



**FIL-QORTI CIVILI  
(SEZZJONITAL-FAMILJA)**

**L-ONOR. IMHALLEF ANTHONY VELLA**

**Sitting Thursday 21<sup>st</sup> May 2020;**

**Application Number: 158/2017 AGV**

**AB (ID nru:0160153A)**

**Vs**

**Dr Benjamin Valenzia u PL Veronica  
Rossignaud, who according to a decree dated  
28th July 2017 were nominated as curators to  
represent the absent CDE**

The Court,

Having seen the application filed by AB dated 4<sup>th</sup> July, 2017, wherein she humbly submits:-

1. That the parties had an intimate relationship, from which relationship a daughter was born on the 16<sup>th</sup> February 2010 in Hounslow, England, named FGE, as results from the minor's birth certificate here attached and marked as Document A;
2. That the said parties lived together in England for four years, however they broke up when the child was five years old. Meanwhile, just over a year ago, the applicant came to Malta, together with the minor child and her brother HIJ, who was born to applicant from a third party and they established their permanent residence here in Malta. Infact, the minor FE attends school regularly and she has integrated within Maltese society. Applicant's parents have also settled here in Malta. Ever since the applicant and the minor child have been in Malta, Respondent is still in touch with his minor child, however he does not contribute towards her maintenance.
3. That Applicant wishes to establish hers and her minor children's permanent and habitual residence here in Malta so as to bring them up appropriately, she needs to be granted the exclusive care and custody of the minor child FGE, born out of wedlock, so as to be able to solely take the necessary decisions required in her best interests, together with all the rights and obligations deriving from parental authority according to law, without the approval and/or consent of the Respondent father.
4. That the applicant was authorised to proceed with this case, in terms of a decree dated 22<sup>nd</sup> May 2017, a legal copy of such decree is here attached and marked as Document B.

Having considered the above, Applicant humbly submits as follows:-

1. Grants the exclusive care and custody of the minor FGE to Applicant her mother AB, such that all decisions related to the health, education, religion, upbringing, the minor child's travelling, including the issuing or the renewal of the minor's passport as well as all decisions related to the minor child, are to be taken by Applicant alone, without the authorisation and/or the consent of Respondent and this in the best interests of the minor child.
2. Confirms that the habitual residence of the minor child FGE is that with her mother, the Applicant;
3. Fixes and liquidates an adequate amount of maintenance for the minor child that is to be paid by Respondent to Applicant, whereas all education and health expenses of the minor child have to be borne equally between the parties, which maintenance and expenses have to continue to be paid until the minor child reaches the age of 18 years or if she works full-time and has stopped attending school, or until 23 years of age, if the minor child continues studying on a full-time basis; orders that these maintenance payments be deducted directly from Respondent's salary, or from the profits derived from his employment, job or from any other benefits that Respondent can be receiving and these must be deposited in a bank account identified by Applicant; decides regarding the modality of revision of the said maintenance that is to be increased annually according to the rise in the cost of living;

With costs against Respondent who is ingunt in subizzjoni (*sic*).

**Having seen the Reply** confirmed on oath in the names of curators Dr. Benjamin Valenzia and PL. Veronica Rossignaud dated 26th September, 2017, wherein they pleaded as follows;

1. Preliminarily, this Honourable Court does not have jurisdiction since the minor's parents are foreigners and the minor child was born in England.
2. Secondly and preliminarily, Applicant must prove that they have been residing in Malta from the date she stated;
3. Respondent requests that a curator be appointed to represent the interests of the minor FGE;
4. Applicant must declare whether she works, and she must provide a prospectus identifying the expenses she incurs related to the minor child.
5. Furthermore, the Respondent is oblivious to further facts, but reserves his right to present further pleas of defence should the need arise.

**Having seen the Ulterior Reply** confirmed on oath of curators Dr. Benjamin Valenzia and PL Veronica Rossignaud, wherein they pleaded as follows:-

1. After managing to contact the absentee CDE, he confirms that Applicant took their minor child without his consent outside the United Kingdom. Respondent did not initiate abduction proceedings so as to avoid Applicant having problems with the authorities.
2. Contact with the minor child is limited and effective access is not being granted for reasons attributable to Applicant. Respondent has not seen his

minor daughter physically ever since she has left the United Kingdom and for this reason he should be given adequate access to the minor child to see her.

3. The absentee informed the curators that Applicant had informed him that she was returning to the United Kingdom together with the minor child, but this does not seem to be the case according to what Applicant indicated through her lawyer.

4. When access was granted, the absentee always gave adequate maintenance and sums of money above that requested at law. In fact, Respondent has set up a trust for his minor daughter to take care of her interests.

5. There exist no reasons at law that would not justify the joint care and custody of the child.

## **FACTS**

1. Plaintiff, of Latvian nationality has been residing in Malta since the 13<sup>th</sup> May 2016, together with her daughter F. Prior to this she used to live in London since 29<sup>th</sup> January 2005. Between the end of 2007 and early 2008 she had started chatting with Defendant through an internet dating site called [www.dating.co.uk](http://www.dating.co.uk). for about eight months and then after having met, they started a proper relationship between them.

Initially they lived separately, but they used to meet often. Plaintiff explains that Defendant was very caring in her regard and after a few months she was expecting their child. However, she states that this was short-lived due to the fact that she found out Defendant was already seeing another woman, although he denied it and she believed him.

During the pregnancy, Plaintiff reiterates that she and Defendant would meet more often, and they used to divide their time between London where she lived, and Hertfordshire, and she realized that Defendant was smoking cannabis. Each time he smoked cannabis he would be a completely different person, he would laugh all the time, his speech was slow and slurred and he would not make sense when he spoke. He explained to her that he needed to take it regularly during the day because it helped him relax from the stress of his long hours at work. He had promised that he was going to reduce the intake, but he didn't.

Plaintiff goes on to state that since Defendant used to share his residence with three other persons and they used to do drugs, she decided not to go to his place in Hertfordshire any longer and instead Defendant moved in with her when she was around 6-7 months pregnant. She did not leave him then because she had no family in London and she always hoped that Defendant would change. He kept on smoking the cannabis and there were times when he would still meet up with his friend K and not return for three days. Defendant kept on insisting that she was only a friend, but they used to argue a great deal about her. This situation kept on even after she gave birth to their daughter.

There was one occasion, when Defendant was so stoned with the cannabis that he raped her and she reported him to the police, but then withdrew her report a week later, where he was imprisoned. His family took it against her, and she was scared they would take her child, so she remained in the relationship. She tried to hide the cannabis from him, but he became more and more violent and there was a time when she had to involve the police again, but she felt sorry for him once again. However, their relationship did not change because he would still disappear for days, switching off the phones and meeting K behind

her back. As a result, she was living in constant stress and she even developed heart problems due to the severe stress that she was under. In fact, she was diagnosed with sinus bradycardia (slow heart rhythm) and she was admitted to hospital because of this condition, but it did not change his attitude towards her. It was only in 2015, when her father was staying with her, that she got the courage to kick Defendant out of the house.

During all this time, she states that Defendant did not give her any money. He would accompany her to the shops and then pay for the groceries, when he earned around 1000 pounds a month. Her only source of income at the time came from the child benefits that she received from the UK government and this only amounted to 17 pounds a week and Defendant believed that this was enough for her. Most of the clothes their daughter had were passed on from a cousin.

After she left him, Defendant used to come and see F during the weekend, but not regularly, He would take her out and spend some time with her. As to her education, Defendant never got involved or attended any school activities. Plaintiff states that it was always she who took the decisions and nobody else. At this time she was paying for all her daughter's needs. Defendant then agreed to pay her 200 pounds a month for the minor child and he did so for three months. From the minute she returned to Malta he did not pay her. She carried out a number of jobs here in Malta to be able to provide for her daughter. She currently works as a custodian at St. John's Cathedral. She works 40 hours a week.<sup>1</sup>

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<sup>1</sup> Dok. AAJ 3

On coming to Malta, she lived with her parents and her son H from another relationship. Plaintiff explains that she came to live in Malta because she had no family in London, whereas her parents lived here. She states that Defendant was aware that she was moving to Malta with their child and although he was not happy about it, he gave his consent for her to be enrolled at the Paola primary school and she had a letter from him to this effect.<sup>2</sup> Eventually, she moved to Sliema and she changed F's school, once again with Defendant's consent,<sup>3</sup> where she integrated very well. Health wise, Plaintiff explains that their minor daughter is fine and there are no problems.

Plaintiff describes the minor's relationship with Defendant as limited in England, since he would just buy her toys and play with her. When they came to Malta, F refused to speak to him and on the rare occasions when she wants to speak to him, the conversation does not last longer than 3 minutes. She does not seem to be so interested.

In the summer of 2017, Defendant wanted to come to Malta, and he wanted to take F to England with him for the summer holidays. Plaintiff objected to this, but he still came to Malta and remained here for three days and once Plaintiff kept on refusing to allow their daughter to travel with him, out of fear of her not coming back to Malta, he gave up and returned to England.

Ever since coming to Malta, Plaintiff feels that it has done a lot of good to their daughter, she is happier and has made many friends and she also does very well at school. She mentions that she had some problems with the pick ups when she moved her children to the school in Sliema. There was an incident when she was late in picking the minor children up because there was a lot of traffic and she

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<sup>2</sup> Dok. AAJ 4

<sup>3</sup> Dok. AAJ 5



informed the school, who initially agreed to wait for her, but then they took her minor daughter to the police station and left her there, since they argued that since the school hours were over, the child was no longer their responsibility. This was only one incident. Then, the headmistress LM had informed her to present a note to the effect that she was authorizing her minor children to go home by themselves.

Up to this day, Plaintiff confirms that she has no contact with Defendant, especially since the minor child does not want to speak to him.

2. NJ, father of Plaintiff, residing in Malta, visited his daughter in London in June 2010 and he was there until August. The grandchildren were very happy to have him there. He used to take her out to the parks and playgrounds because she enjoyed it. Defendant would only spend time playing with the kids, but there he realized that Defendant was smoking marijuana, something that Plaintiff had already told him about. He was very unhappy with this situation and so was Plaintiff, because he was usually stoned before he went out with his daughter.

He realized that when Defendant used to smoke marijuana he would start laughing without a reason and although he had never witnessed Defendant acting violent with his daughter, the latter did mention that he was and he confirmed she had told him about the incident when she had hid the weed for him and he turned very violent, threatening to kill her.

He states that Plaintiff never smoked weed or made use of drugs. He explains that he tried to bring to Defendant's attention that he had to respect the children and Plaintiff, but he informed him that he felt the need to smoke to relieve him from stress and kept on as though it was a normal thing to do.

He also evidenced Defendant who would disappear for around three days, every so often, he would switch off his mobile, so he was unreachable and then return. Plaintiff was aware that he would be with K because she had seen photos of them together on Facebook, a woman with whom he has a relationship and a child today, ignoring Plaintiff and their daughter.

At the time, Defendant was paying bills and buying food and when he used to disappear, Plaintiff used to stay without money. He said that he supported her for a while, and he had sent about 300 pounds.

Plaintiff's father confirms that he had visited her again in 2015 and she was still with Defendant and their life was still the same and during such time he stayed with Plaintiff between May till September and helped her with the children. Plaintiff was more like the father-figure for the children. The little Defendant was with his family, he was under the influence of marijuana. So he decided to take his grandson H back with him to Malta because Plaintiff was having a hard time. In May 2016, Plaintiff came to Malta with her minor daughter permanently. Meanwhile, she had developed a heart problem, bradycardia as a result of the constant arguing with Defendant.

He explains that when the minor daughter came to Malta, she was very shy, but as time went by, she settled at school, she made a lot of friends and became more of an extrovert.

In May 2017, Defendant started to call to speak to his daughter, but she refused to speak to him and she would become very quiet and angry. Defendant tried to convince her to go back to London with him, but she refused.

Plaintiff's father confirms that in June 2017, his daughter had moved with her children to Sliema. They were very happy and they used to spend a great deal of time with their granddaughter. In the summer of 2017, Defendant came to Malta with the intention of taking his minor daughter with him to London, but Plaintiff refused to let her go, until Defendant left.

Today he states that Plaintiff is self-sufficient, whereas Defendant, since Plaintiff came to Malta, never paid her any maintenance and she is the only one who contributes towards her daughter's needs and expenses.

3. OPB, Plaintiff's mother confirmed all that her husband testified, with reference to the time Plaintiff and her daughter came to Malta. She confirmed the happiness of the minor child living in Malta, as though it was always her home and that she was always very reluctant to speak to Defendant whenever he called. She always refuses to speak to her father and she becomes very quiet, showing fear. She reiterates that ever since the minor child came to Malta she never asked for Defendant.

Plaintiff's mother confirms that she had never met Defendant, although she was aware that he had a drug addiction. She also confirms that he came to Malta in 2017, believing that he could take the minor child with him, but Plaintiff did not give in to him, because she was scared that she would never see her daughter again.

She confirmed too that there was a time when she and her husband were supporting Plaintiff, but today she was self-sufficient and Defendant never contributed towards their daughter's needs ever since they came to Malta.

5. Joseph Saliba, on behalf of Jobs Plus exhibited Plaintiff's employment history.<sup>4</sup>
6. QR, Head of San Gorg Preca College Primary School, Sliema presented the minor child's admission and when she left, together with her attendance.

Although, she confirmed that there were no problems regarding the pick-up of the child, she recalls that there was an incident between Plaintiff and the Assistant head ST and the matter had ended up in Court. She confirms that she had filed a report to the police, but she wasn't on the scene. She states that the minor child had spent around a year at the school and she was an average child. She confirms that Defendant was not involved in the enrolment of the minor child.

7. UV, Head of St. Claire's College Primary School, Sliema who confirmed that the minor child had started attending the school in 2017 and she was attending junior school. She wasn't in a position to confirm how the child was admitted into the school, since she wasn't a headmistress at the time. She also produced evidence regarding the child's attendance.<sup>5</sup>

## **CONSIDERATIONS**

## **CARE AND CUSTODY**

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<sup>4</sup> Dok. JSA 1 a fol. 84.

<sup>5</sup> Dok. CMA 1 a fol. 88

Plaintiff is presently living in Malta and she has been living here with her daughter F and her son H, born from another relationship, since 2017. She used to live in England with Defendant, but there were problems because she accuses Defendant of being addicted to marijuana. He smoked in the child's presence and when he was under the influence of marijuana, which happened on a daily basis, he used to become aggressive with Plaintiff.

Defendant's time with the minor child was limited to buying toys and playing with her. He would disappear for a number of days and Plaintiff explains that he would go with a certain K, with whom at present he is in a relationship and also fathered a son. This is confirmed by Plaintiff's father too, who spent sometime with his daughter and grandchildren in London. He witnessed the life Plaintiff and her family were living and he didn't approve of Defendant's behaviour who smoked in the presence of his minor daughter and would then abandon them for a while to be with another woman, switch off his phone to be unreachable and failed to provide for his family, except for food and toiletries. Whenever, Plaintiff's father happened to be in London he spent more time with the children and helped to provide for them too, rather than Defendant.

At present, the minor child is in Malta and has been here for three years. Both Plaintiff and her parents describe her residing in Malta as very beneficial to her and they noticed a big difference in her. She came as a quiet and an introvert child, but over the span of months, she integrated well within Maltese society, at school, with friends and she adapted very well to her surroundings.

Ever since coming to Malta, according to Plaintiff and to her parents, the minor child F refuses to speak to her father whenever he calls and on the

few occasions that he did she was very cold. She showed fear whenever she had to have some form of communication with Defendant. To date in fact the communication has been minimal.

Defendant argues that to a certain extent, the minor child was abducted by Plaintiff, but he didn't report her to avoid trouble with the authorities for her, however the Court tends to disagree with this accusation made by him, even more so when he acquiesced to the child's attendance to two different schools in Malta. Plaintiff produced the documentation to show that Defendant signed and gave his consent to the minor child attending first the Paola Primary School and then the Primary School at Sliema and these were at no point contested by Defendant.

Whenever a Court has to decide regarding a minor child's care and custody, it always has to do this keeping in mind the best interests of the child. In this case at issue, the Court has to evaluate between a parent who worked hard to try to maintain her daughter and moved on to a better place and a parent who despite being consistent in his job, smokes a recreational drug, that still has its negative impacts, having no inhibitions of his minor daughter and the harm it could be causing her.

It has been proved that the minor child has achieved a sense of stability in Malta and any contact with her father provokes a sense of fear within her, recalling her unhappy days in London. This proves that evidently, there is no room for doubt and that in the child's best interests she needs to remain within the exclusive care and custody of Plaintiff. Moreover, it is of paramount importance, that Plaintiff will exclusively take all decisions regarding the education, health and all other decisions related to the minor child.

## **ACCESS**

Plaintiff did not make any request for access to be granted to Defendant, however Defendant insists on joint care and custody or alternatively he requests access. This necessitates the Court to make significant considerations, first and foremost, the fact that Defendant leaves in England, secondly the child refuses to communicate with her father and thirdly and most importantly that Defendant smokes marijuana.

These lead to preoccupations of abductions, bonding issues and exposure to recreational drugs, thus, this Court cannot but envisage a form of access strictly here in Malta, when and if Defendant travels to Malta and the access must inevitably be always carried out in the presence of Plaintiff or one of her parents, if it is impossible for her to attend the access. Supervised access would be ideal because there exists no bond with the child, as has been proved, so some form of therapy would be needed and moreover supervision would prevent the drug exposure. Having said that, however Defendant does not reside in Malta, so this form of supervised access would be futile.

## **MAINTENANCE**

When Plaintiff came to Malta with her minor child, Defendant only paid maintenance in the sum of 200 pounds for a period of three months. Otherwise, Plaintiff testified that he never contributed to his daughter's

needs. Although Plaintiff did not produce documentary evidence or any witnesses to show what Defendant's income was, she testified that he earned around a 1000 pounds monthly. Irrespective of whether the minor child lives in Malta or not, Defendant needs to assume his obligations as a father. Since there was agreement on approximately 200 pounds monthly, although these were not paid regularly, these should be confirmed. All educational and health expenses should be shared equally between the parties.

### **DECIDE**

Having considered all of the above, the Court decides as follows:-

1. Confirms that Plaintiff shall be granted with the exclusive care and custody of the minor child FGE and she solely shall take decisions regarding the health, education, religion, upbringing, the minor child's travelling, including the issuing or the renewal of the minor's passport as well as all decisions related to the minor child.
2. Confirms Plaintiff's request that the habitual residence of the minor child FGE shall be with her mother Plaintiff.
3. Confirms that Defendant is to pay the sum of €250 monthly by way of maintenance for the child. Education and health expenses are to be shared equally between the parties. Maintenance is to be paid until the minor child reaches the age of 18, or is employed or until the child reaches the age of 23 if she continues to study on a full time basis. The said amounts are to be deducted directly from the Defendant's salary and deposited in an account



Plaintiff identifies for the said payments. The said maintenance shall be increased annually according to the cost of living.

All costs are to be borne by Defendant.

**Mr. Justice Anthony. J. Vella**

**Registrar**