

**CIVIL COURT  
(FAMILY SECTION)**

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

**Hearing of Friday 12th July 2019**

**Application no. : 298/2018/2 JPG**

**Case no. : 20**

**IF in her name and the name of  
her minor children TF and LF**

**vs**

**JW**

**The Court:**

Having seen the application of plaintiff IF dated 9<sup>th</sup> April 2019, a fol 2 et seqq., wherein it was held:

*That the parties had agreed, and this was confirmed by a decree of the Civil Court Family Section during mediation of the 14<sup>th</sup> November 2017, that the two minor children reside with the father during the school nights, and this not to disrupt the circumstances in which the children were living, hoping that this was in the best interests of the stability of the children especially the eldest who was starting Form 1. She did this at some sacrifice, as she went to attend to the childrens Malti Language homework most nights, to then have to say goodbye each night, but she was ready to do it for the sake of the children.*

*Eventually however, the children insisted that they wanted to only stay with this arrangement till the end of that school year they did not want to live with the father, and this on the insistence of the children themselves. Since that time the children have resided with the mother in a small one-bedroom flat which belongs to her. Apart from the question of the restrictions of space there is also another important aspect which the defendant does not and has really bothered about.*

*He has not been supplying maintenance for the children and recently he even requested his wife to fork out also his 50% of the education expenses of the children. He is a capable person and although he tries to hide that he is employed, in actual fact he is certainly making ends meet for himself. This was also the pattern when the parties were together. The education fees have since been paid by his sister from the UK after a plea from the wife as the school had suspended their online services meaning the children could not do their homework and assessment work.*

*It is true that she is in employment while officially the husband is not registered as working in Malta. There are certain tricks which are not only known to Maltese but also to other people. In actual fact the applicant knows that her husband has connections with English companies engaged in shipping publishing, and this work is done on the computer from home.*

*Payment does not necessarily flow into Malta and she has no way to control this fact.*

*Wherefore the applicant humbly prays that this Honourable Court confirms that the minor children T and LF continue to live with the mother with access to the father. That JF, the father, be ordered to pay a maintenance allowance for the two children and this according to the condition that his Honorable Court may impose.*

Having seen that the application documents, the decree and notice of hearing have been duly notified in accordance with law;

Having seen the reply filed by JF, dated 29<sup>th</sup> May 2019, a fol 9 et seqq., wherein it was stated:

- i. *That in the first place, the applicant's allegations are factually and legally unfounded. That in any case, the applicant's pretensions are directed so as to continue to shed a bad light on the respondent and the respondent is firmly disapproving of the applicant's claims, such that the primary residence of the minor children T and LF was until recently with the respondent in the matrimonial home, and that it was the same applicant who declared in a previous application that the residence of the children shall be with the father in the matrimonial home when she abandoned the matrimonial home since she engaged in an extra-marital affair;*
- ii. *That the respondent submits that by virtue of a court decree dated the fourteenth (14) of November of the year two thousand and seventeen (2017), this Honourable Court authorised the respondent to have the custody of the children during weekdays, whereas the applicant was authorised to have the custody at her residence during weekends, as evidenced in the decree which is hereby marked and attached as doc 'A';*
- iii. *That the minor children were happily residing with their father and during the summer period they were compelled to spend plenty of their time at their grandparents' residence since they used to attend summer classes in the vicinity and they were inclined to spend their holidays in an environment close to the sea. That after this period of time, the applicant started showering the minor children with gifts and expensive stuff to win over the kids, and ultimately the applicant undertook the decision unilaterally to have the custody of the children without any authority, and hence was in breach of the court decree delivered by this Honourable Court;*
- iv. *That the respondent is contesting the applicant's pleas on account of the fact that the respondent is more competent to be vested with the care of the minor children rather than the applicant, since he is much more able to guarantee stability in favour of the minor children. That this implies, that the applicant shall have access to the minor children, and that the minor children shall reside together with the respondent in what is the home of these children since it is useless that the children*

*are dumped at their grandparents' doing whatever they want, playing PlayStation and without any structure and discipline;*

- v. That the applicant is committed to her job and to her social life, rather than the minor children. That in fact, the applicant returns back home late and the minor children are compelled to stay with their grandparents until that time. That the respondent keeps chauffeuring the children after school since their mother finishes home late and has her own personal commitments and the children are taken by the same respondent to their maternal grandmother after their activities. That in fact, the applicant failed to mention that she calls the respondent when she needs him and instructs him to drive from Bulebel to Saint Paul's Bay four times a week to drive the kids to their activities and consequently, he spends more time chauffeuring the kids rather than spending quality time together with them;*
  
- vi. That the respondent only has one interest, that being the well-being of the children and even though he has limited financial means, he never asked for any money from the applicant and the applicant maneuvered the situation in order to ask for money from the respondent put him in a difficult financial situation;*
  
- vii. That the respondent strongly condemns the applicant's allegation that he has never contributed in favour of the minor child, given that up till the period when they were married and lived together as a whole family, the respondent contributed financially to the needs of the family. That the applicant rarely contributed to the payment of electricity, water, school, mortgage and if she did she looked after her interests rather than of the family in general;*
  
- viii. That the respondent also funds extra-curricular activities and other expenses relating to the minor children's wellbeing. That other than that, the respondent submits that while the minor children were residing with the respondent, he was solely contributing by all means as regards to their everyday living, together with the needs of the children, including but not limited to health, education and extracurricular activities, and the applicant wasn't contributing in any way;*

- ix. That the respondent submits that the applicant's income substantially exceeds that of the respondent. That as a matter of fact the income of the respondent is relatively inadequate and is not sufficient to make ends meet, given that presently the respondent has to incur substantial expenses with regards to the repayment of a loan, payment of bills and other costs, which income may even be insufficient;*
- x. That in view of the abovementioned, the respondent humbly requests this Honourable Court to discard the applicant's claims given that they are not legally founded.*

Having heard all the evidence on oath;

Having heard oral submissions from both parties;

Having seen the exhibited documents and all the case acts;

**Considers;**

**IF** testified that the parties' two child have been living with her since they finished school exams in June 2018. She explained that while they were residing with their father, she used to go to help them with their homework daily in the evening. They used to then be with her from Friday after school until Monday morning when she took them to school. She continued that once the school year ended, the children no longer wanted to live with their father, so they started living with her. Indeed, Plaintiff states that since June 2018, Defendant has never paid maintenance, despite the fact that she presented him with numerous bills relating to the children.

**JF** testified that for the last two years he has worked for an organisation based in London, on a commission basis. He said that prior to this, he had a similar job in London, but that when the parties moved here, he had to start re-building a client base from scratch. He explained that the company he currently works for agreed to pay him the sum of £1,200 regardless of the commission he makes, and then he would be compensated for any commission earned. He exhibited bank statements and explained that this is a joint account held with Plaintiff, who

has been taking money from it without consulting him. He explained that the parties have a property loan, in relation to which he pays the amount of €1,250 monthly. He added that up until Plaintiff left the matrimonial home, he paid for the expenses incurred by the family, including the loan payments, since at the time the parties first came to Malta, he had a lucrative job.

Regarding the children, he agreed that they live with their mother, explaining that **when they were living with him, he found it hard to work at his job whilst at the same time taking care of the house and two children.** He added that Plaintiff can afford to take the children to eat out, and to buy them various videogames, while he has more limited means, so the children prefer being with their mother.

### **Deliberates;**

This is a decree following a request by Plaintiff to be granted custody of the parties' two children with a right of access for Defendant, and for Defendant to be ordered to pay maintenance for the children.

The Court has heard that Defendant is not objecting to Plaintiff's request that the parties' children live with her. Indeed, the defendant admitted to having difficulties coping with the care of the two children, the running of a household and working at the same time. Indeed, the Court notes that the Defendant refrained from filing in the applications regarding the return of his children to the matrimonial home in terms of their agreement and this in spite of the fact the children have spent considerable number of months living with their mother. Accordingly, the Court considers that there is no valid reason to uphold this request.

Regarding access for Defendant, the Court notes that Defendant did not indicate any specific days and times on which he would like to exercise access. The Court is of the opinion that access should be free and ample, on days and times as agreed to by the parties. Should the parties fail to reach such an agreement, access shall be exercised as follows:

- Every Tuesday and Thursday, Defendant shall pick up the children at 5.00pm and return them to applicant's residence at 7.00pm;

- The Defendant shall have his children sleepover at the matrimonial home during the weekend, which shall alternate as follows: on the first week from Friday 5.00pm until Saturday 6.00pm and on the second week from Saturday from 4.00pm until Sunday 5.00pm. Defendant shall pick the children up from and return them to Plaintiff's residence;
- During the school holidays only, the access held on Tuesday and Thursday shall be exercised between 4.00pm and 8.00pm.

The Court notes that Plaintiff produced no evidence regarding her income, and the expenses that she incurs with regards to the children. However, the Court understands that according to the law, parents have an absolute obligation to provide for maintenance and support for their children.

The Court has seen that Defendant claimed in his testimony that he earns £1,200 a month. Defendant also filed a copy of his bank statements for the past nine (9) months, which show the direct deposits of his salary made by his employer. These are as follows:

13/09/2018	€1,630.70
20/09/2018	€657.95
15/10/2018	€1,333.75
31/10/2018	€2,189.88
5/12/2018	€1,309.28
27/12/2018	€2,612.03
23/01/2019	€1,329.35
07/02/2019	€1,663.88
14/02/2019	€830.01
13/03/2019	€1,357.70
27/03/2019	€568.45
12/04/2019	€1,358.32
03/05/2019	€1,363.61
<b>Total</b>	<b>€16,895.63</b>

From the above it results that Defendant's average monthly salary is approximately €1,877.29.

Regarding Defendant's claim that he pays the monthly amount of €1,250 for a property loan, the Court has seen that the entry in his bank statements relative to a loan payment, dated 31<sup>st</sup> December 2018, is actually for the amount of **€800, and not €1,250** as stated by him.

In view of Plaintiff's lack of evidence regarding her income, and the expenses incurred by her for the children, and in view of the evidence proffered regarding Defendant's means, this Court is of the opinion that maintenance *pendente lite* payable by Defendant for his two children should be in the amount of **five hundred euro (€500)**, which amount shall include educational and medical expenses.

**For these reasons, the Court orders that *pendente lite*:**

- 1. The children's primary residence shall be with Plaintiff;**
- 2. Defendant is to have free and ample access with the children, on days and times as agreed to the parties. Should the parties fail to reach such an agreement, the Court orders that access shall be exercised by Defendant as follows:**
  - Every Tuesday and Thursday, Defendant shall pick up the children at 5.00pm and return them to applicant's residence at 7.00pm;**
  - The Defendant shall have his children sleepover at the matrimonial home during the weekend, which shall alternate as follows: on the first week from Friday 5.00pm until Saturday 6.00pm and on the second week from Saturday from 4.00pm until Sunday 5.00pm. Defendant shall pick the children up from and return them to Plaintiff's residence;**
  - During the school holidays only, the access held on Tuesday and Thursday shall be exercised between 4.00pm and 8.00pm.**



- 3. Defendant is to pay the Plaintiff the sum of five hundred euro (€500) as maintenance for the children, which sum shall include educational and medical expenses, and orders Defendant to set up a standing order for the regular payment of the amount stipulated and this within a period of one week.**

**Read.**

**Mhallef Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli  
Deputat Registratur**