Il-Qorti rat ir-rikors guramentat ta' J F F S datat 20 ta' Settembru 2017 fejn  
esponiet bir-rispett u bil-gurament taghha kkonfermat illi:**

1. Illi l-esponenti attrici kellha relazzjoni mal-konvenut u minn dina r-relazzjoni twieldet l-minuri S B F S li twieldet fl-1 ta' Ottubru 2016. Kopja tac-certifikat tat-twelid qed jigi hawn anness u markat Dok. A.
2. Illi ir-relazzjoni bejn il-partijiet spiccat.
3. Illi l-partijiet baqghu ma ftehmux dwar il-kura u l-kustodja, access u manteniment rigwardanti i-minuri u dana minkejja anke li kien hemm medjazzjoni bejn il-partijiet liema ftehim baqa' ma ntlahaqx ghal ragunijiet imputabbli lill-konvenut, liema ragunijiet huma totalment infondati fil-fatt u fid-dritt.
4. Illi dwar manteniment jinghad illi sal-lum mhux biss ma ntlahaqx ftehim dwar l-ammont pagabbli imma l-istess konvenut ihallas xi haga b'mod sporadiku u meta ifettillu; b'dana illi l-minuri hija finanzjarjament kompletament dipendenti fuq ommha l-esponenti. Il-konvenut ma jikkontribwixxi lanqas xejn dwar spejjez ta' sahha u edukazzjoni tal-minuri. Illi l-konvenut huwa obligat li mhux biss imantni lill-imsemmija bintu minuri izda li jhallas kull manteniment minnu dovut mhux biss ghall-futur izda mid-data tat-twelid tat-tarbija minuri.
5. Illi dwar kura u kustodja jezistu ragunijiet gravi, sufficjenti u bizzejjed sabiex il-kura u kustodja tal-minuri tkun esklussivament fdata f'idejn ir-rikorrenti u dan kif ser jigi ippruvat ahjar waqt it-trattazzjoni ta' din il-kawza.
6. Illi dwar access tal-konvenut lejn il-minuri dan ghandu jkun taht supervizjoni u dana qed jinghad anke fl-ahjar interess tal-minuri.

7. Illi l-medjazzjoni bejn il-partijiet ma waslitx ghal ftehim bonarju benjiethom u ghalhekk ir-rikorrenti giet awtorizzata sabiex tipprocedi ghal din il-kawza u dan kif jirrizulta mill-anness digriet immarkat bhala Dok B.

**Jghid ghalhekk il-konvenut ghaliex din l-Onorabbli Qorti m'ghandhiex ghar-ragunijiet fuq imsemmija:-**

1. Tordna illi l-kura u kustodja tal-minuri S B F S fdata esklussivament f'idejn l-attrici.
2. Tikkundanna lill-konvenut ihallas lill-attrici dik is-somma li tigi likwidata in linea ta' manteniment ghat-tifla minuri S B FS okkorrendo b'opera ta' periti nominandi, u liema somma ghandha tirrifletti dak li kien ikollu jhallas il-konvenut sallum mid-data tat-twelid tal-minuri sad-data tas-sentenza effettiva u ohra mensili in linea ta' manteniment futur ghall-imsemmija minuri Sofia bl-imghaxijiet legali skond il-ligi.
3. Tordna illi l-access tal-konvenut versu l-minuri S B F S ikun wiehed limitat u taht supervizjoni.

**Bl-ispejjez inkluz l-ispejjez tal-procedura tal-medjazzjoni kollha kontra l-konvenut ingunt ghas-subizzjoni.**

**IL-QORTI RAT IR-RISPOSTA GURAMENTATA TA' L-INTIMAT M K B (DETENTUR DATATA 11 TA' GUNJU 2018 FEJN** Espona bir-rispett u bil-gurament tieghu kkonferma:

1. Illi kif proposti, d-domandi attrici huma nfondati fil-fatt u fid-dritt m'hemm assolutament l-ebda raguni valida fil-ligi sabiex il-kura u l-kustodja tal-minuri SB F S tigi fdata unikament f'idejn l-attrici f'din il-kawza, anzi, jinghad illi ma hemm l-ebda raguni ghaliex il-kura u l-kustodja tal-minuri S B a S m'għandhiex tibqa' kongunta bejn il-partijiet u li d-decizjonijiet kollha rigwardanti l-benessere, l-edukazzjoni u s-sahha tal-minuri għandhom jittiehdu miz-zewg partijiet;
2. Illi dwar ir-retta alimentari għall-minuri preliminarjament għandu jigi rilevat illi li l-esponent ihallas il-manteniment għal bintu uliedu minuri fis-somma ta' mitejn euro (€ 200) mensili. L-esponenti jibqa' dejjem dispost illi jhallas retta alimentari għall-minuri, b'dana illi din tkun ragonevoli meta paragonata mal-qliegħ tiegħu, tenut kont anke tal-fatt li l-attrici stess taħdem bi qliegħ;
3. Illi l-esponenti diga hallas manteniment għal bintu minuri sa mid-data meta twieldet u għalhekk m'hemm l-ebda raguni ghaliex hu għandu jigi kkundannat jhallas xi manteniment għal perjodi precedenti;
4. Illi lanqas m'hemm l-ebda raguni kwalsiasi ghaliex l-access tal-konvenut ma' S B F S għandu jkun limitat jew taħt supervizjoni – dak li hemm bzonn li jsir huwa illi l-access tal-esponenti mal-minuri għandu jigi regolat minn din l-Onorabbli Qorti peress illi l-access tal-esponenti mal-minuri s'issa kien pjuttost sporadiku u kien qed jsehh biss skond il-konvenjenza tal-omm;

5. Illi l-esponenti qieghed permezz ta' din ir-risposta jipprevalixxi ruhu minn dawn il-proceduri sabiex jintavola kontro-talba.

**Il-Qorti rat il-Kontro-Talba ta' l-intimat M K B** FEJN ESpona bir-rispett u bil-gurament tieghu kkonferma:

1. Illi l-kontendenti kellhom relazzjoni u minn dina r-relazzjoni twieldet il-minuri S B F S fl-1 t'Ottubru 2016;
2. Illi r-relazzjoni ta' bejn il-partijiet spiccat;
3. Illi l-partijiet baqghu ma fthemux dwar il-kura u l-kustodja, l-access u l-manteniment rigward il-minuri u dan minkejja li kien hemm medjazzjoni, u dan ghal ragunijiet unikament imputabbli lill-attrici, liema ragunijiet huma totalment infondati fil-fatt u fid-dritt;
4. Illi l-attrici tahdem bi qliegh u ghalhekk m'hemm l-ebda raguni ghaliex hi m'ghandhiex ukoll taghmel tajjeb ghall-parti mill-ispejjez li huma mehtiega sabiex tigi mrobbija t-tifla minuri. Illi lanqas ma huwa minnu illi l-attrici tiddependi ghal kollox fuq ommha jew li l-esponenti ma jhallas xejn dwar l-ispejjez ta' sahha u edukazzjoni ta' bintu u dana stante li l-esponenti jhallas s-somma ta' € 200 fuq bazi mensili, u apparti minn hekk jhallas ukoll nofs l-ispejjez ta' sahha u edukazzjoni ta' bintu minuri.
5. Illi dwar il-kura u l-kustodja tal-minuri m'hemm l-ebda raguni ghaliex din m'ghandhiex tibqa' kongunta f'idejn iz-zewg partijiet u li d-decizjonjiet

kollha rigwardanti l-benessere, l-edukazzjoni u s-sahha tal-minuri ghandhom jittiehdu miz-zewg partijiet;

6. Illi dwar l-access tal-konvenut dan ghandu jsir f'hinijiet determinati minn din l-Onorabbli Qorti, u ghandhom jinkludu ukoll hin ghal *sleepover* mal-esponenti u dana stante li l-attrici s'issa kienet qed tiddetta, ghab-bazi ta' l-ebda raguni valida fil-ligi kif u meta dan l-access kien qed jigi ezercitat. Dan l-access ghandu certament m'ghandux jkun taht supervizjoni.

7. Illi l-esponenti jaf b'dawn il-fatti personalment.

**Ghaldaqstant u in vista tal-premess, l-esponenti jitlob bir-rispett lil din l-Onorabbli Qorti sabiex:**

1. Tordna illi l-kura u l-kustodja ta' S B F S tigi fdata f'idejn il-kontendenti flimkien u li d-decizjonjiet kollha rigwardanti l-benessere, l-edukazzjoni u s-sahha tal-minuri ghandha tittiehed miz-zewg partijiet;
2. Illi l-esponenti jkompli jhallas manteniment ghall-bintu minuri minuri fl-ammont li kien diga' gie precedentement maqbul bejn il-partijiet u cioe' dak ta' mitejn euro (€200) mensili, flimkien ma' nofs l-ispejjez ta' sahha u edukazzjoni ta' bintu minuri;
3. Illi l-access li jgawdi l-esponenti, jkun tlett (3) darbiet fil-gimgha, ghal tlett sieghat kull darba. Barra minn hekk, l-minuri tkun tista' torqod fid-dar ta' residenza tal-esponenti darba fil-gimgha waqt il-weekends b'tali mod u manjiera illi l-minuri torqod mill-Gimgha ghas-Sibt f'gimgha u mis-Sibt ghall-Hadd il-gimgha ta' wara.

**Bl-ispejjez inkluzi dawk tal-proceduri ta' medjazzjoni kontra r-rikorrenti minn issa ngunta ghas-subizzjoni.**

**Having seen plaintiff's sworn reply** to defendant's counterclaim, whereby...

Having seen the decree given pendente lite during the sitting held on the 22 March 2018, whereby plaintiff was given full care and custody of the minor child.

Having seen all the documents exhibited by the parties.

Having heard all the evidence submitted.

Having seen the acts of the mediation between the parties, 162/17.

**CONSIDERS:**

The Court notes that defendant failed to submit any evidence whatsoever in this case, which means that the Court only has plaintiff's version of facts to consider. Since these facts were in no way contradicted or contested or rebutted by defendant, the Court may consider those facts as having been proven at law.

In her affidavit, plaintiff states that the parties started their relationship in the Summer of 2014, and they lived as a couple with her mother. A year later, plaintiff became pregnant but miscarried only a month later. It was a very difficult time for her. She says defendant did not give her enough emotional support at the time, as she saw him a bit childish and immature, but she believed that if they had their

own place to live in, he would take on more responsibility. They moved into an apartment in December 2015. This time, however, she realised that defendant did not want the commitment of children, which to her was devastating. So, when she found out she was pregnant again in February 2016, she was happy and scared at the same time. Defendant was unemployed, which meant that plaintiff had to pay the rent and maintain them both while preparing for the child.

The couple split up during the pregnancy, after plaintiff maintains that she had had enough of defendant's behaviour, and she moved back in with her mother. She tried helping him sort out his residency papers but found no help from his end. When she finally gave up on him, defendant became possessive and obsessive in her regard, but disregarded the fact that they both were expecting a child. Plaintiff also claims that defendant's addiction to smoking cannabis was one of his biggest problems. She confronted him many times about this, but she saw that he was not prepared to change and become a responsible father.

Plaintiff gave birth to Sofia on the 1 October 2016. Her mother and her new boyfriend were present at the time. Defendant came and went, spending very little time with plaintiff and with his newborn daughter. In the months that followed, defendant hardly visited her and his daughter, and was totally absent from their lives. In fact, defendant went back to Scotland in December 2016, completely missing his daughter's first Christmas.

Plaintiff then goes on to mention various episodes where she had to raise Sofia on her own with little or no help from defendant, explaining why she is claiming sole care and custody of their daughter. She claims he is very unreliable and irresponsible and has hardly been present for his daughter.



Plaintiff also filed five other affidavits, one of her mother, one of her sister, and three of her friends, all of which corroborate and confirm the version of facts given by her. A subsequent affidavit of her previous employer also corroborates the version given by her. Plaintiff also filed a statement on the 15 June 2021, showing arrears in maintenance due by defendant in the amount of €800.

As stated previously, defendant failed to submit any evidence in this case. The only statement that the Court has is his sworn reply and counterclaim, which have not been supported by any other statements or witnesses or evidence.

From the above facts, the Court has no hesitation whatsoever in upholding all of plaintiff's claims. Although defendant stated that he always paid maintenance for S, he never presented a single document or receipt showing such payment. It had to be plaintiff who did this for him in her last statement filed in this case. The Court cannot uphold any of defendant's claims, especially that of sleepovers at his residence. The Court has no information as to where and with whom he resides, whether the addiction to cannabis is as severe as plaintiff is claiming or not, and whether that environment is a safe one for S. The Court would at least have expected an affidavit from defendant, but no such evidence was produced by him.

The court is of the opinion that both parties were very young when their relationship developed. It seems clear that plaintiff was mature and ready to start a family, whereas defendant was still a boy. This is being said with all due respect to both parties. It appears that the whole relationship was not properly thought out by them, and both rushed into something they should have considered very carefully. If, as plaintiff states, defendant had a drug addiction from the very beginning of their relationship, then maybe she should have been more careful in her choices. Similarly, if defendant was living and sleeping with his partner, he

should have been responsible enough and accept the consequences of his actions. However, plaintiff changed and became a dedicated and committed mother, but defendant chose to remain free. This has led to plaintiff bringing up S without the support of a father figure. The Court hopes this has not caused too much pain to the child. The Court also hopes that defendant will, eventually, take on the role of a father and actually be one to his daughter, no matter how much time has already been lost by him in this regard. Defendant has a responsibility as a father and cannot shy away from it. His duty is to find a stable employment and provide for his daughter, as she should be his main priority in life.

### **DECIDE:**

Now, therefore, for the above reasons, the Court;

#### **Upholds plaintiff's claims.**

1. Orders that the care and custody of the minor child, S B F S, be vested solely in plaintiff.
2. Orders defendant to pay maintenance for the said minor child in the amount of €250 per month, which sum includes half the ordinary expenses normally incurred in health and education. This maintenance shall increase to €280 per month when S attains the age of ten, and shall further increase to €320 per month when she reaches the age of fifteen, and shall remain so payable until S is eighteen years old without increasing further and shall remain payable up to the age of twenty-three, provided that S will still be studying full-time and not be in full-time employment.
3. Allows access to defendant with the minor child once a week, for a maximum time of three hours, under the supervision and in the presence

of a family member, as well as virtual access via any means, on two other days in the week, for an hour each time.

**Denies defendant's counterclaims.**

All costs are to be borne by defendant.

Hon. Judge Anthony G Vella

Judge

Cettina Gauci- Dep Reg