



**CIVIL COURT
(FAMILY SECTION)**

MR JUSTICE HON. ANTHONY G. VELLA

Sitting of Thursday 16th November 2023

Sworn Application 126/2020 AGV

In the names of

JS

VS

TAB

The Court;

Having seen the Sworn Application of JS who humbly requests:-

1. That up until the 23rd April 2020, he resided together with the Defendant, her daughter V and the parties' daughter EJ S , who was born on the 1st November 2018 in his property 12B Cataleya Apartments, Triq Kananea Attard. He was acting as a sponsor for the Defendant and her daughter since they are third country nationals.
1. That after threats that she would leave Malta and take their minor daughter with her, the Plaintiff, requested that a warrant of prohibitory injunction be issued to stop the Defendant from taking their daughter outside the country, and in fact the said request for a warrant was granted by this Honourable Court.
2. That on the 23rd April 2020, the Plaintiff returned home and found nobody. The Defendant had left the home with the parties' daughter. She did not leave any information or indication where she would be taking her.
3. That due to the false and malicious allegations made by the Defendant against the Plaintiff, he is only exercising limited access under supervision, and this is of serious harm to the relationship between the Plaintiff and his daughter and is prejudicing his rights to family life.
4. That primarily due to the Defendant's attempts to cancel the Plaintiff from the child's life and the insistence of the said Defendant to leave with the child for Russia, there is no hope that an agreement may be reached and in fact the mediation had to be closed.
5. That the Plaintiff knows of these facts personally.

That therefore, the Plaintiff humbly requests this Honourable Court deem it fit to:-

1. Order that the care and custody of the minor EJS be entrusted to the Plaintiff or in default to the parties jointly, according to what the Honourable Court deems to be in the best interest of the minor.
1. Order that the country of domicile and residence of the minor EJS remain Malta until the said minor reaches the age of majority.
2. Order that the minor EJS reside principally with the Plaintiff.
3. Schedule adequate access for that parent, who would not be residing primarily with the minor.
4. Give all those other orders that this Honourable Court deems fit in the best interest of the minor.

With costs against the Defendant who is hereby referred to the oath.

Having seen the Sworn Reply of TA B , pleads as follows:-

1. That in the first instance, it is true that the parties had a relationship together, from which the minor child EJS was born on the 1st of November 2018. That the relationship between the parties broke down and this due to the Plaintiff's abusive behaviour both in the Respondent's favour and towards her minor child V from another relationship, and this in front of the minor child E .
2. That with reference to the first demand relating to the care and custody of the minor child, this should be wholly denied given that this is not in the best interest of the minor child in light of the Plaintiff's violent behaviour. That in fact the respondent always took care of the needs of the minor child.

3. That the second demand is also being opposed because it is not in the best interest of the minor child. That in fact, the minor child's domicile should be that of Russia where the minor child spent most of her life and this until the age of majority.

4. That the third demand is also being opposed given that the minor child should reside primarily with the Respondent.

5. That with regards to the fourth demand, it should be decided in the best interest of the minor child and this with all the necessary safeguards.

6. That the respondent objects to all the expenses of the case.

Save other pleas.

With costs against the Plaintiff, including mediation letter and Warrant of Prohibitory Injunction No 42/2020 who is demanded for a reference on oath.

Having seen the Counter-claim of the defendant TAB respectfully requests as follows:-

1. That the parties were in a relationship from which the minor child EJS was born on the 1st of November 2018.

2. That the relationship between the parties broke down due to the Plaintiff's violent character, who was violent towards the Respondent and towards her minor child from another relationship V and this in front of their minor child E

3. That by means of a court decree dated 22nd of May, 2020 the Honourable Family Court awarded the Respondent with the care and custody of the minor child and ordered that the Plaintiff counterclaim exercises access under supervision and this amongst other things.

4. That the facts here declared are known personally by the Respondent.

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

1. Awards the exclusive care and custody of the minor child EJS to the Respondent and authorises her to take all the decisions relating to the health, issuance of identity card, issuing of passports, education and travel of the said minor child and this without the consent of the Plaintiff counterclaim.
2. Orders that the minor child resides with the Respondent and this as established by the Honourable Court.
3. Orders that the domicile of the minor child be in Russia until age of majority.
4. Establishes and liquidates an adequate amount of maintenance which should be paid by the Plaintiff counterclaimed to the Respondent for the said minor child and which should remain payable until the minor reaches the age of eighteen (18) years if the minor stops pursuing her studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years if the minor child decides to pursue her studies on a full-time basis; as well as ordering that the alimony be deducted directly from the salary or income of Plaintiff counterclaimed or work or any other benefits

that he would be receiving and deposited directly in a bank account that is to be indicated by the Respondent and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living and orders that the Respondent receives any benefits relating to the minor child, including but not limited to the children's allowance in its entirety.

5. Orders that the Plaintiff counterclaimed pays all the expenses related to the health, education of the minor child whilst she is still studying including and not limited to uniforms, transport, donations, private lessons and other expenses related to her education, including expenses related to the extra-curricular activities of the minor child.
6. Orders the Plaintiff counterclaimed to pay the Respondent all the arrears relating to the maintenance and expenses of health and education of the minor child.
7. Gives all orders that the Honourable Court deems necessary, including and not limited how the minor child's travel should be regulated, including that the passport of the minor child is kept by the Respondent and this save any other orders which the court deems fit and just.

With costs and interests against Plaintiff counterclaimed reference to the oath of the other person, including Letter of Mediation, Warrant of Prohibitory Injunction No 42/2020 against the Plaintiff counterclaimed.

**Having seen the Sworn Reply of JS to the Counterclaim of TAB
Respectfully pleads as follows:-**

1. That first of all the reconvened Plaintiff categorically denies that he has a violent character and indeed it is the reconvening Defendant that has rendered herself guilty of moral violence against him and this to the detriment of his relationship with his daughter.
2. That it is absolutely untrue that it was always the reconvening Defendant who always took care of the child's needs. Indeed, until the said reconvening Defendant left the Plaintiff's residence and abducted the child without his knowledge or consent, not only did he provide financially and materially for the parties' daughter, the reconvening Defendant and her daughter (from another father), but also cared of the child and regularly did what was necessary such as preparing her food, feeding her and changing her.
3. That the reconvening Defendant, due to her mental health problems as well as her character, is not the suitable parent to raise the child and this as will be proven during the course of this case and therefore, it is not in the child's best interest for the care and custody of the minor to be entrusted exclusively in the hands of the Defendant and neither that the minor's principal residence be with the reconvening Defendant.
4. That it is not in the child's best interest that the country of domicile be Russia and this because the living conditions and standards, including accommodation that the Defendant can provide for the minor in Russia are very low and the probability is that the child would spend most of her time in child care facilities or in the care of third parties or even in the care of her sister V who is ten years old.

5. That the reconvened Plaintiff has every intention to continue to contribute to provide for the needs of his minor daughter as he always has done. The reconvening Defendant, however, should also contribute towards the needs of the minor child.
6. That there are no arrears of maintenance and/or educational and medical expenses due.
7. That since the reconvening Defendant has repeatedly made it clear that she wants to leave for Russia and take the parties' minor daughter and this on a permanent basis, the minor's passport should not be entrusted in the hands of the reconvening Defendant.
8. That for all the above cited reasons all the claims as contained in the counterclaim should be denied.
9. Saving further pleas.

With all costs against the reconvening Defendant who is referred to the oath

Having seen all the documents exhibited, and heard all the evidence;

CONSIDERATIONS

Originally, Plaintiff had initiated these proceedings to be granted sole care and custody of the minor child EJS or failing which, to place the child in the joint care and custody of the parties.

Throughout the proceedings, there were several changes and several applications that brought about different court decrees and consequently, the Court feels that it would be superfluous to delve into the evidence that led to these decrees, that the Court is going to identify hereunder:-

- (i) on the 25th November, 2020, the Court decreed that the supervised access visits as per decree dated 22nd May, 2020 would be substituted with monitored access and access to the minor child had to be exercised every Monday and Wednesday between 4 – 7 pm and during weekends from 9 am – 6 pm alternating between Saturday and Sundays.
- (ii) On the 4th May, 2021, the Court decreed that the monitoring services offered by Appogg can be stopped since access is being exercised regularly and more frequently than had been decreed by the Court.¹
- (iii) A report filed on the 19th July, 2021 by the Directorate of Alternative Care (Children and Youths), confirmed that the monitoring could be stopped.²
- (iv) By mutual agreement before the Court dated 3rd November, 2021, the parties agreed that access would increase at the weekends as from Friday at 17hrs to Saturday 17hrs and the following week from Saturday to Sunday at the same time.³
- (v) Further to an application filed by Defendant on the 29th March, 2022, by a decree dated 14th June, 2022, the Court upheld four of her requests and decreed as follows:-
 - (i) the custody of the minor child be entrusted to both parties;
 - (ii) award access to the Plaintiff

¹ A fol. 133

² A fol. 146

³ A fol. 152

- (a) during the week every Monday from 4pm-9pm and on Wednesday from 4 pm till Thursday at 8 am whereby the father would transport the minor child to school.
- (b) A sleepover from Friday at 5 pm – Saturday at 5 pm and from Saturday at 5 pm till Sunday at 5 pm alternating every week.
- (iii) Awards the father access to the minor child during the public holidays in that the minor child will spend the first public holiday with the Father from 9 am till 6 pm and the following public holiday with the mother and this on an alternate basis.
- (iv) Orders that the father picks up and drops off the minor child from the mother’s residence.⁴
- (v) Further to Defendant’s application dated 15th February, 2023 and Plaintiff’s reply dated 13th March, 2023, the Court upheld the following requests:-

(a) Orders that the minor child EJS be granted in the temporary care of the father, with whom he shall reside given the mother’s circumstances at present and awards access to the mother for the minor child:-

- i) During the week every Tuesday whereby the mother picks up the child from school or if the child does not have school from 4 pm until 9 pm and on Thursday whereby the father picks up the child from school or if the child does not have school from 4 pm till 9 pm.
- ii) A sleepover from the first week from Friday at 5 pm – Sunday at 5 pm with the mother alternating every week.

⁴ A fol. 157

- iii) Awards access to the minor child during the public holidays alternatively with that the minor child shall spend the first public holiday with the mother from 9 am till 6 pm and the following public holiday with the father, on an alternate basis.
- iv) Orders that the child spends mother's day with the mother from 9 am till 6 pm and father's day with the father.
- v) Orders that the mother picks up the minor child from school or the father's residence and drops off the minor child at the father's residence.
- (vi) Orders the father to keep an open line of communication of Whatsapp with the mother and authorizes the mother to have access via video call with the child when she is abroad every day for an hour.
- (vii) Orders the mother to pay maintenance for the minor child in the sum of one hundred and fifty Euros (€150) monthly whilst ordering her to pay half of the expenses in relation to health, education and extra-curricular activities of the minor child agreed to between the parties, thereby revoking the previous decree related to maintenance dated 22nd May, 2020.⁵
- (viii) The court furthermore ordered that the father changes the child's school to that of his place of residence.

Louis Buhagiar, for and on behalf of Jobsplus exhibited Plaintiff's employment history,⁶

⁵ A fol. 306

⁶ Dok. LB 1

Vanessa Bonello, in representation of Lombard Bank confirmed that they had a savings account in Plaintiff's name bearing number 01440540606.⁷

Johanna Bartolo, in representation of Bank of Valletta plc. confirmed that from the searches carried out it resulted that in the Plaintiff's name there was a current account bearing number 4001413207698 and it is still opened.⁸

Having seen all evidence produced by Plaintiff and Defendant.

Having Considered.

Care and Custody

Further to Defendant's application filed on the 15th February, 2023, there was a change in circumstances namely that Defendant was suffering from her chronic urticaria, meaning that she has had a relapse, and is once again suffering from severe allergies. The treatment for this condition necessitates an injection regularly, which in Malta costs around €720 monthly, whereas in Russia it is offered for free.

Having previously suffered from this condition and having already lived in Russia, she had already received treatment for it.⁹

This is one of the reasons that has led her to take a decision and to move temporarily to Russia.

⁷ Dok. VB 1

⁸ Dok. JB 1

⁹ Dok. TR7

Another reason is that despite the fact that she was working in Malta as a clerk with a salary of around €1000 monthly, her employer had warned her that she was going to be made redundant.¹⁰ Moreover, she had a part-time job as a hairdresser, but she had no choice and had to stop working as a self-employed, because was not legally eligible for VAT registration, having been so informed by the said VAT department.¹¹

Admittedly, from the evidence produced, it results that Defendant has problems be they financial as well as psychological due to the consequences she has had to face. She admits that she needs to seek therapy in Russia and for the said reasons, the minor child, must either accompany her to Russia, or alternatively she falls into the care and custody of Plaintiff.

The Court decreed on the 22nd March, 2023, that the minor child was to be temporarily under Plaintiff's care and custody and the Court also authorized him to change the minor's school to be closer to where they reside. There was no objection on Defendant's part, but on the other hand, in her application she insists that Plaintiff must play his role as a father and assume and put forward his responsibilities, due to the impossibility of her being here in Malta.

Although there were accusations from her end that Plaintiff was violent and aggressive, she laments that this was more in his relationship with her daughter V, born from another relationship. She testified that there were never big issues with their daughter E. She does, prior to the decree issued in March, 2023 state that Plaintiff did not assume his responsibilities and would not always follow his access. This is denied by Plaintiff, who admits that he was always prepared to

¹⁰ Dok. TR 5

¹¹ Dok. TR 6

help with their daughter. He used to be concerned that Defendant used to be out or at work or dating and she used to leave their daughter E, with her older sister V .

Representatives from Appogg confirm that overall, the parties used to agree when their daughter was involved, the main issue being solely as to the place of pick up and drop off. These were the main issues on which they disagreed.

It results that what mainly conditioned Defendant's decision to leave Malta, was the fact that Plaintiff had issued a warrant of prohibitory injunction, prohibiting her from leaving the Maltese islands with their daughter E. Plaintiff insists that these were her plans, but he was not going to allow his daughter to live in Russia, where the conditions were far worse than in Malta, where the schooling is not up to Maltese standards and Defendant's residence is a very small apartment.

Despite all these accusations, towards the end of the proceedings, Defendant herself demanded that the Court upholds her request for the child to be placed in the care and custody of Plaintiff.

She did not give any indications of what her plans are, in the sense whether she intends to move back to Malta permanently. She simply requests access and daily contacts via WhatsApp. This gives the impression to the Court that her plans are indefinite and long-term.

A child needs stability in his life and cannot be like a pendulum swinging from West to East without any direction. She has already seen and experienced enough throughout these proceedings. Moving to Russia is not in her best interests as the standard of living that Defendant can offer her, is not equal to that she can be offered in Malta through Plaintiff.

In determining care and custody cases, the Court always prioritizes the child's best interests and will grant joint care and custody, provided that the parties themselves are capable of communicating and cooperating between them. In this case, communication between the parties is very evidently lacking at best, and having the mother reside in another country for long stretches of time will compound this even further,

Having considered all the aforementioned facts, the Court concludes that in the best interests of the minor child, the care and custody shall be entrusted with the father, the Plaintiff in this case, and that furthermore, until such time that Defendant resides in Russia, or in any country other than Malta, the minor child shall reside with her father, the Plaintiff.

All ordinary decisions related to the education and health of the minor child are to be taken solely by the Plaintiff, whereas all extraordinary decisions, shall be taken jointly by the parties, until Plaintiff resides outside Malta.

If she returns permanently to Malta, then the care and custody may be a joint one, and all decisions be they ordinary or extraordinary shall be taken jointly by the parties. To this effect, the parties will need to submit to the Court a joint request in this sense, in terms of Subsidiary Legislation 12.20.

Access

For the duration of the period when Defendant is in Malta, she shall be given access rights to be exercised on the following days:-

- a) During the week every Tuesday whereby the mother picks up the child from school or if the child does not have school from 4 pm until 9 pm and on Thursday whereby the father picks up the child from school or if the child does not have school from 4 pm till 9 pm.
- b) A sleepover from the first week from Friday at 5 pm till Sunday at 5 pm with the mother alternating every week.
- c) Awards access to the minor child during the public holidays alternatively, in the sense that the minor child shall spend the first public holiday with the mother from 9 am till 6 pm and the following public holiday with the father on an alternate basis.
- d) Orders that the child shall spend Mother's Day with the mother from 9 am till 6 pm and Father's Day with the Father.
- e) Orders that the minor child be picked up by the mother from school or the father's residence and drops off the minor child at the father's residence.

While Defendant is residing outside Malta, she shall have free virtual access with the minor child by means of any media platform, for at least half an hour every day between 5pm and 8pm Malta time.

Therefore, Plaintiff must also oblige himself to keep an openline communication of WhatsApp or other platform with the mother to have access via videocall with the child during the time she is abroad every day for 30 minutes.

Moreover, the child's passport shall be retained by Plaintiff and he shall be able to renew the said passport without Defendant's consent.

Maintenance

At present, according to the decree issued by the said Court dated 22nd March, 2023, Defendant has been paying €150 monthly towards the minor child, as well as half the expenses in education, health and extra-curricular activities.

Plaintiff is insisting that this sum is not sufficient and should be increased. Defendant objects to this considering that at present she does not have a permanent full-time job and has found a couple of temporary ones. She is still interested in working self-employed as a hairdresser but has problems here in Malta to have a work permit.

Plaintiff confirms that he works as a Global Trial Leader with an income of approximately €6,500 gross and he also works as a nurse with the Department of Health. He also owns property, and he admits that at present the property is in his brother's name as he was advised to do so when he was undergoing separation proceedings with his wife.

In determining maintenance, the Court must always observe the needs of the person requesting maintenance and the means of the person from whom the said maintenance is being requested. In this respect, the Court tends to agree with Defendant's submissions that there is quite a discrepancy between her income and Plaintiff's. In reality, the Court does not have much information about Defendant's present income, but the presumption is that it is definitely not at a par with that of Plaintiff.

As a result, after having considered all the above, the Court is of the opinion that the maintenance being paid by defendant in the sum of €150 monthly, inclusive of half education, health and extra-curricular activities is sufficient. However, considering that Defendant is presently absent from the Maltese islands, making it more tedious to send each time an amount for education, health and extra-curricular expenses, **an all-inclusive sum of €200 is sufficient to include all the above.**

All children's allowance shall be perceived by Plaintiff.

The said maintenance is to increase annually according to the cost-of-living index and moreover it is to be paid until the minor child reaches 18 years of age or starts a full-time employment or until she reaches 23 years of age if she remains studying full-time until such time.

DECIDE:

Now, therefore, the Court:

Having considered all the above, the Court decides as follows:-

1. UPHOLDS Plaintiff's first request and grants him exclusive care and custody of the minor child, with the limitations as explained above.
2. UPHOLDS Plaintiff's second request.
3. UPHOLDS Plaintiff's third request.
4. UPHOLDS Plaintiff's fourth request as above explained.
5. UPHOLDS Plaintiff's fifth request and orders the payment of maintenance as above explained.

COUNTER-CLAIM:

1. Partially upholds Defendant's first counterclaim as explained above, insofar as and limited only to the eventuality that Defendant returns permanently to Malta.
2. Rejects the rest of the counterclaims as far as applicable.

The costs are to be borne as to one third (1/3) by Plaintiff and two thirds (2/3) by Defendant.

Hon. Mr. Justice Anthony J. Vella

Registrar