

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 30th of January 2023

Application no.: 284/2018 JPG

Case no.: 17

RT

Vs

IL

The Court:

Having seen the sworn Application filed by RT dated 6th November 2018, *at page 1 et seq*, wherein it was held:

- 1. That the parties RT, holder of identity card no. Y and IL holder of identity card no Z were in a relationship and from this relationship NLT was born on the X as results from the annexed Birth Certificate 'Dok A' ;*
- 2. That the relationship between the parties was no longer possible and has now finished;*
- 3. That the Respondent has obtained the care and custody of the minor without the knowledge of the Plaintiff;*
- 4. That the Respondent has refused all attempts by the Plaintiff to accord right of access to the minor and to participate in his care and custody;*

5. *That the Respondent has never requested the Plaintiff to participate in the care and custody and has never requested maintenance.*
6. *That the Plaintiff was thus obliged to file these procedures in order to obtain access, care and custody of his minor son.*
7. *That Plaintiff was authorised to file these procedures by a Decree issued by this Honourable Court on the 10 May (2018) Dok B.*

Cause of the claim

1. *That the parties RT, holder of identity card no. Y and IL holder of identity card no Z were in a relationship and from this relationship NLT was born on the X as results from the annexed Birth Certificate 'Dok A' ;*
2. *That the relationship between the parties was no longer possible and has now finished;*
3. *That the Respondent has obtained the care and custody of the minor without the knowledge of the Plaintiff;*
4. *That the Respondent has refused all attempts by the Plaintiff to accord right of access to the minor and to participate in his care and custody;*
5. *That the Respondent has never requested the Plaintiff to participate in the care and custody and has never requested maintenance.*
6. *That the Plaintiff was thus obliged to file these procedures in order to obtain access, care and custody of his minor son.*
7. *That Plaintiff was authorised to file these procedures by a Decree issued by this Honourable Court on the 10 May (2018) Dok B;*

Claims

Thus, the Respondent should therefore state why this Hon. Court should not:

- 1. Order that the Plaintiff is to have care and custody of the parties' son NLT and relative maintenance.*
- 2. Alternatively to accord and order that the Plaintiff has adequate access to their minor son NLT;*

With costs against Respondent summoned for oath.

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the sworn reply dated 27th May 2020 *a fol 36 et seq* wherein it was held:

- 1. That in the first instance, it is true that the parties had a relationship together, from which NL was born on X. That it is also true that the relationship between the parties broke down and after the Applicant got to know that the Plaintiff was defiling her minor child from a previous relationship and had participated in sexual activities with her, from which charges the Plaintiff was found guilty and is currently serving a three year prison sentence;*
- 2. That in the second instance, with reference to point three, it is false that the Respondent obtained the care and custody of the minor child without the Plaintiff's knowledge given that this was obtained after the Plaintiff was duly notified but failed to reply;*
- 3. That with reference to the first demand relating to the care and custody of the minor child, this should be wholly denied given that this is not in the best interest of the minor child in light of the violent behaviour of the Plaintiff. That in fact the Respondent always took care of the needs of the minor child;*
- 4. That the second demand is also being opposed because it is not in the best interest of the minor child to have access with his father, which access should be suspended and this as will be proven in the case. That without prejudice in case the Honourable Court orders that there should be access towards the child, this should happen once it is clear through specific assessments that it is in the*

minor's best interest and after ascertaining that all the necessary safeguards are present;

5. That the Respondent objects to all the expenses of the case;

Save other pleas.

With costs against the Plaintiff who is demanded for a reference on oath.

Having seen that Respondent availed herself of article 396 et seq of chapter 12 of the Laws of Malta and filed a Counterclaim.

- 1. That the parties were in a relationship from which the minor child NLT was born on the X, and thus today is six years of age;*
- 2. That the relationship between the parties broke down due to the violent character of the Plaintiff. That in addition, the Respondent got to know that the Plaintiff had defiled her minor child from a previous relationship and had also participated in sexual acts with her. That in fact on the 25th of February 2016 the Plaintiff was arraigned in Court whereby he was found guilty by means of a judgment dated 1st of February 2019, which judgment was confirmed by the Court of Criminal Appeal on the 25th of July 2019 for which the Plaintiff is serving three years imprisonment (see judgment of the Court of Appeal hereby attached and marked as Doc A);*
- 3. That by means of a Court decree dated 9th of March 2016, the Honourable Family Court acceded to the requests of the Respondent and awarded her with the care and custody of the minor child (See application and decree hereby attached and marked as Doc B);*
- 4. That in addition, the Plaintiff counterclaimed has not passed over any form of maintenance for his minor child from February 2016;*
- 5. That the facts here declared are known personally by the Respondent;*

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

1. *Order that the Plaintiff counterclaimed be deprived of all his rights of parental authority in terms of article 154 of the Civil Code and this in the best interest of the minor child;*
2. *Awards the exclusive care and custody of the minor child NLT to the Respondent and authorises her to take all the decisions relating to the health, education, issuing of passport, issuance of identity card and travel of the said minor child and this without the consent of the Plaintiff counterclaimed;*
3. *Declares that the Plaintiff counterclaimed is not fit to have the custody of the minor child in terms of article 56A of the Civil Code;*
4. *Orders that the minor child NLT resides with the Respondent;*
5. *Establishes and liquidates an adequate amount of maintenance which should be paid by the Plaintiff counterclaimed to the Respondent for the said minor child NLT and which should remain payable until the minor reaches the age of eighteen (18) years if the minor 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 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 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 and orders that the Respondent receives any benefits relating to the minor child, including but not limited to the children's allowance in its entirety;*
6. *Orders that the said maintenance includes the Plaintiff's counterclaimed share from the expenses related to the health, education, extra-curricular activities, issuing of passports and any other expenses relating to the minor child;*

7. *Orders the Plaintiff counterclaimed to pay the Respondent all the arrears relating to the maintenance and expenses of health, education and extra-curricular activities of the minor child;*
8. *Issues a protection order in terms of Chapter 16 of the Laws of Malta in favour of the Respondent and her family members;*

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

Having heard the evidence on oath;

Having seen that this Court as presided has ordered the closure of Plaintiff's evidence on the 6th of June 2022 (*vide fol 207*)

Having seen the note of submissions files by Respondent;

Considers:

Inspector Hubert Gerada, stationed at the immigration section, testified on the 4th March 2022, (vide fol 193A et seq) and explained that on the 9th of July 2021, he was the duty officer. He explained that with regards to the deportation of an EU national, if a restriction is imposed on an EU national, a letter to this effect is issued by Identity Malta, to the Malta Immigration Office and therefore to the witness. In fact on the 7th of July he was informed by Dr Chanelle Bantic from Identity Malta that the said letter was in fact issued. Witness contends that he had picked up the letter on the 8th of July and took it personally to Corradino facility where he met Mr RT. Witness adds that he gave a true copy of the said letter to Mr RT.

On that same day, Mr RT informed the Inspector that he was going to be travelling to Italy on the 10th of July 2021. Witness seized RT's I.D. Card and took the ID Card to the immigration section at the Malta International Airport for Mr RT to pick up the said document from the airport. This was recorded in the report departure which shows that RT left for Italy on Flight FR 7952 to Rome on the 10th July 2021. Witness also testified that he knew that RT was involved in criminal proceedings before the local Courts, and was serving a prison sentence in

Malta. According to procedure, the Immigration Office will once again follow up on RT once the person is about to be released.

Stefania Calafatto Testa testified on the 20th July 2022 (vide fol 239 et seq) and explained that she shall be exhibiting a list of cases involving Plaintiff before the Court of Magistrates and another list of cases involving Plaintiff before the Court of Appeal. The first list contains two cases, one has already been decided, whilst the other was pending on appeal. The second list shows that the case in the names *Police vs RT* decided on the 1st of February 2019 by the Court of Magistrates and decided by the Criminal Court by Judge Dr Aaron Bugeja on the 25th of July 2019.

Dr Alexia Aquilina testified on the 20th July 2022 (vide fol 242 et seq) and exhibited two documents, Dok AA 1 which indicates Court cases involving the Plaintiff and Dok AA2 which indicated acts in general involving the Plaintiff's name.

Louis Buhagiar, representing Jobs Plus, testified on the 11th October 2022 (vide fol 251) exhibited the parties' employment history.

Inspector John Spiteri testified on the 11th October 2022 (vide fol 251) exhibited Plaintiff's conviction sheet. Witness also explained that he is aware that there are ongoing investigations and/or prosecutions. Witness also added that he is aware that Respondent filed a number of police reports at the St Julians' Police station with regards to her daughter, and this was a case he prosecuted himself. Witness also contends that Inspector Leory Balzan Engerer who is no longer part of the police force, was investigating a case of alleged stalking by Plaintiff on Respondent.

Witness confirms that he is aware that there is another inquiry which is still pending regarding the uploading of indecent pictures of Respondent by Plaintiff on Social Media. Plaintiff was arrested in this regard and a number of electronic equipment were seized by the police. However the technical expert has left Malta for good, and there is now little way of knowing what happened to the devices which were seized.

Asked as to whether witness was involved in Plaintiff's deportation, Witness explained that what happens at times is that when child sexual offenders terminate their prison terms, they are

deported to their country of origin even if they are Schengen members. Witness at the time was asked whether Plaintiff ought to be deported or not. Witness declared that he found no reason why a convicted child sexual offender should remain within our society.

Johanna Bartolo, in representation of Bank Of Valletta testified on the 11th October 2022 (vide fol 252) and confirmed that Plaintiff had no bank accounts in his name.

Lorraine Attard in representation of HSBC Bank Malta plc testified on the 11th October 2022 (vide fol 252) explained that Plaintiff had a savings account, where an amount is still due to the bank as well as a loan account with dues still owed to the bank.

Respondent testified by means of an affidavit (vide fol 300 et seq) and explained that Plaintiff was her neighbor in Italy and she used to go and play with Plaintiff and his sister at their house. She also had a good relationship with his mother. In October 2010, she won a scholarship and came to Malta with her daughter A, born from a previous relationship. In September 2011, Plaintiff had contacted her on Facebook and they started chatting. After a while, Respondent became distress as Plaintiff began to demand to know the whereabouts of Respondent at all time. He was constantly checking on her via text and phone calls. In fact she had tried to end contact at the time.

Eventually in February 2012, Plaintiff came to Malta and pressured her into hosting him. He used to tell Plaintiff that if she refuses to host him, he would go on to live in the streets as long as he would be close to her. In the beginning, Respondent explains that he was quite charming and acted as though he shared the same lifestyle. He stated that he wanted to have a child with Respondent. At one point, Respondent tried to end the relationship but Plaintiff faked a heart attack to manipulate her in staying with him. She added that he also tried to control her daughter and when Respondent would stand up to his behavior, he would blame her of trying to deprive her daughter of a father figure. In June 2012, Respondent suffered a miscarriage. Later that year, Respondent was presented with the opportunity to purchase the residence where they were living and had opened a bank account with the intent to save money for the deposit in this account. She recalls trusting Plaintiff with her bank card. However after a few months, she found that that Plaintiff was withdrawing money without her consent. In February 2013, Respondent was pregnant again and on the X, she gave birth to a son NLT. The baby was born 4 weeks pre-mature due to stress since Respondent did not have may help from Plaintiff during

the pregnancy. After a few months Plaintiff began displaying strange behavior and significant mood swings. Respondent recalls having used his computer one time, and Plaintiff got very angry. Years later, Respondent realized that this behavior was due to Plaintiff's cocaine use.

Since 2012, Respondent explained how Plaintiff had changed many jobs, and how he also forced her on two occasions to film each other during intimacy, something he was obsessed with. In fact, while on a trip to Italy to visit her family, their new flat mate found out that Plaintiff's phone was videoing her while showering. She had also found a picture of her credit card on Plaintiff's phone. She had reported Plaintiff and in fact he was charged in Court. In May of 2015, Plaintiff had informed that her that despite having a job he did not have any money, and it was then that she began to work as a cleaner. At that same time, her daughter had confessed to a friend who was visiting that Plaintiff was using her to help him masturbate. Due to Plaintiff's controlling attitude and mood swings, Respondent had decided to move back to Italy for the summer and Plaintiff had also agreed to move out from her house by September 2015. Throughout her stay in Italy, Plaintiff had compelled Respondent to use his Italian phone, and Respondent kept on receiving calls from people claiming to be interested in being intimate with Plaintiff.

After some investigation Respondent found out that Plaintiff had placed an advertisement in a magazine seeking other couples for sexual pleasures. In August of 2015, via WhatsApp, calls and texts, Plaintiff threatened Respondent that he would commit suicide if they did not reconcile. Eventually Plaintiff moved out on the 24th September of 2015. In October 2015, after having a baby sister move into her residence, this same babysitter told Respondent that her daughter had told her about what had happened with Plaintiff. Together with the babysitter, Respondent went to Appogg and the Vice Squad to file a report on defilement of minors. This and more was also confirmed by a Court appointed child-psychologist. The suicide threats persisted. Moreover in December of 2015, Plaintiff also told Respondent that he had a tumor. Respondent also discovered that Plaintiff had synchronized her email to his email address. Plaintiff also threatened to abduct the minor child NLT. In February 2016, Plaintiff was arrested. His parents had told her that they knew that Plaintiff had displayed problematic behavior however they still bailed him out. It was at this point that she terminated all relations with Plaintiff's family. On the 9th of March 2016, Respondent was awarded full custody of the minor NLT No access rights were granted to Plaintiff. In April of that year, Respondent began receiving anonymous phone calls on both her mobile and landline, particularly at night.

Moreover, Plaintiff's mother began posting on social media fabricated information such as Respondent was not allowing her to see NLT and this information was also featured on Respondent's business page. This was only the beginning of hundreds of posts which followed. On the 22nd November 2006, when Respondent was about to renew her passport, Plaintiff had again sent fabricated information to the Italian Embassy on the lines that she was running away with the child and this in spite of the fact that Respondent was awarded custody by Court order.

As a result, it took her six months to renew her passport. Respondent had to begin therapy with Victim Support, all this in the midst of different fake profiles including that of the parties' minor son. Plaintiff had even posted on social media stating that their son was missing. On the 1st of February 2019, Plaintiff was sentenced to three years imprisonment and Plaintiff appealed from this judgment. On the 25th July 2019, the judgment was confirmed on appeal and Plaintiff was imprisoned. In May 2021, Plaintiff was brought before the Court of Magistrates in relation to the stalking charges, however Plaintiff was deported back to Italy on the 10th of July 2021. There has been no contact between Plaintiff and the minor son NLT for the last seven years. Respondent contends that she spent EUR 7,000 a year for the parties' child upbringing, together with a EUR 3000 in relation to accommodation expenses.

Respondent testified viva-voce on the 26th October 2022, (vide fol 314 et seq) explained that she met Plaintiff when she was around ten years old since they were neighbours, and in fact she used to play with his sister. Plaintiff's family eventually moved town and they had not seen each other for twenty years. When she came to Malta, with her eldest daughter who is now twenty years old, he had contacted her on Facebook. She was very happy that he had contacted her after so many years. Plaintiff appeared to be very charming. He also went with her to Brussels and then to Malta. However, he began suffocating her, constantly questioning her whereabouts. At the time Respondent was very independent and had already been divorced. Respondent confirms that Plaintiff came to Malta in February of 2012. In 2013, the parties then had the child NLT, and Plaintiff was obsessing about them getting married. At one point, Respondent was intent on ending the relationship, however Plaintiff simulated a heart attack. On another such occasion, he pretended to lose consciousness in the bathroom.

At one point, Respondent recalls that her daughter had spoken out about what Plaintiff had asked her to do. Even though Plaintiff was eventually arrested for all this, it was then that the stalking and threats on Facebook began to cause further distress to the Respondent. Respondent

had no choice but to report all this, and when Plaintiff was eventually charged, he was in prison at the time. The harassment and stalking led to the closure of Respondent's business. Respondent confirmed that the child had last seen Plaintiff in February 2016 and that he never paid any maintenance for the minor. Asked whether Plaintiff has ever made request to see the child, Respondent explains that they once went to Court, yet he had failed to reply within sixty days and did not proceed with a court case.

Martine Cauchi, Social Worker within the Domestic Violence unit at Agenzija Appogg testified on the 26th of October 2022 (vide fol 316 et seq), explained that the case notes that she was filing derived from the notes of all the professionals which have been involved in the case which are inputted and saved on an online file. Witness adds that Respondent was client between February 2018 and January 2019 and had first come in contact with their services via a referral from victim support Malta, since at the time she was attending sessions there. During their first appointment, Respondent had explained how she had come to settle in Malta following her separation from her previous husband, and how eventually Plaintiff had come to live with them, their relationship and that they have a child together. Witness recalls that Respondent had mentioned that the pregnancy was stressful, and that there were often many arguments with Plaintiff, since Plaintiff was a liar, and had a jealous and possessive disposition. Respondent had also informed them, that she discovered that Plaintiff had stolen objects from his place of work. Moreover, her daughter had alleged that Plaintiff had sexually abused her.

The case was declared closed at this time, however, on the 19th of April 2018, Respondent had re visited their office, seeking help since Plaintiff was psychologically and emotionally abusing her by calling her 20 and 30 times a day, creating fake profiles in her name. On the 10th of May 2018, Respondent re-contacted their offices, regarding court sitting scheduled for January 2019, wherein Respondent was assisted with a police escort. A shelter was also offered, however after much consideration she had declined. Last contact occurred on the 22nd of January 2019, when Respondent sought help regarding possible employment options was advised to contact particular services in this regard.

Inspector Keith Scerri filed various police reports on the 16th November 2022 (vide fol 321 et seqq.)

Considers:

This is a judgement following requests on the part of both parties to be entrusted with the care and custody and parental authority of the parties' minor child NLT born on the X, who is currently X years old.

Care and Custody

In proceedings which involve the rights of minors and those belonging to the parents, the Court has a duty to take into account that which is solely in **the best interests of the child** and this is due to the fact that in the majority of cases its decisions will inevitably have a lasting effect on the life of the child. The jurisprudence of the Maltese Courts has always been consistent in that, issues regarding the care and custody of children are to be solely determined on the principle of the best interests of the child, the best utility and best advantage to the interests of the child.¹

The Court also makes reference to the considerations of the Court of Appeal in its judgment in the names: *Sylvia Melfi vs. Philip Vassallo* decided on the 25th of November 1998:

In this case the Court must seek to do what is in the sole interest of the minor child in its decision whether the care and custody of the child should be given to one parent or the other the Court must solely be guided by what is most beneficial to the child [...] The Court should at all times seek the best interests of the child irrespective of the allegation, true or false, made against each other by the parties. Such allegations often serve to distance oneself from the truth and serve to render almost impossible the search of the Court for the truth. This is why it is the duty of the court to always look for the interests of the child. Exaggerated controversies between the parties often make one wonder how much the parents have at heart the interest of their children. Sometimes parents are only interested at getting at each other and all they want is to pay back the other party through their minor child.

¹ **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civil Court, decided 27 November 2003: “*Apparti l-ħsieb ta’ ordni morali u dak ta’ ordni legali, li għandhom setgħa fil-materja ta’ kura u kustodja tat-tfal in ġenerali, il-prinċipju dominanti ‘in subjecta materia’, li jiddetermina normalment u ġeneralment 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 jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...*”

Similarly, the European Court of Human Rights affirms:

The child's best interests may, depending on their nature and seriousness, override those of the parents (see Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII).

The Court recognises that in normal circumstances both parents have an important and fundamental role in the upbringing and life of their children, and therefore neither should be excluded from the child's care unless there are serious reasons which lead the Court to take such a drastic measure. In fact this has been the stance adopted in the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, wherein the Court affirmed that it has the power to entrust the care and custody of a minor solely in the hands of one of the parents if this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights a relevant consideration, the child's best interests are the Court's primary consideration.²

Although this Court has always held that it is generally in the best interest of the child that the child's relationship and rapport with both parents is preserved and protected, irrespectively of the nature of the relationship between that same child's parents, 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 of the parents to be divested of parental authority.

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.”

Maintenance

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 ttenni 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 mghallma mill-ġjurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.”*”

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*** 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-Ligi, li l-ġenituri ghandhom 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, "jerfġhu responsabbiltajiet indaqs matul iż-żwieġ tagħhom" (Ara Eoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deċiża fil-25 ta' Ġunju 2003).³

The obtaining Jurisprudence 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 recognizes the fact that according to law, parents have an obligation to maintain their children according to their means. However, local Courts have always stressed that:

.....

Il-Qorti dejjem irriteniet illi l-ġenituri ma jistgħux jabdikaw mir-responsabilita` tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu l-introjtu tagħhom. Dejjem kienet tal-fehma illi kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbilita` tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-istat." (Vide Tiziana Caruana vs Redent Muscat (272/2018) deċiża mill-Prim' Awla Qorti Ċivili fl-24 ta' Ġunju 2019; Liza Spiteri vs LEE Farrugia (219/2018) deċiża mill-Prim' Awla Qorti Ċivili fit-2 ta' Ottubru 2019)⁴

³ Translation: "the obligations of maintenance by spouses are regulated by article 3 of Chapter 16... according to the obtaining provisions of law, parents have the same obligation towards the children, and therefore, both have to contribute to the upbringing of the same, this applies even more so today, since the spouses are now equal under the law and have the same rights, and therefore, in terms of Article 2 of Chapter 16, are burdened with equal responsibilities during marriage." (Vide also Jennifer Portelli pro et noe vs John Portelli (App np. 2668/1996) decided 25th June 2003)

⁴ Translation: "The Court has always reiterated that parents cannot abdicate their responsibility of materially maintaining their children, and this independently of the quantum of their income. It was always the considered opinion of the Courts that a parent is in duty bound to maintain his children, even where his income is low or when he is unemployed. The Court can never accept a situation where a person brings a child into the world and assigns all responsibility to the other parent or to the State. (Vide Tiziana Caruana vs Redent Muscat (272/2018) decided from First Hall (Civil Court) on the 24th of June 2019; Liza Spiteri vs LEE Farrugia (219/2018) decided from First Hall (Civil Court) on the 2nd of October 2019)"

Of relevance is also the dicta of the Court of Appeal in *Marina Galea vs Mario Galea* decided on the 31st of January 2019:

“Il-manteniment tat-tfal, fil-verita` izjed milli dritt tal-ġenitur li qed irabbihom, huwa dritt tat-tfal minuri li ma jisfawx mċahhdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neċessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”⁵

Considers:

From the acts of the case, it transpires that the parties were childhood friends, however at one point in time Plaintiff’s family relocated. In October 2010, Respondent won a scholarship and decided to move to Malta together with her daughter A, born out of Respondent’s previous marriage. After many years, precisely in September 2011, Plaintiff contacted Respondent again *via* Facebook, and the parties started chatting and eventually began a relationship. Plaintiff came to Malta in February 2012 and the parties cohabited in Respondent’s residence together with the minor A. The parties eventually had a son NLT on X. Following a three year prison sentence, Plaintiff was deported to Italy in July of the year 2021. The child has always resided with Respondent from birth.

The Court observes that the proceedings *de quo* were commenced by Plaintiff on the 6th November 2018. Together with her sworn reply, Respondent availed herself of the possibility of filing a counter claim. At the beginning of the proceedings, Plaintiff was awaiting judgment from the Court of Appeal, which judgment was then delivered on the 25th July 2019, confirming the judgment of the First Court. Plaintiff was subsequently imprisoned. Respondent was notified with the acts of the proceedings on the 2nd of March 2020 and filed her reply and counter claim on the 27th May 2020 (*vide fol 36 et seq*). In the interim, the Court notes that from the evidence produced, Plaintiff was deported back to Italy after serving his prison sentence in July of the year 2021. The Court also observes that Plaintiff together with his lawyer have failed to attend sittings since the 3rd of June 2021, and this Court as presided proceeded with the closure of the Plaintiff’s evidence on the 6th of June 2022 (*vide fol 207*). Thus, this Court is compelled to determine the case solely on the evidence produced by Respondent.

⁵ Translation: “With regard to maintenance due to children, in reality, rather than being a right of the parent who is looking after them, maintenance is a child’s right in order that children are not denied material things which are in today’s world considered as necessary for their education and development.”

From the uncontested testimony of Respondent, it results that while the parties were living together Plaintiff, did not attend to the minor child's needs. Respondent recalls how Plaintiff would change jobs frequently, and how he never had the means to buy groceries for the family. In fact Respondent had to start work as a cleaner to make ends meet. It also resulted from Respondent's testimony that Plaintiff had a possessive and obsessive personality and threatened Respondent constantly, stalked Respondent, and together with his family, invented all sorts of falsities on Respondent as a person and as a mother, to the extreme that Plaintiff even created a false post on social media alleging that their son went missing. The Court even heard how Plaintiff tried to sabotage Respondent's business *via* social media and how he threatened to expose on social media indecent photos of Respondent. The testimony tendered by Respondent is corroborated by the testimony of Inspector John Spiteri who testified before this Court on the 11th October 2022 (*vide fol 251*). The Court has also taken cognizance of the reports filed by Respondent which report were filed in these proceedings by Inspector Keith Scerri.

This Court also took cognizance of the judgments handed down by the Court of Magistrates and the Court of Appeal against Plaintiff, wherein Plaintiff was guilty of perpetrating a number of sexual offences on Respondent's daughter A, who at the time was still a minor. The Court observes that in the judgement of the first Court, the Court engaged in a detailed summary of the events as they unfolded and a summary of the testimonies of A, that of Rebecca Hadzi, (*vide fol 96-98*) which corroborate the version of events tendered by Respondent in her affidavit. This Court notes that the first Court, in its considerations, held that:

“ Illi din il-Qorti kellha l-opportunita li tisma lil AS tixhed quddiemha viva voce bil-procedura tal-videoconferencing tinsab moralment konvinta li din ix-xhud qed tghid il-verita u fl-ebda hin ma kellha raguni l-ghala tiddubita mill-kredibilita' ta' din ix-xhud. Din il-Qorti setghat ukoll tikkonstata li l-minuri kienet dejjem konsistenti fil-verzjoni tal-fatti minnha moghtija kemm meta tkellmet mal-Pulizija kif ukoll fis-seduti li kellha mal-psikologa nominata fl-atti tal-Inkjesta Magisterjali u mbaghad meta xehdet quddiem din il-Qorti.” (vide fol 101)

The Court notes that Respondent by means of a *pendente lite* decree dated 9th March 2016 awarded by this Court as diversely presided, obtained full custody of NLT. As afore mentioned,

this Court is duty bound to determine the merits of the case based solely on the minor child's best interest.

The Court has observed that despite the fact that Plaintiff initiated these proceedings, Plaintiff did not show any interest in these same proceedings following his deportation. More so, this Court notes that no applications *pendente lite* were filed for access, despite the fact that Plaintiff has been discharged from prison since the 10th of July 2021. Furthermore, the Court notes that Plaintiff has had no contact with the minor child since 2016. In the Court's considered opinion, this is not the behaviour one expects from a parent who has initiated judicial proceedings requesting the exclusive custody of the child. It is evident from Respondent's testimony that the minor child NLT, was simply a tool or weapon with which Plaintiff attempted to secure full control over Respondent's life. Moreover, in the light of Plaintiff's criminal conviction of the sexual defilement of Respondent's first child, that conviction severs the Paternal Authority of that parent over his children⁶. In light of these considerations, the Court deems that in the best interest of the minor child NLT, that the Respondent be vested with the exclusive care and custody of the minor child, in view of the fact that there exist grave reasons that necessitate that Plaintiff to be divested of parental authority over the said child.

With regards to Respondent's request for maintenance and maintenance arrears, the Court notes that together with her affidavit Respondent filed a number of estimates for the monthly expenses incurred for the minor NLT. Respondent indicates that the average yearly expenses incurred for the minor amount to seven thousand euros (EUR 7000), together with an additional three thousand euros (EUR 3000) yearly for food and accommodation expenses. The Court notes that Respondent filed objective documents which corroborate the amounts declared. As previously indicated, it is palpable that Plaintiff never contributed towards his son's upbringing and basically lived off Respondent throughout their relationship, compelling Respondent to suffer solely all the responsibilities and burdens of child rearing.

In light of the above considerations, the Court deems that Plaintiff should be ordered to pay the sum of four hundred euro (€400) each month by way of maintenance for the minor child NLT, which amount also includes Plaintiff's share from the educational, medical and extracurricular expenses of the said child. The Court orders that this sum is to be deducted directly from any wages, salaries, benefits, or other income Plaintiff may be receiving. Such

⁶ Vide Article 203(2) in conjunction with 197(5) of Chapter 9 of the Laws of Malta.

amount is to increase according to the cost of living adjustment annually, until the minor reaches the age of eighteen (18) years if the minor 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 minor child decides to pursue his studies on a full-time basis. The said amount is to be deposited directly in a bank account of Respondent's choosing. The Court orders that any benefits, and/or allowances offered by the State are to be received by Respondent.

With regards to arrears, the Court has seen that according to article 2123(b) of Chapter 12 of the Laws of Malta prescription does not run as between the parent and the child.

Therefore, from the minor's date of birth, that is the X, up until the date of the decree, that is the 9th March 2016, the maintenance arrears due are not prescribed. Thus, this Court orders Plaintiff to pay the sum of EUR 300 a month, to Respondent by way of arrears for the period commencing X up until the date of this judgment, which sum includes Plaintiff's share in relation to the educational and medical expenses.

The Court shall also acceded to the issuance of a Protection Order for Respondent, her daughter and the minor son NLT.

For these reasons, the Court, while rejecting Plaintiff's requests as set forth in his sworn application, accedes to the requests put forth by Respondent in her counter-claim and:

- 1. Accedes to Respondent's first request and orders that Plaintiff is to be divested of parental authority over the minor child NLT.**
- 2. Accedes to Respondent's second request and awards the exclusive care and custody of the minor child NLT to the Respondent and authorises her to take all the decisions relating to the health, education, issuing and the renewal of the child's passport, issuance and renewal of the child's identity card and all travel of the said minor child and this without the consent, signature or presence of the Plaintiff counterclaimed;**
- 3. Abstains from taking further cognisance of the third request, since content of said request was addressed above;**

- 4. Accedes to Respondent's fourth request and orders that the minor child NLT is to reside with the Respondent;**

- 5. Accedes to Respondent's fifth request and orders Plaintiff to pay the sum of four hundred euro (€400) each month by way of maintenance for the minor child NLT, which amount also includes Plaintiff's share from the educational, medical and extracurricular expenses of the child. The Court orders that this sum is to be deducted directly from any wages, salaries, benefits, or other income Plaintiff may be receiving. Such amount is to increase according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minor 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 minor child decides to pursue his studies on a full-time basis. The said amount is to be deposited directly in a bank account of Respondent's choosing. The Court orders that any benefits, and/or allowances offered by the State are to be received by Respondent.**

- 6. Abstains from taking further cognisance of the sixth request since said request has been addressed above.**

- 7. Accedes to Respondent's seventh request and orders the Plaintiff to pay the sum of EUR 300 a month, to Respondent by way of arrears for the period commencing X up until the date of this judgment, which sum includes Plaintiff's share in relation to the educational and medical expenses of the child.**

- 8. Accedes to Respondent's eight request and after having seen Article 412C of Chapter 9 of the Laws of Malta and Article 37(2) of the Civil Code:**

Orders the issue of a Protection Order against RT in favour of IL , AS and the minor NLT, under the following conditions:

- a) Prohibits RT from approaching or otherwise following the movements of and IL, AS and the minor NLT the Applicant's family members;**

- b) Prohibits RT from accessing the property, of IL for the duration of these proceedings and for five (5) years from the final judgment;**
- c) Prohibits RT from contacting IL, AS and NLT;**
- d) And orders him to keep a distance of at least one kilometer from the aforementioned property in Malta and a distance of at least five hundred meters from wherever IL, AS and the minor NLT are found;**
- e) This Protection Order is being given immediate effect and remains in force for the duration of these proceedings and for the period of five (5) years following final judgment.**
- f) If without valid reason RT contravenes any prohibition or restriction imposed upon him/her by this Protection Order, he/she may, if found guilty, be liable to a fine of two thousand, three hundred and twenty-nine Euro and thirty-seven cents (€2,329.37) or to imprisonment not exceeding (6) months or both.**
- g) A copy of this Order shall be served upon RT at the expense of IL by any means prescribed by Law.**

All costs are to be borne by Plaintiff.

Read.

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

**Lorraine Dalli
Deputy Registrar**