



**CIVIL COURT
FAMILY SECTION**

MR. JUSTICE ANTHONY VELLA

Sitting of Thursday, 11th April 2019.

Warrant of Prohibitory Injunction number; 47/19/2 AGV

AB (182480 A)

vs

CD (ID nru : 182533A)

The Court;

Having seen the application of AB presented on the 6th March 2019 pleads with respect and confirms on oath;

1. That the applicant has an interest that the minor, here in after indicated, be not taken outside Malta;
2. That the respondent is the person having or who might have, the legal or actually custody of the said minor;
3. That the plaintiff has filed mediation proceedings for personal separation from the respondent.

4. That the parties got married on the 24th June 2010, in Greece, and from their marriage ED who will soon be 8 years of age, was born on the 3rd June 2011 (Birth Certificate and photos of the minor attached and marked as Doc A and B).
5. That unfortunately, the conjugal life of the parties, is no longer possible, and the respondent has threatened the plaintiff, that he will take back the minor to Greece, and will never see her again;
6. That the plaintiff, is scared that this can occur, since after he marital breakdown, respondent has not ties in Malta, as he is a Greek National. Plaintiff is concerned that the respondent can abduct the minor from school, and escape from the country, even though the minor has lived in Malta, since the year 2017, and has settled in school and has a circle of friends;
7. That since the minor has a valid Greek Passport, the plaintiff is even more scared and concerned that her husband's threats some into effect;
8. Where fore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the respondent enjoining him not to take, or allow anybody to take, the said minor out of Malta.

Having seen the reply of the respondent CD (182533A), who replied on the 21st March 2019 as follows;

Preliminary

1. This is a reply to the application filed by the plaintiff, AB in terms of Article 877 of Chapter 12 of the Laws of Malta, hereby the plaintiff requested this Honourable Court, to issue a warrant of Prohibitory injunction, against the respondent restraining him from taking his child, ED outside Malta.
2. The claims made by plaintiff are entirely unnecessary and patently vexatious because, the defendant has never threatened the plaintiff that he will take the said minor to Greece. On the contrary, defendant does not intend to leave Malta, and this due to his and the minor's various commitments in Malta.
3. The warrant of prohibitory injunction is simply a puerile retaliation on part of the plaintiff. There is no reason prima facie according to the Law, for which this Honourable Court, should uphold claimant request for the warrant of prohibitor injunction to be issued against the respondent.

4. The respondent is **objecting** to the issuing of this warrant of prohibitory injunction and this is for various reasons, which will be provided in this reply. Never the less, on a without prejudice basis, and subsidiarily to the arguments, here in, should this Court feel that it has to issue the warrant of prohibitory injunction, the respondent respectfully asks this Honourable Court, to allow him to travel with the child to Greece, from the 23^r April 2018 till 30th April 2019, this for vacation which the respondent had planned, with his daughter, as of last year with the plaintiffs' consent.

Facts of the case:

5. Parties married in Greece on the 23rd June 2010 and from their marriage, ED, was born on the 3rd June 2011. Both parties are of Greek nationality.
6. Where parties are still living together, in the apartment, Flat 2, Windmill Court, Triq Carini, Santa Venera, they have undergone mediation proceedings for their personal separation, which proceedings have not had a positive outcome.
7. Respondent has been living in Malta since 15 November 2017 and has since settled in Malta with no intention of settling in any other country. He is the primary carer of ED and has no intention of taking her away from her habitual environment.

Prima Facie:

8. As this Honorable Court, is well-aware , there are various judgements which establish that in these types of applications, the Court cannot delve into the merits of the case, since it would be deciding the case without the proper hearing, At the stage, the Court is to examine, whether, *it is satisfied that such warrant is necessary in order to preserve any right of the person , suing out the warrant, and that prima facie such person appears to possess such right.*
9. That was discussed in the case, **Associated Supplies Limited versus Joseph Mizzi**, where the Court held that, *'Il-Qorti tibda biex ittenni l-principju li jirregola proceduri ta' din x-xorta, u cioe' li l-iskrutinju li jehtieg din il-Qorti, f' dal-istadju, huwa essenzjalment wiehed fuq livell ta' prima facie. Il-mertu jigi mistharreg u evalwat dil-kawza bejn il-partijiet. Dan ifisser illi f' dal-proceduri, il-Qorti ma tkun bl-ebda mod qed tippronunzja ruhha fuq fatti, u fehmiel dwar il-vertenza, kemm jekk tigi milqugha t-talba odjerna, kemm jekk tigi michuda.*
10. As well in the case **Emanuel Balzan versus Francelle Agius**, which made reference to the case **Camilleri vs Gove et**, *Mid-disposizzjonijiet tal-istess Artikolu 836 jidher li l-uniku ezami li trid taghmel dil-Qorti huwa biss dak ta' prima facie u dan ghaliex il-mertu kollu jigi investigat fil-kawza propja bejn il-partijiet, u ghalhekk hemm*

limitazzjoni sinifikanti fl-ezami li trid taghmel il-Qorti, f' dal-istadju, u dan tenut li hawn si tratta dejjem ta' procedura preliminari u li ghad qed tistenna l-ezistu finali tal-kawza propja.

11. Moreover, with regards to the prima facie, the Court of Appeal, in the case **Grech pro et noe vs Manfred**, decided on the 1th July 1988. 'Huwa rekvizit oggettiv u mhux soggettiv, **ma jiddependix mill-element diskrezzjonali tal-gudikant, jew il-jeddijiet jidhru prima facie, ma' l-ewwel daqqa ta' ghajn jew ma jidhru xejn, ghall-finijiet tal-hrug tal-mandat.**
12. According to respondent's humble option, there is no prima facie basis or the issuance of this warrant. Respondent is a responsible parent, who as always, cared of this child, and has her interest at heart. It must be stated, that in the past, parties never had such issues, when ED travelled abroad with the respondent, as a matter of fact, the child always returned to Malta, on the agreed date.
13. In the humble opinion of the respondent, the nationality of parties should not be taken into account, in these proceedings, since both parties are foreigners, with the same intention and habitual residence in Malta with their child;
14. The current application for the issuance of the warrant of prohibitory injunction alleges that applicant's main concern is that the respondent will remove the minor from Malta, 'and take back the minor to Greece'. One must keep in mind, that Greece is signatory to the Hague Convention and even if, **only hypothetically**, the respondent attempts to leave for Greece, with the said minor, without the consent of the mother (which surely is not the case), there are other safe guards and remedies permitted at the law which claimant may avail herself of.

Links to Malta:

15. In the warrant, of the prohibitory injunction, the claimant also claims that she is scared that the respondent will leave Malta with the minor child, on the basis that the respondent does not have ties with Malta as he is Greek National.
16. Claimant is trying to mis lead the Court, when she declared under oath that the respondent does not have ties with Malta. As the claimant, is well-aware off, the respondent has various commitments in Malta, from which it appears clearly and un doubtedly what his true intention is to continue to reside in Malta, with his child, ED. To this effect, the respondent would like to draw the attention of this Court, about this;

- a. Indefinite contract of employment on full time basis in the post of finance officer with the European Union Programme Agency which contract was entered into 2nd July 2018. (Doc. A).
 - b. Lease agreement with **the claimant** which expires on the 25th October 2019 (Doc B.)
 - c. Recent purchase of two motor vehicles (Doc C).
 - d. Very recent payments made to road tax and motor vehicle insurance regarding vehicles with registration number OUR 147, and motorbike with the registration number IBW 379 (Doc. D.).
 - e. Contract s Senior Squad Coach with Msida St. Joseph Football Club, which was entered into 2nd January 209and ends on 31st May 2020 (Doc. E.).
 - f. Certificate of attendance of Maltese Language Module I, from the University of Malta (Doc F).
 - g. Recent payment to a 3month subscription with Hilton Hotel and living well Health Club for both respondent and his child, ED (Doc. G).
 - h. Certificate of conduct from the Maltese Police (Doc. H).
17. The question arises, ‘Would a person intending to leave Malta pay road tax and a motor vehicle insurance, purchase 2 motor vehicles, pat for future subscription fees and enter into a contract with third parties, which end in 2019 or later?’
18. Without any doubt, the answer is **No.**
19. In this request, the Civil Court (Family Section) in the case, MG vs JB Decided on the 3rd December 2018. Made reference to various judgements and held that, “Il-Ligi thares il-jedd prima facie bhala rekwizit mehtieg ghall-hrug tal-mandat. Irid ghalhekk ikun jedd, albeit biss wiehed fuq bazi prima face, li jimmerita helsien, **Mhux bizzejjed li jkun semplici diffikulta’, disagju jew thassib. Il-Qorti taghraf koll illi l-mandat ta’ Inibizzjoni huw meqjus mezz procuderali ta’ natura eccezzjonali.**”

ED’s Passport

- 20. On the 8th March 2019, this Honorable Court, ordered parties to deposit the passport of the minor under its authority subject to other measures, which this Honorable Court may deem appropriate and opportune.
- 21. Respondent humbly submits that he is not in the possession of his child’s passport. In fact, he does not know where the passport is placed.

Conclusion;

22. The respondent is **objecting**, to the issuing of this warrant of prohibitory injunction and this since there is no prima facie element according to Law for which this Honorable Court, should uphold this request for a warrant of prohibitory injunction to be issued against the same respondent.
23. Respondent always acted in good faith, informed the claimant of any travelling with the child and obtained he consent and authorization prior to such travel, as is the case with the afore-mentioned holiday, planned for the coming month. This shows that the claimants' worries are unreasonable and un justified if not frivolous and aimed solely at disrupting a planned and paid-for vacation where the minor, will be visiting family and family friends' in Greece.
24. Never the less, on a without prejudice basis, should this Court accede to claimant request, respondent respectfully asks this Honorable Court, to allow him to travel with the child, to Greece, on the 23rs April 2019 to 30th April 2019, both dates inclusive, thereby also ordering the plaintiff to release unto the respondent the minor's passport. It must be noted that respondent obtained the claimant's approval and consent to travel with the minor child. As a matter of fact, this holiday has been planned from December, 2018.
25. Saving further submission which may be made during the hearing of this warrant before this Honorable Court.

Having seen all the evidence brought by the parties;

Having heard the parties give their testimony in Court;

Having seen all the documents exhibited;

Having heard the final submissions;

Deliberates;

This is a warrant of prohibitory injunction filed by AB against her husband CD, requesting the Court to stop him from taking their minor child, ED, away from Malta. Both parties are Greek

nationals, residing and working in Malta, and the minor child attends school regularly in Malta as well. This claim is based on Article 877 of Chapter 12 of the Laws of Malta and is very often requested where a parent has a real fear that his or her child may be taken out of Malta and not returned. Such claims are usually decided by the Maltese Courts on a *prima facie* basis, and the Court does not normally go into great depth in hearing evidence. It is more of a precautionary measure, where such fear of taking a child out of Malta actually exists, or where the parent feels that such threat exists. For this reason, the Court would normally hear preliminary evidence and submissions in order to come to a decision on the matter.

Article 877 of Chapter 12 of the Laws of Malta provides:

877.(1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.

(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.

(3) The warrant shall also be served on:

(a) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and

(b) the Commissioner of Police enjoining him not to allow such minor to leave Malta.

In the course of counsels' oral submissions before this Court, it became increasingly evident that both parties, for very different reasons, do not wish to leave Malta and return to Greece. Both parties seem well settled here, even though they both have family back in Greece, hence both have strong ties with their native country. The minor child also seems to be well settled in Malta, has her school friends here, and attends other activities too. From the evidence brought forward by both parties, the Court does not see any immediate threat that the minor child may be taken to Greece by the father and not returned to Malta. In fact, as things stand today, both

parties may take the child from here: both have strong ties to their motherland, but both have very good employment posts and bright prospects here. For the Court, there is no *prima facie* threat that respondent is going to leave the island with the child. It was made clear that both parties had gone abroad in the past with the child, and there already are another two such trips planned for the near future, as had been agreed to by both parties. This in itself is a clear indication of their intention to remain here in Malta, continue with their respective professions, and ensure that the child continues receiving a healthy education and attending school. There are no immediate reasons why the child should not be permitted to leave the Islands of Malta and Gozo, and consequently the Court will not be upholding the issuing of this warrant.

DECIDE

Therefore, this Court, having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta;

Rejects the application filed by AB.

Denies the request.

Each party is to bear his own costs.

Mr Justice Anthony Vella

Judge

Cettina Gauci

Dep Reg