

**CIVIL COURT  
(FAMILY SECTION)**

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

**Today, Wednesday 8th May 2019**

**Application no. : 34/2019/1 JPG**

**JOF  
vs  
MS**

**The Court:**

Having seen the sworn application dated 20th February 2019 (Vide fol 1), filed by the plaintiff, wherein was held:

*That the applicant has an interest that the minor, hereinafter mentioned be not taken outside Malta;*

*That the respondent/s is/are the persons having, or who might have, the legal or actual custody of the said minor;*

*Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the respondent/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;*

*AOF born X male. Son of JOF and MS born in Y, 4 feet tall and blonde.*

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the reply of the defendant MS, dated 5th April 2019, a fol 56, where in it was held that:

*That by means of a court decree dated 20th of February, 2019, this Honourable Court provisionally acceded to the Warrant of Prohibitory Injunction so that the minor child AOF be prohibited from travelling outside Malta;*

*That the defendant claims that the applicant's request for the issuing of this warrant is a frivolous and vexatious one, since there is no real fear that she will move abroad to another country with the child and thus this warrant is not necessary;*

*That the facts in brief are the following:*

- 1. That the parties separated by means of a contract dated fourteenth of June two thousand and eighteen (14.06.2018) in the Acts of Notary Dottor Marilene Cristina.*
- 2. That by means of clause number eighteen (18) of the said contract, the parties agreed that they shall both be entitled to travel abroad for a maximum period of fifteen (15) days per year and this after giving the necessary information to the other party.*
- 3. That by means of clause number twenty (20), the parties agreed as to how the passports relating to the minor child are kept, with the Y passport being kept by the Father and the W passport being kept by the mother. In the same clause, the parties agreed that until the passport is issued, the Husband obliged himself to hand over the passport to the Wife when she will be going abroad and that the latter should return the said passport after her arrival (see contract hereby attached and marked as Doc MS1).*

4. *That this is in fact what happened this year, where after the exponent obtained the authorisation from the applicant to travel with the child, she went back to her home country for a holiday during the Christmas holidays and applied for the minor child's W passport. That one month after, in February, the exponent had to travel back to W to pick up the minor child's passport personally, and this since she was informed that it cannot be sent by post. That for this reason she obtained the authorisation of the applicant once again, who gave the exponent the child's Y passport so that she can travel with him.*
5. *That in fact the exponent always obtained the applicant's authorisation and never threatened that she will take the minor child outside of the country without the father's authorisation. That in fact, she has rigorously followed the separation contract and where she is in disagreement, has filed the appropriate procedures;*
6. *That this request for the said warrant was in fact solely made the day after the mediation sitting where the applicant was informed that by means of a Court decree of the Honourable Family Court, it was decided that the minor child resides with the mother whilst she was awarded care and custody of the minor child (See decree hereby attached and marked as Doc MS2);*
7. *That the applicant has failed to file a reply to the said application. That nevertheless he filed an application requesting the court to revoke contrario imperii the court decree and this because he claims that he did not understand the consequences of the notification amongst others. That he also stated that the exponent published the application on facebook and in fact filed a police report (See police report hereby attached and marked as Doc MS3);*
8. *That as explained in her reply, the applicant primarily claims that this was done unintentionally and in fact she was surprised when in November, the police contacted her to ask her whether she had posted anything on Facebook. That in fact the applicant claims that she only meant to send the reply by messenger to her W lawyer and cannot understand how this was*

*posted on Facebook. That immediately upon being informed of this mistake, the applicant deleted this post. That moreover, the applicant has changed all her passwords since that time since she fears that she was in some way hacked;*

9. *That with reference to the present warrant, it is thus ironic how the applicant claims that he fears that the exponent will take the minor child outside the country without his authorisation, when he has known of the said application since November 2018 and did not file any procedures. That on the contrary, he has since then given his consent for the exponent to travel with the minor child during the Christmas holidays and in February of this year whereby the exponenti returned as agreed to Malta;*

10. *That recently, the exponent asked the applicant to travel with the minor child in May whereby he informed her that until there is a court decision, he will not give his authorisation to any travel and thus the exponent cancelled her travelling plans. That the exponent had also given her consent so that the applicant travels with the minor child in Y in June, but he informed her that he cancelled his plans as well;*

11. *That there is in fact **no real fear that the exponent will take the child outside of the country;***

12. *That this all shows how the said warrant was filed capriciously and in a vexatious manner and there is no reason on a prima facie basis, as required by law so that this warrant is acceded to and thus should be revoked.*

*With costs of this procedure against the applicant.*

Having heard the parties testify before the Court under oath;

Having seen all the documents filed by the parties;

Having heard oral submissions of counsel to both parties;

**Considers;**

**JOE** (the applicant), testified that the parties have a six-year-old son together, named AOF who currently spends two weeks living with him, and two weeks living with his mother, the Applicant. He explained that in 2016 defendant had abducted the child and he had to involve the police and initiate court proceedings in V in order to be able to bring the child back to Malta. He said that since then, defendant has been constantly saying that she hates Malta, that she does not want to live here, and that she wants a quick divorce so that she can go back to the W so that she can get married to her boyfriend, who lives there. He explained that he is scared that Respondent will up and leave with the child and go to W, and he is very concerned that if that were to happen, he would lose his rights to his son who he loves very much.

**Under cross-examination** he confirmed that the parties agreed in their separation contract dated the 14<sup>th</sup> of June 2018 that they would each be allowed one vacation abroad for two weeks annually with their child. He agreed that Respondent has gone abroad with their son three or four times now, and has always asked for his consent before doing so, but added that recently, her attitude has changed and she has in fact threatened to take the child out of the country and she been constantly filing applications before the Family Court.

**MS** testified that after the parties signed the separation contract, she travelled a few times with the child and plaintiff never had a problem with it, which is why she cannot understand why he now felt the need to file the proceedings.

**Under cross-examination** she agreed that in 2016 she had taken the child out of the country and that the W Court had decided that the parties' minor son should return to Malta. She explained however that the parties had decided to remain in U because she was not ready to return to Malta, but that they had to return about six months later since they could not find a job.

Asked to confirm whether her intention is that she and A live in the W, she answered that she would like to be able to live with her son in the W, since her family is there and because here she cannot exercise her profession as a music teacher and has instead ended up working in a factory to be able to support herself. She explained that this is why she has asked Applicant many times to allow her to return to the W with their son. She confirmed that the

messages exhibited in Doc JOF 7 and Doc JOF 8 are messages that she sent, and that she has filed court proceedings for the contract to be amended.

**Deliberates:**

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.*

The Court begins by noting that in proceedings for the issuing of a precautionary warrant, the Court may not delve into the merits of the case, but rather it must be satisfied that the person asking for the warrant to be issued has a *prima facie* right and that the warrant is necessary in order to preserve that right.<sup>1</sup>

These proceedings were filed by applicant, JOF against defendant MS in order to prevent their minor child AOF from being taken out of the country. Applicant contends that he has a real and reasonable fear that defendant might try to abduct their child since she had already done this previously in 2016. Moreover, defendant keeps insisting on how much she hates living in Malta and that she wants to leave the country with their son. Respondent on the other hand contends that this precautionary warrant is not necessary, since the parties agreed

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<sup>1</sup> Vide for instance **Panorama Company Limited vs Enemalta Corporation** decided by the First Hall of the Civil Court on the 14<sup>th</sup> of February 2013.

in their separation contract that they would each be allowed an annual two week holiday with their child, and since she has never done anything with regards to the child without his consent or the Court's authorisation.

Having considered the law and jurisprudence on the matter, and having seen the evidence produced in these proceedings, the Court is of the opinion that applicant's request should be upheld.

The Court has seen the various messages sent to Applicant by Respondent, where she repeatedly asserted that she does not want to live in Malta, neither does she want the parties' son to grow up here. So much so, that Respondent even told Applicant that she does not want their child to learn Maltese since this would be a waste of time. The Court notes that these messages were sent **after** the parties had already agreed in their separation contract, that the child's domicile should be in Malta until he reaches the age of majority. While the Court understands Respondent's frustration at not being able to exercise her profession as a music teacher in this country, the Court notes that she nonetheless agreed in the separation contract that the child's domicile should be in Malta. While it is true that she is impugning the validity of this contract, until such time as it may be annulled by the Courts, the contract of separation signed by the parties on the 14<sup>th</sup> of June 2018 remains valid and binding.

The Court also notes that Respondent has no real ties with Malta, as she herself has stated in various messages sent to Applicant. Her family does not live here and she is soon to be married to her W boyfriend who does not want to live in Malta. Furthermore, as she herself stated, in Malta she works in a factory, as opposed to exercising her chosen profession as a music teacher. The Court cannot but remark *obiter* in this regard, that this latter fact is mostly due to Respondent's behaviour: as a European Union citizen, Respondent has a right to work freely in Malta, and it is very likely that she would be able to find a job as a teacher in Malta (considering that teachers are scarce) if she improved her English. The fact she is choosing not to do so, after having lived in Malta for some years, further adds to the Court's concern that Respondent has no intention of establishing her and the child's domicile in Malta, notwithstanding that agreed by the parties.

Therefore, this Court, having seen Articles 873 to 877 of Chapter 12 of the Laws of Malta is of the opinion that all the essential elements of the prohibitory injunction concur.

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For these reasons the Court orders that the defendant MS, mother of the minor child **AOF**, 6 years of age, born on the X in Y, four feet tall and blonde, be prohibited from taking or allowing anybody to take the said child out of the Maltese Islands, and orders Respondent to deposit any passport of the minor child in her possession with the Court Registrar with immediate effect.

To this end the Court orders that a copy of this decree be notified to all Officials and Authorities according to Law.

All costs are to be borne by Respondent.

**Given in Camera.**

**Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli**  
**Deputy Registrar**