



**FIL-QORTI CIVILI
(SEZZJONI TAL-FAMILJA)**

L-ONOR. IMHALLEF ANTONIO G. VELLA

Seduta ta' nhar il-Hamis 16 ta' Novembru 2023

Rikors Guramentat nru : 36/2023 AGV

SJ

Vs

Dr Brandon Muscat u

PL Quentin Tanti

Bhala kuraturi deputati biex jirrapprezentaw

l-assenti WH detentur

tal-passaport tar-Renju Unit bin-numru

402701018 bidigriet tat-24/02/2023

Il-Qorti ;

Rat ir-rikors gumentat ta' SJ datat 22 ta' Frar 2023,

Tesponi bir-rispett u bil-gument taghha tikkonferma s-segwenti:-

1. Illi l-esponenti kellha relazzjoni ma' WH detentur tal-passaport tar-Renju Unit bin-numru 402701018 u minn din ir-relazzjoni twieldu zewgt minuri MJ H u WCH nhar id-29 ta' Awwissu 2010 u 18 ta' Ottubru 2013 rispettivament (certifikat tat-twelid annessi u mmarkati Dokument SJ 1);
2. Illi r-relazzjoni bejn il-partijiet intemmet u nhar l-14 ta' Gunju 2017 il-partijiet iffirmaw kuntratt ta' kura u kustodja fl-atti tan-nutar Karen Valletta fejn irregolaw l-kura u l-kustodja , manteniment u access tal-minuri . Dan il-kuntratt hawn anness u mmarkat bhala Dokument SJ 2.
3. Illi l-konvenut kien telaq ,mill-gzejjer Maltin nhar 22 ta' Mejju 2016 ghar-Renju Unit qabel ma ffirmaw l-kuntratt ta' kura u kustodja . Infatti kien ta' prokura lil avukata tieghu biex tidher ghan-nom tieghu fuq l-imsemmi att.
4. Illi wara li gie iffirmit il-kuntratt, il-konvenut telaq lejn ir-Renju Unit bikonsewgeza li r-rikorrenti tilfet kull kuntatt minn mieghu u ghadha sal-guranta tall-lum fl-impossibilita li tikkomunika mieghu, hekk kif

ikkonfermat permezz ta' dikjarazzjoni guramentat tagħha data 22 Ta' Mejju 200, anness u mmarkat bhala Dokument SJ 3.

5. Illi r-rikorrenti pruvat tikseb sebgha snin komunikazzjoni mal-konvenut permezz tal-intervent tal-Awtorita Centrali ta' Malta immarkata Dokument SJ4.
6. Illi għal dan l-aħhar seba' snin ir-rikorrenti ilha trabbi lil uliedha wahedha u minghajr ebda kontribuzzjoni jew kuntatt da parti tal-konvenut;
7. Illi għalhekk ir-rikorrenti tehtieg li l-kura u l-kustodja tal-minuri MJH u WCH tghaddi esklussivament fiidejha ad eskuluzzjoni tal-konvenut WH ;
8. Illi aktar minn hekk ir-rikorrenti qed issib kull darba li tipprova tiehu decizjonijiet relatati mal-edukazzjoni sahha u safar tal-minuri infatti mhux l-ewwel darba li ntavolat rikors quddiem l-Onorabbli Qorti sabiex tkun tista' issiefer fuq vaganza ma' uliedha.
9. Illi fil-kuntratt li kien sar bejn il-partijiet fi klawnsola nru 1 , hemm indikat li fl-eventwalita' i'li wiehed mill-partijiet ikun nieqes mill-gzejjer Maltin jew ma jkunx kapaci jezercita l-obbligi imposti fuqu, il-kustodja matul l-assenza jew inkapacita' tigi ezercitata mill-parti l-oħra;
10. Illi pero' tenut kont tal-fatt li l-konvenut ilu għal madwar sebgha snin, ir-rikorrenti titlob li l-konvenut jigi svestit mill-awtorita' ta' genitur ghaliex mhuwiex jikkontribwixxi għal izvilupp , manteniment u edukazzjoni ta' uliedu ai termini ta' Artikolu 3B tal-Kodici Civili u kull tama ta' Relazzjoni

bejnu u bejn uliedu bit-trapaa taz-zmien qieghde tisfaxxa fix-xejn. Dan certament li mhuwiex fl-ahjar interess tal-minuri uliedu.

11. Illi r-rikorrenti ghamlu diversi tentattivi tuli s-snin biex ma tasalx sa dan il-punt izda m'ghandux fl-ahjar interess tal-minuri li ghal kull decizjoni li hemm bzonn li titiehed fuqhom u dwar hajjithom , ir-rikorrenti trid tibqai obligata li tintavola r-rikors l-Qorti minhabba li l-konvenut fettilu jabbanduna lil uliedu.

12. Illi permezz ta' digriet moghti minn dina l-Onorabbli Qorti nhar il-25 ta' Ottubru 2022, ir-rikorrenti inghata l-awtorizzazzjoni mehtiega sabiex tipprocedi bir-rikors guramentat skont l-Artiklolu 930 tal-Kap 12 . Din l-awtorizzazzjoni giet estiza permezz ta' digriet datat 29 ta' Dicembru 2022 (kopja informali taz-zewg digriet imsemmija annessa u mmarkati Dok SJ 5 u SJ. 6).

13. ILLI kontestwalment ma' dan ir-rikors l-esponenti qieghda tipprezenta rikors ghal-hatra ta' kuraturi deputati sabiex jirraprezenta l-interess tal-intimat WH .

Ghaldaqstant ghar-ragunijiet supost l-esponenti umilment titlob lil dina l-Onorabbli Qorti sabiex jekk joghgobha:

I. Tordna l-awtorita' tal-genituri fir-rigward tal-minuri MJH u WC H tigi vestita unikament fil-persuna ta' omm il-minuri , cioe' ir-rikorrenti.

- II. Tafda u takkorda li l-kura u l-kustodja tal-minuri tigi fdata esklussivament fi idejn ir-rikirrenti ommhom in vista tal-fatt li missier il-minuri huwa assenti mill-gzejjer Maltin u ma hemm ebda mezz kif l-omm tista tikkuntatja l-istess missier ghal ghajnuna u bzonnijiet li l-minuri jista jkollhom bzonn.
- III. Tawtorizza l-omm sabiex tiehu decizjonijiet ta ífirma taz-zewg genituri, sew jekk biex il-minuri tattendi istituzzjoni edukattiva , jew extra kurikulari u sew jekk ghal hwejjeg ohra, il-firma tal-omm tkun sufficjenti sabiex l-applikazzjoni titmexxa.
- IV. Tordna li kull fejn hemm il-htiega ta firma taz-zewg genituri sew jekk biex il-minuri tattendi istituzzjoni edukattiva , jew extra-kurrikulari u sew ghal hwejjeg ohra, il-firma tal-omm tkun sufficjenti sabiex l-applikazzjoni titmexxa;
- V. Tawtorizza lil-omm sabiex tkun tista tapplika ghal hrug tal-passaport ghal minuri minghajr il-firma tal-konvenut u sabiex tibghat d-dritt li tibqa ggedded kull passaport sussegwenti li l-minuri jkollohom bzonn sakemm jilhaqa l-eta tal-maggoranza bil-firma taghha biss.
- VI. Taghti provediment ulterjuri rigwardanti l-minuri li dina l-Onorabbli Qorti jidhrilha xierqa u opportuna fic-cirkustanzi.

Rat ir- Risposta Guramentata tal-Avukat Dottor Brandon Krik Muscat (KI 576091M) Et noe;

Jesponu bir-rispett:

- I. Illi l-epsonenti ma humiex edotti mill-fatti u jirrizervaw minn issa li jirrispondi b`imod aktar estensiv hekk kif jigu moghtiha l-informazzjoni relattiva.

- II. Salv eccezzjonijiet ulterjuri.

Having seen that proceedings were being conducted in the English language;

Having heard all the evidence and submissions made by the parties;

CONSIDERS:

The facts of the case are as follows. The parties had met some time in 2009 and started a relationship together, out of which two children were born in 2010 and in 2013. They subsequently moved to Malta to live here as a family. Plaintiff states that the relationship ended, and they had agreed between them as to the children's care and custody and maintenance arrangements by means of a public deed in the acts of Notary Karen Valletta dated 14 June 2017. In the meantime, defendant had left Malta to relocate to the United Kingdom, and since then plaintiff has lost all means of communication with him and is not aware of his whereabouts. She had instructed the Maltese Central Authority to try to find him,

as he was not paying his maintenance or keeping contact with the children, but even this proved unsuccessful. Since the contract stipulated that they shared joint custody, she is requesting the Court for that clause to be changed and to be awarded sole care and custody of both children, particularly to be able to apply for the children's needs with the Maltese authorities without having to resort every time to mediation proceedings to obtain authorisation.

Defendant was absent in these proceedings, represented only by curators appointed to safeguard his interests and possibly make contact with him during these proceedings. The evidence submitted by Plaintiff has not been contradicted in any way, and therefore the Court may take her version of events as proven fact at law. The Court fully understands Plaintiff's predicament. She has single-handedly brought up the children, with little or no help at all from Defendant during these last seven or eight years. She is rightly requesting the Court to have Defendant divested of parental authority over the children and be placed in a position to apply on her own for all the children's needs, both educational and anything related to their health and medical requirements, without the written consent of their biological father.

The Court sees no reason at law to withhold these requests. It is in the children's best interests that their mother may apply on their behalf without requiring prior written consent from Defendant. The Court is of the opinion that Plaintiff has already been carrying the burden of raising two children on her own for almost eight years. Upholding her requests will at least make that burden a little lighter and less bureaucratic. The Court sincerely hopes that this judgment will help make her life and that of the children somewhat easier, in the absence of the

Defendant being present in their lives. For these reasons, all Plaintiff's requests will be upheld.

DECIDE:

Now, therefore, the Court:

UPHOLDS all Plaintiff's requests.

Orders the parental authority in relation to the minors MJH and WCH is solely vested in the person of their mother, that is the Plaintiff.

Entrust and grant the care and custody of the minor children to be exclusively vested in the hands of the Plaintiff mother since the father of the minors is absent from the Maltese Islands, and there is no means with which the mother can contact the said father for assistance or any needs which the minors may require.

Authorises the mother to take all the decisions regarding health, education and travelling of the minor children unilaterally, without the need to obtain verbal or written consent from the father.

Orders that whenever the need for the signature of both parents arises, whether it is the minor children to attend an educational institution, or extra-curricular

activities, or any other issue, the signature of the mother would be enough for such application to be valid and processed.

Authorises the mother to apply for the issuance of the minors' passports without the signature of the defendant, and for the mother to be granted the right to renew every subsequent passport the minors would require until they reach the age of majority, using only her signature.

All costs are to be borne temporarily by Plaintiff, but shall become recoverable from Defendant, if and when his whereabouts are determined.

Judge

Hon Anthony G Vella

Cettina Gauci ó DEP REG