

**CIVIL COURT
(FAMILY SECTION)**

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

Hearing of Wednesday 3rd July 2019

App. No. : 236/2018 JPG

Case No. : 24

TB

Vs

**And by virtue of decree dated
16th October 2018, Dr Yanika
Camilleri and LP Davina
Sullivan were appointed as
Curators to represent FB
And by virtue of decree dated
6th March 2019, Dr Christopher
Chircop was appointed to
substitute Dr Yanika Camilleri.**

The Court,

Having seen the application dated 20th June 2019, of Dr Christopher Chircop (ID: 197289M) and Legal Procurator Davina Sullivan (ID: 176470M) as Curators to represent FB for the application of TB dated 27th May 2019, a fol 129, wherein it was held:

That by a decree of the 13th June 2019 this Honourable Court, acceded to the requests of B as it decided that it is the child's best interest to travel on the intended school trip in South Africa and authorised the same. (Decree was sent to Dr Christopher Chircop via email on the 18th June 2019).

That Curator Christopher Chircop, sent this decree to B via email and on the 19th June 2019 he received an email by B in which he informed him that he wish to appeal from such decree.

That according to article 229 sub-article 3 of Chapter 12 of laws of Malta such appeal '... may be entered before the definitive judgment only by special leave of the court hearing the case, to be requested by an application...'

Therefore the applicants humbly request this Honourable Court:

To grant such leave of appeal, so the applicants will appeal from such decree before the definitive judgment.

This apart from any other decision/order which this Honourable Court deems appropriate in the circumstances.

Having seen that Dr Maxine Gatt for TB accepted service of defendant's application;

Having seen the reply of TB (holder of Passport no. X), dated 26th June 2019, a fol 143, wherein it held:

That by means of their application, applicants are requesting that this Honorable Court grant them leave to appeal from this Court's decree dated the 13th of June 2019.

By means of its decree of the 13th June 2019 the court acceded to the exponent's request made by means of an urgent application, thereby authorising Z Bakalli to go on a geography school trip to South Africa; 'Operation Wallacea' on the 10th July till the 28th July 2019, since it deemed that this school trip is in the

best interests of the minor child;

That throughout the course of these proceedings curators have been appointed to represent the interests of the father, Mr. FB.. These curators have been successful in making contact with the father¹, however it has been repeatedly and clearly the father's lack of interest in appearing before this Honorable Court, or in seeking his own legal counsel, that has resulted in him being duly represented by Curators. Moreover his residential address remains unknown till this very day to both the exponent and the Curators which represent him and which have repeatedly asked him to furnish the same; this is indeed evidenced from the correspondence via emails sent by Mr. Christopher Chircop and B exhibited by means of note duly filed by the curators in the acts of these proceedings during the last sitting, wherein Dr.Chircop points out that B has not replied to his question requesting his residential address, and moreover B refused to do so brought up excuses such as; "Kindly clarify to me for what purpose you require a UK address from me?".

*That in fact, to the urgent application filed by the exponent for the minor to attend to the school trip in question, **Dr. Christopher Chircop and Legal Procurator Davina Sullivan duly filed a reply on F behalf on the 11th June 2019**, in which reply they declared as follows:*

"That on the 5th May 2019 an email was sent to B (attached and marked as Doc A), and a contact was made between B and the curators.

That yesterday at about 1pm B contacted Dr. Christopher Chircop by an email in which he was informed that B was going to phone him within an hour.

That Dr. Christopher Chircop yesterday was on leave and therefore no contact was made between them.

¹ Dr. Yanika Camilleri and Dr. Christopher Chircop have both declared that they have made minimal contact with Mr. Fisnik.

That although yesterday Dr. Christopher Chircop sent an email to B and informed him that he was on leave and he should communicate with him either by sending to him the necessary information by email or otherwise phone him today morning, so far no communication was made between the curators and B.”

*That respectfully, and as shown above, B was given due opportunity by the Curators acting on his behalf to make contact with them, and **it was his failure to follow up on this communication, that is the reason behing the filing of an application requesting granting of leave to appeal from Court’s decree.***

*As it appears from the corrispondence attached to Curator’s note, filed simultaneously with the application requesting leave to appeal from the 13th June 2019 decree, **curators made contact with B via email dated the 5th June 2019 informing B of the urgent application filed by the exponent, and informing also B of his right to reply by not later than the 10th June 2019.** B only made contact with Curators on the 10th June itself, and this without furnishing a reply as to his position on the application lodged, even though he was fully aware of the deadline! Thus, **B had good enough time to reply to such urgent application, should he have so wished.***

So much so that Dr. Chircop informs B by means of an email of the 19th June 2019; “Unfortunately you sent me the communication yesterday which was too late. As you were informed by my email sent to you on the 5th June 2019 we had to file the reply by the 10th of June. I will send you the decree of the court in the afternoon.”

More so, as B himself admits in an email which he sends to Rebecca Cassar, the minor’s geography teacher, dated the 10th of June 2019, he was in receipt of the information as to the exponents urgent application for the court to grant leave for ZB on the 10th of June 2019, following therefore the receipt by himself of an email from Dr. Christopher Chircop, referred to above; “...I found out, only

now, that application has been lodged at the court”².

Requesting an appeal at this stage, seeing that the school trip is so close, will only put the minor’s plans in limbo, prejudicing the safeguarding of her best interests. Needless to say the minor is very excited to go on the school trip together with her friends, and has at this stage all the preparations in order to travel to South Africa.

Respectfully this is typical of B past actions, wherein he makes sporadic contact with institutions where the children attend, or with courts/lawyers representing him, but never follows through with it, circumstances which have been amply proven throughout the course of this case.

Therefore, for the reasons elucidated above, the exponent requests that the court reject the applicants request, and this together with any other order which this Court deems necessary in the circumstances.

Having seen the note filed by Dr Christopher Chircop noe dated 26th June 2019 and the documents therein attached;

Having seen the exhibited documents and all the case acts;

Having heard oral submissions from both parties;

Considers;

This application seeks this Court’s authorization to appeal its decree dated 13 June 2019, whereby this Court upheld the Plaintiff’s request that the minor child of the parties travel to South Africa as a school trip on the 10th July, 2019 and return on the 28th July, 2019. (Vide application page 107)

² Email dated the 10th June 2019 sent by Mr. FB to Rebecca Cassar, exhibited by means of a note filed by Dr. Christopher Chircop, during last sitting.

Maltese Legislation does not lightly allow for appeals from interlocutory decrees before final judgment. Indeed, Article 229(3), Chapter 12 of Laws of Malta:

*(3) Save as otherwise specifically provided for in this Code an appeal from any other interlocutory decree not included in subarticles (1) and (2) may be entered before the definitive judgment only by special leave of the court hearing the case, to be requested by an application to be filed within ten days from the date on which the decree is read out in open court. The court, after hearing the parties, may grant such leave of appeal if it deems it **expedient and fair** that the matter be brought before the Court of Appeal before the definitive judgment and the time limit for the filing of such an appeal shall commence to run from the date of the said decree.*

Indeed, appeals from Interlocutory decrees before definitive judgment may only be entered if the Court grants special leave to do so.

This special leave will only be granted if the applicant proves to the satisfaction of the Court that it is expedient and fair that the Court of Appeal be seized of the matter **before** the definitive judgment.

This Court has examined the Respondent's application for special leave to appeal and heard oral submissions on the matter in the course of the hearing dated 24th of June, 2019 and has been informed of no reason, compelling or otherwise, that would induce this Court to consider it expedient and fair for the Appellate Court to be seized on the matter before definitive judgment. The respondent seems to have objected to his daughter's travel arrangements with her school without articulating, in any way, his objection.

Therefore, the application is denied. Costs are to be borne by FB.

Read.

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

Lorraine Dalli
Deputy Registrar