



**CIVIL COURT  
(FAMILY SECTION)**

**MR. JUSTICE ANTHONY G. VELLA**

**Sitting of Tuesday 14th November 2023**

**APPLICATION number : 122/2022 AGV**

**Sworn Application No  
122/2022 AGV, in the names  
of:**

**A L E B**

**vs.**

**Dr Mario Caruana and PL  
Peter Sammut appointed as  
curators for MW.**

**The Court;**

**Having seen the Sworn Application of ALEB , whereby she respectfully submits and on oath declares:-**

1. That from a brief relationship between the parties was born the minor child T E S V B on the 3<sup>rd</sup> February 2012.
2. That the relationship has irretrievably broken down and that applicant and the minor child have been living in Malta since 2016.
3. That from that day onwards the applicant has not had no communication with the Defendant and the Defendant has not shown any interest in the minor child nor paid maintenance or contributed financially towards her needs since 2016.
4. That the applicant is having difficulty to take the necessary decisions for the well being of the minor child, including the registration for residency permits with the respective Maltese authorities given that at present the care and custody is vested jointly between the parties.
5. That the parties have been authorised to proceed at this instance by virtue of a court decree of this Honourable court dated 19<sup>th</sup> May 2022 (see copy of the decree hereby attached and marked as Doc C).
6. That the facts here declared are known personally by the Plaintiff.

For these reasons the Plaintiff contends, saving any necessary and opportune decisions, why this Honourable Court should not:-

1. Orders that the exclusive care and custody of the minor child T E S V B is to be vested with the Plaintiff as established by this Honourable Court.
2. Determines and liquidates an adequate amount of maintenance which should be payable by the Defendant to the minor child and which should remain payable until the minor child reaches the age of eighteen (18) years

if the minor child stops pursuing his studies and starts working on a full time basis or payable up to the age of twenty three (23) if the minor child decides to pursue their studies on a *full-time* basis; as well as ordering that the alimony be deducted directly from the salary or income of Defendant 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 Plaintiff and further provides how the said maintenance is to be reviewed and increased yearly so that it reflects the increase in cost of living.

3. Orders that this maintenance should include the Defendant's share of the expenses related with the health and education, including expenses related to extra-curricular activities of the Minor Child.
4. Authorises the Plaintiff to take the necessary decision pertaining to the health, education of the minor child T E S V B, including the issuance and renewal of her passport as well as to register the residency of the minor child with Identity Malta.

With costs and interests against the Defendant who is demanded for a reference on oath.

**Having seen the sworn reply** of Dr Mario Caruana and PL Peter Paul Sammut as curators for MW , respectfully:-

1. That Respondent declare that they are not aware of the facts surrounding this case.
2. That Respondents request that they be given full information over and above the last known address of absentee MW abroad and or any state

and also any means of communication whatsoever through which contact may be made with the absentee M W and if possible, the names of the family members of absentee M W.

3. The Respondents are reserving their right to submit ulterior pleas permitted by the Law if the curators manage to make contact with the absentee after they are provided with the latest details of those known by the Plaintiff.

With expenses against the applicant who is as of now summoned for the reference of her oath.

Having seen all the acts and documents exhibited.

## **FACTS**

In 2010, Plaintiff entered into a relationship with Defendant, with whom she had a child T E S V B on the 3<sup>rd</sup> February, 2012. She decided to terminate their relationship because Defendant was abusive and violent.

At the time they lived in Sweden and in terms of Swedish law she chose to have sole custody of the child, agreeing with Defendant to have access to their daughter once or twice weekly for about an hour. However, she states that Defendant did not always observe this agreement.

She adds that when their daughter was three months old, Defendant was arrested for drug possession, although he claimed that someone had stolen his identity card. Nevertheless, no proceedings were instituted for such theft.

Plaintiff claims that Defendant was an irresponsible father being negligent when she was in his presence and in fact as a result of this in 2013, Defendant was

granted limited visitation rights through a court order. During such a period she admits, she noticed her daughter would return from the access experiencing digestive issues, she was having trouble sleeping and she would also show signs of neglect such as unchanged diapers and hunger.

She explains that for a period Defendant would visit T every alternate weekend and after petitioning there was a time when he was given the right of sleepovers. However, she further explains that Defendant was not consistent in exercising his access rights and moreover, their daughter was not keen to go with her father. She admits to having problems with interacting with Defendant when it came to his visitation rights, so much so that social services had to get involved to facilitate their exchanges.

Plaintiff reiterates that during such a time, T was showing signs of neglect, such as problems with constipation, bruising and the minor had also accused the father of abusing her, but the investigation had to be closed, because the minor refused to talk to the police on this issue.

Due to these problems, the social services decided to investigate them as parents and meanwhile all visitations' rights to Defendant were suspended due to suspicions of possible abuse.

The investigation required that T lives with Plaintiff for 6 continuous weeks and social workers would live with them on a full-time basis, after which the minor would live with her father for 6 weeks.

Between May 2<sup>nd</sup> and June 15<sup>th</sup>, 2016, Plaintiff explains that she was put under investigation, and this was detrimental to her health, with the result that the social workers issued a care order for T to be placed in state care. However, she challenged this order and successfully regained custody of the child.

Between 15<sup>th</sup> June and July 7<sup>th</sup>, 2016, the investigation into Defendant's abuse commenced, from which eventually, the social carers concluded that he was incapable of taking care of the minor child, with the result that she was placed in Plaintiff's custody. Since there were indications of abuse, Defendant never regained visitation rights.

In August 2016, Plaintiff moved to Malta having gained full custody of the minor child. Ever since she has settled in her job as a senior analyst with Betsson and her daughter attends St. Clare College, Sliema Primary and she also participates in various extra-curricular activities.

Since 2016, Plaintiff confirms that Defendant has not been in contact neither with her nor with her daughter. There was one occasion when his lawyer contacted hers, but he never followed up.

EB , Plaintiff's mother confirmed her daughter's version and moreover she was very involved in the child's life when they were both living in Sweden.

### **Maintenance**

Plaintiff explains that she has always maintained their daughter, although there was a time when Defendant was paying €150 monthly for her and now, she claims arrears for this maintenance.

Presently she works at Betsson where her income is that of €31, 000 gross which sometimes increases with overtime.

She lists out the expenses she has with respect to running the household, as well as the expenses related to the education and health of the child.

**Lorraine Attard**, in representation of HSBC Bank Malta plc. confirmed that from the searches carried out, Plaintiff has a current account in her name bearing number 009138264001, which is still active.<sup>1</sup>

She also had a loan account with Mortgages department bearing number 16204352.<sup>2</sup> There was also a credit card account.<sup>3</sup>

**Eleanor Vella**, in representation of Identity Malta, confirms that there were various applications by Plaintiff for change of address as results.<sup>4</sup> She confirms that the first application was on the 18<sup>th</sup> April, 2017. She also confirms that Plaintiff had to present the minor's passport.

### **Having considered:**

### **Care and Custody**

Plaintiff brought forward very clear evidence to show that Defendant is an irresponsible father and already way back in 2016, the Swedish Court had removed his visitation rights to his child, due to founded suspicions that there was possibility of abuse on the said child.

Plaintiff also produced evidence to show that Defendant also used to abuse of drugs and was subjected to criminal proceedings before The Stockholm District Court.<sup>5</sup>

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<sup>1</sup> Dok. LA1

<sup>2</sup> Dok. LA 2

<sup>3</sup> Dok. LA 3

<sup>4</sup> Vide Dok. EV 1 u EV 2

<sup>5</sup> Vide judgment dated 21<sup>st</sup> January, 2015.Dok. ALB 7 a fol. 97

It is also not contested that Defendant has not seen the minor child since 2016 and apart from one occasion when he contacted a lawyer, he did not seem to make an effort to see her.

Considering the main issues that impeded Defendant from seeing his daughter, namely abuse and negligence, there seems no doubt that this Court has to grant Plaintiff exclusive and sole care and custody of the minor child T.

Furthermore, all decisions related to the health and education of the minor child shall be taken exclusively by Plaintiff, as well as the said Plaintiff shall be entitled to hold the minor's passport and apply for its issuing without the requirement of Defendant's signature.

Plaintiff shall also be entitled on behalf of their minor daughter to register for her residence permit.

### **MAINTENANCE**

Plaintiff is claiming arrears for maintenance from Defendant as well as a monthly amount of maintenance. She explains that for a time Defendant used to give her €150 monthly and then he stopped in 2016, in all probability, because by that time he was denied access to his daughter.

Plaintiff has not produced any evidence as to what Defendant's income consists of, but in any case this is an arduous task, considering that she has not been in touch with him for a number of years.

In quantifying maintenance, the Court has to consider what the needs of the person claiming maintenance are and what are the means of the person being asked to pay maintenance.



Presently, Plaintiff is employed with BML Group as a Responsible Game Coordinator where her income totals around €31,000 gross and this increases at times depending on her overtime.

In her affidavit she identifies her various expenses including the house loan amounting to €544 monthly with HSBC Bank Malta plc. health insurance and home insurance amounting to approximately €400 a year. Around €250 monthly on utility bills.

In addition, the child's expenses are substantial and apart from education expenses, she attends various extra-curricular activities from dancing, drama and scouts, that according to Plaintiff cost her around €2000 a year consisting of fees and approximately another €500 for clothes and equipment and camps related to these activities.

Moreover, there are health expenses, in particular the care of her eyes since the minor's eyesight has been deteriorating for a while, such check ups and purchasing of new spectacles amounting to a yearly expense of €465.

It is understandable that Plaintiff is doing her utmost to take good care and offer her daughter a good upbringing. Nevertheless, Defendant remains at law, T's father and as such he shall assume his obligations, mainly that of maintaining his daughter. The Court lacks the evidence to substantiate and quantify an amount of maintenance, but generally in such circumstances, it applies an amount calculated on a minimum wage.

Thus, for all intents and purposes, Defendant is to pay the sum of €250 monthly as maintenance towards his daughter T, as well as half the education and health expenses.

As to the arrears of maintenance, the court notes the Plaintiff has not made a claim for the payment of arrears of maintenance. However, since the request is tied to the request of maintenance, the Court feels that it has to pronounce itself, since it is also in the best interests of the child that the father assumes his responsibility as a parent and contributes to the upkeep of his daughter. The fact that he failed to do so in the past should not be seen as some victory or reward on his part. It is the least that defendant can do in the circumstances.

Since there was no decree issued by the Court on the amount of maintenance and since 2016, Defendant has stopped paying the said maintenance, the Court calculates that the amount due is €150 x 6 years and 11 months = €12,450.

## **DECIDE**

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

1. Upholds the first claim.
2. Upholds the second claim and orders Defendant to pay Plaintiff the maintenance as decided above until the child reaches majority or is in full time employment or until 23 years of age if she continues studying on a full-time basis.

The said maintenance is to increase annually according to the cost-of-living index.

3. Upholds the third claim in part and orders Defendant to pay half the education, including extra-curricular activities and health expenses.
4. Upholds the fourth claim.

Costs are to be borne temporarily by plaintiff and shall become entirely recoverable from Defendant when his whereabouts are determined.

**Hon. Mr. Justice Anthony J. Vella**

**Registrar**