



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Tuesday 8th October 2024

Sworn Application number: 300/2021 AGV

JP

Vs

ABM and JBM

The Court,

Having seen the sworn application of JP who humbly submits as follows:-

1.0 PRELIMINARY FACTS

- 1.1 That the Plaintiff is the mother of the Defendant, ABM who has been married to the other defendant JBM from the twentieth (20th) of June of the year two thousand and sixteen (2016).
- 1.2 That from the marriage of the Defendants ABM and JBM ,two minor children were born, KBM who was born on the seventh (7th) of January of the year two thousand and eighteen (2018) and SBM who was born on the twenty-seventh (27th) of December of the year two thousand and nineteen (2019), hereinafter referred to as the “Minor Grandchildren”.
- 1.3 That the Minor Grandchildren are the maternal grandchildren of the Plaintiff.
- 1.4 That during his childhood, teenage years and prior to his marriage with the Defendant JBM and even several months thereafter, the Defendant ABM had a good relationship with the Plaintiff. This also includes the time within which the same ABM used to study in England and later on while living in Spain for work reasons. Moreover, the Defendants lived for a long period of time in Spain, wherein the minor K was born.
- 1.5 That the Plaintiff, together with her husband MP , whom she married on the first (1st) of July of the year two thousand and seventeen (2017), a number of years after her annulment with SBM (who is the father of the Defendant A), had visited the Defendants in their home in

Marbella, Spain in February of the year two thousand and seventeen (2017). Later on that year, the same Defendants attended the wedding ceremony of the Plaintiff and her husband M in Croatia.

1.6 That furthermore, the Plaintiff had even visited the minor K in Spain in February 2018, and therefore shortly after the same minor was born, where she spent a few days with the Defendants in their home in Marbella, Spain. In addition, a few months later, the Plaintiff had the opportunity to spend some time with the Defendants and her grandchild K when they visited Malta around the Easter holidays of the year 2018.

1.7 That until this period, the relationship between the parties was a very pleasant one.

1.8 That towards the middle of the year 2018, the Defendants terminated all contact and communication with the Plaintiff, as well as with the rest of the family and therefore this includes the Plaintiff's children as well as the siblings of the Defendant ABM , and this was done without ever giving a clear explanation as to what led the Defendants to take such a decision.

1.9 That so much so, a few months after the Plaintiff had booked the Easter vacation mentioned above, the Plaintiff found out that the Defendant J, visited Malta in the year two thousand and eighteen (2018) together with her granddaughter K , without informing the Plaintiff or taking the opportunity to meet up with the Plaintiff during such visit. The same Defendant ignored any invitation by the Plaintiff to meet up.

- 1.10 That even from when the Defendants relocated back to Malta, they showed no interest in establishing a relationship with the Plaintiff and potentially solving any problems that could have existed between the parties, for which problems the Plaintiff has to this day never been given any reason or at least a reasonable explanation as to what caused the Defendants to deny the Plaintiff from meeting and establishing a relationship with the minor Grandchildren. It is also worth mentioning that the Plaintiff has never had the opportunity to meet her grandson S, and the Defendants chose to ignore all efforts by the Plaintiff to meet with her grandson.
- 1.11 That the Plaintiff made a lot of efforts during the past years to try and understand the reason as to why her son the Defendant ABM decided to terminate all communication with the rest of his family abruptly and unexpectedly, and as to why the Defendants are denying the Plaintiff from seeing and spending some time with her minor Grandchildren.
- 1.12 That the Plaintiff feels she always acted as a kind and responsible grandmother with her granddaughter K, whenever she had the opportunity to visit and spend time with her, and the affection and love that the Plaintiff has towards her and her grandson S, is clear from her repeated efforts to understand what could have possibly caused this dispute between the Defendants and the rest of the family, which ultimately resulted in her losing all access and communication with her minor Grandchildren.
- 1.13 That it was never the Plaintiff's intention to institute these proceedings, and she did everything possible to discuss and informally resolve any possible problems that could have existed between her and the

Defendants without resorting to the need of judicial proceedings. These measures included communication by means of messages, telephone calls and letters, including legal letters, requesting the Defendants to meet with the Plaintiff to not only discuss and resolve any problems that exist between them, but also for her to be granted the opportunity to establish a relationship with the Minor Grandchildren, which efforts have always been ignored by the Defendants. Moreover, the Defendants never explained why they decided to terminate all communication with the rest of the family, that is, with ABM 's siblings, his father, his aunts and uncles, as well as with his grandmother.

- 1.14 That so much so, that even presents bought by the Plaintiff and sent to the Minor Grandchildren were returned to her unopened.
- 1.15 That it is also worth noting that the Plaintiff instituted mediation proceedings on the eleventh (11th) of March of the year two thousand and twenty-one (2021), in the names *JP vs. ABM et.* (letter bearing reference number 290/21), intended to serve as a platform allowing the Defendants to clearly explain what caused the termination of communication between them and the Plaintiff, and to be able to reach an agreement for the manner in which the Plaintiff could start to visit and spend time with her Minor grandchildren. Despite this, the Defendants showed no interest in participating in the mediation proceedings, so much so that they did not attend any of the six (6) sittings set by the mediator. It was due to the Defendants' clear lack of interest that the mediation proceedings were declared closed, and this in terms of the decree issued by this Honourable Court on the eleventh

(11th) of November of the year two thousand and twenty-one (2021), a copy of which is hereby annexed and marked as Document “A”.

1.16 That the Plaintiff feels that it is unjust that she is being denied the opportunity from establishing a relationship with her minor Grandchildren without any explanation or justification, which relationship would be also in the best interest of the minor Grandchildren.

1.17 That in view of the abovementioned facts, and as these may be proven during the hearing of this case, these procedures had to be instituted.

2.0 LEGAL AND FACTUAL CONSIDERATIONS

2.1 That while the Plaintiff understands and appreciates that the parents are responsible for the care and custody of the minor Grandchildren, there is no justification as to why she should be refused the possibility to have an affectual relationship with her grandchildren.

2.2 That by means of a recent decision of the European Court of Human Rights (the “European Court”) in the names *Neil Vacheva vs Georgios Babanarakis*, decided on the thirty-first (31st) of May of the year two thousand and eighteen (2018), the European Court, when faced with the question as to whether the European Council Regulation (EEC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility extends to the concepts of ‘parental

responsibility’ and ‘rights of access’ even to the grandparents, the Court held that:

“It must be noted that the ‘rights of access’ are defined broadly, encompassing in particular the right to take a child to a place other than that child’s habitual residence for a limited period of time.

That definition does not impose any limitation in regard to the persons who may benefit from these rights of access.”

This judgment added that:

“Regulation No.2201/2203 does not expressly exclude a request made by grandparents for rights of access to their grandchildren from coming within the scope of that regulation.

...

“It follows that the concept of rights of access referred to in Article 1 (2) (a) and in Article 2.7 and 2.10 of Regulation 2201/2003 must be understood as referring not only to the rights of access of parents to their child, but also to the rights of access of other persons with whom it is important for the child to maintain a personal relationship, among others, that child’s grandparents,

*whether or not they are holders of parental responsibility.*¹

2.3 That as a result of this decision, the European Court confirmed the principle that ‘*paternal responsibility*’ also extends to grandparents, which means that grandparents should not be denied rights of access without any valid reason.

2.4 That in fact, recently our domestic Courts had the opportunity to analyse the concept of grandparents’ juridical interest in cases instituted for access to be granted to their grandchildren. Reference is made to the judgment of the Court of Appeal in *Cosimo Marziano et. vs. Silvia Marziano et.*, decided on the twenty-eighth (28th) of January of the year two thousand and twenty-one (2021), where it was decided that:

“the issue in the present case is whether or not Maltese ordinary law grants the grandparents a possibility to make a request to the court to be granted access to their grandchildren.

27. In the Civil Code there is no express provision of law granting grandparents such a right.

¹ Emphasis added by the plaintiff.

28. However, according to article 7(2) of the Civil Code grandparents have an obligation to provide maintenance for their grandchildren in particular circumstances:

“7(2) In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants”.

29. An obligation which leads to the participation of the grandparents in the life of grandchildren. The law also provides that children have an obligation to provide maintenance to their ascendants in case of indigence (art. 8 of the Civil Code). Such obligations would not seem to be justified if it is declared that in all cases, irrespective of the circumstances, grandparents have absolutely no right to ask the Court to authorize them to have some form of contact with their grandchild.

30. These obligations are in themselves a confirmation that Maltese law recognises the existence of a special relationship between grandparents and their grandchildren, and therefore grandparents have an interest in making a request to have some form of contact with their grandchildren.”²

² Emphasis added by the plaintiff.

2.5 That even by means of the decision of the thirteenth (13th) of June of the year one thousand nine hundred and seventy-nine (1979) in the names *Marckx vs Belgium*, the European Court had already established the principle that:-

“In the Court’s opinion, “family life”, within the meaning of Article 8 (art.8), includes at least the ties between near relatives, for instances those between grandparents and grandchildren, since such relatives may play a considerable part in family life.”

2.6 That, furthermore, the preamble of the ‘*Convention on Contact Concerning Children*’, signed on the fifteenth (15th) of October of the year two thousand and three (2003) by the Member States of the European Union and Other Signatories makes reference to the need for children to maintain contact and a relationship not only with their immediate family, that is their parents, but also with persons with whom the minor children may have ‘*family ties*’, and namely:

“The need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children³, subject to the best interests of the child.”

³ Emphasis added by the plaintiff.

2.7 That the delicate age of the minor Grandchildren increases the need for them not to be deprived of the possibility of benefitting from a close relationship with their maternal grandmother.

2.8 That it follows that the Plaintiff's rights to establish a relationship with and to have access to the minor Grandchildren, as well as the right of the Minor Grandchildren to have contact with their maternal grandmother should not be interpreted as a limitation to the parents' rights and responsibilities at law. On the other hand, it follows that the decision of the Defendants to deny the minor Grandchildren from establishing a relationship with the Plaintiff goes against the Minor Grandchildren's rights to respect for one's private and family life as protected by Article 8 of the European Convention on Human Rights. In addition, the right and obligation of a parent to take decisions for and on behalf of his children should never take precedence over the importance of ascertaining that the best interests of the child are respected, a concept which is enshrined in Article 149 of the Civil Code (Chapter 16 of the Laws of Malta), that provides:-

“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.”

2.9 That it is certainly in the best interests of the minor Grandchildren to experience the love and affection that the Plaintiff may offer as their

grandmother, and this as could be proven during the hearing of these current proceedings.

3.0 REQUESTS

Therefore, in view of the above-mentioned reasons, and based on the above-mentioned judgments of the courts, the Plaintiff respectfully requests this Honorable Court to:-

- A. Declare that it is in the best interests of the Minor Grandchildren K and S BM that the Plaintiff is given access to the same Minor Grandchildren and for her to meet and spend time with them;
- B. Grant the Plaintiff access to the Minor Grandchildren by establishing such days, times and directives that this Honorable Court may determine to be appropriate and in order to permit the Minor Grandchildren to continue building a relationship with the Plaintiff grandmother.
- C. Grant any other directive that this Honorable Court would deem appropriate and necessary.

Having seen the sworn reply of the Defendants humbly pleads as follows:-

Pleas

1. That in the first place, the Plaintiff is away from Malta and she should appoint a mandatory to appear on her behalf.
2. That in the second place, the right claimed by the Plaintiff and the merits of the suit as a right imposed with her request on the minor children of the Defendants, against the joint will of the minors' parents, does not exist in the Maltese law that wants that it is the minors' parents who are entrusted with all the decisions regarding the minor children of the family, except the intervention of the Court where that intervention is strictly necessary in the crucial interest of the minors.
3. That the intervention of the Court in order that it interferes in the upbringing of the children of the family and, on a third party's request, imposes things regarding the minor children **against the will of the children's parents**, is not a faculty exercised lightly by our Courts particularly where the parents are exemplary and are taking care, treating, educating and generally raising their minor children in a level which is objectively high and always in their best capacity and the intervention being requested is not advantageous for the minors.
4. That in the best interest of the minor children K and S siblings BM , Defendants' children, that all Plaintiff's requests are to be turned down and this for the reasons which will result from the evidence that is going to be gathered during the hearing of this suit.
5. That in brief it is stated that the Plaintiff had systematically broken her report with the Defendants, separately and as a couple and had never tried to fix it. At best, and with this lawsuit, the Plaintiff is pretending that, against

Defendants' parents will, she imposes access for the Defendants' children – and thus separate the children from their parents even if for a little amount of time – despite her contempt towards their parents. In the worst hypothesis – and that more in line with Plaintiff's behaviour with the Defendants – the Plaintiff wishes to show the Defendants that they do not possess any authority on their children which cannot be addressed by her, so that she is trying to substitute judicial proceedings instead of trying to establish a report with the Defendants.

6. That the Plaintiff has never had contact with the minor S and had contact the minor K only three times. It is difficult to state that it is in the best interest of the minors that – against the will of their parents and under the prevalent circumstances – they have forced contact with a person who essentially they do not know, is not valid and shall not to be taken into account by the Court.
7. The costs of this case shall be borne by the Plaintiff.

Except for other pleas.

Having heard all the evidence produced by the parties.

Having seen all the documents submitted.

CONSIDERS:

FACTS

1.SBM was married to **JPE** , from 1987 to 2004. They had three children, one of whom is Defendant A. He stated that although they annulled their marriage, they remained in touch with regards their children's upbringing. His ex-wife **J** was always a good and dedicated mother, and she always prioritized their education.

He admits that Defendant has severed all relations with him, not even inviting him to his wedding and not allowing him to see his grandchildren **K** and **S** . Both Defendants disallow them from seeing their grandchildren or communicating with them. They don't even accept gifts from them, and it is breaking their heart.

Last he saw **K** was on the 25th December, 2018 and it was for not more than half an hour and he was not even allowed to touch her. As to **S** , he never saw him and he has no idea what he looks like today.

2. J P , mother of Defendant **ABM** , explains how her children are the most important thing in her life and after separating from her husband she brought them up and provided for them financially. She explains that she was always very involved in their studies, in particular with Defendant son, especially since he was a very diligent scholar. She supported him all the way, even when he was finding his studies at the University of Leeds very hard.

When she met her husband she used to divide her time between Malta and Croatia, but she was mostly in Malta due to the fact that she had work here and also her family, but both **A** and **S** were living in the UK at this time and she

confirms that A who was 19 years old lived in Malta and she was attending ITS. She still lives in this way.

As to A she confirms that she started having drug problems when she was around 25 years of age and this was after she broke up with her boyfriend after a seven year relationship. She admits to also being aware that her children were making use of marijuana and she was always campaigning against it as its use frightened her.

She adds that A used to complain that he was arguing constantly with A, but they were always like that, although they loved each other to bits.

When Defendant starting dating J, she was very pleased and they got on very well, frequenting each other quite a lot. They travelled together and spent weekends on vacation. After Defendants got married, they moved to Gibraltar since A got a promotion at work. She mentions that it was very upsetting that A'S father was not invited to the wedding, no matter how much she tried to convince him. Not even the invitations named them as hosts of the wedding together with J 's parents.

There was an incident, where Defendant A had asked his mother to test for Huntington's disease and this because her father had died of it. Her personal doctor advised her not to, but she still did to please her son and luckily, she did not carry the gene. She claims that her son and wife were very supportive during this period since they had to wait for three weeks until the results were out.

At her wedding to her long-time partner on the 1st July, 2017, Defendants announced that they were expecting their first child. Everyone was very pleased with this news.

It was June, 2018, when Plaintiff explains that her ex-husband contacted her to determine whether she was aware that their daughter-in-law was in Malta with their granddaughter K . However, she explains that she was not aware and although she tried to contact Defendant, she never replied to her messages, nor did she answer her phone calls.

This was followed by an email on the 5th August, 2018, wherein her son explained all the reasons why she was not a good grandmother and until she reflected upon them, he would be depriving her from seeing her grandchild. The last time she saw K was when she was 11months old. Meanwhile, they had another child S who she has never seen. Despite all her efforts to speak to her son, it was all in vain. 25th December, 2018 was the last time that she saw A and his family.

She confirms having received a Whatsapp wherein A informed her and his grandmother on the birth of their child, She admits leaving the chat as she felt insulted to be informed in that way, but she contacted A directly and congratulated them. This led to an ongoing exchange of messages between them.

A was insisting that she keeps away from there, when she was asking to go to Spain to see her grandchildren. She explains that she tried to reach out and also recommended that they go to a psychologist together, but all efforts were in vain since he was accusing her with several shortcomings as a mother.

After having sought legal advice, Defendants never replied to her letters nor did they attend the mediation proceedings she commenced.

When her son and his wife moved back to Malta in 2020, all her family reached out to them to patch things up, but everything was just shut down. Phone calls were not answered. She tried to communicate with them via emails and also

WhatsApp begging them to accept her. She denies what he accused her of, precisely that she abandoned him.

3. Defendant A BM explains that he has tried to reconcile with his mother, but her actions have made it impossible for him to maintain a close relationship with her. He admits that over the years he has tried to reconcile, but Plaintiff has shown little interest in doing so. He has therefore limited access to his children until they can resolve the issues between them.

He denies all allegations made against him and he also denies cutting ties with his mother from mid-2018 without any reason. Between 2018 and 2020, he states that there were several exchanges of WhatsApp messages, wherein he explained why he felt he needed to take a step back from their relationship, to which she never responded. Then he terminated all communication after the legal proceedings were initiated by Plaintiff and by then it was mutual. He also adds that since their return to Malta, his mother has not contacted or asked to meet nor has she enquired into the well-being of the children.

To prove that he was in contact with his mother after 2018, he states that he had a son, born in December, 2019 in Gibraltar and he had created a WhatsApp message with his mother and grandmother to send them a picture of him. His mother did not reply to the message and left the group, probably offended that he had not contacted his grandmother directly.

He further explains that a few months after their son was born they returned to Malta and he developed serious medical conditions that required numerous visits to the emergency room. It was in March, 2020, in one of their overnight stays in hospital that he received an email from Plaintiff asking for access rights to her grandchildren and not even asking on their well-being. This coincided on the day

after there was a publication on MaltaToday of an article regarding grandparents' rights and they sought legal advice, predicting where Plaintiff was heading. All communication in March 2020 were cut off.

He was left out from a digital Easter gathering of his family and they did not invite him to a birthday, funeral, or Christmas and no one asked about the children and their well-being.

As to his upbringing, Defendant complains that there was a lot of neglect from his parents, from forgetting to pick him up after his tennis lessons, from leaving him alone with his sisters, whilst his parents would be out and would often return home drunk. He experienced violence, physical as well as psychological abuse and neglect.

Moreover, at the age of 13 he was sent to school in the UK, where he was very unhappy. His parents rarely made contact with him and if he tried they would never take up the call. After three years he moved to Ampleforth College in York and he was accompanied by his uncle, since his cousin was going up too. He felt his parents' absence very much nonetheless. Both his mother and his uncle boast that he was given a first-class education, but he felt nothing more than neglected.

All these occurrences had an impact on Defendant's life so much so that his damaged family situation have led him first to suffer from separation anxiety disorder, which later manifested itself into Panic Attack Disorder as classified by his psychologist.⁴

He explains that when he started taking psychological therapy ever since he was 20 years old, when he was in his twenties, he realised that he did not have a normal

⁴ See report attached with Defendant's affidavit.

upbringing as he was subjected to physical and psychological abuse by his parents. His mother used to forget to pick him up, his parents used to leave him with his younger sisters at home alone for long hours. People were always coming and going from their house, so much so that his sister ended up dating a well-known drug dealer and he was introduced to the wrong crowd, where drugs became a significant part of his social scene. Their father used to physically abuse them and on one occasion he had to go to school with a black eye and his parents asked him to lie and say that he fell down the stairs.

When he was a teenager, his parents divorced and although he was not given a reason, he found out that his mother was unfaithful through messages he saw on his father's phone. His mother was never present and was not focused on them, so much so that his sister was expelled from two schools in the UK. They had no rules or discipline, and their villa became a party house. Things took a turn for the worse when his mother moved to Croatia to live with her partner and his sister got convicted for drugs and he begged his mother to solve the matter as he could not live any longer with his sister and her boyfriend. It was then that he moved in with his grandmother.

Despite all this, he became a successful businessman, but his mother always made it clear that she did not like his wife. The psychologist he was seeing in Gibraltar recommended that he writes a letter to his mother to try and rectify the situation and this was because he was getting panic attacks. He did eventually write the letter to his mother, who replied very coldly. He added that his mother also distributed a paraphrased content of this letter to all the family and as a consequence his family ostracised him. He was no longer invited to any family events and the worse moment was when his grandmother messaged him to tell him that she did not want to see his children and she was disinheriting them. This was on the 30th December, 2020.

He explains that because of his upbringing he could have ended up like his sister who has a drug problematic relationship on her.

He denies not trying to contact his mother after the letter. When S was born, he created a WhatsApp group and sent a photo to both his grandmother and mother too, the former replied and his mother left the chat. He felt that his mother was in the wrong here because she had to reach out.

On being cross-examined, Defendant admits that he always had a difficult relationship with his father and there were periods when they were not on speaking terms. Over the years he feels he has been ostracised from his family and any contact with his children at this point, is preoccupying because he fears that the feelings of his family against him, would be input in his children's minds.

He also adds that since he has been living in Malta, he has not received any text messages from his mother or phone calls to rectify the situation. He also states that his mother lives in Croatia and he is never made aware when she is in Malta.

Defendant explains that he has some form of communication with his maternal grandmother, but he keeps a step back, because he does not want to put his grandmother in a situation where she has to choose between him and Plaintiff.

On cross-examination he admits that there are three reasons why he feels that there should not be any contact between his children and Plaintiff, primarily because of his relationship with his mother, her lack of parenting skills, being selfish, indifferent and irresponsible, his sister's drug problems that all prove that his mother is not the most reliable parent. Secondly, this situation is causing a lot of stress on his marriage since her actions have led to emotional turmoil in their

marriage, followed by bouts of depression and having her back in their lives could be detrimental to their marriage. Thirdly, the fact that his mother has influenced all the extended family, so much so that they took her side, and he fears that his children will suffer the same fate.

He also believes that these issues need to be sold privately and it is not a matter that should have ended up in court, placing their problems on a completely different level. However, as parents, their sole aim is to safeguard the interests of their children and safeguarding them above all from suffering the same traumatic upbringing that he had.

Having been through traumatic experiences during his childhood, Defendant wants to ensure that his children do not pass through the intense psychological and post-traumatic stress. When he sees his sister it reminds him constantly, that had he not taken action, he would have ended up like her.

During his three years since they have been here in Malta, he has not succeeded in establishing a relationship with Plaintiff. For most of the time she lives in Croatia and he is never made aware when she is back on the island, because she does not make an effort to contact him to try and make amends, instead she took legal action against him. As a mother she should not be treating her children in such a way, so he fears that she would treat his children in the same way.

3. MP Plaintiff's husband explained that he met Plaintiff in 2008 and they had a relationship that lasted ten years, until they decided to get married. He states that he has a good relationship with all the family, although at no point in time did he want to replace the children's father.

He explains that Plaintiff used to split they year between Malta and Croatia. At the time, two of the children were attending university in the UK. Whenever they were returning to Malta, Plaintiff would ensure to be in Malta before them.

He used to have a good relationship with A and admired him as being a very good student and he turned out to be successful in business. He was also a great sportsman.

He admits that at one point when Defendants were dating each other, they were going to split because of the way A acted as he has a bit of a temper. They intervened to help them out, practically taking J 's side. Then suddenly very abruptly, Defendants cut all ties with them and with the rest of the family. There was never any contact during Christmas. They send presents and they were returned unopen. Everyone, even other members of the family tried to contact them, but it was always in vain.

He admits that Plaintiff was furious when her ex-husband contacted her to let her know that their daughter-in-law was in Malta with their granddaughter and she hadn't contacted them.

When he met Plaintiff, the children were all in their teens. In cross-examination he confirms that Plaintiff used to spend half the year in Malta and half in Croatia and since S studied abroad at the time, Plaintiff was always in Malta at the same time that S was.

When Plaintiff happened to be in Croatia, she would also seek the help of her ex-husband and he would help out with the youngest child, but he had his doubts as to whether he would have taken care of Defendant.

Under cross-examination, he explains that both him and Plaintiff were aware of the drug problem that was taking place at the apartment in San Gwann and this was between 2009/2010. Plaintiff was concerned that A and his friends were rolling joints and that was why at times his behaviour was being erratic. Things took a turn for the worse when they started to get out of hand, after A broke down his sister A'S door, because she and her boyfriend were doing drugs in the room. A also blamed her brother A or having introduced her to joints in the first place.

He admits that they were also aware that in 2014, there were heavier drugs involved and he concluded from the police report when A was arrested. At the time due to A's drug problems, Plaintiff would spend more time in Malta, as long as was needed, such as when she was arrested for a drug related theft.

He was also aware that Defendant A, had broken off his ties with his close friends and they had confirmed this when he bumped into a couple of them. He denies knowing that the reason was because these friends were drug users. He also refused to invite his father to his wedding.

He also states that Plaintiff used to cry because of the situation and she could not understand or make sense why A Broke off all ties and relations with the family.

4. S BM , Defendant's sister, explains how her close bond with her brother started to deteriorate as soon as he started going out with J . After Defendants had their first child, K , their relationship took a turn for the worse, as they avoided all contact with the family.

She admits that this situation has put so much strain on the family and it is upsetting considering that they were a very close-knit family and her brother had a very special relationship, especially after their parents separated. Her brother

tried his utmost to play the fatherly figure. She thanks her mother who always prioritized their education and ensured that they furthered their studies.

5. JBM Plaintiff's ex-brother-in-law, explained that until Plaintiff and his brother separated, they were close and they used to frequent each other. After the separation, as would happen in normal circumstances, they lost contact with each other. He admits that he had a good relationship with A as an uncle, but they were not close and at present there was not much contact between them. He confirmed that at present he is aware that A cut all ties with both his paternal and maternal side of the family.

He also confirmed that A did not want his father's partner to attend the wedding and so his father did not attend. He also felt that after what he made the family pass through, A should not attend his paternal grandfather's funeral so he did not tell him where it was going to be held.

6. AM BM, A's sister, explains that once her mother met M she remained based in Malta, but she would travel to Croatia and this was around 2008/2009. She also confirms that they are a very close family, that it is very upsetting that Defendants blocked all contact with them, without there being any form of confrontation. She also explains that her mother has put all her efforts in attempting to set up some form of contact, at least with her grandchildren, but Defendants ignore all her attempts.

Under cross-examination she explains that there was no drug abuse in Plaintiff's house. There was use of joints because as a group of friends, if any parents

happened not to be home, they would go to that person's house and if there was use of drugs, it was something light, but there was no drug abuse.

She also admitted that had her mother been aware that she and A were having problems she would have come down from Croatia immediately. However, she explains that Plaintiff was always aware that they did not get along well, and she had even taken them for therapy, on the occasions she was in Malta.

Regarding a family WhatsApp chat, she admits that she was not always part of the chat, but she was aware that there was some name calling going on towards A . The family were sticking up for Plaintiff so they accused him of being "sad" and a "hypocrite."

She explains that her mother made several efforts to make up with A , and she also tried to reach out by sending gifts to the grandchildren, sending cards and trying to get in touch.

She confirms that she is not on speaking terms with her brother.

8. J BM , A 's wife explained that when she met her husband in 2011, it was not all roses, because at the time he was around 21 years of age and he was living alone with his younger sister, as their mother had a Croatian partner and spent a lot of time with him in Croatia. She would be in Malta for all the holidays and when the other sibling S, would be in Malta, since she studied abroad. She came to realise that there were family issues, in that there was a significant maternal absence, with A living alone with his sister AM, and the father in a relationship with a young girlfriend.

She admits that there were several confrontations between A and his sister AM, in particular because of her boyfriend who was a bad influence and he promoted

the use of drugs in their house. One of the arguments A had with his mother was because she was aware of the bad habits of this boyfriend J, but she did nothing to correct him. She confirms that when AM, was arrested, Plaintiff made contact with Appogg, Caritas, Sedqa to help her address her issues. There were various issues with AM, and at one point her mother was considering asking for the issuing of a restraining order.

In 2012, Plaintiff had announced that she was returning to Malta for good and A was over the moon, however, these plans were short-lived, because overnight she decided to return to Croatia.

She states that at some point they had gone to visit Plaintiff in Croatia and she describes their time there as not being pleasant. Then they had K their first-born and things seemed to be working fine, until June 2018, when she admits having come own to Malta to meet some relatives. When Plaintiff had found out that she was in Malta and she hadn't contacted her, she played hell and called A shouting and screaming. In February, 2018, Plaintiff had visited them in Spain and another time she visited together with her husband.

Nevertheless, there still was a lot of contact, so much so that they spent Christmas 2018 with Plaintiff's side of the family and in March 2019, they came to Malta for the weekend and she went to visit Plaintiff's paternal grandfather and maternal grandmother. They did not meet Plaintiff because she was away at the time. During such time she explains that there were numerous exchanges between A, his mother and family. She was in contact for birthdays, Christmas and anniversaries. The last she heard from Plaintiff was in September 2019 when she was six month pregnant with her son and after that there was no contact from Plaintiff, not even to congratulate her on the birth of the child.

She denies that they were invited to her husband's sister's engagement and they did not attend.

The next she heard was in March 2020, when they received an email from Plaintiff and this was after their son was born, wherein she was referring to a judgement that had been delivered by the Maltese Courts, wherein she asked to have a relationship with her grandchildren and asked for access. She confirms that they did not answer this email as proceedings were instituted by then.

She also confirms that there was an incident in October, 2019, where A formed part of a WhatsApp group with his family and a lot of harsh things were being said towards him so much so that he had to leave the chat. There was another episode when A created a chat between himself, his mother and grandmother to share a photo of their son. His grandmother congratulated them, whereas Plaintiff left the chat.

Since January 2020 they relocated to Malta and there was no contact whatsoever, but somehow Plaintiff managed to get hold of their address and A's two sisters went behind their door and made a scene and they had to involve the police to solicit them.

She also explains that her husband's relationship with his father were not always good, full of ups and downs and these issues were mainly related to his father's girlfriend. His father did not attend their wedding. The main event that ended the relationship completely was in December 2018 when they visited her father-in-law on Christmas day, but their daughter was very tired, and they decided to leave. After that they received a message from her father-in-law, wherein he informed A that he was disowning and disinheriting him. This was the last time they heard from him.

She goes on to explain that the unconventional upbringing that A had left repercussions, so much so that he would suffer from panic attacks and he also sought help from two psychologists who confirmed the same. She admits that these created tension and stress in their marriage, but through a lot of effort they managed to overcome these problems.

Once they had their daughter, A, started seeing things from a different perspective and was concerned and became more vocal towards his mother, since he did not want his daughter to experience what he had experienced in his childhood.

8.S P E Plaintiff's brother explains that since he worked and shared the same room at work with his sister, he was aware of how proud she was of her son A . She had taken out a loan to finance his first-class education in the UK and thanks to that, A who was very diligent advanced in his career and has been very successful and he has always been very grateful to his mother.

She was always in Malta when the children were here during school vacations, and whilst they were attending boarding school or University she would not be in Malta. Also, he explained that as an adult AM did spend time in Malta alone since Plaintiff would be in Malta for around half a year, though not consecutively. When AM had a drug problem, Plaintiff was in Malta more permanently or else she was in contact with her via video calls. Due to the gravity of the drug problem, Plaintiff increased her time in Malta.

He also confirms that he was aware that AM had a drug problem when she was around twenty years old. During such a period Plaintiff was not always here, but whenever she needed to here, she made sure she was within twenty-four hours.

He confirms that at one point in time, Defendants decided to cut all ties with all the family members, both from the mother and father's side. He believes that this happened after K's birth. He explains that Plaintiff had told him she had received a letter from A, where the reasons he gave for blocking them from his life, were all rather trivial. He believes that there were other reasons behind it all, especially, since the whole matter evolved sometime after Plaintiff sold a property and had decided to divide the proceeds between the three children. Up to then A was always very loving and caring towards her.

He also states that he was baffled since A's close friends were not invited to their wedding and when he spoke to them they all blamed J..

9.AB, J's mother is totally aware of the difficult situation between the parties and she has decided to be non-judgmental. She explains her relationship with Plaintiff as being courteous and polite. She states that during the time J was expecting S she was living with her in Gibraltar, because A had to be in Malta. Throughout such period she confirmed that there was no form of communication by Plaintiff. The only communication was to collect a Christmas present which Plaintiff had sent to a wrong address.

As to the relationship A had with his parents, she explains that with his father it was not so good because he had a partner who was A's age so there was peer humiliation. His mother was mostly in Croatia, rather than in Malta and A found himself having to take care of his sister who had a drug addiction.

10. R P E, Plaintiff's brother, also confirmed that Defendant had good relations with the family and he was very close to him, so much so that his daughter E was his bridesmaid at his wedding. He also added that the last time he met A was at Christmas lunch 2017, when they all met up at Plaintiff's house.

11.N PE Plaintiff's brother, confirms that his sister was always a good mother, and she would be an excellent grandmother. He spoke to Defendants last on the 18th January, 2021 when they wished him a Happy Birthday on Messenger. He confirms that his sister has been trying to establish a relationship with her grandchildren, but to date they have all proved to have been in vain. Moreover, Defendants have also decided to terminate their relationship with all the rest of the family including himself.

12.Fr. C C , confirms that Defendant J was one of his parishioners and he had met her husband A. He explains that from what he got to know about A 's upbringing it was far from ideal. It was thanks to his wife that he managed to pick up the shattered pieces of his life in the nick of time. From the information he has he feels that it would not be in the child's interests to go against the parents' wishes to grant access to someone who they deem would be a negative influence on their offspring. He added that he hopes for a reconciliation and that what he testified is according to what Defendant J, told him and he never verified anything, except checking about A 's sister's drug problem as reported in the Times of Malta.

CONSIDERATIONS

First Plea

Defendants claim that Plaintiff should appoint a mandatory to appear on her behalf since she does not live in Malta.

Throughout the proceedings it transpires that Plaintiff lives for a substantial part of the year in Croatia, but travels to Malta regularly due to the fact that she is a director of a business that she runs in Malta together with her family.

In this respect, the fact that Plaintiff is not permanently absent from the Maltese Islands and throughout the proceedings she has been present to testify when required, the first plea is being rejected.

Second Plea

Plaintiff contends that following the **Cosimo Marziano** case,⁵ which judgement was confirmed by the Court of Appeal, even after a retrial by a judgment delivered on the 27th March, 2023, she definitely has a locus standi at law to seek a right of access to her grandchildren, citing various case-law under the European Convention of Human Rights. In the abovementioned case, the Court of Appeal, whilst embracing the considerations made by this Honourable Court, added that whilst in the Civil Code (Chapter 16 of the Laws of Malta), there is no express provision granting grandparents access rights to their grandchildren, the fact that Articles 7 (2) and 8 of the Civil Code oblige grandparents to provide maintenance for their grandchildren in particular circumstances ***“are in themselves a confirmation that Maltese law recognises the existence of a special relationship between grandparents and their grandchildren.”***

Having said that the Court also emphasised that by no means is this right of requesting access an absolute and automatic right, ***“it will now be up the Family Court to decide on the merits of the case, and therefore, whether the grandparents should have any contact with their granddaughter. The Court is***

⁵ Cosimo Marziano et. Vs. Silvia Marziano et. 28th January, 2020

certainly not declaring that the plaintiffs have a guaranteed right to visit or have contact with their granddaughter. However, as grandparents they do have a right to ask for visitation. The Family Court will then take a decision based on the best interests of the child.”

Initially, the Maltese Court was hesitant to touch on these “grey areas” in the law, adopting a very restrictive approach. This was evident in the case **_RB noe. vs RBM** decided on the 3rd July, 2019, il-Qorti ammettiet is-segwenti:-

“Il-Qorti taghraf illi huwa minnu dak li targumenta l-intimata illi d-dritt Malti ma jirrikonoxxix access versu n-nanniet.

“B’referenza ghas-sentenza fl-ismijiet Neli Valcheva vs Georgios Babanarakis citata mir-rikorrent, il-Qorti turrileva illi din is-sentenza m’hijiex applikabbli fil-kaz odjern peress illi a kuntrarju tal-ligi Maltija, il-ligi Bulgara fl-Artikolu 128 tal-Kodici tal-Familja tipprovdi ghal dritt ta’ access ghan-nanniet, u kien a bazi ta’ dan l-artikolu li n-nanna tal-minuri f’dik il-kawza kienet ghamlet talba ghall-access mal-minuri. Il-Qorti turrileva ukoll illi r-Regolament tal-Kunsill numru 2201/2033 ma jistabilixxix drittijiet t’access ghall-genituri jew membri ohra tal-familja. Dan ir-regolament jistabilixxi biss regoli rigward il-gurisdizzjoni tal-Qrati u r-rikonoxximent u l-infurzar ta’ decizjonijiet moghtija mill-Qrati tal-Istati membru tal-Unjoni Ewropeja fl-ambitu ta’ kwistjonijiet specifici tal-ligi tal-familja, inkluz kawzi u decizjonijiet dwar drittijiet t’access lejn tfal minuri. Dan jidher b’mod car mill-Artikolu 41 li jipprovdi dwar ir-rikonoxximent u l-infurzar ta’ sentenzi li jiddeterminaw id-drittijiet ta’ access, izda ma jakkordawx xi drittijiet t’access.

“Id-drittijiet t’access imsemmija fl-artikolu 40(1)(1) moghtija f’sentenza nfunzabbli li tkun inghatat fi Stat Membru ghandhom jigu rikonoxxuti u

jkunu nfużabbli fi Stat Membru iehor minghajr il-bzonn ta' dikjarazzjoni tal-ifużabbilita' minghajr ebda possibilita' li ssir opposizzjoni ghar-rikonoxximent taghhom jekk is-sentenza tkun giet iccertifikata fl-Istat Membru tal-origini skond il-paragrafu 2."

Undoubtedly, this is by far and large an untouched area of our law and jurisprudence, but the reasoning behind the **Cosimo Marziano** case opts for a more innovative and wider interpretation of what this right of access claimed by grandparents entails. The **Marziano** case, therefore, has, for the first time, opened the doors, attempting to bring Maltese jurisprudence in line with international thinking, in keeping with sociocultural trends, towards the interpretation of "family life."

*"At the sociocultural level, equally profound transformations are affecting the way of life of citizens. The phenomenon of families whose members (parents and children) have dual or different nationalities (which is closely linked to the free movement of persons and, more generally, to globalisation), the diversity of forms of union and cohabitation, besides marriage, in particular the civil partnership...are just a few examples. The diversification of family structures is therefore a reality of contemporary society....Those economic and sociocultural changes, whose multiple effects on the lives of citizens are being felt at a steady pace, require in some cases a reconsideration of the assumptions underlying legal systems and the substance of their rules, and necessitate an adaption of the law and in particular EU law (including private international law)."*⁶

⁶ Cosimo Marziano et. Vs. Silvia Marziano et. 28th January, 2020

The first signs of jurisprudential development that wanted to align itself with social developments go back to the 13th June, 1979, in the case **Marcks vs Belgium**, wherein the Court developed the notion of “*family life*” as contemplated under Article 8 of the European Convention of Human Rights. The Court interpreted the said notion as “ *includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life.*”

Developments in society have therefore created grey areas in the law, because these developments take place at a much faster pace than legislative adaption. It therefore, becomes challenging because these grey areas may give rise to uncertainties concerning the existence of rights of access by persons other than parents, in this case grandparents.

In **Valcheva vs Babanarakis** decided on the 31st May, 2018, the Court questioned the following “*with regard to grandparents specifically, is not that uncertainty disconcerting considering that, in principle and subject to the best interests of the child, contact between grandparents and their grandchildren, in particular in an ever-changing society, remains an essential source of stability for children and an important factor in the intergenerational bond which undoubtedly contributes to building their personal identity?*”

The reasoning in the **Valcheva** case is, however, based upon a general presumption that grandparents are indispensable in their grandchildren’s life as they offer them support and stability. Acting on this presumption can be

dangerous as not every grandparent can necessarily offer that support and stability and if grandparents are legally seeking access rights to their grandchildren, this is obviously a consequence of conflict with the parents, who in exercising their parental authority have denied access between the grandparents and grandchildren for reasons they are aware of. It is here that the Court plays a significant role because it can override any parental decision if it is not in the best interests of their children. Each case needs to be assessed individually.

This was the line of thought adopted by Prof. K. Sandberg in his article “Grandparents’ and grandchildren’s right to contact under the European Convention on Human Rights:”-

“Grandparents and parents acting as opponents in a courtroom may be harmful to the children involved. It does not facilitate an atmosphere of cooperation where the grandparents can act as a support for the child.¹⁵ A case brought before the ECtHR often is a sign that there is not a peaceful relationship between the parties. In the private law cases, the parents for some reason do not want the grandparents to see the children, which is why the court system has become involved.

Grandparents may be good for their grandchildren, including in conflict cases. However, decisions in individual cases cannot be based on this as a general presumption. Whether the grandparents’ right to family life has been violated in a specific case should depend not only on the consequences for the grandparents but also – and more importantly – on whether contact is in the child’s best interests. The best interest assessment has to be made individually, as required by Article 3(1) CRC. A result based on a general presumption may potentially be contrary to the best interests of the child in a specific case. Once a child is capable of forming a view, which children are from an early age, their best interests cannot be determined without hearing the child’s own view.

An awareness in this respect is all the more important as the ECtHR cases under Article 8 ECHR are brought by adults for violations of their right to family life. The best interests of the child only enter the case in the proportionality assessment and children's own rights are absent from the scene. If their best interests are not even properly examined and their views taken into account, children are placed in a subordinate position that does not harmonise with their being at the centre of the case.⁷

As has already been reiterated the right to access is not an absolute and automatic right, the grandparents can demand it, but it has to undergo the “best interest of the child” test. This was considered in the case decided by the ECH **N.V. and C.C. vs. Malta** decided on the 10th November, 2022, in consideration of Article 149 of Chapter 16 of the Laws of Malta:-

*“In assessing those decisions, the Court must ascertain more specifically whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and whether they made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see *Neulinger and Shuruk vs Switzerland (GC) No. 41615/07 §139, 6 July 2010*).*

*Furthermore, the Court stated “Indeed, the Court has often reiterated that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see for example, *X vs Latvia (GC) no. 27853/09, §96, ECHR, 2013*). Furthermore, the child's best interests*

⁷ Elevenjournals.com, Family & Law “Grandparents’ and grandchildren’s right to contact under the European Convention of Human Rights “ Profs. K. Sandberg

may, depending on their nature and seriousness, override those of the parents (see Neulinger and Shuruk, cited above, §134, and Sahin v. Germany (GC), no. 30943/96, §66, ECHR 2003-VIII). In particular a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development.

....

59.....What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as "necessary" within the meaning of Article 8 (see T.P. and K.M. v the United Kingdom ..)

60. In various contexts the Court has also held that there is a positive duty to take measures to facilitate family reunification as soon as reasonably feasible (see for example, Strand Lobben and Others, cited above, §205, and Abdu Ibrahim v. Norway (GC), no. 15379/16, §145, 10 December, 2021 and the case law cited therein.)

It is clear that the legislator wanted to ensure that the best interests of the children are supreme and must not be undermined in anyway, not even by their own parents or even their grandparents. The fact that parental authority is legally vested in the parents ought not to be construed as absolute, in that the parents do not have the final say on all matters concerning children, and this as enshrined

within Article 149 of the Civil Code , which provides that upon good cause being shown, the Court is empowered to give all such directions as regards the person or the property of the minor as it may deem appropriate and in the best interests of the child. At times even hearing the children is fundamental, if they are of age and in particular if there were prior existent close family ties, which does not seem to be the case in point.

Thus, there is no room for doubt that grandparents have a juridical interest to file a case asking to be granted access to their grandchildren and the Court is competent to hear it, but this is not an absolute right. The Court must assess each case on an individual basis and determine whether the instability in the relationship between the grandparents and parents is such that granting access is not in the best interests of the minor children, as those interests are supreme over any other interest.

This is the approach taken by our Courts in the **Cosimo Marziano** case, wherein it stated:

“...it is inevitable to conclude that to keep in line with international legal interpretations that are more in keeping with the realities of contemporary society, grandparents are entitled to file a case asking to be granted rights of access. Nevertheless, this is in itself is a procedural determination and in terms of international law cited, it cannot be denied, but it does not bring an automatic application of this doctrine. The right of access is subject to the overriding principle that the best interests of the children prevail. Every case must be examined on the merits, and if grave factual reasons against the grandparents or grave prejudice to the children result, then the ultimate interest of the children prevails.”

[....]

....even Article 8 under Regulation 2201/2003, albeit granting the right to ask for access rights to grandparents, whether this will be exercised or not is a substantive matter, that can only be decided by the Courts once it has collected all the evidence and has assured itself that its decision is taken in the best interests of the child. This is the overriding principle.”

Family Life

As established by the ECHR in the Marckx case of 1979:-

““family life” within the meaning of Article 8 (art.8) includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life.”

“Later the ECHR has specified this to require “sufficiently close family ties” between them⁸ with reference to Commission decision Lawlor v United Kingdom. When the child has lived with its grandparents for some time, this is normally sufficient to constitute family life. Yet, cohabitation is not a prerequisite, as “close relationships created by frequent contact” also suffice.

In Manuello et Nevi (2015) and Beccarini et Ridolfi (2017), however, while referring to Krusic, the Court does not mention the requirement

⁸ Krusic vs Croatia 2014

that those family ties be sufficiently close. Reference is made to the case of Bronda c. Italie (1998), but there the Court includes in family life “the relation between a child and its grandparents, with whom it had lived for a time,” in that case until the girl was around five years old. In Beccarini et Ridolfi, the grandparents had in fact been caring for their three grandchildren for approximately eight years, from when the children were very young. In Manuello vs Nevi, on the other hand, there is nothing to indicate that they have ever lived together, and nevertheless the existence of a family life is not questioned.

Turning back to the existence of “sufficiently close family ties” between grandparents and grandchildren, which is normally required. The point of departure is different where they have lived together and where they have not. After cohabitation for some time, the starting point is that family life in the meaning of Article 8 ECHR exists. Where they have not lived together, they need to prove that there is a “close relationship” between them, which should be “created by frequent contact.” (Kruskic and TS and J.J).⁹

It is clear that the relationship between parents and their children and that between the grandchildren and their grandparents are not on the same footing. The latter requires a lesser form of protection, in the sense that there is a violation of the family life if the grandparents are refused a reasonable access to maintain a good relationship between them.

Thus, as has already been reiterated by this Court, the Plaintiff’s request for access should not be automatically granted based on her status as a biological grandparent. Rather it should be evaluated based on whether her involvement

⁹ Grandparents and Grandchildren’s Right to contact under the European Convention on Human Rights. Profs. K. Sandberg

aligns with the best interests of the child. This approach is further supported by the European Court of Human Rights precedents which emphasize the importance of maintaining family relationships, including between grandparents and grandchildren, but regularly not at the expense of the primary rights of the parents to make decisions in their children's best interests and above all, the Court to oversee whether those decisions are in fact in the best interests of the minor children.

Best Interests of the Child

The Civil Code requires that the court's intervention prioritizes the child's best interests. This principle is fundamental in family law, ensuring that decisions are made to safeguard and promote the welfare and development of the child or children, above all other considerations.

Defendant ABM, in exercising his parental authority has denied access to Plaintiff, grandmother to his children on the grounds that having been brought up in a broken family and his home life was *“marred by volatile and unhealthy relationships, neglect, physical and emotional abuse, deceit and manipulation, as well as exposure to substance abuse, he has no desire to subject his minor children to a mother who, according to his testimony had no knowledge on how to bring up children and who was far from being an exemplary mother.”*

His traumatic childhood has left a dramatic impact on Defendant ABM so much so that he suffers from panic attacks. A psychologist who BM, visits from time to time concluded that **“A exhibits symptoms consistent with PTSD, likely stemming from prolonged exposure to familial abuse and neglect... A's past experiences of physical abuse and emotional neglect have left deep**

psychological scars that affect his current well-being and his approach to parenting.”

These psychological problems have also led to a strained marriage, with several problems to overcome, so much so that having Plaintiff in their life would actually put their marriage at risk.

Defendants argue that another reason why they chose to terminate relations between Plaintiff and their children, was because she lacked all parenting skills and guidance. She failed to place boundaries, she failed to provide a safe and structured environment for him and his sisters. Defendants’ allegations that leaving him to live with his sister when they were only teenagers, without supervision, since Plaintiff chose to live abroad with her partner at the time, only returning during school holidays, led to them organising parties where drugs were very rife, there was absolutely no control, so much so that his sister AM ended up struggling with serious drug problems.

The drug problems were corroborated by various witnesses produced during the case, with AM herself confirming that she had to undergo criminal proceedings after having been arrested. In its judgement delivered on the 27th November, 2018, the Criminal Court acknowledged and emphasised Plaintiff’s neglect, her permissive attitude towards drug abuse and her lack of parental guidance.

AM also admits that her problems emanated from the fact that she suffered “total absence from my mother during upbringing..” “Always left us alone, her whereabouts were unknown.” Plaintiff denies all this and insists she was always here when she felt her children needed her to be her. Moreover, she admits to having done everything she could do to put an end to AM ’ s drug problem, even

going so far as reporting her to the authorities, to assist her in fighting her addiction.

The reality is that the neglect and liberal attitude towards drug taking has created serious problems in ABM 's upbringing, later stultifying relations with Plaintiff. These issues in themselves, were not resolved and it is understandable that BM feels the need to shield the Plaintiff's grandchildren from such cycle of emotional distress and instability as that which dominated the Defendant's childhood.

Defendant BM , also testified how Plaintiff used to hide her husband's violence rather than handling such abuse. He explains how she made him lie at school the true cause of his black eye as a result of a beating from his father. To date, Defendant has no good relations with his father.

Defendants also refers to Plaintiff's manipulative character, which too created hostility within their household. It was blatant from the start of his courtship with Defendant J BM , that she disliked her and treated her differently to his previous girlfriends, mainly because she was not part of a noble family. This is also corroborated by both Defendant ABM 's sisters.

Again, Defendants insists that granting access to Plaintiff is not in the best interests of the children, because if so, they would be exposed to her manipulative character, thereby threatening the stability and integrity of the Defendant's family unit.

Family Life

In consideration of what this Court has considered to be the approach taken by the ECHR in the interpretation of Article 8 in the sense that it requires “sufficient close family ties,” from the evidence put forward in this case, it results that between Plaintiff and her grandchildren, there was no substantial relationship. Plaintiff only saw her granddaughter three times, but has never met any of her grandsons.

Plaintiff and also Defendants do agree that there were occasions when they met and they also travelled together, but these were minimal and there was hardly any follow up, except for Plaintiff causing conflict when she discovered that Defendant JBM was in Malta and she had not contacted her to see their grandson. It is questionable how establishing a relationship, a bond with a grandmother than never was, according to Defendant ABM, can be detrimental towards the children’s life.

The close family ties are practically non-existent according to Defendant ABM, facts that Plaintiff denies. There were a few occasions where they spent time together when Defendants’ daughter was born. However, Plaintiff’s version is not so credible, considering that when Defendant ABM created a WhatsApp chat, with his maternal grandmother and also Plaintiff to send them a picture of their newborn son, Plaintiff simply left the chat without replying. Ever since there has not been any contact with the grandson, though Plaintiff insists she had congratulated him in a separate message.

Essentially, if the Court had to grant access to Plaintiff it would be forcing the children to have contact with a person whom is practically a stranger to them and moreover a person with whom they never established close family ties.

Defendant did genuinely try to resolve issues with Plaintiff, also reaching out to her, that once they address their past issues and resolve them then they could move forward. She seemed to be totally oblivious of the trauma he passed through in his childhood years. He expected this reconciliation to happen over a cup of tea as a normal mother and son relationship would require and he was shocked to find out that soon after his son was born and had medical complications, Plaintiff sent an email requesting to see her grandson alone, admitting that their relationship had broken down, thereby excluding the parents and challenging their very own authority.

Ironically, the email was sent the day after Malta Today reported the developments that took place with the Cosimo Marziano case, entitling grandparents to demand access rights to their grandchildren, when their parents deprive them.

Plaintiff fails to convince this Court that she genuinely made efforts to put aside the differences with her son and start afresh, restore their relationship and build a real bond with her grandchildren. This is the stability and healthy environment that the grandchildren would require. Her ideas of bonding with the grandchildren was to send them gifts, when she was aware that Defendants disapproved because they were not on good terms.

Again, Plaintiff chose to fight for her rights through legal letters and legal proceedings, possibly feeling a sense of entitlement with the recent developments of the **Cosimo Marziano** case, thoroughly to spite the parents and to show them that she too has an equal right to see her grandchildren, defying all form of parental authority, which this Court has already shown as not being absolute.

Indeed, all this shows that Plaintiff was not prepared to go the extra mile to make amends with her son, but she wanted a battle, definitely placing her interests first,

rather than those of her grandchildren. By far this is appalling behaviour from a grandmother, who is meant to dote upon her grandchildren.

This battle and lack of empathy continues to manifest itself through Plaintiff's manipulations to isolate Defendant from the rest of the family. He confirms having been excluded from family birthdays, Easter gatherings, his sister's wedding as well as not being made aware of his grandfather's funeral venue, which version is corroborated by his uncle. Defendant was also insulted on the family WhatsApp chat, so much so that he was compelled to exit the chat. All this indicates that Plaintiff ensured to create hostile relations with the rest of the extended family to further make Defendant feel isolated.

In consideration of all the above, the "sufficient close family ties" between the Plaintiff and Defendants are practically non-existent. The only close contact between them was during a holiday they had altogether, but other than that, all forms of close contact seem to have failed. Plaintiff adopted the same egoistic approach, spending most of her time in Croatia at the expense of her children when she they were younger, leaving them behind in Malta to their own devices and retaining the same approach with her grandchildren.

Plaintiff tries to depict herself in a positive manner, in collusion with her husband and with other family members, she has repeatedly sought to peddle a completely different narrative, painting herself as the doting mother and grandmother she never was. This discrepancy raises serious concerns about the Plaintiff's honesty and integrity and to this effect Defendants decision to terminate all forms of access between their children and Plaintiff is definitely in the best interests of the children.

Defendants have succeeded in bringing about stability, security and happiness in their children's life, and introducing Plaintiff into their life, whose sole aim appears to be vindictive towards her own son, would mean that this Court is encouraging grandparents' rights as being on equal footing to that of parents, when in fact it is not, as only parents can exercise their authority over the children, provided it is in their best interests. Defendants' decision to cut all ties with Plaintiff are more than reasonable and justifiable in this case, and above all in their best interest.

DECIDE:

Having considered all the above, this Court rejects all Plaintiff's claims as it is not in the best interests of the minor children K and S and upholds Defendant's pleas.

Consequently, the Court rejects Plaintiff's claims.

All costs are to be borne by Plaintiff.

Hon. Mr. Justice Dr. Anthony Vella

Registrar

