

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of 1<sup>st</sup> of November 2023**

**Application no. : 198/2018 JPG**

**Case no. : 19**

**NA in his own name and on  
behalf of the minor DO**

**Vs  
IO**

**The Court:**

Having seen the sworn application filed by Plaintiff on the 20<sup>th</sup> July 2018 (Fol 1), English translation at Fol 6 which stated:

1. *That on the X, in Pieta', a son was born to the parties by the name of DO, as per attached document marked Doc A;*
2. *That Defendant has not paid any maintenance and educational and medical expenses to his child from the month of July of the year 2012 till this very day;*
3. *That the mediation between the parties was terminated due to lack of agreement, as per the attached document marked as Doc B;*
4. *That Plaintiff is suitable to assume the care and custody of the minor, contrary to Defendant who is an alcoholic and not in the right state of mind;*

5. *That the Plaintiff know these facts personally.*

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

1. *Authorize Plaintiff to assume the exclusive care and custody of the minor DO;*
2. *Fix dates and times of access to Defendant with respect to the minor child under those conditions that this Honourable Court deems fit to impose, including supervised or monitored access;*
3. *Order that any social benefits or any social assistance with respect to the minor that may be due, will be payable exclusively to the Plaintiff;*
4. *Condemn the Defendant to pay a fixed sum of maintenance to Plaintiff for the amount of four hundred euro (€400) per month for his minor son apart from his share of the ordinary and extraordinary medical and educational expenses;*
5. *Condemn Defendant to pay for the arrears of maintenance with effect from the month of July of the year 2012 until the day he commences to pay adequate maintenance;*
6. *Order that the fixed amount of maintenance increases every year at the rate of 1% per annum on the previous years;*
7. *Order that the decreed maintenance be directly deducted from the salary of the Defendant or from the social assistance as the case may be, such that the employer of the Defendant or the Director for Social Security to execute the order and be ordered to send a cheque directly to Plaintiff;*
8. *Authorize the Plaintiff to apply for and renew the passport of the minor without the authorisation of Defendant;*

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

Having seen that that the acts of the sworn application, this Court's decree and the notice of hearing have been duly notified according to law;

Having seen the sworn reply filed by Defendant on the 12<sup>th</sup> November 2018 (Fol 17), which stated:

1. *That the parties have a thirteen (13) year old son from a relationship they had together and they no longer live together after a friendly separation some five (5) years ago;*
2. *That the Applicant meanwhile got married to a third person and has two other children from him;*
3. *That in the amicable separation it was agreed that both parties should have joint custody and care of their son DO which worked well for five years or more;*
4. *That as regards access it was agreed between the parties that their son was to be with Respondent, the natural father, from Monday to Friday after school from 2.30 p.m. to 8.30 p.m. when Applicant would go to collect him and that their son was to sleep over with the father on Friday and Saturday and the Applicant would collect him after he spent Sunday during the day with the Respondent natural father;*
5. *That this arrangement was not always strictly adhered to but became flexible by agreement between the parties;*
6. *That as regards maintenance it was mutually agreed by the parties that the father would maintain him and feed him when the son was with the father, while the Applicant mother would maintain him when the boy was with the Applicant*

*mother;*

- 7. That ever since the beginning of June this year the Applicant abruptly and unilaterally allowed no further access to the Respondent father and started demanding full custody and care of their minor son;*
- 8. That the mediation proceedings were held about twice by Godwin Genovese as the Applicant kept insisting that she should have full custody and care of the child which Respondent did not agree to;*
- 9. That the Respondent is a J and so is his son by agreement with the Applicant and regularly until recently always took his son with him to the S for prayers on the Sabbath in which the son willingly participated. Respondent's late father and grandfather of their son was the President of the J Community in Malta for many years until sadly he passed away some two (2) years ago aged 88 and Respondent's brother RO has been and is the Rabbi for the past 33 years;*
- 10. That unfortunately and through no fault of his, Respondent is presently unemployed after the family business meanwhile went bankrupt and he has been unable to find employment in view of his age;*
- 11. That Respondent is perfectly capable of continuing the joint care and custody of their minor son as he has always and responsibly done ever since their son was born;*
- 12. That Respondent is not an alcoholic but enjoys a glass of red wine daily as he suffers from a heart condition and the occasional tot when socialising when he goes out but never in the presence of his minor son;*
- 13. That the Respondent dearly loves his son who loves both his parents and he has a very good relationship and rapport with him, as most fathers and sons do, who bond in a special way together;*
- 14. That Applicant on her part has two other very young children from her present*

*husband which she is finding very difficult to cope with, a one year old and two year old and appears to be suffering from post natal depression and borderline personality disorder from the symptoms she manifests according to a psychiatrist who told Respondent that she requires a minimum of five years treatment and therapy to cure, which Applicant refuses to have and undergo;*

- 15. That furthermore Applicant has a history of violence – she once threw an iron at Respondent’s face and luckily he ducked but she hit him on his neck, she repeatedly slapped the Respondent in his face besides many other incidents of violence over a span of eight years and the Respondent had to make police reports including number 6/M/1571/2018 and then Applicant began making false police reports against Respondent;*
- 16. That when the parties lived together, Applicant every weekend together with a group of Filipinos regularly took their minor son to a pub in Paceville called ‘Memories’ returning home at midnight totally drunk, laughing and vomiting and somehow carrying their minor son who was then a toddler, at the same time waking up Respondent;*
- 17. The Respondent wishes for both parties to continue with joint custody and care of their minor son in the best interests of their child as the child is likely to suffer under her sole care as she is not treating him well and Respondent would have no possibility of acting as a deterrent to Applicant’s unruly behaviour with him. Moreover, since Applicant is a foreigner from the Philippines, Respondent has reasonable fear that Applicant will eventually kidnap his minor child and take him to the Philippines against the will of the child and not allow any access to the child by his natural father as she has often threatened to do;*
- 18. That in actual fact, Applicant is now also requesting this Court to apply for and renew the passport of their minor son, and this without the authorisation of the Respondent;*
- 19. That Respondent wants the best for his son and for the child to be genuinely*

*loved by both his parents and not be abused or threatened badly by Applicant in any way. Applicant regularly screams out loudly and shouts whenever talking to Respondent on the telephone and especially every month during monthly cycle of her period and she is bad tempered and often swears in both Maltese and English in the presence of their minor son who is having difficulty to cope with her unruly behaviour which badly unsettles him and is having a very bad effect on him;*

- 20. That Applicant already filed an application on 13 June 2018 for the Court to grant her full care and custody of the minor child DO and to appoint Agenzija Appogg to make the necessary recommendations with respect to the access. This application in the acts of mediation number 136/18 GG is still pending;*
- 21. That moreover Applicant also on the 13<sup>th</sup> June 2018 filed another application in the acts of mediation number 136/2018GG requesting this Court to order Respondent to pay a fixed monthly maintenance of 300 euros for his minor son, which sum shall include all educational and medial expenses, which this Court already decreed on the 19<sup>th</sup> July 2018 as requested;*
- 22. That Respondent has regularly been paying Applicant the maintenance of 300 Euros monthly already decreed since then and cannot understand how barely one day later after it was decreed on the 19<sup>th</sup> July 2018, she filed this law suit the very next day on the 20<sup>th</sup> July 2018 now requesting an even higher maintenance of 400 Euros henceforth for their minor son and also with retroactive effect from July 2012, that is 6 years ago, and this now in addition besides the ordinary and extraordinary health and educational expenses too;*
- 23. That Respondent at his age of 55 years received no unemployment benefits, and only receives relief from the Social Security Department to the amount of 434 Euros monthly which is his only income and from which he is expected to live on 100 Euros after paying the maintenance already decreed of 300 Euros monthly, or in absolute poverty, if now ordered to pay maintenance of 400 Euros monthly, which he cannot afford, with retroactive effect from 6 years ago and this besides additional ordinary and extraordinary health and*

*educational expenses for their minor son when these are thankfully already provided gratuitously by the Government;*

*24. That Applicant has a job and works regularly besides benefitting from free child care services for all her children provided by the Government of the Republic of Malta;*

*25. That on his part Respondent wishes to retain joint care and custody of their minor son together with Applicant and is willing to continue to pay 300 Euros monthly already awarded for the maintenance of their minor son and to have access with a sleepover from Friday afternoon to Sunday afternoon, besides access for a couple of hours or more in the afternoon on Wednesdays and that a passport is issued to their minor son only for limited travel of up to one month per annum on the express condition that the Applicant brings their minor son back to Malta for the rest of the year.*

*That for the above mentioned reasons Applicant's requests should not otherwise be granted.*

Having heard evidence on oath;

Having seen the exhibited documents and all the case acts;

Having seen that in the sitting of 6<sup>th</sup> July 2023 the parties declared that they have no further evidence to produce;

Having heard final submissions by both parties;

**Considers:**

***Plaintiff testified on the 16<sup>th</sup> of January 2019 (vide fol 34 et seq)*** and explained that she lived with Defendant for eight years here in Malta and together they had a son. Her relationship with Defendant was abusive and she had in fact asked for Appogg's intervention to ascertain that the parties' son is safe with the father during access. Plaintiff testified that Defendant is an alcoholic and smokes in the presence of their son. She adds that he also tends to get into arguments with people. She affirms that Defendant also cut access short by thirty minutes and asked her to pick up their son thirty minutes earlier. Plaintiff explains that ever since their son is not seeing Defendant, the child is calmer, and is not aggressive.

In cross-examination, Plaintiff explains that her son used to get sick with a cough due to being exposed to cigarette smoke. She affirms that Defendant used to smoke from day one however, the drinking became worse as the relationship progressed. She contends that she used to leave the room whenever he used to smoke, and there were times when he tried to stop but to no avail. She contends that her son is bothered by the excessive smoking and his father's insistence with religion, and told Plaintiff that he does not wish to attend the S any longer. Plaintiff explains that their son used to attend S with Defendant at times on Saturdays. Plaintiff confirms that DO told her that Daniela from Appogg visited him at school.

Plaintiff affirms that she used to go to the Pub with Defendant prior to the birth of their son, and adds that she has never instructed her son not to speak to his father. She recalls that when she left sometime in April or May of the year 2012, Defendant had threatened her life, but he did not let her take her son with her. The following day she instituted proceedings prohibiting Defendant from travelling with their son. During this time, their son was living with Defendant, and she would only be able to see DO if and when Defendant let her.

With regards to maintenance, Plaintiff affirms that she is currently receiving EUR 300 a month as maintenance and this in accordance with a Court decree, however, she is having to pay private transportation for DO to go to school in Mriehel from San Gwann where they live. She explains that there is no government transport from San Gwann to the school in Mriehel, since DO's address was originally that of Defendant in Imsida and not San Gwann on the relative school documents.

***Daniela Darmanin testified on the 4<sup>th</sup> March 2019 (vide fol 65 et seq)*** and explained that she is the social worker assigned to the case and has been following the case since October 2018.



She testified that she spoke to both parents individually and it was brought to her attention that the child was spending most of his time after school with the father and also during the weekends. Together they had decided that the child would go to his Father's house every Friday after school and stay with the father till Sunday evening. However, Plaintiff changed her mind and said that she would rather wait for the Court's decision and then supervised access visits commenced in November. Witness affirms that the father has a very positive relationship with the child, although lately there have been some difficulties relating to events that happened in the past relating to the father's drinking and smoking. Witness contends that Defendant denied that he ever took the child in bars. OZ, DO's half-brother who is an adult, would also at times attend the supervised access and is a very good influence on DO. However, recently OZ's mother passed away, and Defendant had to cancel a number of sessions to support OZ who is now living with Defendant.

With regards to smoking, witness explains that during a house visit Defendant had shown her a room, which is the only room in which he smokes and this to avoid the child from inhaling smoke. Witness adds that she also spoke to the child and visited him at school unannounced 3 or 4 times. The child always insisted that he wanted to spend unsupervised time with his father as he is not comfortable at Appogg. Witness confirms that the child did mention that his father used to smoke in his presence in the past. Witness suggested that at this stage access should be monitored rather than supervised.

*Felix Camilleri testified on the 4<sup>th</sup> March 2019 (vide fol 71 et seq)* and explained that he is the social support worker that is present during the SAVs. Witness explains that Defendant and the minor have a positive relationship, whereby they discuss what is going on in their lives, Defendant asks the minor about his life at school and at home, and whether there is anything that is worrying him. They also talk about OZ since his mother has passed away. Access takes place every Saturday and there have been occasions where Defendant cancelled the sessions because he had to support OZ in light of his mother's recent passing. Witness explains that during the SAV, Defendant takes a small break to go outside and smoke. Witness reiterates that the SAV flows naturally, and at times they play cards, and at time OZ comes to visit with the father.

*Defendant testified on the 8<sup>th</sup> of April 2019, (vide fol 79 et seq)* and explained that his relationship with his son is a very positive one, and affirms that from day one, he invested in

his schooling and his education. DO is a very intelligent child and was always addressed his needs. Defendant affirms that it was Plaintiff who was violent in his regards and this even led to a heart attack. He adds that following their son's birth, Plaintiff seemed to be in a perpetual state of anger and used to throw heavy stuff at Defendant. He explains that he eventually sought the help of Appogg, and then sought advice from a psychologist. Defendant explains that DO is getting bored at the S because he is the only child there and like most children he hates waking up early to attend the S.

Defendant recalls that there was a period of six months where he would only meet the child for five (5) minutes whenever Plaintiff would come to collect the maintenance allowance. He affirms that whenever Plaintiff would tell him that she would be buying something for the minor, he would immediately pay his share, without asking for receipts, he would even buy things for the minor out of his own free will without asking for money in return. He explains that the maintenance of EUR 300 a month is a slap in the face considering he is unemployed and contends that he is paying for Plaintiff's whole family and not for his son. With regards to the taxi for school, Defendant contends that he had spoken to a friend who has a cab company and that the fee was 5 euro, EUR 2.50 each way. Defendant explains that he is now on social benefits, and receives EUR 500 but his family helps him out financially, and pays the EUR 300 maintenance from this EUR 500.

He explains that there were occasions in his life which led him to drinking and that now he is smoking very little. He insists that he never smoked in his child's presence and not even in the car. He insists that DO is not happy seeing him at Appogg and wants to resume access at his home. Defendant insists that should the request for maintenance as put forth by Plaintiff in this application be acceded, this would place an extreme financial burden on Defendant.

***Plaintiff testified on the 12<sup>th</sup> February 2020 (vide fol 97 et seq)*** and affirmed that between June and December of the year 2019, Defendant did not exercise visitation hours, but used to see their son for five minutes each month, whenever he would have advised her to go and pick up the maintenance, as Defendant would have her sign a receipt. As for January then, Defendant would speak to Daniela from Appogg to arrange access with DO.

In cross-examination, Plaintiff denies that she is objecting to more access time, and that she will never refuse sleepovers if the Court so ordered. She denies that she is putting pressure on

DO to babysit the toddlers but insists that it is DO who enjoys playing with his sisters. He explains that DO spends a lot of time on his computer, and at times she would ask him to watch his sisters while she is hanging the clothes. He confirms that when DO is away from school it is because he is sick. She explains that her two other children also attend school and stay at school till 5:30pm at Klabb 3-16.

***Defendant testified on the 12<sup>th</sup> February 2020*** and inter alia explained that following the Court decree in relation to access, he had arranged with Daniela the social worker to have access at the S on Saturdays. He confirms that he would see DO on those occasions where Plaintiff would call at his house for maintenance.

***Plaintiff testified on the 3<sup>rd</sup> November 2020 (vide fol 107 et seq)*** and explained that prior to the lock down, access would happen in accordance with the decree and then after lock down, access would happen in accordance with DO's wishes.

***Plaintiff also testified by means of an affidavit (Vide fol 119 et seq)*** and added that from January 2015 onwards, DO was living with her and until the maintenance decree, Defendant did not contribute financially. She explains that she works as a part-time customer care coordinator at Jewel Design and Manufacturing Limited.

***Defendant also testified by means of an affidavit (vide fol 139 et seq)*** and explained that it was he who covered all the expenses following DO's birth, until Plaintiff decided to go to work. Defendant affirms that for the past seven years he has paid around EUR 28,000 for his son's well being including cooking for him and paying for all his needs, including expensive branded clothing and, spending money. He adds that despite he is paying EUR 300 by way of maintenance for DO, DO is nonetheless bringing different torn pyjamas for his sleepovers.

***Jeanette Lepre on behalf of Lombard Bank testified on the 17<sup>th</sup> January 2022, (vide fol 142A et seq)*** and explained that Defendant has never banked with Lombard Bank.

***Daniel Azzopardi on behalf of BNF Bank testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and explained that Defendant is not a client of BNF Bank.

***Charmaine Psaila Ragi on behalf of APS Bank testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and confirmed that Defendant has no banking relationship with APS Bank.

***Johanna Bartolo on behalf of BOV Bank testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and held that Defendant holds six accounts with the bank, however, four have been closed, and two are still active. A joint account with a third person was also found in Defendant's name.

***Miriam Azzopardi on behalf of Malta Stock Exchange testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and that Defendant did not hold any accounts with the Malta Stock Exchange.

***Lorraine Attard on behalf of HSBC Bank Malta Plc, testified on the 17<sup>th</sup> of January 2022, (vide fol 142A et seq)*** and held that Defendant held two savings accounts which were however closed on the 29<sup>th</sup> of July 2020. Defendant also held a credit card account which was closed in July 2013. Defendant also holds a current account which is still operative. Defendant also holds three different loan accounts, and a joint account in the parties' names and another account in the name of Defendant and a third party.

***Clayton Borg on behalf of Mapfre MSV Life, testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)***, and held that no policies were found in the parties' names.

***Claudia Diacono on behalf of the Malta Business Registry testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and explained that Defendant was involved in one company bearing C number 10828 as a director and was also vested with the legal and juridical representation as from the 29<sup>th</sup> June 2017.

***Louis Buhagiar on behalf of Jobs Plus testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and exhibited the parties' employment history.

***Saviour Theuma on behalf of the Department of Social Benefits testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and exhibited the relative documentation in relation to the social benefits received by Defendant, and explains that Defendant was receiving social benefits from 21<sup>st</sup> January 2013 onwards.

***Dr Christopher Spiteri on behalf of Transport Malta testified on the 17<sup>th</sup> of January 2022 (vide fol 142A et seq)*** and exhibited a list of vehicles which were registered in Defendant's name. Witness affirms that Defendant only has one vehicle which is currently registered in his name.

***Johanna Bartolo re produced on the 22<sup>nd</sup> February 2022 (vide fol 146A et seq)*** and explained that the account which is jointly held with Defendant and a third party, is held jointly with a certain RO.

***Dr Marita Dimech on behalf of the Malta Public Registry testified on the 22<sup>nd</sup> of February (vide fol 146A et seq)*** and explained that from the details included in the writ of summons, the deed of the personal separation was found.

***Lorraine Attard on behalf of HSBC Bank Malta plc, re produced on the 22<sup>nd</sup> February 2022, (vide fol 146C et seq)*** explained that the third party with whom Defendant holds a joint account is SO.

***Plaintiff testified with reference to the oath on the 1<sup>st</sup> of June 2022 (vide fol 187 et seq)*** and explained that she started working back in 2018, after she gave birth to her second child and had originally started working on a part-time basis and has done so until presently. Plaintiff affirms that her monthly income is circa EUR 700-800 and works with the Blue Rock Company Limited in Valletta in the Diamonds International Outlet. Plaintiff exhibited FS3s for the years 2019, 2020, and 2021. Plaintiff contends that she always worked within the same company but had taken some time from work after her marriage. Plaintiff declares that she has no other income. With reference to property owed and acquired after her marriage to her husband, Plaintiff explains that the property in question which is a flat out of a block of four was donated to her husband by his father.

***Defendant in cross-examination on the 18<sup>th</sup> of January 2023,*** confirmed that DO was born on the X and not on the 10<sup>th</sup> of August 2005 as indicated in Defendant's affidavit. The sum indicated in the affidavit takes into account, the four years in which Defendant paid for the circumcision, the food, clothing etc. both for DO and Plaintiff. When questioned how he could afford to buy expensive clothing or DO while on social benefits, Defendant contends that he

was not buying clothes for DO on a daily basis, but opted to buy certain clothing because they were of good quality and do not tear easily. This clothing is kept at his house. Defendant denies that he was having issues with Plaintiff because of his excessive smoking and drinking in DO's presence and reiterates that his son had his own room in his residence and affirms that there is sufficient ventilation in his house and that he smoked in the balcony, and in any case no smoke can enter DO's room since it is insulated.

Defendant confirms that he did in fact lodge police reports and copies of these have been attached to the reply.

With reference to the maintenance Defendant affirms that he declared that he was financing Plaintiff's entire family since the monthly expenses indicated by Plaintiff for the parties' son for detergents was rather exorbitant. Defendant also declares that he is paying private Maltese lessons for DO, and his share amounts to EUR 60 a month. Asked whether he was paying maintenance prior to the decree, Defendant testified that Plaintiff would call him informing him that DO would be needing a pair of shoes etc, and then she would go to his house together with her husband and he would give her the money in cash. Asked whether he paid any medical expenses or his share in any medical expenses before the Court's decree, Defendant answered in the affirmative and that he paid whatever what was needed to be paid. Defendant denies that it was Plaintiff who paid DO's uniform, school bag etc and insists that he would get the list and go to stationery and buy whatever was needed.

Defendant recalls that about four months ago, DO told him that his eyesight was poorly and that he could barely read. Defendant testified that he told his son to get spectacles but Plaintiff brushed this off. Defendant declared that he had called Plaintiff himself and told her that if she does not take DO to the doctor, he would deposit the money and court and she would not get a cent. After three days, DO had a brand new set of spectacles.

**Considers:**

This is a judgement following a requests on the part of Plaintiff to be vested with the exclusive care and custody of the parties' son, to establish access for Defendant and to order Defendant to pay the sum of EUR 400 monthly for the parties' son by way of maintenance.

***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 regulated by the principle of the best interests of the child, the best utility and best advantage to the interests of the child.<sup>1</sup>

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.*

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).*

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<sup>1</sup> **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...*”

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 no one of them should be excluded from the child's care unless there are serious reasons which lead the Court to take such a drastic measure. In fact this has been the stance adopted in the judgement in the names of **AB vs CD** decided on the 23<sup>rd</sup> 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.<sup>2</sup>

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.”***

**Access:**

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. Article 57 of the Civil Code provides as following:

**Article 57:**

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<sup>2</sup> “*Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-ahjar 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.”*”



*(1) Whosoever may be the person to whom the minor children are entrusted, the spouses shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law: Provided that this right may be suspended if the exercise thereof would put either the children or the other parent at a risk of harm.*

*(2) It shall be in the discretion of the court, according to circumstances, to fix the time, place, and manner in which the spouses shall have access to the children: Provided that the right of access may be withdrawn by the Court when the spouse who is granted such right of access fails to exercise such right without reasonable cause.*

*(3) It shall be lawful for the court entirely to forbid such access to their minor children if it may be detrimental to the welfare of such minors or to the welfare of anyone of the parents.*

Of particular relevance are sub articles (2) and (3) of the above-indicated disposition of the Civil Code. 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. In fact, the Court of Appeal has affirmed the following:

*“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 jkollha 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.<sup>3</sup>*

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<sup>3</sup> Vide decisjoni tal-Qorti tal-Appell datata 3 ta’ Ottubru 2008 fl-ismijiet Miriam Cauchi vs Francis Cauchi.

## ***Maintenance***

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 għandhom l-istess obbligi versu l-ulied tagħhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f’posizzjoni ta’ ugwajanza 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).<sup>4</sup>*

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 irriteriet 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-meżżi 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)<sup>5</sup>*

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<sup>4</sup> 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)

<sup>5</sup> 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 m`caħħdin minn dawk l-affarijiet li d-dinja tal-lum tikkunsidra bħala neċessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”<sup>6</sup>*

**Considers:**

From the acts of the case, it transpires that the parties were involved in an intimate relationship which lasted for almost a decade, and from this relationship had a child, DO who was born on the X. The child DO has to date attained the age of majority and therefore, the Court shall take no further cognizance of the first, second, third, and eight request. It appears that DO is still a full-time student and is expected to enroll in University or MCAST.

Thus, the remaining requests involve maintenance and maintenance arrears. This Court has seen that Plaintiff contends that no maintenance was paid by Defendant between July 2012 and the date of the pronouncement of the Court’s decree. Nor did Defendant pay his share in so far as the educational and medical expenses of then child DO are concerned. On the other hand, Defendant insists that he has always paid whatever needed to be paid.

**Deliberates:**

*Request for Maintenance in the sum of EUR 400 monthly*

The Court observes that the sworn application bearing number 198/2018 was filed by Plaintiff on the 20<sup>th</sup> of July 2018, and as correctly pointed out by Defendant, the said sworn application was filed the day after this Court diversely presided upheld Plaintiff’s request for maintenance for DO in the amount of EUR 300 monthly, together with Defendant’s share from (the then minor) DO’s educational and health expenses, and this by means of a decree dated 19<sup>th</sup> July 2018.

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<sup>6</sup> 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.”

This Court took cognizance of the list of expenses filed by Plaintiff in the acts of the mediation with number 136/2018 together with the *pendente lite* application dated 13<sup>th</sup> of June 2018, wherein Plaintiff asked the Court to order Defendant to pay the said sum of EUR 300 by way of monthly maintenance. At the time, DO was circa thirteen or fourteen years old. In this list, Plaintiff indicated a total monthly expenditure of EUR 615. However, the Court notes that Plaintiff did not update this list throughout the pendency of the current proceedings, nor did she exhibit any documentation underscoring any additional expenses which she might have incurred since June of 2018. The Court also notes that Plaintiff who works on a part-time basis earns a minimal wage, whereas Defendant relies exclusively on social benefits after having been boarded out.

The record shows that the parties' son DO, is intent on enrolling in University or MCAST and thus intends to keep on studying on a full-time basis. Therefore and in accordance with the law, Defendant is obliged to maintain DO until DO attains the age of twenty-three years old.

Although this Court is mindful of the fact that as children grow, expenses become even more substantial, Plaintiff failed to exhibit objective evidence which corroborates her request for a higher amount of maintenance. Therefore, after having taken cognizance of the documentation indicating the parties' respective incomes, and the needs of the parties' son as indicated in the sworn statement dated 13<sup>th</sup> June 2018 in the acts of the mediation with number 136/2018, it is this Court's considered opinion that maintenance for the coming five years, that is, until DO attains the age of twenty-three years old, is to remain set at three hundred euros (€ 300) monthly. Nonetheless, the said maintenance shall increase annually in accordance with the official cost-of-living increases. The said amount is to be transferred directly to a bank account of Plaintiff's choosing, provided that the parties' son decides to continue to reside with Plaintiff. Should the parties' son opt to live elsewhere, maintenance shall be paid directly to parties' son. Additionally, Defendant is to pay half of the educational and medical expenses incurred for the parties' son upon presentation of the relative receipts. Such amount is to be deposited directly in a bank account of Plaintiff' choosing within seven days from presentation of said receipts.

*Request for Arrears:*

In her sworn application, Plaintiff is claiming arrears of maintenance with effect from July of 2012 until the day Plaintiff commences payment of adequate maintenance for the parties' son DO. The Court has seen that the parties' testimony in this respect is somewhat contradictory, while Plaintiff claims that no maintenance was paid during this time frame, Defendant contends that he has always paid what was necessary and what was due.

From the evidence produced it appears that:

- The parties relationship lasted for circa eight (8) years;
- In her affidavit Plaintiff claims that she left Defendant's residence and terminated the relationship sometime between April and May of the year 2012;
- By means of a letter dated 9<sup>th</sup> of May 2012, Plaintiff requested the initiation of mediation proceedings to regulate the care, custody, access and maintenance of the parties' son; (Mediation number 575/2012)
- By means of a joint application dated 18<sup>th</sup> July 2012 the parties informed the Court that the parties had agreed that while the minor would keep on residing with the Father, the mother was to have access, two times during the week for two and half hours each time, and a sleep over during the weekend;
- Thus, at the time, the child was residing with the father and kept on residing with the father for around 6 months as indicated by Plaintiff in her reply;
- In her affidavit Plaintiff declared that between November 2013 and January 2015 the minor was sleeping both at Defendant's house and at her house, however it was Plaintiff who paid for the child's educational and medical expenses.
- As of January 2015, in her affidavit Plaintiff affirms that the minor resumed his primary residence with her and until the 19<sup>th</sup> of July 2018, Defendant paid no maintenance and also failed to pay his share from the minor's educational and medical expenses.
- Prior to the initiation of these proceedings it appears that the parties had reached an amicable settlement, which settlement however, was never approved by the Courts, wherein they decided that they would both have legal custody and that DO would have access with Defendant every day from 2:30pm till 8:30pm and a sleep-over over the weekend on an alternative basis. With regards to maintenance the parties had mutually agreed that the father would maintain the child and feed him when he was with him while the mother would do the same whenever the child was with her.

- By means of a decree dated 28<sup>th</sup> May 2018, the parties were authorized to proceed with litigious proceedings as evident from the copy of the decree at page 11 of the acts;
- Plaintiff instituted these proceedings on the 20<sup>th</sup> July 2018 (that is within the time frame envisaged in the law)

The above timeline indicates that for the majority of the year 2012, DO resided with Defendant, a fact that is also corroborated by the joint application filed by the parties in the acts of the mediation with number 575/2012. During the rest of the year 2012, it appears that the minor continued to reside with the father, while Plaintiff, only had access as indicated above. Therefore, it is this Court's considered opinion that there are no arrears due for the year 2012.

Between November of 2013 and January 2015, the minor was sleeping both at Defendant's house and at Plaintiff's house, however it was Plaintiff who paid for the child's educational and medical expenses. Thus, it is this Court's understanding that in light of this arrangement no maintenance arrears are due for the above indicated period of time by Defendant.

As of January 2015, the minor resumed his primary residence with Plaintiff mother and Plaintiff contends that until the 19<sup>th</sup> of July 2018, Defendant paid no maintenance and also failed to pay his share from the minor's educational and medical expenses. The Court observes however, that prior to the initiation of these proceedings, the parties had reached an amicable settlement, which settlement, however, was never approved by the Courts, wherein it was decided that they would both have legal custody, and that DO would have access with Defendant **every day from 2:30pm till 8:30pm** and a **sleep-over over the weekend on an alternative basis. With regards to maintenance the parties had mutually agreed that the father would maintain the child and feed him when he was with him while the mother would do the same whenever the child was with her.** This arrangement was also commented on by the social worker in charge of the case, Daniela Darmanin, who affirmed that the minor was residing with the Plaintiff mother solely for the sake of showering and sleeping, as he would spend most of his time after school with the father.

From the evidence adduced, it is very clear to this Court that DO was living alternately with both parents following the termination of his parents' relationship. DO had no primary residence and as such, there was no agreement as to maintenance for a substantial period of time, as the child's needs were provided by the parent responsible for the child on a particular

day. This form of arrangement, evidently left no record of who paid for what over the years. In fact, this Court underscores that no evidence was produced **by either parties** indicating the payment or otherwise of the maintenance and relative expenses, except for the payments tendered for maintenance covering the year 2018, as attached by Respondent with his sworn reply. This Court understands that since there was no official contract, no police reports could have been lodged by either of the parties, nonetheless, Plaintiff failed to, at the very least, compile a list of medical or educational expenses she incurred throughout the different time frames, nor was there any mention of extra-curricular activities the minor DO might have attended from time to time, expenses relating to spectacles, any particular medical interventions or vaccines, despite the fact that at one point Plaintiff did mention that she had to pay for a number of vaccinations.

Despite the fact that the parties' testified on multiple occasions before this Court and each filed an affidavit, during their testimonies, the parties futilely dwelled on their tumultuous relationship and each other's faults, and failed to effectively address the issue of maintenance with detail or at the very least, a degree of accuracy, even though the parties were mindful of the fact DO attained majority during the pendency of the proceedings and that the only matter to be addressed remained the issue of maintenance and arrears.

Thus and in light of the above considerations, it is this Court's considered opinion that the request for maintenance arrears cannot be acceded to.

**For these reasons, the Court:**

- 1. Abstains from taking further cognizance of the first, second and third requests since the parties' son has, in the interim, attained the age of majority;**
- 2. Rejects the fourth request and orders that Defendant is to pay the sum of EUR 300 monthly by way of maintenance and this in accordance with the decree dated 19<sup>th</sup> July 2018, together with half the sum of the medical and educational expenses incurred for the parties' son.**
- 3. Rejects the fifth request in light of the considerations made above;**
- 4. Accedes to the sixth request limitedly and orders that the monthly maintenance in the amount of EUR 300, is to increase each year in accordance with the official cost-of-living increases;**



- 5. Rejects the seventh request, for reasons cited;**
- 6. Abstains from taking further cognisance of the eight request since the parties' son has in the interim attained the age of majority;**

**Cost shall be equally divided between the parties.**

**Read.**

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

**Lorraine Dalli  
Deputy Registrar**