



**CIVIL COURTS
(FAMILY SECTION)**

MADAM JUSTICE

**Onor. Abigail Lofaro LL.D., Dip. Stud. Rel.,
Mag. Jur. (Eur. Law)**

Hearing of the 8th March 2023

Application Number: 82/2022 AL

In the names of:

A B

-vs-

C D

The Court:

Having seen the application of the plaintiff,¹ wherein it is stated that:

- 1. That the plaintiff and defendant were in a relationship and from the said relationship a child, namely E D, was born on the 11th March 2021, evidenced by the birth certificate hereby attached and marked as Doc A.*

¹ Fol. 1.

2. *That the relationship between the parties was always characterised by psychological violence, beatings, abuse and threats, so much so that when the minor E D was born, the plaintiff could no longer bare to live with the defendant and so she went to live with her parents together with the chid.*
3. *That the defendant is a dangerous person and is also a drug dealer known to the police. The defendant is right now out onbail because of a drug case he had in 2018, which case is still ongoing in front of Magistrate Elaine Mercieca, and which bail conditions the defendant breaks without scruples. When the plaintiff was still pregnant with the minor, the defendant used to allow criminals to access his house to buy drugs from him, and once in particular when they were sleeping, their house was broken into by people with firearms who were looking for the defendat. The defendant is also deeply involved in the Libian and Serbian drug community in Malta;*
4. *That in the mediation acts there was presented ample proof on how the defendant used to treat the plaintiff durig their relationship and after they broke up, which cruelty escalated without control when the plaintiff was pregnant with the minor. The defendant consumes drugs and alcohol in abundance, in consequence of which he becomes a very aggressive person. The plaintiff was treated as a slave, where she was made to wash and clean the defendant's flat every day from the urine and feaces of the defendant's dog. One time the defendant locked the plaintiff in a bedroom for the whole day, and the plaintiff was constrained to relieve herself on the floor. The defendant used to beat her up without scruples and tell her that he had sexual relations with other women whilst in a relationship with her. The cruelty was so bad that the plaintiff was broken mentally and moraly by the defendant, and she never had the courage to report him for the constant beatings that he gave her, but instead used to forgive him. However, when finally the minor E D was born and the defendant showed no signs of changing his attitude to be a good father to his son, the plaintiff finally plucked up the courage to protect her son, escaped from the flat with the child and went to live with her parents.*
5. *That it also needs to be said that the plaintiff is mentally terrified of the defendant, and this is because he managed to manipulate her in a way that anything that he tells her is believed by her and she feels that she needs to*

obey him, otherwise there will be dire consequences on her and her son. The defendant used to threaten the plaintiff all the time that he was going to take her son away from her and that she was not a capable mother to take care of her son. For the plaintiff to finally pluck up the courage to open these proceedings in Court, a few months had to pass from the birth of her son, and this because she continued to hope that the defendant would change or show interest in his son and abandon the criminal life he was living, but it was all in vain because the defendant has no interest to change his life for his son, and is happily earning money illegally from selling drugs, so much so that he continues to break his bail conditions by going out after hours to sell drugs in the vicinity of Black Gols Pub and Riun Pub in Sliema in the hours that he should be confined to his house!

6. *That during the mediation between the parties the defendant never took any interest to appear for the mediation, and the plaintiff had to submit an application in the acts of the mediation to protect her son's best interest, and this due to the fact that the defendant used to threaten her all the time that if she did not obey him there would be very serious consequences for her and her son;*
7. *That by means of a decree dated 1st April 2022 this Honourable Court ordered that the exclusive care and custody of the minor is given to the plaintiff and access in favour of the defendant is held by means of Appogg Agency, as well as issued a protection order in favour of the plaintiff against the defendant (See Doc B here attached).*
8. *That it is not the first time that the defendant told the plaintiff that he wanted to escape from Malta, specifically because of the judgement that will soon be given in his regard by the Criminal Court. The defendant is a Dutch national and he has no ties with Malta. He changes his residence (in rent) every few months and it is very difficult to find him. In this regard the plaintiff humbly submits that the defendant should not be allowed to leave the Maltese Islands on his own with the minor.*
9. *That the defendant is certainly a very dangerous person and is not suitable to be entrusted with the care and custody of the same minor. On the other hand the plaintiff his mother is suitable to be legally entrusted with the*

exclusive care and custody of the same minor and to be authorised to take all the decisions related to the same minor in exclusion of the defendant, which is already presently doing because she has already been entrusted with the temporary care and custody of her son by this Honourable Court.

10. *That even though the defendant is aware that the plaintiff has always taken care of the minor and it is her that exclusively takes care of him and ensures that he is in need of nothing the same defendant has never made any payments towards the maintenance of his son or at least contributed in any way to the needs of the same minor.*
11. *That it is in the best interests of the minor that any access that is given to the defendant for the minor is exercised in the presence of a social worker or representatives of Appogg Agency, as has been temporarily established by this Honourable Court during mediation, and this is because the defendant is not only suitable to be entrusted with the care and custody of the minor, but he also cannot be entrusted to be alone with the minor as the defendant is a very dangerous person and of detriment to his son, as will be proven during the course of these proceedings.*
12. *That it is also in the best interests of the minor that the plaintiff is authorised to apply for the minor's passport without the need of the signature of the defendant, as this will be proven during the course of these proceedings.*
13. *That it is also in the best interests of the minor that the plaintiff is authorised to leave the Maltese Islands with the minor without the signature, consent or authorisation of the defendant, as this will be proven during the course of these proceedings.*
14. *That it is also in the best interests of the minor that the surname of the minor is changed from D to B D, and this is because it has always been the plaintiff's wish for the minor to take her surname as well, but the defendant never gave her permission to do this. The defendant will not suffer any prejudice if the minor's surname is changed, and the minor is only a year old, therefore it will not affect him in his daily life.*

15. *That the mediation between the parties was not successful and it was for this reason that by means of a decree dated 6th April 2022 the parties were duly authorised to proceed with the current law-suit (Doc C here attached).*
16. *That because the defendant is of a foreign nationality, the present law-suit is being translated into the English language, a copy of the same translation being here attached and marked as Doc D.*

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

1. *Confirm and declare and trust the Applicant mother with the exclusive care and custody of the minor E D;*
2. *Orders that the minor child E D' residence shall be with the Applicant mother;*
3. *Confirms and orders that in the child's best interests any access granted to the defendant for the minor E D is exercised in the presence of a social worker or representatives of Appogg Agency;*
4. *Confirms that the adequate sum of maintenance for the minor should be that of three hundred euD per month, which maintenance should also include health and education expenses.*
5. *Orders that the defendant should pay this liquidated sum directly to the applicant in a bank account as indicated by her on a fixed date established by this Honourable Court to be paid every month.*
6. *Authorises the plaintiff and orders that such maintenance as liquidated is deducted from the defendant's wage or from any income/benefit that he might receive from any entity or department.*
7. *Orders that any benefit that the plaintiff may be eligible for as a parent including but not limited to the children's allowance is perceived exclusively by the plaintiff.*

8. *Authorises the applicant to apply for the child's passport without the defendant's consent, authorisation or signature.*
9. *Authorises the applicant to travel with the said child without the defendant's consent, authorisation or signature.*
10. *Orders that the defendant is not to be allowed out of the Maltese Islands alone with the minor child.*
11. *Extends the Protection Order in favour of the applicant and grants and orders a protection order in favour of the minor against the defendant according to Article 412C of the Criminal Code.*
12. *Orders a Treatment Order on defendant in terms of Article 37 of Chapter 16 of the Laws of Malta under those circumstances that this Honourable Court deems fit and opportune in the circumstances.*
13. *Orders that the birth certificate of the minor is corrected in the sense that the surname of the minor changes from D to B D, and this in the supreme best interests of the minor.*

With expenses against the defendant and reference to the oath of the other party.

Having seen the list of witnesses of the plaintiff;

Having seen that the defendant was duly notified with the sworn application on the 11th July 2022,² but did not file a sworn reply within the term established by law. Therefore, during the audience of the 9th November 2022, the defendant was declared to be in a state of contumaciousness;³

Having seen the birth certificate of E D, with the progressive number 2788 of the year 2021;⁴

² Fol.44.

³ Fol. 45.

⁴ Fol. 19.

Having seen the decree dated 1st April 2022,⁵ whereby the Court acceded to the demands of the plaintiff as put forward in her application of the 11th November 2021,⁶ and ordered: (i) the care and custody of the minor E D to be entrusted exclusively to the plaintiff A B, (ii) access rights to the defendant under the supervision of Aġenzija Appoġġ, (iii) the defendant to pay maintenance in the sum of €300 per month for the minor, which sum includes part of the costs related to the minor's health and education, (iv) the issuance of a protection order in terms of Article 39 of the Civil Code in favor of the plaintiff and the minor, and (v) the plaintiff to collect her and the minor's personal belongings from the defendant's residence, and if necessary, with the assistance of the Police and Court Marshalls;

Having seen the decree dated 6 April 2022,⁷ whereby the Court declared the mediation process closed and authorised the parties to proceed with a legal action within the term imposed by law;

Having seen that during the audience of the 22nd June 2022,⁸ the Court acceded to the plaintiff's request that the current proceedings resume in the English language;

Having seen all the procedural acts;

Having seen the note verbal of the sitting of the 9th November 2022,⁹ where the Court granted the parties six (6) weeks to submit their note of submissions;

Having seen the note of submissions of the plaintiff;¹⁰

Having seen that the case was adjourned for the delivery of judgement for today;¹¹

Considered:

CONSIDERATIONS:

⁵ Fol. 33.

⁶ Fol. 21.

⁷ Fol. 38.

⁸ Fol. 42.

⁹ Fol. 45.

¹⁰ Fol. 85.

¹¹ Fol. 45.

1. The Current Action:

In brief it is said that the facts of the present case are that the parties were in a relationship together however it doesn't transpire that they were ever married. From the said relationship, the minor E D was born on the 11th March 2021. It appears that the relationship of the parties broke down and in light of this, the minor ended up living with the plaintiff whilst the defendant was enjoying the right of access to his son and contributing financially by paying maintenance. It is said that the plaintiff lodged this legal action against the defendant due to his incorrect behavior and also to have the situation regarding her son formally regulated through a judicial decision.

Therefore, in light of the premise, the Court has before it a case where the plaintiff is requesting:

- i. That she will be exclusively entrusted with the care and custody of the minor, provided that the residence of the minor will be with the plaintiff herself;
- ii. Adequate access for the defendant to the minor, provided that such access is held in the presence of social workers or a representative of Agenzija Appogg;
- iii. The liquidation of adequate maintenance for the minor in the sum of €300 per month, which sum includes the defendant's share of expenses related to health and education, whilst ordering that such maintenance be deposited directly into the bank account of the plaintiff as determined by the Court, and which shall also be directly deducted from the salary or earnings that the defendant has or might have;
- iv. Orders that any social benefit that the plaintiff might be eligible for as a parent, including but not limited to the Children's Allowance, shall be perceivable by the said plaintiff;
- v. Authorise the plaintiff to apply for the minor's passport as well as travel with the said minor without the consent, authorisation or signature of the defendant;

- vi. Order that the defendant cannot leave the Maltese Islands alone with the minor;
- vii. Extend the Protection Order against the defendant, which order is in favor of the plaintiff, whilst also issuing the same in favor of the minor, and this in terms of Article 412C of the Criminal Code;
- viii. Order a Treatment Order for the defendant in terms of Article 39 of the Civil Code under those conditions that this Court deems appropriate;
- ix. Order the correction of the Act of Birth of the minor, in the sense that the minor's surname is changed from 'D' to 'B D', and this is in honour of the minor's supreme interests.

On the other hand, and despite the fact that the defendant was duly notified with the sworn application, the said defendant chose not to file his sworn reply within the term established by law and is therefore in a state of contumaciousness. In addition to this, the Court also observed the fact that even though the defendant was given the faculty to file his note of submissions in terms of Article 158 subsection 10 of Chapter 12 of the Laws of Malta, he did not take advantage of such an opportunity.

2. The Version of the Parties and the Evidence Submitted:

The Plaintiff's Version and the Evidence Submitted by Her:

Through an affidavit,¹² the plaintiff stated that she met the defendant when she was thirty (30) years old in March 2020 on the social platform 'Tinder', where they consequently agreed to meet on March 24th 2020 at the defendant's house in the presence of his friend. Since then, they started meeting every day and a relationship started between them. The plaintiff admits that at that time she had just got out of another relationship which lasted two and a half years, and therefore in her eyes the defendant seemed to be the solution to her problems and heartbreak. She explains that at the beginning of their relationship, the defendant

¹² Fol. 47.

was nice to her and made her laugh, and within a month the plaintiff moved in with the defendant.

The plaintiff states that at the time being she was already aware that the defendant was selling drugs, and this bothered her a lot. However, the plaintiff explains that the defendant used to tell her that this was only a temporary thing since he was out of a job due to the Covid-19 pandemic. She was also aware that the defendant had a case pending before the Courts of Malta related to drugs. Despite all of this, the plaintiff says that she tried to help the defendant find a job, but he never really showed interest. It is said that the defendant was more interested in selling drugs and earning money in an easy way.

The plaintiff further explains that while she was living with the defendant, she found out that the defendant was also using drugs and alcohol, and when he was under the influence of alcohol he ended up being aggressive towards the plaintiff. It is also said that they used to go often to the same places where the defendant used to sell drugs, and where the plaintiff would end up returning home around eleven o'clock, whilst the defendant would return home at four o'clock in the morning drunk and aggressive. It was precisely for this reason that after a month together, the parties began to fight frequently about such lifestyle, but the plaintiff contends that she remained hopeful that the defendant would change his behaviour and thus stayed in the said relationship.

The parties' first argument was in April 2020, and the plaintiff lists a number of other episodes where the defendant was violent and aggressive toward the plaintiff. Despite such behavior, the plaintiff says that she did not report the defendant to the Police, however she describes the defendant as a narcissist and manipulative person. A pattern was thus created between the partes, whereby the plaitiff would constantly leave the defendant's house because of his behaviour and subsequently return back and defendant allowed this as she was in love with him. The plaintiff admits that she would do everything the defendant told her to, including using drugs with him. She explains that the episodes of violence happened every week, where she was threatened and abused. She further explains that their neighbours and landlord were aware of what was happening.

Consequently, in July 2020 the plaintiff found out that she was pregnant and the defendant was happy with such news. In fact, it was explained that the defendant

started to treat the plaintiff well and so the plaintiff was convinced that the baby was about to save the relationship. However, such behavior on the part of the defendant only lasted for about two weeks, after which the defendant continued with his usual behavior. The episodes of violence and aggression continued, and the plaintiff never reported such abuse to the Police because the defendant always made it clear to her that he would retaliate if she did so. In addition, the parties were evicted from the residence rented to them in Sliema, and thereafter the parties went to live in the plaintiff's flat in Salini. It is said that the episodes of violence kept happening there as well.

Meanwhile, the plaintiff contends that she was suspicious that the defendant was adulterous in her regards with other women. Due to this, the parties used to fight, but the defendant always used to manage to convince the plaintiff that there was nothing going on from his end. Around February 2021, after a particular episode where the defendant was violent with the plaintiff, the defendant chose to leave the plaintiff's residence and went to live in a house in Qormi, and the plaintiff followed her. On the 11th March 2021 the parties' son was born, and while the plaintiff was in hospital the defendant was at home with his friends partying. When she returned home after the delivery, the plaintiff found the house in a disastrous state, the baby's necessities were still in the boxes, and the defendant was constantly shouting at her and taking the baby from her arms. Therefore, the plaintiff decided to leave and went to live with her parents. Despite this, the plaintiff explains that she still used to meet often with the defendant and this in the interest of the minor to meet his father. Around May 2021, the plaintiff chose to save her relationship with the defendant and so she went back to live with him. Even though he promised that he would change, he did not. Subsequently the plaintiff went to live with her parents for good, but kept in touch with the defendant and sometimes met him so that the defendant could see his son.

She concludes by stressing that: *"I have lost hope that he will ever change or contribute towards his son's upbringing, not least be a good father to his son. It is definitely not in E's interests to spend any time with his father, especially on his own. C does not have any idea how to be a father, and other than holding his son for a few minutes, he has never participated in being a father to his son"*.¹³

In order to corroborate her version, the following evidence was submitted:

¹³ Fol. 56.

- a. The affidavit of F B, ossia the father of the plaintiff, duly sworn on 26th October 2022 and filed on the 9th November 2022,¹⁴
- b. Medical certificate issued by St James Hospital Sliema on the 19th April 2020 regarding injuries suffered by the plaintiff,¹⁵
- c. Correspondence between the neighbour of the plaintiff and the landlord of the plaintiff on the social platform Whatsapp, ¹⁶where he texted that "this guy our neighbor is mental. He throws things in the flat and fights every night. Today he started from the morning, I think he is beating that girl now";
- d. Correspondence between the landlord and the plaintiff on the social platform Whatsapp,¹⁷ where the landlord asked the plaintiff if she was well, and that she worries about her;
- e. Medical certificate issued by St Luke's Hospital Emergency on the 28th August 2020,¹⁸
- f. Photos of the plaintiff with bruises and injuries on her face and eyes;¹⁹
- g. Correspondence between the parties on the social platform Whatsapp,²⁰ regarding the defendant's behavior and the violent episodes;
- h. Prospectus of the costs related to the minors per month,²¹ which according to the plaintiff amount to the sum of €900.25 monthly.

The Defendant's Version and the Evidence Submitted by Him:

The Court reiterates that the defendant is in a state of contumaciousness in these proceedings, therefore his version was not provided.

¹⁴ Fol. 82.

¹⁵ Fol. 57.

¹⁶ Fol. 61.

¹⁷ Fol. 62.

¹⁸ Fol. 65.

¹⁹ Fol. 66-68.

²⁰ Fol. 69-80.

²¹ Fol. 81.

3. Salient Legal Principles for the Current Case:

Before the Court proceeds to its considerations regarding the present merit, it is going to first list in detail those legal principles that are relevant to the present case.

In respect to care and custody, the Court maintains that in such aspects our jurisprudence has always taught that it should consider the best interest of the minor. In the case **Jennifer Portelli pro.et noe. vs. John Portelli**²² was told: *“Jingħad illi l-kura tat-tfal komuni tal-mizzewġin, sew fil-liġi antika u sew fil-liġi viġenti, kif ukoll fil-ġiurisprudenza estera u f’dik lokali hija regolata mill-prinċipju tal-aqwa utilita’ u l-akbar vantaġġ għall-interess tal-istess tfal li ċ-ċirkustanzi tal-kaz u l-koeffiċjenti tal-fatti partikulari tal-mument ikunu jissuġġerixxu. Illi in konsegwenza, ir-regola sovrana fuq enunċjata għandha tipprevali dwar il-kustodja u l-edukazzjoni tat-tfal komuni tal-mizzewġin, sew meta l-konjuġi jisseparaw ruħhom għaddizzjarjament, sew meta jiġu biex jisseparaw konsenswalment”*.

In the judgment in the names of **Susan Ellen Lawless vs. The Reverend George Lawless**,²³ the Court had said that: *“la cura ed educazione dei figli, nel caso che la moglie non continua ad abitare col marito, deve essere commessa ed affidata a colui, fra i coniugi, che si riconoscerà’ piu atto ed idoneo a curarli ed educarli, avuto riguardo alla loro eta’, ed a tutte le circostanze del caso – sotto quie provvedimenti, che si reputino spediti pel vantaggio di tali figli”*.

In the cases of **John Cutajar vs. Amelia Cutajar et**,²⁴ and **Maria Dolores sive Doris Scicluna vs. Anthony Scicluna**,²⁵ it was also held that *“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 dominant in ‘subjecta materia’, li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din insorta f’dina l-kawza, 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 jirrizultaw mill-provi tal-kaz li jrid jiġi rizzolut...”*.

²² Decided by the First Hall Civil Court on the 25th June 2003 (App. Nr. 2668/1996/2RCP).

²³ Decidd by the First Hall Civil Court on the 8th December 1858.

²⁴ Decided by the First Hall Civil Court on the 28th January 1956.

²⁵ Decided by the First Hall Civil Court on the 27th November 2003 (App. Nr. 1715/2001/RCP).

Taking into account the basic principles as enunciated by the jurisprudence just cited, and namely the principle of the most utility and that of the best advantage for a minor, according to Article 56 of the Civil Code, the Court has the faculty to entrust the care and custody of the minor to only one parent and this so that the supreme interest of the minor is always safeguarded. The Court underlines that the interest of the minor is paramount to the rights of the parents. In the judgment in the names of **Frances Farrugia vs. Duncan Caruana**,²⁶ and **Marlon Grech vs. Charlene Banks**²⁷ it was held that the Court “*filwaqt li dejjem taghti piz għad-drittijiet tal-ġenituri, l-interess suprem li zżomm quddiemha huwa dejjem dak tal-minuri, kif anke mghallma mill-ġurisprudenza kostanti tagħna*”.

With regards to maintenance, the legal principle of child maintenance is based on Article 7(1) of the Civil Code which makes reference to Article 3B, cited above. Therefore, based on the premise, it follows from the provisions of the law, that all parents, whether married, separated or single-parents, have the same obligations towards their children, and therefore both of them must contribute to the upbringing of the same. The Court considers that maintenance is not linked to any particular job or income but is an absolute obligation. Therefore, each parent must provide to ensure that their children have adequate maintenance which in terms of Article 19 subsections 1 and 2 of the Civil Code must cover food, clothing, health, housing and expenses related to the same health and education. The Court emphasises that the obligation of both parents towards the children remains the same in any situation of life, which obligation is dictated according to the means, calculated according to the provisions of Article 20 of the Civil Code, and the needs of the same minor.

When the Court has to establish maintenance, there is no formula established in the law by which the Court carried out the calculations to then issue the result. However, Article 20 of the Civil Code serves as a means of guidance to assist the Court to reach its conclusions in this regard. This article reads as follows:

“(1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

²⁶ Decided by the Civil Court (Family Section) on the 31st May 2017 (App. Nr. 268/2011 AL).

²⁷ Decided by the Civil Court (Family Section) on the 15th June 2017 (App. Nr. 218/2013 AL).

(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”.*

Confirmed that parents must take care, maintain, teach and educate their children, the Court has the obligation to consider that each parent contributes according to his means and ability, and also according to the needs of the same minor.

In relation to the Court's power to issue orders despite other provisions, and this is in terms of Article 149 of the Civil Code, where it is stipulated that: *“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 makes reference to the judgment in the names of **Edward Briffa pro et noe vs Georgina sive Georgia Seguna**, decided by this Court on the 25th January 2019, whereby a legal evaluation regarding the absolute discretion of the Court in the context of the supreme interests of the minor is carried out. In this sentence it is taught that:

“Il-Qrati nostrana kellhom diversi okkażżjonijiet sabiex jikkunsidraw x’inhu għall-aħħar interess tal-minuri. Fost oħrajn wieħed isib il-kawża fl-ismijiet Helen Mary Strout f’isimha proprju kif ukoll bħala kuratriċi ad litem ta’ binha

minuri Warren Luke vs. Av. Dr. Simon Galea Testaferrata nominat bhala kuratur deputat sabiex jirrapreżenta l-assenti Paul Joseph Strout deċiża mill-Prim'Awla fit-28 ta' Frar 2003 fejn gie osservat li 'Jirrizulta li l-attrici minn mindu telaq zewgha iddedikat ruhha ghat-trobbija ta' binha u terfa' wehidha, bl-ghajnuna sussidjarja tal-genituri taghha, il-piz ta' din it-tarbija. Huwa ragjonevoli ghalhekk illi fuq l-awtorita` tal-gurisprudenza stabbilita in materja (Vol. II p 325; Vol. IV p 74; Vol. VIII p 557 fost ohrajn) partikolarment b'rigward "a cio' che e` piu` utile e vantaggioso all' interesse si morale che fisico" tat-tifel innifsu, il-kura u l-kustodja tieghu ghandha tkun affidata lill-omm.'

*Huwa l-interess tal-minuri li huwa suprem u mhux dak tal-partijiet jew ta' terzi persuni li jkunu in retroxena. Il-Qorti tal-Appell (sede Superjuri) fid-deċiżjoni taghha tal-25 ta' Novembru 1998 fl-ismijiet **Sylvia Melfi vs. Philip Vassallo** irreteniet li:*

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.

*Din il-Qorti tirreferi wkoll ghal dak li qalet fid-deċiżjoni taghha tat-12 t'April 2018 fl-ismijiet **RM vs NM** (Rik Ġur Nru 196/10RGM):*

*"In tema legali ssir referenza ghall-kawza fl-ismijiet "**Cedric Caruana vs Nicolette Mifsud**" deciza mill-Qorti tal-Appell fl-4 ta' Marzu 2014 fejn il-Qorti enfasizzat li fejn jidhlu l-minuri huwa ta' applikazzjoni assoluta l-Artikolu 149 tal-Kap 16 li jaghti poter lill-Qorti taghti kwalsiasi ordni fl-interess suprem tal-minuri."*

*Fil-fehma tal-Qorti l-Artikolu 149 tal-Kap 16 jagħmilha ċara illi fejn jikkonċerna l-interess suprem tal-minuri idejn il-Qorti m'hiex imxekkla b'regoli stretti ta' proċedura. Hija għalhekk tal-ferma konvizzjoni illi fejn jidhlu d-drittijiet u l-interess suprem ta' minuri, il-Qrati tagħna għandhom diskrezzjoni wiesgħa ħafna u ma humiex imxekkla minn regoli ta' proċedura rigoruża. Addirittura l-Qorti tal-Familja għandha s-setgħa li tiegħu kull provvediment fl-aħjar interess tal-minuri anke jekk hadd mill-partijiet ma jkun għamel talba fir-rigward (ara **A sive BC vs D sive EC** deċiża minn din il-Qorti fit-30 ta' Ġunju 2015). (Ara wkoll **Joseph Micallef vs Lesya Micallef** deċiża mill-Qorti tal-Appell fl-14 ta' Dicembru 2018)".*

4. Application of Legal Principles to the Current Case:

Having established the premise, the Court stresses that when it is put in a situation where it has to consider a request for exclusive care and custody, the obligation arises in the Court to determine first and foremost what is in the best interest of the minor. Therefore, at this stage for the Court it is irrelevant what the parents' wishes are, but what must be absolutely determined is what is necessary and beneficial for the minor in question. This is outlined in particular in the judgment in the names **Sylvia Melfi vs. Philip Vassallo**, decided by the Court of Appeal on the 25th November 1998:

"In this case the court must 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".

a. Care, Custody and Residence of the Minor:

The Court recognises the fact that sometimes, a request of this nature is put forward so that a particular parent is excluded from raising the children. Such behavior is nothing but the fruit of the extra pique between the parents themselves. In the present case, this is a request made by the plaintiff so that this Court grants her the care and exclusive custody of the minor E D, son of the parties, and also establishes the maintenance that should be payable by the defendant for the needs of the same minor, which maintenance should also include his contribution to the costs related to health and education.

It follows from the uncontradicted testimony of the plaintiff that the parties had a relationship, and from this relationship the said minor was born. Although the plaintiff is requesting that she be entrusted with the exclusive care and custody of the minor, from the records it appears that the defendant has no objection to such a request. In any case the Court sees that the parties lived under the same roof, but the plaintiff did not feel safe with the defendant and therefore ended the relationship and went to live with her parents, and this in light of the supreme interests of minors. In such a time, the defendant still failed to take care of his son and provide for him financially. It also appears from the acts of the case that the defendant also has another son from a previous relationship. Therefore, from the evidence presented, in particular the correspondence between the parties themselves, as well as that with the landlord on the social platform *Whatsapp*, as well as the medical certificates and the photographs of the injuries suffered by the plaintiff, for the Court there is no doubt that it was the plaintiff who always assumed the effective care and custody of the minor.

In light of the premise, the Court is satisfied that it is in the best interests of the minor, that the care and custody of the minor E D should be vested exclusively in the hands of the plaintiff, whereby the minor must continue to reside with the plaintiff in Malta, in that premises which the plaintiff herself establishes as her residence. The Court continues to confirm its consideration in view of the fact that there is no basic communication between the parties. In this regard, the Court makes reference to the judgment in the names **Miriam Cauchi pro et noe vs. Francis Cauchi**,²⁸ where the Court of Appeal held that it is “*tiskarta t-talba ghall-kustodja kongunta ghax, bhala sistema, mhux prattikabbli meta l-genituri ma jitekellmux bejniethom*”. This teaching was further elaborated in the judgment

²⁸ Decided on the 3rd October 2008 (Appea Nr. 2463/1999/1).

of **Scott Schembri vs. Dorianne Polidano**,²⁹ where the Court stressed that “*filwaqt li tiddikjara li taqbel ma’ tali pronunzjament izzid illi l-istess principju japplika fejn iz-zewg genituri m’humieq kapaci jikkellmu b’mod civili ma’ xulxin li l-kura u kustodja ma ghandhiex tkun kongunta ghaliex immankabilment tkun sors ta’ litigi ulterjuri b’detriment serju ghall-benessere tal-minuri*”. All this was reconfirmed in the judgment in the names **Claire Booker vs. Roger Mahlangu**.³⁰

In light of the above, the Court underlines that the defendant does not have the right to leave the Maltese islands alone with the minor, while the plaintiff has the faculty to apply for the relative passport of the minor as well as traveling with the minor without the defendant's consent, authorisation and/or signature.

b. Access to the Minor:

With regards to access, the Court underlines that “*Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m’hemmx dritt ghall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu ghall-izvilupp tal-minuri, li, ghal dan il-ghan, jehtigilha ikollha kuntatt ma’ ommha u anke ma’ missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access, jiddependi mill-htigijiet tat-tifla u mhux mill-interess tal-genituri. Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux vice versa. L-importanti hu l-istabbilita` emozzjonali tat-tifla, u li din ikollha kuntatt mal-genituri taghha bl-anqas disturb possibbli*” (sottolinejar tal-Qorti).³¹

The minor has the right to enjoy both his parents, and should not be deprived of them if not based on professional instruction. In fact, in the judgment in the names **Romina Spagnol vs. Thomas Spagnol**,³² it was held that: “*Il-Qorti tfakkar illi d-dritt ghall-ac`cess huwa wiehed mid-drittijiet fundamentali tal-genituri, liema dritt jemanixxi mis-setgħa ta’ genitur. Għaldaqstant id-dritt ghall-ac`cess għandu jitgawda mill-genitur u dan anke jekk il-kura u kustodja tiġi assenjata lil wiehed mill-genituri. L-unika e`c`cezzjoni fejn il-Qorti tkun kostretta li tordna n-nuqqas ta’ ac`cess huwa f’kaz li jkun hemm rakkomandazzjoni minn espert fil-qasam, jew*

²⁹ Decided by the Civil Court (Family Section) on the 30th April 2015 (App. Nr. 277/2012 RGM).

³⁰ Decided by the Civil Court (Family Section) on the 7th December 2017 (App. Nr. 183/2016 RGM).

³¹ Vide judgement in the names **Miriam Cauchi pro et noe vs. Frances Cauchi**, decided by the Court of Appeal on the 3rd October 2008 (Appeal Nr. u 2463/1999/1).

³² Decided by the Civil Court (Family Section) on the 27th October 2021 (App. Nr. 202/2014 AL).

minhabba fattispeċċi partikolari tal-kaz li jkollha quddiemha l-Qorti fejn ikun jidher b'mod lampanti li ma jkunx fl-interess suprem tal-minuri li jinzamm tali aċċess. Il-Qorti tirribadixxi illi ma għandha l-ebda interess li tisfratta l-possibbiltà li ġenitur jibni relazzjoni ma' uliedu, salv jekk ikun hemm raġunijiet validi u legittimi, u dan f'għieħ l-interess suprem tal-minuri”.

In the present case it appears that the defendant had some form of right of access, but it is not known if this was being exercised or not. The Court sees that the minor is almost two years old and in view of: (i) the defendant's lack of interest in his son, (ii) the defendant's colourful past, (iii) the lack of information on how and where the defendant is, in particular whether he has rehabilitated himself and whether he is being given professional help, (iv) the well-being of the minor, and (v) that up to this stage the Court has not has no recommendation of experts in the field, in the supreme interest of the minor at this stage, and *rebus sic stantibus*, the Court prohibits any type of access or communication between the minor and the defendant. It is a fact that the defendant, despite his aggressive, violent and abusive character, needs help. However, if he is able to work hard to get himself out of this vicious circle, in the future he will undoubtedly be in a position to ask the competent Court for access by proving unequivocally that he has radically changed his life.

c. Maintenance for the Minor:

Having established the premise and in view that the care and custody of the minor will be vested exclusively in the hands of the plaintiff and as a consequence the minor will live with her, the respondent shall pay maintenance for the upbringing of his minor son. When dealing with maintenance, the Court in its last and most recent judgments, namely those in the names of **Otilie Micallef pro et noe vs. Jason Joseph Mifsud**,³³ and **Romina Veneziani noe vs. Dr. Marc Sant**,³⁴ it taught that:

“Madanakollu l-grad ta' prova neċessarja f'kawża fejn si tratta talba għal manteniment minn għand dak il-ġenitur li ma jkunx preżenti sa mit-twelid tal-minuri, huwa tali fejn ikun biżżejjed għal dik il-parti li tagħmel it-talba għal hlas ta' manteniment illi tippreżenta pDpett li jindika appDsimattiv tal-infiq ta' flus

³³ Decided by the Civil Court (Family Section) on the 18th January 2022 (App. Nr. 107/2015 AL).

³⁴ Decided by the Civil Court (Family Section) on the 27th January 2022 (App. Nr. 152/2016 AL).

*fuq il-minuri li għandu jkun ikkorraborat b'numru sostanzjali ta' rċevuti, liema rċevuti għandhom jagħtu indikazzjoni tal-ħajja li dik il-parti tkun qiegħda tagħti lil uliedha, iżda l-Qorti ma tarax il-bżonn illi tali parti fil-kawża għandha tippreżenta kull irċevuta li tingħata kuljum, anke saħansitra għal kartuna ħalib! F'dan ir-rigward, il-Qorti tagħmel referenza għas-sentenza fl-ismijiet **Michelina Bezzina vs Julian Bezzina**,³⁵ fejn gie ribadit illi: “jingham ukoll li likwidazzjoni fuq bazi ekwitattiva għandha ssir meta jkun diffiċli li wiehed jistabilixxi precizament dak li huwa dovut lill-attur, u dan sabiex tista' ssir gustizzja f'kazijiet fejn ma jkunx possibbli li titressaq prova konkreta li tistabbilixxi bi precizjoni t-telf *subit*³⁶”.*

From the evidence presented, the Court considered that it is not established what is the last job of the two parties and their respective income. From the documents, it appears that the plaintiff submitted a pDpect of the costs related to the minor amounting to €900 per month. Furthermore, from the acts of the case, the Court considered that a *pendente lite* decree was given on April 1 2022,³⁷ where the Court *inter alia* ordered the defendant to pay maintenance of €300 per month for the minor, which sum was to include part of the costs related to the health and education of the minor.

Considering the circumstances and the evidence presented, the Court is of the opinion that the defendant should pay the plaintiff the sum of two hundred and twenty five EuD (€225) in maintenance every month, and also the sum of seventy-five EuD (€75) as part of the costs related to health, education and extra-curricular activities every month, and thus the defendant must pay the plaintiff a total of three hundred EuD (€300) every month, which maintenance shall increase every year according to the cost of living index and shall be deducted from any income, and/or benefit that the defendant may earn. By means of application of Article 3B of the Civil Code, the defendant is obliged to pay maintenance for E D until the minor reaches the age of eighteen (18) years. However, in the event that the minor chooses to continue studying on a full-time basis after reaching the age of majority, the maintenance must continue to be paid until the minor reaches the age of twenty-three (23) years or until he completes his studies, whichever event occurs first. Any social benefits in connection with the minor, including the Children's Allowance, must be perceived by the plaintiff. In the event that the

³⁵ Deciza mill-Qorti tal-Familja nhar it-28 ta' Ġunju 2018, mhux appellate (Rik. Ġur. Nru. 131/2013RGM).

³⁶ **Priscilla Cassar vs Robert Farrugia**, deciza mill-Prim'Awla tal-Qorti Civili, nhar il-15 ta' Lulju 2014.

³⁷ Fol. 33.

minor chooses to live on his own after turning eighteen (18), the maintenance must be paid directly to him.

d. Order of Protection in terms of Article 412C of the Criminal Code and/or Article 39 of the Civil Code:

The plaintiff requests that the protection of the Court issued in terms of Article 39 of the Civil Code on the 1st April 2022 be extended. The Court after having seen all the evidence, in particular the affidavit of the plaintiff and that of her father, which affidavits are not contradicted by the defendant, it came to the conclusion that the defendant is an aggressive and violent man, and the plaintiff is indeed frightened of the same defendant. In view of this, the Court sees that for the peace of mind and the protection of the plaintiff and her son, in the circumstances it is appropriate to continue to apply Article 39 of Chapter 16 of the Laws of Malta and therefore extends the application of the protection order under Article 412C of the Criminal Code where the provisions of this article shall apply *mutatis mutandis* to an order issued by this Court under Article 39 of the Civil Code.

Therefore, the Court through a decree given contextually with this judgment, is re-issuing the order of protection against C D in favor of A B, holder of the identity card number 526689M and of her son E D, and this under the following conditions:

- i. Prohibits C D from approaching or otherwise following the movements of A B and her son E D;
- ii. Prohibits C D from accessing the property 35 Oberon, Gharghur Road, Naxxar;
- iii. Prohibits C D from contacting A B in any way, including by electronic means, and orders him to keep a distance of not less than one kilometer from the premises where they reside, the place of work and/or the minor's school, and at a distance of not less than five hundred meters (500m) wherever A D and her son are found;

- iv. Prohibits C D from in any way, including by electronic means, molesting, harassing, bothering or harassing A B and her son;
 - v. This Protection Order is being given immediate effect and will remain in force for five (5) years, which time may be reduced or extended for further periods in terms of Article 412(C)(9) of the Code Criminals;
 - vi. If without valid reason C D violates any prohibition or restriction imposed on him through this Protection Order, he may, if found guilty, incur a fine of seven thousand EuD (€7,000) or imprisonment of no more than two years, or both;
 - vii. A copy of this Order shall be served on C D by courier and if necessary, after legal hours;
 - viii. The judgment in question and the Protection Order issued today against C D must be notified to the Police Commissioner.
- e. Order of Treatment in terms of Article 37 of the Civil Code:

The plaintiff also asks the Court to order and apply against the defendant a treatment order. However, the plaintiff did not put forward any suggestions on how this should be done. The Court sees that in this case, the plaintiff has not submitted any proof of the defendant's criminal conviction and of the drug addictions he has. In light of this, the Court does not see that it can accede to the plaintiff's request and issue a treatment order.

f. Application of Article 149 of the Civil Code:

Finally, the Court reiterates that Article 149 of the Civil Code, gives to the Court wide discretion to decide what in the circumstances is appropriate in the supreme interest of the minor. The foreign jurisprudence is clear in this regard, and where the supreme interest of the minor is dealt with, the Court should not be hindered by the strict and rigorous procedural rules, so much so that the Family Court has the power to take any provision in the best interest of the minor even if none of the parties has made a request in this regard.

In light of the above, the Court is of the opinion that it would be appropriate to give the following provisions and this in the best interests of the minor, whereby the Court is of the opinion that in light of the evidence produced there is room to apply Article 154 of Chapter 16 of the Laws of Malta against the defendant given that which is contemplated in subsections (a) and (e) of the same Article have been proven and satisfied to the extent required by law. The Court points out that it would be unfair and certainly not in the interests of the minor that the defendant continues to have some form of authority over the same minor. In light of all the evidence collected, the Court is of the opinion that the power of the parent should also be vested exclusively in the plaintiff only, provided that the defendant is stripped of the authority of a parent in terms of Article 154 of Chapter 16 of the Laws of Malta. This consequently means that the plaintiff is being given the necessary authority to take all those decisions in relation to the minor, and that is the ordinary everyday ones as well as the extraordinary ones which include but are not limited to the issues of health, education, religion, extra-curricular activities and travel, as appropriate and opportune in the circumstances. This means that the plaintiff through such a sentence has the right that without any authority, consent or signature of the defendant, she should take those decisions against the minor and travel with him as well. The same shall apply in relation to the minor's passport, where the plaintiff is also being authorised to apply or renew the minor's passport without any authorisation, consent or signature of the defendant, provided that the same passport must always and only be kept in the possession of the plaintiff.

g. Correction in the Minor's Surname:

The plaintiff requests that the surname of the minor be changed from 'D' to 'B D'. The Court sees that Article 92 subsection 3 of the Civil Code, stipulates:

“If the child conceived and born out of wedlock has been acknowledged jointly by both parents on the Act of Birth, the surname by which that child shall be known shall be declared in terms of article 292A”.

On the other hand, Article 292A of the Civil Code stipulates:

“(1) The person giving notice of the birth shall also deliver a declaration by the parents of the child indicating the surname to be used by the child in terms of the

choice made by virtue of sub-articles (3) or (4) of article 4, or of article 4A, or of article 92, and such surname shall be registered in the column under the heading "Name or names by which the child is to be called and Surname" in the Act of Birth immediately after such name or names.

(2) Where no such declaration is made in the case of a child conceived and born out of wedlock or where the parents are in disagreement, any of the parents may request the directions of the competent court in terms of article 131”.

Article 131 of the Civil Code stipulates about the minor who is subject to parental authority, whereby subsection 3 stipulates:

“In case of disagreement between the parents on matters of particular importance, either parent may apply to such court as maybe prescribed by or under any law in force from time to time indicating those directions which he or she considers appropriate in the circumstances”.

In light of the above, the Court understands that the plaintiff is requesting a direction from the Court in terms of Article 131 of the Civil Code, which article falls under the competence of this Court. The Court sees the uncontradicted version of the plaintiff and acknowledges that plaintiff always wanted her son to assume her surname along with his father's, but this was not possible because of the defendant. Therefore, this proves that there was no agreement between the parties regarding the surname, which issue is of utmost importance since it affects the identity of the minor in society. The Court is morally convinced that it is in the best interest of the minor that he also assumes his mother's surname. The same happened in the judgment in the names **Katrina Schembri vs Dr Abigail Bugeja et noe**,³⁸ where the Court had acceded the request of the plaintiff for a change in the surname of the minor in a case that dealt with care, custody and maintenance of the said minor. Therefore, the Court sees that the minor should assume the surname ‘*Azzopari D*’.

DECISION:

³⁸ Decided by the Civil Court (Family Section) on the 28th April 2016 (App. Nr. 190/2015 RGM).

Therefore, and for all the reasons mentioned above, the Court decides this case in this manner:

1. Acceedes to the first and second requests of the plaintiff and order that the care and custody of the minor E D be entrusted exclusively to the plaintiff, provided that the minor shall reside with his mother in that premises which the plaintiff establishes as her residence;
2. Rejects the third request in relation to access to minor by the defendant;
3. Acceedes to the fourth, fifth, sixth and seventh requests and order the defendant to pay the plaintiff the sum of two hundred and twenty-five EuD (€225) in monthly maintenance , and as well as seventy-five EuD (€75) as part of the costs related to health, education and extra-curricular activities every month, and thus the defendant must pay the plaintiff a total of three hundred EuD (€300) every month, which maintenance shall increase every year according to the index of the cost of living and shall be deducted from any income and/or benefit that the defendant may earn. By applying Article 3B of the Civil Code, the defendant is obliged to pay maintenance for E D until the minor reaches the age of eighteen (18) years. However, in the event that the minor chooses to continue studying on a full-time basis after reaching the age of majority, the maintenance must continue to be paid until the minor reaches the age of twenty-three (23) years or until he completes his studies, whichever event occurs first. Any social benefits in connection with the minor, including the Children's Allowance, must be perceived by the plaintiff. In the event that the minor chooses to live on his own after turning eighteen (18), the maintenance must be paid directly to him;
4. Acceedes to the eighth and ninth requests regarding the minor's passport and travel;
5. Acceedes to the tenth request and orders that the defendant is not authorised to leave the Maltese islands alone with minor;
6. Acceedes to the eleventh request and extends the protection order in favor of the plaintiff and the minor against the respondent;

7. Rejects the twelfth request regarding the treatment order;
8. Accedes the thirteenth request and order that the minor assumes the surname '*B D*';
9. By means of application of Article 149 of the Civil Code, the Court applies Article 154 of Chapter 16 of the Laws of Malta against the defendant, meaning that the power of the parent should also be vested exclusively in the plaintiff only, and orders that the defendant be stripped of the authority of a parent in terms of Article 154 of Chapter 16 of the Laws of Malta.

With the costs to be paid in their entirety by the defendant.