



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Tuesday 21st March 2023

APPLICATION number : 132/2022 AGV

LB

vs.

**Dr Victor Bugeja and PL Veronica
Rossignaud as curators to represent LLT ,
as decree dated 5th September 2022**

The Court;

Having seen the sworn Application of L B dated 2nd June 2022;

Respectfully submits and solemnly declares:

1. That from a relationship that the parties had, the minor E B was born on the twentieth day of May of the year two thousand and nineteen (20.05.2019) at Mater Dei Hospital, Malta and that therefore today the said minor is three years old (certificate of birth hereinafter attached and marked as Dok A). That the exponent is of Maltese Nationality, whilst the defendant is of Irish Nationality;
2. That on the twenty seventh of May of the year twenty twenty-two (27.05.2022), the defendant arbitrarily left Malta, and this without this trip having been planned or without prior warning, and as far as the defendant knows, she has gone to Ireland, her birthplace and the place where up until today both her mother and father still reside, albeit separately. That it was at this point especially, that the defendant jeopardised the best interests of the minor EB and is still putting these best interests in jeopardy until today, and this since she has vanished from the minor's life and escaped the responsibilities of parenthood;
3. That in view of all of this, the exponent had to file an application for the issuance of a Warrant of Prohibitory Injunction against the defendant, which warrant was acceded to temporarily on the second day of June of the year twenty twenty-two (02.06.2022), and by means of which the defendant was prohibited from taking the minor outside of Malta (see in this sense a legal copy of the warrant of prohibitory injunction number 121/22 AL here annexed and marked as Dok B as well as the receipt showing return of passport annexed as Dok C);

4. That the defendant is not capable of taking care of the responsibilities which the minor brings with her. It results that the mother has significant mental problems and has refused to be administered the proper treatment for the same, and this as will be shown during the course of the court case. That apart from this, the defendant is not capable of taking care of her needs, let alone the basic needs of the minor child, including also those relating to the minor's health, and this also as will be shown during the court case;
5. That in view of all this, there exist impelling reasons that justify, in the best interests of the minor, that the plaintiff be accorded the exclusive care and custody of the minor, and this whilst there be established unequivocal criteria with regards access rights of the defendant towards the minor, if it is the case that the defendant returns to Malta, which access, if so, should be subject to the controls and safeguards from the competent authorities in the best interests of the minor;
6. That the mediation process has been closed by order of this Honourable Court and also due to the urgent nature of the case at hand, and the exponent has been duly authorised to proceed with the present sworn application by virtue of a court decree of this Honourable Court of the sixth of June of the year twenty twenty-two (06.06.2022) (here attached and marked as Dok D);

That therefore and for the reasons here indicated, this Honourable Court has been requested to:

1. Accord the exponent the exclusive care and custody of the minor EB
2. Declares and decides that it is in the best interests of the minor EB that she continues residing permanently with the exponent father in Malta and in the residence where the father resides, save for according access to the defendant to the said minor if the court deems fit, which access should be in Malta, and under the conditions that this Court deems proper to impose, including with supervision of the access, monitoring, and even so that the plaintiff attends parenting courses;
3. Orders that the defendant pays such monthly maintenance for the minor EB to the exponent, which monthly maintenance should be payable on a particular date once every month, and orders that the same defendant pays the exponent such monthly maintenance even directly from her salary or income from work which she has or can have, or by means of a standing order, and provide for an increase in maintenance every year so as to reflect the increase in cost of living;
4. Orders that the defendant pays to the exponent, half of the expenses of health and education as well as extra-curricular expenses relative to the minor EB ;
5. Orders that the defendant pays the exponent, for any arrears of maintenance due by her for the minor as of the month of June twenty twenty-two (2022) and this until the date that the defendant effectively starts paying her share of the said maintenance with regards the minor EB ;
6. Declares that any social benefits in connection with the minor, including children's allowance, are paid exclusively to the exponent father;

7. Gives any other order which it deems fit and proper;

With costs, including those of the mediation number 642/22 and those of the warrant of prohibitory injunction number 121/22 AL, against the defendant who is from now being summoned with reference to the oath of the adversary.

Having seen the curators' reply, filed in the Maltese language:

Rat ir-risposta pprezentat bil-Lingwa Maltija tal-kuraturi deputati datat 19 ta' Settembru 2022:

Illi l-esponenti jirrileva li huma mhux edotti mil-fatti tal-kaz.

Illi r-rikorrenti ghandhom jindikaw hekk ghandhom indikazzjoni jiet fejn tinsab L L T sabiex issir komunika mill-esponenti kemm-il darba jkun il-kaz.

Illi fi kwalunkew kaz, il-Qorti ghandha dejjem tiddeciedi fl-ahjar interess tal-minuri, salvi l-salvagwardanti kollha spettanti lil intimata kif rapprezentata mill-esponenti fir-rigward tal- minuri in kwistjoni.

Having heard all the evidence submitted by the parties.

Having seen all the documents exhibited.

Having examined the acts of the warrant 121/22/2AL, attached to these proceedings.

CONSIDERS:

That this case concerns the plea raised by plaintiff, LB to have the care and custody of his daughter E regulated by the Court. The facts of the case are, in brief, as follows. The parties had a relationship between them, from which a daughter was born to them in May 2019. However, it appears that the mother developed a chronic mental illness after the birth of the child, and although initially she sought the help of medical practitioners, by time she stopped receiving this help and refused to have medication. Her condition worsened, and by May 2022 she upped and left Malta to return to Ireland, her homeland. Plaintiff became the sole carer of the child after that point and instituted these proceedings to protect the interests of the child.

From the acts of the case, it appears that the mother is still not residing in Malta, and the father wishes to regularise the position regarding the matters relating to the minor child's education and health, without the need to obtain the mother's prior consent or written approval. For the sake of defendant's privacy, the Court will not go into detail as to the various incidents and episodes of the mother's mental breakdown as stated by plaintiff. From his affidavit and the documentation exhibited by him, plaintiff showed that the condition suffered by the mother was a significantly serious one, He states that since defendant's departure from these islands, E has been more settled into a routine. This version of events is supported by documentation, and corroborated by plaintiff's mother, A B , who also testified by means of an affidavit.

The Court is of the opinion that plaintiff's requests with regard to care and custody are to be upheld, given that defendant is no longer living here in Malta. The only plea that remains to be considered is that of maintenance payable by the mother. The Court has no information as to what employment, if any, the

defendant is currently engaged in. The Courts in Malta have always upheld that it is the duty of both parents to maintain their children, even when their means are limited, as in this case. Given that the mother is suffering from serious mental health conditions, a maintenance order would have to be considerate. Plaintiff earns around €3,000 per month, which should be enough for him to provide for himself and the child. Nonetheless, the Court shall liquidate a sum of maintenance payable by defendant in the amount of €150 per month. Secondly, with regard to arrears in maintenance claimed by plaintiff, since there was no evidence produced in this regard, the Court cannot liquidate such an amount as arrears. Consequently, the only plea that will not be upheld by the Court is the fifth plea.

Moreover, the Court is of the opinion that plaintiff should be granted full parental authority over the child, to the exclusion of defendant, in order to facilitate any application needed for educational or health requirements, as they may arise from time to time, without the need to obtain defendant's prior consent in writing, given that the mother is presently absent from the life of the child. The Court finally stresses the importance of the role of the mother, all the more so in this case, for the better growth of the child. It is hoped that defendant will seek all the necessary medical help and participate in the child's upbringing, as E, will surely require her mother's presence in her life sooner or later.

DECIDE:

Now, therefore, for these reasons, the Court:

1. UPHOLDS Plaintiff's first demand and grants him the exclusive care and custody of the minor child EB .

2. UPHOLDS Plaintiff's second demand and declares and decides that it is in the best interests of the minor EB that she continues residing permanently with the father in Malta and in the residence where the father resides, save for granting access to the defendant to the said minor, which access should be in Malta.
3. UPHOLDS Plaintiff's third demand and orders that the defendant pays monthly maintenance for the minor EB to plaintiff in the amount of €150 per month as provided for in the judgment, which monthly maintenance shall be payable on the first day of each month, and orders that the same defendant pays plaintiff such monthly maintenance even directly from her salary or income from work which she has or can have, or by means of a standing order, and provide for an increase in maintenance every year so as to reflect the increase in cost of living;
4. UPHOLDS Plaintiff's fourth demand and orders that the defendant pays plaintiff half the expenses of health and education as well as extra-curricular expenses relative to the minor E B ;
5. DENIES Plaintiff's fifth demand.
6. UPHOLDS Plaintiff's sixth demand and declares that any social benefits in connection with the minor, including children's allowance, are paid exclusively to the father.
7. GRANTS Plaintiff exclusive parental authority over the minor child to the exclusion of defendant, and therefore authorises him to sign on his own all the necessary documents required for the minor child's health and educational needs without the need to acquire defendant's prior signature or consent in writing.

All costs are to be borne temporarily by plaintiff and shall become recoverable from defendant if and when her whereabouts are established.

Hon Anthony G Vella

Judge

Cettina Gauci – DEP REG