



**CIVIL COURT
FAMILY SECTION**

MR. JUSTICE ANTHONY VELLA

Sitting of Thursday, 4th April 2019.

Application number; 99/17 AGV

AB (Maltese Residence card 84130 A)

vs

1. C (Maltese Residence: 63481A)
2. Dr. Mark A Mifsud Cutajar and PL Liliana Buhagiar appointed as Deputy Curators for the Minor child DE as per decree of the 29th May, 2017.
3. Director of Public Registry.

The Court;

Having seen the application of AB presented on the 21st April 2017 pleads with respect and confirms on oath;

1. That from a relationship, that the plaintiff had with the defendant C, the minor DE, was born on the 17th October 2016 and this a result from the birth certificate of the same minor child bearing the number 6015 of the year 2016 which is being here by annexed and marked as Doc VP 1.
2. That as results for the same act of birth of the minor, in the column ‘Name and Surname’, of the Father were registered with the words ‘Unknown Father’, whilst there are no details of the Identification Document, age, birth place and place of residence of the Father and the name and surname of the father of the father of the child and whether he is dead or alive;
3. That as will result from the hearing of the lawsuit, the plaintiff is the natural father of the child DE.
4. That the plaintiff has proceeded with a judicial letter dated 2nd December 2016, Doc VP 2), in accordance the procedure contemplated in Article 86 of the Civil Code in order to recognize the same minor as his own natural child but the defendant C remained in default and failed to file a note

agreeing so that the plaintiff be recognized as the natural father of the same minor;

5. That the plaintiff wishes that the factual state be reflected in the birth certificate of the minor, so that this act will reflect the reality and so that the plaintiff will be in a position, to exercise and perform his right and duties as a father;
6. That the plaintiff is declaring from now his availability for any genetic and scientific evidence required by the Law and by this Honorable Court;
7. That thus this lawsuit has to be made;
8. That the plaintiff knows these facts personally;

1. Declare that the plaintiff AB (Residence Number: 84230A) is the natural father of Christin DE;

2. Order the defendant Director of Public Registry to affect all the corrections and annotations necessary in the birth Certificate of DE, which act bears the number 6015/2016, amongst which;

- a. Change the surname ‘E’, in the column ‘name or names by which the child is to be called’ with the surname ‘B’, as to reflect the surname of the father;

- b. Delete the words, ‘unknown father’, in the column ‘name and surname’, with reference to the father of the child and instead writes down ‘AB’, enters the numbers of the Maltese Residency card number, ‘0084130 A’, relative to the father of the child, in the

column “ Identification Document”, enters the numbers “33” in the column “Age”, and this always with reference to the father of the child, enters the place , “Parvomay, Bulgaria”, in the column “Place of birth”, as regards to the father of the child, “St Pauls’ Bay Malta”, in the column “Place of residence”, as regards to the “Father of the Child”, enters “FG” (Deceased)”, in the column “ Name and surname of the father”, and whether “Living or dead”, with reference to “Father of the Child” ;

3. Give all the provisions and orders which this Honorable Court may deem fit and opportune;

With all costs against the defendants who are summoned from now so that a reference to their evidence be made.

Having seen the reply filed by the Director of Public Registry dated 29 May 2017, filed in the Maltese language, wherein it was premised as follows;

1. Illi preliminarjament u fil-mertu, l-esponenti tistqarr li mhix edotta mill-fatti li gew dikjarati fir-rikors guramentat;
2. Illi stante s-suespost, l-esponenti tirrimetti ruhha ghar-rizultanzi istutturji u umilment titlob lil dina l-Onorabbli Qorti, sabiex tistieden lill-partijiet kollha koncernati sabiex jissotomettu ruhhom ghat-testijiet genetici kif provdut **fl-Artikolu 100 A tal-Kap. 16 tal-Ligijiet ta’ Malta**, sabiex jigi vverfikati jekk l-attur huwiex verament il-missier naturali tal-minuri DE;

3. Illi bla hsara ghas-suespost f' kaz li jintlaqaw it-talbiet tar-rikorrenti minn dina l-Onorabbli Qorti, l-esponenti tistidien lir-rikorrent sabiex permezz ta' nota jipprezenta d-dettalji personali tieghu, senjatament is-segwenti, 1. In-numru tal-karta tal-identita'. 2. Ismu u kunjomu. 3. L-eta' tieghu meta twieldet DE. 4. Il-post tat-twelid tieghu. 5. Il-post tar-residenza tieghu meta twieldet il-minuri DE. 6. Isem u kunjom missieru. 7. Jekk l-imsemmi missier patern kienx ghadu haj jew mejjet, meta twieldet il-minuri DE. Tali informazzjoni hija mehtiega biex tigi eventwalment inserita fl-atti tat-twelid tal-minuri DE;
4. Illi bla pregudizzju ghas-suespost il-partijiet kontendenti ghandhom ukoll jiddeciedu b' mod definittiv liema kunjom ghandu jassumi l-minuri DE u dan a tenur **tal-Artikolu 92 (6) tal-Kapitolu 16 tal-Ligijiet ta' Malta**;
5. Illi finalment dejjem minghajr hsara ghal fuq suespost, l-esponenti tissotmetti li fi kwaunkwe kaz l-azzjoni tar-rikorrent hux attriwibbli ghal xi ghemil jew nuqqas ta' agir tal-esponenti u kwindi hija ma ghandhiex tigi assoggetata tal-ispejjez tal-kawza istanti;
6. Salv eccezzjonijiet ulterjuri.

Bl-ispejjez kontra r-rikorrenti li qiegħed minn issa jigi ingunt in subizzjoni.

Having seen the reply filed by C (ID MT 4015866) (063481 A) under oath, wherein it was premised as follows;

1. That the defendant is opposing to the requests of the plaintiff in view of the fact that those same requests, if acceded to, will have a deleterious effect on the interests of the minor;
2. That without prejudice to the above, the defendant would like to point out that should the request of the plaintiff be acceded to by the Court, the fact that the current action was filed was not through any fault of hers, so that she should not be made, to suffer any expenses related to these proceedings;
3. That the defendant is reserving the right to submit further submissions, should the need arise.

All expenses should be borne by the plaintiff, who is being presently enjoined *in subizzjoni*.

Having seen all the documents exhibited by the parties;

Having seen the affidavit filed by the plaintiff on the 12 March 2018;

Having seen the affidavit filed by the defendant on the 27 March 2018;

Having seen the report filed by the Court-appointed expert, Dr. Marisa Cassar, on the 26 July 2018, whereby it was confirmed that the plaintiff is the biological father of the minor child mentioned;

Having seen that the parties had no further evidence to submit;

Having seen that the parties had agreed, during the sitting before the Court held on the 21 February, 2019, that the minor child's surname should read BE, and requested the Court to take note of this;

Having seen that the Director of Public Registry objected to this request, since under Maltese law, the child's surname could be registered as BE ;

Considers;

The case concerns a plea filed by plaintiff to be officially recognized as the natural biological father of a minor child, and consequently have his name registered with the Maltese authorities as such. Given the DNA test result carried out by Dr. Marisa Cassar as aforesaid, there is little else for the Court to consider. The pleas raised by the Director of Public Registry were more of a guidance for the parties than anything else, and in fact both parties abided by the instructions and direction given therein. The defendant, on the other hand, submitted that it was not in the minor child's best interests to have this exercise done, and that in any case she should not be made to bear any costs and expenses.

As to the evidence tendered by both parties in their affidavit, this relates more to the problems they had in their relationship and how they behave with each other at present, rather than the actual merits of the case of filiation. This in itself is also very indicative. It does not appear that there is any basis for contention that plaintiff is in actual fact the biological father of the minor child. For this reason, the Court will uphold the plaintiff's application and will grant the requests so made.

DECIDE

For these reasons, therefor, the Court, while denying the pleas raised by defendant C;

Grants the requests made by the plaintiff, and consequently;

Declares that the plaintiff AB (Residence Number: 84130A) is the natural father of DE;

Orders the defendant Director of Public Registry to effect all the corrections and annotations necessary in the birth Certificate of DE, which act bears the number 6015/2016, amongst which;

-Change the surname ‘E’, in the column ‘name or names by which the child is to be called’ with the surname ‘BE’, as to also reflect the surname of the father;

-Delete the words, ‘unknown father’, in the column ‘name and surname’, with reference to the father of the child and instead writes down ‘AB’, enters the numbers of the Maltese Residency card number, ‘0084130 A’, relative to the father of the child, in the column ‘Identification Document’, enters the numbers ‘33’ in the column ‘Age’, and this always with reference to the father of the child, enters the place, ‘Parvomay, Bulgaria’, in the column ‘Place of birth’, as regards to the father of the child, ‘St Pauls’ Bay Malta’, in the column ‘Place of residence’, as regards to the ‘Father of the Child’, enters ‘FG’ (Deceased), in the column ‘

Name and surname of the father”, and whether “Living or dead”,
with reference to ‘Father of the Child’ ;

All costs are to be borne by defendant C.

Mr. Justice Onor. Anthony Vella
Judge

Cettina Gauci
Dep Reg