

**CIVIL COURTS
(FAMILY SECTION)**

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

Hearing of the 9th of May 2024

Sworn Application no.: 90/2022 JPG

Case no.: 22

TD

Vs

**By means of a decree dated 7th
of February 2023 Dr Brandon
Kirk Muscat and PL Veronica
Rossignaud as Deputy Curators
to represent the absent GA**

The Court:

Having seen the sworn Application filed by Plaintiff TD on the 2nd of May 2022 at fol
1 et seqq which reads:

*That the Applicant and GA were married and from this marriage the
minor RA was born on the twenty-eight (28) of May of the year two
thousand and fifteen (2015), per the copy of birth certificate being
attached and marked as **Doc. A**;*

*That matrimonial life of the parties deteriorated for reasons contemplated and ascribed by law, and which led the parties to divorce on tenth (10) March of the year two thousand and eighteen (2018) in the Court of Orhei, Soldanesti Branch, Republic of Moldova, per the copy of the divorce certificate being attached and marked as **Doc. B**;*

That the Respondent, namely GA is absent from the Maltese Islands;

That the absent Respondent constantly circumvents his obligations as a father, and this to the extent that he has never contributed towards the maintenance, necessities and expenses pertaining to the minor;

That at present the minor lives with the Applicant mother;

That the Applicant has the care and custody of the minor, who has always cared for the needs of the same;

That due to the absence of the Respondent, the Applicant has encountered various obstacles in terms of decisions relating to the well-being of the minor, including that of registering for child care for the minor;

That the Applicant is the better suited party to be granted the care and custody of the minor RA in light of the fact that the absent Respondent has purposely excluded himself from the life of the minor;

That consequently it is in the best interest of the minor that the Applicant be granted the exclusive care and custody of the minor RA, and this as shall be proven during the course of the proceedings;

That it is also in the best interest of the minor that the Applicant be authorised to register the minor for child care, and subsequently school, and this without the need for the signature, consent and/or authorisation of the absent Respondent;

Therefore, the Applicant respectfully requests that this Honorable Court :-

1. *Declare and entrust the care and custody of the minor RA solely to the Applicant mother;*
2. *Order that the residence of the said minor RA be with the Applicant mother;*
3. *Grant the power and authorise the Applicant mother to take all decisions in respect of the minor, whether ordinary or extraordinary, and this for his well being;*
4. *Authorise the Applicant to register the minor for child care, and subsequently school, and this without the need for the signature, consent and/or authorisation of the absent Respondent;*
5. *Authorise the Applicant to file any application relating to the minor without the need for the signature of the Respondent father;*
6. *Authorise the Applicant to apply for a passport for the minor without the need for the signature of the Respondent father;*
7. *Establish and liquidate an apposite sum for the minor's maintenance, which amount should take into consideration the education and health of the said minor in light of the Respondent's absence from the Maltese Islands;*
8. *Order the absent Respondent to pay the aforementioned amount, as liquidated, directly to a bank account of the Applicant as designated by*

her, on a date established by this Honourable Court every four (4) weeks;

9. *Authorise the Applicant should it be possible, to receive the maintenance so liquidated, directly deducted from the salary of the absent Respondent or deducted by a department or entity from which he receives any form of income;*

With costs against the Defendant who is solicited to make submissions.

Having seen the sworn reply filed by the Deputy Curators dated 24th March 2023 at fol 24 et seqq;

Having heard the testimony on oath;

Having seen that during the sitting of the 27th of April 2023, the Court acceded to the request and *pendente lite* awarded exclusive care and custody of the child R to his mother the Plaintiff, such that all decisions ordinary and extraordinary relating to the child's education, health, passport and travel be taken solely by the mother without consent, signature or presence of the Defendant; (vide fol 27)

Having seen that by means of a note dated 22 February 2024, Dr Brandon Kirk Muscat, declared that he has no evidence to produce;

Having seen that during the sitting of the 6th of March 2024 (vide fol 41) the parties declared that they had no further evidence to adduce, and they had no final submissions to make and invited the Court to adjourn the proceedings for judgment;

Having seen all the acts;

Considers:

Plaintiff testified by means of an affidavit, (vide fol 30 et seqq) and explains that she and Defendant were divorced in Malta, and Defendant left Malta one year later and a

few months following the birth of their son R, who is now X years old. Plaintiff declares that has no contact with Defendant. Plaintiff testified that she is encountering difficulties as she does not have the exclusive care and custody of their son.

Plaintiff affirmed that during her marriage to Defendant, she had found out that he had been previously married, and had a family in Azerbaijan. She affirms that Defendant was sending all his income to his first wife and son, and in reality, never planned to live with Plaintiff. After his departure, Defendant never made any contact, and did not contribute financially to the upkeep of the child of the parties.

Plaintiff testified viva voce on the 27th of April 2023 (vide fol 34 et seqq) and confirmed that she married Defendant in 2014, in Moldova. She affirms that her first husband died in 2014 and she became acquainted with Defendant through social media. From her first marriage, Plaintiff has a son. Defendant had told her that his first wife and children died in an accident. At the time, Plaintiff was very vulnerable. She affirms that she did not know that Defendant was already married and that he had a family in Azerbaijan, and only got to know about this a year and a half after their marriage, after having listened to a suspicious telephone conversation. Eventually Defendant admitted everything. She confirms that Defendant left Malta in 2017 after having lived in Malta for circa two years, and their son will shortly be eight years old.

CD, Plaintiff's daughter, testified on the 27th of April 2023 (vide fol 30 et seqq) and explained when Defendant left she was in Form 5 and ever since there has been no contact. Witness confirmed that Defendant did not send any money. Witness affirms that while Defendant was still living with them, it was her older brother who provided for them.

Ignatius Ciantar, on behalf of the Public Registry testified on the 22nd of June 2023 (vide fol 56 et seqq) explained that Defendant, was registered as the father of RA born on the X. This is the only record of Defendant available at the Public Registry. (Vide Dok IC 1)

Eleonor Vella Damato, on behalf of Identita, testified on the 16th of January 2024 (vide fol 109 et seqq) exhibited Defendant's file and explained that Defendant's first

application for a residence permit was based on the family member criteria as he was married to Plaintiff Miss TD. The first residence card was issued on the 19th November 2014 and expired in the 18th of November 2019. This was the only residence card issued and from then on, no other applications were submitted.

Considers:

This is a judgement following Plaintiff mother's request to be entrusted with the care, custody and parental authority of the parties' minor child RA who was born the X and who shall shortly be 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 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

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 taċ-ċirkostanzi personali u 'de facto' li jkunu jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...*”

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 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 parent 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 in the judgement in the names of **AB vs CD** decided on the 23rd of February 2018, 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

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 vested with the exclusive care and custody of the child.

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-Liġi, 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, “jerfġu responsabbilitajiet 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 jistgħux jabdikaw mirresponsabilita` tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu lintrojtu tagħhom. Dejjem kienet tal-fehma illi kull ġenitur

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*)

ghandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta li persuna ġgib it-tfal fid-dinja u titlaq kull responsabbilta` tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-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 m’caħħdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neċessita` għall-edukazzjoni u għall-iżvilupp tagħhom.”⁵

Deliberates:

From the acts of the case, it transpires that the parties met online and following a brief courtship, contracted marriage in Moldova. From this marriage, the parties had a son, R, who was born on X as evidenced from the birth certificate at page 6 of the acts. The parties obtained a divorce on the 10th of March 2018 from the Moldovian Courts (vide the certificate of divorce at page 7 *et seqq* of the acts). It appears that Defendant abandoned Plaintiff and their child and left Malta in 2017. Following his departure, Defendant has made no contact with Plaintiff. No contact seems to have been made

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.”

with Defendant on the part of the Deputy Curators. Thus, this Court is compelled to determine the case solely on the evidence produced by the Plaintiff.

From Plaintiff's uncontested testimony, Defendant deceived Plaintiff into marriage whilst still being married to his first wife. It appears that Defendant's sole motive behind his marriage to Plaintiff was financial gain, and in fact, Defendant abandoned Plaintiff and their child a mere two (2) years after their son's birth. Following his departure, no contact was made by Defendant.

The Court notes that Defendant by means of a decree dated 27th April 2023, this Court vested Plaintiff mother with the *pendente lite* exclusive care and custody of the minor child.

As afore mentioned, this Court is duty bound to determine the merits of the case based primarily on the minor child's best interest. It is more than evident that Defendant was never involved in the minor's life, never provided for him and only used the relationship with Plaintiff to gain financial advantage and support his family abroad. In light of these considerations, the Court finds no reason to vary its decree dated 27th April 2023, and deems that in the best interest of the minor child R that Plaintiff mother be vested with the exclusive care and custody of the minor child who shall have the primary residence with his minor. In light of the circumstances, specifically Defendant's abandonment of his child, the Court does not believe that it is in the child's best interest for Defendant to have access to the minor R. The Court authorises Plaintiff mother to take all ordinary and extraordinary decisions relating including to the parties' minor child, including decisions relating health and education of the child; to all applications relating to the issue and renewal of the child's passport and/or residential permits and travel arrangements.

With regards to Plaintiff's request for maintenance, the Court notes that Defendant never contributed towards his son's upbringing and basically lived off Plaintiff throughout their relationship, compelling Plaintiff to bear alone the responsibilities and burdens of child rearing.

In light of the above considerations, the Court orders that Defendant pay the sum of four hundred and fifty euros (€450) each month by way of maintenance for the minor child which amount shall include Defendant's share of the educational, medical and extracurricular expenses until the minor child reaches 18 years of age or 23, should he continues his studies. The Court orders that this sum is to be deducted directly from any wages, salaries, benefits, or other income Defendant might be receiving. Such amount shall increase annually according to the cost of living adjustment each year and is to be deposited directly in a bank account of Plaintiff's choosing.

The Court orders that any benefits, and/or allowances offered by the State are to be received by Plaintiff.

For these reasons, the Court:

- 1. Accedes to Plaintiff's first request and awards the exclusive care and custody of the minor child RA to Plaintiff mother;**
- 2. Accedes to Plaintiff' second request and orders that the minor child's residence be with the Mother;**
- 3. Accedes to Plaintiff's third request and authorises her solely to take all ordinary and extraordinary decisions relating to the minor child;**
- 4. Accedes to Plaintiff's fourth request and authorises the Plaintiff mother solely to register the minor for schooling and educational purposes;**
- 5. Accedes to Plaintiff's fifth request and authorises Plaintiff mother to file any application relating to the minor without Defendant's signature, consent, authorisation or presence;**
- 6. Accedes to Plaintiff's sixth request and authorises Plaintiff mother to apply for and renew the minor child's passport or the child's residence permit and this without Defendant's signature, consent, and/or presence;**
- 7. Accedes to Plaintiff's seventh request and orders Defendant to pay the sum of four hundred and fifty euros (€450) each month by way of maintenance for the minor child which amount also includes Defendant's share from the educational, medical and extracurricular expenses until the minor child reaches eighteen (18) years of age or twenty-three (23) if studying full time. The Court orders that this sum shall be deducted directly from any wages,**

salaries, benefits, or other income Defendant might be receiving. Such amount shall increase annually according to the cost of living adjustment each year and shall be deposited directly in a bank account of Plaintiff's choosing. The Court orders that any benefits, and/or allowances offered by the state are to be received by Plaintiff;

- 8. Abstains from taking further cognisance of the eighth and ninth request since said requests have been addressed above.**

All costs are to be borne by Defendant.

Read.

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

Lorraine Dalli

Deputy Registrar