



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Thursday 22nd February 2024

Sworn Application number: 223/2022 AGV

AB

v.

**Dr Martin Fenech and PL
Nicholette Aquilina appointed
as curators for the absent MK
as per decree dated 24th
October 2022 and were after
excluded from the acts as per
decre dated 14th Febraury
2023.**

The Court ;

Having seen the Sworn Application of AB ;

Respectfully submits and on oath declares:-

1. That the parties had a relationship, from which relationship the minor child G A J B, was born on the 26th of Novembru 2018 (see birth certificate hereby attached and marked as Doc A);
2. That the defendant is an alcoholic and in fact in the past even attended a rehabilitation programme for alcohol dependence syndrome, apart from suffering from a depression;
3. That therefore the plaintiff filed an urgent application to regulate care and custody of the minor child in the acts of mediation, which application was decreed and he was awarded *pendente lite* the care and custody of his son;
4. That the defendant left Malta to go back her country Russia and as far as the plaintiff knows, she is still receiving treatment for her addiction;
6. That the plaintiff has been authorised to proceed at this instance by virtue of a court decree of this Honourable court dated 22th September, 2022 (see Doc B attached);
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. Awards the plaintiff the exclusive care and custody of the minor child
GAJB
2. Orders that the minor child resides with the plaintiff;
3. Authorises the plaintiff to take all the decisions relating to the health, education, travel, issuing of passports and any decision relating the minor child and this without the defendant's consent. Orders as well that the minor child's passport be kept by the plaintiff and that this is renewed without the need of the defendant's consent.

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

Having seen the reply filed by the curators on the 16 December 2022, in the Maltese language, whereby they declared that they are not privy to the facts of the case, and consequently reserved their position to file additional replies if and when so required;

Having seen that, by a subsequent decree, the curators were excluded from these proceedings, and defendant, by means of an application dated 13 February, 2023, accepted service of plaintiff's sworn application.

Having seen that defendant nonetheless failed to file her sworn reply in the time limit prescribed by law and was therefore declared in default of such procedure.

Having heard all the evidence submitted by plaintiff.

Having seen all the documents thus exhibited in the acts.

Having seen the acts of the mediation proceedings attached to this case.

Having seen defendant's written submissions, filed on the 8 February 2024.

CONSIDERS:

This case is essentially a request to regulate the care and custody and residence of a minor child. The father filed this case since the child is residing with him, and the mother is residing abroad and has lost contact with them. For this reason, the case was filed against curators to represent the mother. In a nutshell, Plaintiff is requesting that this Court grant him full care and custody of his son, who is residing with him here in Malta, and that this residence is also confirmed by the Court, and that he be authorised to take all the decisions for the child without having to obtain the mother's prior consent.

Plaintiff submitted sufficient evidence to support his claims. Suffice it to say that Defendant's behaviour has been described as, at best, erratic. Her medical file was exhibited in these proceedings, and the treatment given to her over a period

of time is very indicative and self explanatory. Without going into the substance of the merits, the Court notes that Defendant, at the eleventh hour, filed a note of written submissions for the Court to consider. In it she accepts her failings throughout the years and did not object to Plaintiff's requests to regulate the care and custody of their child. She also requested that some form of access with the child be considered, as she has no intention of returning to Malta. The Court cannot enter into the merits of access between the child and the Defendant mother, as this has not been brought up at the correct stage in proceedings. The Court may, however, make a recommendation that the parties actively discuss the possibility that virtual access be granted, and that the child builds a relationship with her mother. This will definitely benefit the child, and in the long run also be of benefit to the parties themselves.

For the above reasons, therefore, the Court shall uphold all Plaintiff's claims and award him with the care and custody of the minor child GAJB , and order that the child's residence be with his father the Plaintiff. For ease of practicality and in the child's best interests, since the mother is resident abroad, the Court shall also authorise Plaintiff to take all the necessary decisions relating to the child's health, education, travel, and other ancillary matters. This will obviously avoid the need to communicate with Defendant every time a public document would need to be signed for the child's needs. It would be highly recommended, nonetheless, that such decisions taken freely by the father are still communicated to the mother, to keep her informed of their child's development.

The final comment the Court shall make in this regard is to raise the question whether the minor child requires some form of psychological assistance and

support, given that the mother has not been very present in his life. The Court hopes that whatever needs the child may have as he grows up, these will be sufficiently addressed by the father as best as possible.

DECIDE:

NOW, THEREFORE, FOR THE ABOVE REASONS, THE COURT:

UPHOLDS PLAINTIFF'S CLAIMS.

1. Awards the Plaintiff the exclusive care and custody of the minor child
GAJB
2. Orders that the minor child resides with the Plaintiff;
3. Authorises the Plaintiff to take all the decisions relating to the health, education, travel, issuing of passports and any decision relating the minor child and this without the Defendant's consent. Orders as well that the minor child's passport be kept by the Plaintiff and that this is renewed without the need of the Defendant's consent.

All costs are to be borne by Defendant.

Hon Anthony G Vella

Judge

Cettina Gauci

Dep Reg