

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 13th of March 2024

Application no.: 222/2021 JPG

Case no.: 27

AS

Vs

KB

The Court:

Having seen the application filed by Plaintiff dated 10th September 2021, at page 1 et seqq., where in it stated that:

- 1. That from a relationship between the parties, on X, the minor SBS was born.*
- 2. That the applicant is the main carer of the minor SBS, as she assumed all the responsibilities of both parents, upon the breakup of the relationship, and this as will be proved during the course of these proceedings.*
- 3. That in virtue of a decree in the acts of the mediation proceedings bearing number 1600/19 dated the ninth (9th) March of the year two*

thousand and twenty (2020), this Hon. Court ordered that the applicant be entrusted with the parental authority as far as minor SBS is concerned; with the care and custody of the said minor, as well as with the faculty that the mother signs whatever forms and/or documents of extraordinary nature.

- 4. That unfortunately the father has been battling a serious drug addiction for a number of years. The mediation process has been quite long, with the hope that the father succeeds in overcoming this addiction, however, this did not result.*
- 5. That the applicant is authorised to proceed with this sworn application in virtue of a decree of this Hon. Court, dated the twelfth (12th) of July of the year two thousand and twenty one.*

Therefore the applicant humbly requests this Hon. Court so that for the above reasons:

- 1. Orders that the parental authority of the minor SBS be entrusted to her.*
- 2. Entrusts the care and custody of the minor SBS to her, whereas confirms that the residence of the minor be with the Mother.*
- 3. Orders that all decisions, both of ordinary nature, as well as those of extraordinary nature regarding the upbringing, health, education, extra-curricular activities, as well as decisions regarding domicile, travel, issue of and extension of passport of the minor son be taken exclusively by the applicant, and this without the need of signature of the respondent.*
- 4. Establishes access for the father, if this is in the minor's best interest, and the modality of such access, and if needs be, such access has to be exercised by the respondent under supervision.*
- 5. Liquidates and establishes maintenance for the minor, and this until the minor reaches the age of eighteen years if he decides to stop from his studies*

and starts working, or until he reaches the age of twenty three years, if he decides to continue studying on a full time basis and subsequently orders the respondent to pay the said maintenance as liquidated; with all the modalities of payment, including provisions for the periodical increase in order to reflect the rise of living index, as well as orders that all expenses of health, education and extra-curricular activities of the minor be paid by both parents in equal shares, as well as establishes the mode of payment of such expenses.

- 6. Orders that the said maintenance be deducted automatically from the salary, profits, place of work that the respondent has or might have, or from any social benefits that he may be receiving from time to time.*
- 7. Orders that the said maintenance be deposited in bank account in the name of the applicant.*
- 8. Declares that the respondent is responsible for the payment of arrears of maintenance as well as his share of expenses of health, education (and extra-curricular activities if the case is so), as well as rise in living index, and this as will be proved during the proceedings.*
- 9. Liquidates the maintenance arrears as well as the respondent's share of expenses of health, education (and extra-curricular activities if the case is so), as well as rise in living index, not paid by the respondent.*
- 10. Condemns the respondent to pay the applicant the maintenance arrears as well as the respondent's share of expenses of health, education (and extra-curricular activities if the case is so), as well as rise in living index, not paid by the respondent.*
- 11. Orders that all social benefits and/or social assistance which is payable to the minor SBS be paid to the applicant.*
- 12. Give all those orders, which are appropriate, that concern the minor SBS.*

With costs against the respondent, who is summoned so that a reference to his oath be made.

Having seen that prior to the first sitting that is of the 25th of November 2021, Defendant was notified with the sworn application however failed to file a sworn reply, since the Court was informed that the parties were very close to reaching an amicable agreement and for the purpose of limiting legal costs, a request was made so that the sworn reply be filed only after the following sitting should the parties fail to reach an agreement;

Having seen that Dr Victor Scerri renounced as counsel to Defendant by means of a note at page 30 of the acts;

Having seen that Defendant, thereafter failed to file a sworn reply;

Having seen that during the sitting of the 16th of October 2023, (vide fol 154) Dr Brandon Kirk Muscat from Legal Aid was appointed to assist Defendant;

Having seen that Dr Brandon Muscat during the sitting of the 29th of January 2024, informed the Court that he was renouncing to the cross-examination of the Plaintiff;

Having heard final submissions from counsel to the parties;

Considers:

Plaintiff testified by means of an affidavit (vide fol 32 et seq) and explained that she met Defendant on February of 2016 at a party. Defendant was twenty-six (26) at the time while she was twenty-four (24). Plaintiff testified that at the time both of them suffered from depression and substance misuse disorder and were both dependent on heroin. When in March of 2016 she moved to Gzira, Defendant moved in with her. During this time, they used to fight a lot and Defendant would often be paranoid and accuse her of cheating. In March of 2017, Plaintiff explains that she stopped using drugs and in fact continued working with the Detox Center to come off the methadone and then suboxone. By September 2017 she was completely recovered and began trauma

therapy with Dr Gail Debono, and was subsequently appointed a psychotherapist from Appogg, Romina Baldwin, who is still her therapist today. By October 2017 she broke off her relationship with Defendant but then in December 2017 discovered that she was pregnant.

She affirms that they tried to make it work for the sake of the baby, however Defendant was still dependent on drugs. She kept on working two jobs right until she gave birth as Defendant was never able to hold down a job. Their son was born on the X, and is now aged X. It was a traumatic birth as Plaintiff had to undergo an emergency caesarean. **At the time, Defendant was taking advantage of her immobility and was stealing money from her to buy heroin, when he was supposed to be buying groceries, nappies and other necessities.** When she returned to week after three months of giving birth, Defendant would be with the minor at her home, since she believed Defendant was clean at the time.

Plaintiff explains that between January and October 2019 Defendant was working with Appogg and Sedqa and she believed him when he told her that he was clean. However after the minor's baptism in October 2019, on returning from the ceremony, she found Sam screaming in the apartment while Defendant was passed out on the sofa, high on heroin. At this point she immediately broke up with defendant and initiated mediation proceedings and was awarded the *pendente lite* care and custody of their son. She explains that Defendant relapsed yet another time, and has on several occasions, being aggressive, broken furniture and other possessions.

Plaintiff testified that Defendant only contributed **once by way of maintenance** and it has always been Plaintiff who contributed for their son's upbringing, however she has never stopped Defendant's access. Due to a change of circumstances, Plaintiff's employment was terminated and she is now looking after their son on her own as she has no family support in Malta but is being financially supported by her family from abroad.

Louis Buhagiar on behalf of JobsPlus, testified on the 6th of March 2023 (vide fol 80 et seq), and exhibited the parties' jobs plus employment history. (Vide Doks LB1 and

LB 2) witness further explained that Defendant has been unemployed since March 2022.

Re-produced on the 29th of March 2023, (vide fol 86 et seq) Plaintiff re-confirmed her version of events as stated in her affidavit and confirmed that Defendant was making use of heroin while he was with the baby while she was at work. She confirmed that when she found Defendant unconscious, the minor was just under eighteen (18) months and at the time the minor had not yet started walking. She had found the baby on the floor. At the time she had stopped all contact between the child and Defendant and insisted that he went to Rehab. Defendant has now been living with his mother ever since.

Plaintiff explains that Defendant's access with the minor is supervised by Plaintiff or by Defendant's mother. Plaintiff confirms that Defendant has not been paying any maintenance, and **affirms that ever since the minor's birth, Defendant gave her two hundred euros in total.** Plaintiff confirms that she trusts Defendant's mother completely when the child is with her.

Saviour Theuma on behalf of the Department for Social Services, testified on the 9th of May 2023 (vide fol 124 et seq), and explained the relative documentation in relation to the social benefits received by both parties. (Vide Dok ST1 and ST 3)

Dr Gianluca Bezzina, GP specified in addiction with Sedqa, testified on the 12th of June 2023 (vide fol 150 et seq) explained that Defendant is one of his patients, and has been treating him since June of 2021. **Defendant had a relapse of his heroin addiction.** Witness affirms that Defendant keeps regular contact and has made quite an improvement. Defendant suffered from heroin and cocaine addiction and a dependency on medicinal tablets. There was a **relapse in February of 2022**, when he was dismissed from his employment, but has been following the plan quite well and generally listens to the advice he is given. Defendant attends appointments once every two weeks. Witness explains that he has been offering him additional support ever since Defendant's social worker was assigned to another team.

Witness explains that he also follows Defendant's brother, and despite the fact that his brother's situation is more chaotic, Defendant still manages to make a good effort and keep up his good work. Witness confirms that Defendant is under Sedqa's care and is still on methadone. Witness confirms that **Defendant has just recently been employed as a helper during auctions.**

Dr Dianne Galea, on behalf of Sedqa testified on the 12th of June 2023 (vide fol 143 et seq) and explained that Defendant was on their waiting list following contact made in May of the year 2023. Defendant was waiting to be allocated a social worker to initiate work on his care plan. In the past year, Defendant had made contact from 2005 to 2006, from 2010 to 2011, and from 2012 until 2020. There have been periods where contact was consistent and regular and even Defendant's family was also involved in his progress. Defendant's case **was closed in March 2022**, however, following such closure, Defendant **made contact again in May of 2023.**

Maria Caruana, on behalf of Caritas, testified on the 12th of June 2023 (vide fol 139 et seq) and explained that Defendant first made contact with the Agency on the 5th of October 2006, and at the time Defendant used to make use of heroine, and was given methadone everyday to stop him from using heroin. There was also contact in the Summer of 2007, however this time, Defendant was referred from Mount Carmel. At the time he had informed them that he would be attempting the program by Oasi in Gozo since at the time his girlfriend was doing their same program and couples were not allowed to be in the same program. After an absence of several years, he resumed contact in 2009 and in 2015. In 2016 he had informed them that even his girlfriend was using and this was the most difficult time for Defendant. During this period, contact was quite haphazard and the last contact was in 2022 when he had just come out of Dar l-Impenn, however there was no subsequent contact.

Paul Smith, Plaintiff's father, testified by means of an affidavit, (vide fol 156 et seq) and explained that he has been in Malta for the past six years and that he had moved to Malta when his daughter got pregnant. Witness affirms that he has given Defendant numerous chances, but at this point, he has run out of said chances. Witness testified that he has driven Defendant on numerous occasions for his rehab sessions and has even driven Defendant's mother, his daughter and grandson to see Defendant whilst in rehab.

Witness contends that since his grandson's birth, Defendant never contributed for the minor's upbringing, and **instead Defendant stole from his daughter.**

Witness confirms that together with his daughter's mother, they help their daughter financially where possible since they cannot look after the minor regularly and thus allowing their daughter to engage in full time employment.

Stephania Calafato Testa on behalf of the Registrar of Criminal Courts, testified on the 8th November 2023 (vide fol 223 et seq) and exhibited documentation in relation to court proceedings against Defendant, which totaled a number of five concluded cases before the Magistrate Courts. (Vide Dok SCT1-SCT5)

Adrienne Szabadi, testified by means of an affidavit (vide fol 259) and explained that she has been friends with Plaintiff for twelve (12) years now, that is, since both of them moved to Malta. Witness contends that despite the fact that Plaintiff has had issues with Defendant, Plaintiff has always ensured that the child has a relationship with the father in a safe and controlled way. Despite the fact that Plaintiff has been through a lot because of Defendant, Plaintiff has always supported Defendant out of love for their son. Witness affirms that Defendant has not accepted responsibility for the minor due to his incapacity consequent to drug abuse, and is afraid that by the time Defendant gets his act together, their son will be an adult.

Martha Dowling testified by means of an affidavit (vide doc MD1) and explained that she is a close friend of Plaintiff's and has spent many weekends and holidays together with Plaintiff and her son, since the minor is a close friend to her daughters. Witness adds that throughout the years she has witnessed Plaintiff do everything possible for the minor, while Defendant did the bare minimum. Witness affirms that access with the Father is supervised by the paternal grandmother, and has on numerous occasions accompanied Plaintiff to pick up the minor for the grandmother's house. Witness recalls a number of occasions where Plaintiff had called her and told her of Defendant's many violent outbursts. Witness contends that despite the fact that Defendant cares about his son, he is incapable of being a responsible parent and has not had a consistent job, nor has he made any financial contributions. Witness adds that Plaintiff also pays for the

minors' occupational therapy and educational psychologist since Plaintiff noticed that there might be some issues with the minor's development.

Considers:

This is a judgement following court proceedings instituted by Plaintiff requesting this Court to be entrusted with the exclusive care and custody and parental authority of the parties' minor child SBS born on the X, and who is currently X years old.

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 primarily 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 primarily regulated by the principle of the best interests of the child, the best utility and best advantage to the interests of the child.¹

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

¹ **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 ta' ċirkostanzi personali u 'de facto' li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut..."

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).

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 23rd 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.²

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.

² "Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed 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 taġhti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġurisprudenza kostanti taġhna hawn 'il fuq iċċitata.""

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.”

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’ ugwaljanza u għandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, “jerfghu 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).³

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 irriteniet illi l-ġenituri ma jistghux 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-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbilta` tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-

³ 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*)

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)⁴

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 mcaħħdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neċessita` għall-edukazzjoni u għall-iżvilupp tagħhom.”⁵

Considers:

From the acts of the case it transpires that the parties met in February of the year 2016. Regrettably, as admitted *ex-admissis* by Plaintiff in her uncontested testimony, both contending parties were drug users. However, unlike the Defendant, Plaintiff stopped using drugs in March of 2017 and was completely recovered by September 2017. In October 2017 Plaintiff terminated her relationship with Defendant, but discovered she was pregnant the following December. It appears that Defendant was and still is struggling with the consequences of drug abuse.

The Court observes that from the acts of the proceedings, Defendant failed to file a sworn reply despite the fact that he appeared before this Court as presided on the first sitting, that is the sitting of the 25th of November 2021. (*vide page 20*).

⁴Translation: “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)”

⁵ 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.”

From the uncontested testimony of Plaintiff, it is apparent that the parties' relationship was not a healthy one, but one that unfortunately sustained their drug habit. However, this Court commends Plaintiff's efforts in her determination to turn her life around, and despite all the hardships endured, she alone took on the responsibility of parenthood to the parties' child. From the evidence adduced, it is blatantly obvious that it was solely Plaintiff who attended to the minor's needs both emotionally and financially. This was further corroborated by the testimony of the professionals entrusted with the care and rehabilitation of Defendant. It is apparent that Defendant could not hold down a job for more than a few weeks, and as a result, Plaintiff had to work more than one job to ensure a decent living for them all. This Court notes that by means of a decree during the mediation proceedings, Plaintiff was vested with the *pendente lite* exclusive care and custody of the parties' minor son by this Court as diversely presided. (*Vide decree at page 12 of the acts*)

Despite the fact that Defendant seems to have overcome his addiction problems for which he is to be commended especially in light of the circumstances he faces at home, this Court is duty bound to determine the merits of the case primarily on the child's best interest. In light of these considerations, the Court deems that in the best interest of the parties' minor child, Plaintiff mother is to be vested with the exclusive care and custody of the minor child. The Court therefore orders that Plaintiff mother shall take all the decisions both of an ordinary as well as extra-ordinary nature, with regards to the upbringing, health, education, extra-curricular activities, travel and the issue and extension of the minor's passport, and this without the consent, signature or presence of Defendant father.

With regards to access, this Court has seen that Plaintiff has always striven to maintain a good relationship between the child and Defendant, providing access to the father whilst ensuring the safety and wellbeing of the child under the supervision of Defendant's mother. The Court orders that said access shall be coordinated between the parties bearing in mind the age and safety of the parties' minor child and shall be under the supervision of the Defendant's mother, that is the minor child's paternal grandmother. Additionally, the Court orders that said access is not to take place in the presence of Defendant's brother.

With regards to Plaintiff's request for maintenance and maintenance arrears, the Court notes that from the evidence produced, Plaintiff was unemployed and receiving social benefits as indicated from the documents at page *110 et seq* of the acts. It appears that Defendant has

just been engaged in employment. In her testimony Plaintiff explained that she is being financially supported by her parents, a fact which has also been corroborated by Plaintiff's father in his affidavit. (Vide affidavit *at fol 156 et seq*) Plaintiff also exhibited a list of expenses she incurs for the minor and explains that she receives assistance in the form of a food bank, by F.E.A.D. operated by the FSWS and benefits from reduced utility bills. She also affirmed that in the past the minor used to attend some extra-curricular activities however said activities had to be stopped because of financial constraints. Plaintiff also exhibited a series of receipts for the said expenses incurred.

As previously indicated, it is evident that Defendant never contributed towards his son's upbringing⁶ and basically lived off Plaintiff throughout their relationship, compelling Plaintiff to consequently bear alone the responsibilities and burdens of child rearing. In light of the above considerations, the Court orders the Defendant to pay the sum of three hundred euros (€300) each month by way of maintenance for the minor child, which sum includes Defendant's share of the minor's educational, medical and extracurricular expenses. The Court orders that this sum is to be deducted directly from any salaries, social benefits, or other income Defendant might be receiving. Such amount shall be increased according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minor stops pursuing his studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years should the child decide to pursue his studies on a full-time basis. Said amount is to be deposited directly in a bank account of Plaintiff's choosing. The Court orders that any child benefits and children's allowance offered by the State to the minor son, shall be received by Plaintiff.

With regards to Plaintiff's request for maintenance arrears, as well as arrears for medical, educational and extra-curricular expenses, this Court orders Defendant to pay the minimum maintenance allowance that is two hundred euros (€200) a month, which sum includes Defendant's share of the child's medical and educational expenses. Therefore, the maintenance arrears for the child SBS are as follows:

From the X (Date of Birth of the child SBS) to date, there are 69 months x €200 = €13,800 minus one payment of €200 = thirteen thousand, six hundred euros (**€13, 600**). The arrears of maintenance shall be paid by instalments of a €100 a month over and above the €300 maintenance allowance per month awarded by this Court.

⁶ Barring a single payment of two hundred euros (€200).

For these reasons the Court:

- 1. Upholds Plaintiff's first request limitedly and orders that Plaintiff is to be vested with the exclusive care and custody of the minor SBS;**
- 2. Upholds Plaintiff's second request and orders that Plaintiff is to be entrusted with the sole care and custody of the minor child and orders that the minor's primary residence, habitual residence and domicile shall be that of Plaintiff;**
- 3. Upholds Plaintiff's third request and orders that Plaintiff shall take all the decisions both of an ordinary as well as an extra-ordinary nature, with regards to the upbringing, health, education, extracurricular activities, travel and the issue and extensions of the minor's passport, and this without the consent, signature or presence of Defendant;**
- 4. Upholds Plaintiff's fourth request and orders that access of Defendant to the child shall be carried out under the supervision of Defendant's mother, that is the minor child's paternal grandmother. The said access shall be coordinated between the parties bearing in mind the age and safety of the minor child and in default of such agreement, shall be held every Saturday from 3.00pm to 6.00pm. Additionally, the Court orders that said access shall not to take place in the presence of Defendant's brother;**
- 5. Upholds Plaintiff's fifth request and orders Defendant to pay the sum of three hundred euro (€300) each month by way of maintenance for the minor child, which sum includes Defendant's share of the minor's educational, medical and extra-curricular expenses. Such amount is to increase according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minor stops pursuing his 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 his studies on a full-time basis.**

- 6. Upholds Plaintiff's sixth request and orders that this sum is to be deducted directly from any salaries, social benefits, pension or other income Defendant might be receiving.**
- 7. Upholds Plaintiff's seventh request and orders that said maintenance allowance is to be deposited directly in a bank account of Plaintiff's choosing;**
- 8. Upholds Plaintiff's eight, ninth and tenth request and orders Defendant to pay the minimum maintenance allowance for a child's subsistence that is, two hundred euros (€200) a month, which sum includes Defendant's share of the child's medical and educational expenses. Therefore, from the X (Date of Birth of the child SBS) to date the arrears of maintenance amounting to thirteen thousand, six hundred euros (€13, 600) shall be paid by Defendant by instalments of a hundred euros (€100) a month over and above the three hundred euros (€300) maintenance allowance per month awarded by this Court.**
- 9. Upholds Plaintiff's eleventh request and orders that any eligible child benefits, or children's allowance provided by the State shall be received by Plaintiff on behalf on the minor child SBS.**

All costs are to be borne by Defendant.

Read.

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

Christabelle Cassar

Deputy Registrar