

**CIVIL COURT
(FAMILY SECTION)**

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

Today, Wednesday 18th December 2019

Application no. : 153/2019/3 JPG

**PL
vs
LL**

The Court:

Having seen the sworn application filed by PL dated 1st August 2019, a fol 1 et seqq., wherein it held:

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

That the respondent is the person having, or who might have, the legal or actual custody of the said minor child;

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

Particulars of the minor children

P, a seven-year-old boy, born on the X. The boy has Y hair and Y eyes as seen in the photo herewith attached and marked DOK A.

M, a nine-year-old girl, born on the W. The girl has V eyes and V hair as seen in the photo herewith attached and marked Dok B.

Having seen the Court's decree dated 1st of August 2019, provisionally upholding the demand for the prohibitory in junction, ordering notification and a right of reply to the defendant, and appointing the application for hearing for the 21st of August;

Having seen the application filed by the Director (Civil Registration) as the Officer in charge for the issuing of passports and of the Commissioner of Police as the Principal Immigration Officer, dated 2nd August 2019, a fol 10, wherein it held:

That the applicants have been served with the Warrant of Prohibitory Injunction in the given names, together with the decree of the 1st August 2019 whereby this Honourable Court has provisionally acceded to the applicant's request namely PL in order to enjoin LL from taking the minors PL and ML out of Malta;

That from investigations that the applicants have conducted is resulted that the minor has a passport issued by the B Authorities;

That passports issued by foreign authorities cannot be seized by the Executive Police;

Wherefore, the applicants while bringing the above to the formal attention of this Honourable Court, respectfully request this Honourable Court that in the circumstances give such directions, including an order to the father of the children namely LL whom is in possession of the above mentioned foreign passports to deposit such foreign passports of the minors under its authority,

subject to any other measures which this Honourable Court may deem appropriate and opportune.

Having seen this Court's decree dated 2nd August 2019, ordering the respondent to deposit the children's passports under the authority of this Court;

Having heard oral submissions of counsel to both parties;

Having seen the sworn reply filed by LL, dated 2nd September 2019, a fol 18 et seqq., wherein it was held:

- i. *That the defendant has been served with the warrant of prohibitory injunction in the aforesaid names and with the decree of the second (2) of August of the year two thousand and nineteen (2019) year, during the court sitting dated the twenty-first (21st) of August of the year two thousand and nineteen (2019);*
- ii. *That in the first place, this Honourable Court shall abstain from taking cognisance of the plaintiff's demand given that the action as propounded by the applicant is devoid of valid legal basis and hence, it is unfounded in fact and in law;*
- iii. *That without prejudice to the above mentioned, the plaintiff's demand does not merit acceptance given that there are no reasonable grounds which justify that the minor children be impeded from being taken out of the Maltese Islands. That for the sake of clarity, only the minor child M has been impeded from leaving the Maltese Islands, and P is currently residing in T;*
- iv. *That the plaintiff's demand is unfounded in fact and in law on account of the fact that the issues relating to care and custody and the rights and duties of the parties as parents of M and P, have already been dealt within the jurisdiction of the Court of T. That resultantly, the defendant has been **vested with absolute care and custody of the minor children**, whereas the plaintiff*

has been obliged to pay maintenance, as well as having access rights in terms of the judgment dated the sixteenth (16th) of July of the year two thousand and eighteen (2018), which judgment and its translation are herewith being marked and attached as docs 'A' and 'B'. That in view of the circumstances of the case, the T Court reached the conclusion that it is in the paramount interests of the children that the care, custody and residence of the minor children be vested in the defendant, particularly because the children have been living together with their father since September of the year two thousand and seventeen (2017), which ambiance has offered them stability and safeguard. That the mentioned judgment is res judicata given that the plaintiff opted not to appeal;

- v. *Other than that, the plaintiff is faced with criminal proceedings in the T Court when she repeatedly failed to pay maintenance in favour of the defendant for the two minors, as reflected in the accusation together with its translation, which documents are herewith being marked and attached as docs 'C' and 'D'. That the plaintiff failed to mention that in case she returns to T she will be punished as a result of her default in paying maintenance;*
- vi. *That with all due respect, the defendant is contesting the mentioned warrant given that the plaintiff herself gave her explicit consent when authorising the minor children to travel abroad together with the defendant as well as with the paternal grandmother LP, which declaration of consent and its translation are being herewith marked and attached as docs 'E' and 'F';*
- vii. *That the plaintiff failed to mention that **on various occasions she resorted to violence as a means of punishing the minor children, and this happened in the presence of the defendant, and in particular on one instance when M was punished by the plaintiff way back in April of the year two thousand and seventeen (2017)**! That other than that, for the sake of clarity, during the period when the minor children were residing in Malta, the plaintiff failed in her duties of sending the minor children to school for elongated periods;*

- viii. *That even though the plaintiff tried to implicate that she was thrown out of the matrimonial home during her marriage with her defendant, this is wholly untrue. That the plaintiff committed **adultery with a man who was residing together with the parties in the matrimonial home, and additionally the plaintiff consummated other illicit and imprudent acts which led to the termination of marriage**, as shall be proven in the course of the proceedings;*
- ix. *That subsequent to this period, the minors was constrained to live together with the defendant given that the plaintiff **acted in her sole interests**. That the defendant has taken due care to the children's upbringing, both financially and emotionally. That during the preceding years, the contact of the plaintiff with the children has been sporadic. This confirms that the plaintiff's interests in instituting this action was clearly not for the childrens' sake but to vindict herself from the plaintiff!*
- x. *That it is worth mentioning that during the period when the parties resided in Malta as a married couple, the minor children have expressed their wish to return back to T since they couldn't adapt in Malta. That as a matter of fact, the minor child P was acting aggressively while in Malta, and M couldn't adapt well;*
- xi. *That after this time-period, the children went back to T where they received their education and good care, and they have **expressed their wish to reside in T together with the defendant and the paternal grandmother**. That additionally, as a matter of fact the minor children have no ties with the Maltese Islands, and it is wholly inconsiderate to impede the minor child M from returning back to their home country. That it should be the case that the plaintiff initiates the exercise of her right of access, which right has never been deprived from the defendant, and at the same time the minor children continue to reside in T;*
- xii. *That furthermore and without prejudice to the abovementioned, the plaintiff failed to outline that she is preserving the prima facie right by means of this*

action which she allegedly possess and therefore, the plaintiff's request ought to be disregarded, in terms of article 873 of Chapter 12 of the Laws of Malta;

xiii. That for the aforementioned reasons, there are no grounds for this Honourable Court to accept the plaintiff's demand for the issuance of the warrant of prohibitory injunction, given that there is no just cause why this Court should adhere to the plaintiff's demands which request isn't based on any imminent fear, but simply on vengefulness.

That in light of the abovementioned, the defendant humbly requests this Honourable Court to disregard the plaintiff's demand.

Having seen the decree given on the 1st of August 2019 whereby this Court, provisionally upheld the request for the issue of a Prohibitory Injunction against the Respondent enjoining him not to take or allow anybody to take the minor children P and M L outside the Islands of Malta and Gozo;

Having seen the decree given on the 25th September 2019, regarding the access of the plaintiff to her daughter (Vide page 54);

Having seen this Court's previous decree dated 14th October 2019, whereby this Court rejected Respondent's plea of lack of Jurisdiction;

Having seen the note in the record of the proceedings of the 11th December 2019 whereby counsel to Plaintiff informed the Court that Plaintiff has requested the help of the Maltese Central Authority to intervene with regard to the minor children of the parties who are in S;

Considers;

The plaintiff is requesting the Court to issue a warrant of prohibitory injunction on the Respondent to impede him from taking his children out of the Islands of Malta. The Respondent had raised the plea of lack of jurisdiction contending that jurisdiction lies with the Courts of T who issued a judgment on 16th July 2018, awarding care and custody of the minor children in the hands of the Respondent.

Plaintiff submits that this judgment was awarded without her knowledge and that she had not been duly notified, in spite of the fact that her husband knew very well her address. In fact, she consented to allow her children to go for a holiday and instead her husband instituted proceeding for separation, care and custody of their children in her absence and without her knowledge.

The plaintiff alleges that both she and her husband work regularly in Malta and reside in Malta, however their children are residing with Respondent's parents in T.

Deliberates:

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

(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 issuance 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.

These proceedings were filed by applicant, PL against the Respondent in order to prevent that their minor children P and M L be taken out of the country. Applicant contends that she has a real and reasonable fear that defendant might try to take his children back to S to live with his parents in spite of the fact that both parties are living and working regularly in Malta. Respondent on the other hand contends that in spite of the fact that he is working in Malta, it is better for the children to live with their paternal grandparents since both parties work long hours and it is the grandparents who are always present when the children come back from school and who are able and willing to look after them.

The Court considers that in these warrants the Court must be guided by the best interests of the child, which are paramount.

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.

While defendant tried to justify his arbitrary decision that the minor children of the parties are better off living with the paternal grandparents in S in spite of the fact that both parents have been living and working in Malta for a considerable period of time, it is this Court's considered opinion that it is not in the children's best interest to be bereft of both parents. This Court was very concerned, that there was prima facie evidence of a real risk that the Respondent might take the parties' children out of the country without plaintiff's permission. This especially in light of the machinations adopted by the Respondent, and the manner in which he achieved a non-suited custody award by citing a wrongful address of the Plaintiff. In fact, there is more than prima facie evidence that in spite of this Court's provisional Prohibitory Injunction on the Respondent, by means of stealth, the Respondent still managed to spirit away his children out of Malta. Indeed, this Court has been informed that the Central Authorities of both countries have been alerted and are working on this case.

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.

For these reasons the Court orders that the Respondent LL, father of the minor children:

P, a seven-year-old boy, born on the X. The boy has Y hair and Y eyes;

M, a nine-year-old girl, born on the W. The girl has V eyes and V hair;

Application no. : 153/2019/3

Be prohibited from taking or allowing anybody to take the said children out of the Maltese Islands.

Furthermore, the Court orders that a copy of this decree be notified to all the Authorities concerned in accordance with the 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**