

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Hearing of the 2nd of October 2020**

**App. No.: 243/2018 JPG**

**Case No.: 20**

**NCW**

**Vs**

**MM**

**The Court,**

Having seen the sworn application filed by NCW dated 14<sup>th</sup> of September 2019, at page 1 et seqq., wherein it stated that:

*“1) That, the Applicant is a citizen of Malta who had a relationship with the defendant MM in I, as a result of which the minor LM was born on the 3<sup>rd</sup> of December 2010, who is of Maltese and I citizenship (copy of her birth certificate here attached and marked as Doc A);*

*2) That, I law, particularly article 6(4) of the Guardianship of Infants Act 1864, provides that the mother is automatically entrusted with the care and custody of her children who are minors, and this by stating “...where the mother of a child has not married the child’s father, and no other person is, under this Act, the guardian of the child, she, while living, shall alone be the guardian of the child”*

*3) That, MM, although indicated as the father of the minor, failed to provide his*

*requests before the I Court with regard to the care and custody or access of the minor as is requested by article 11 of the aforementioned Act, which provides that “In the case of an illegitimate infant the right to make an application under this section regarding the custody of the infant and the right of access thereto of this father or mother shall extend to the natural father of the infant and for this purpose references in this section to the father or parent of an infant shall be construed as including him”.*

*4) That, it is therefore the Applicant who is automatically vested with the care and custody of her minor child, whilst MM has no right over the said minor.*

*5) That, without prejudice to the fact that the care and custody of the minor is entrusted in the hands of the Applicant, being the mother of the minor LM, a copy of the Applicant’s sworn affidavit is hereby being presented and marked as Dok B, which affidavit sheds light on the behaviour of MM and his violent behaviour against both the Applicant and their daughter LM;*

*6) That, the defendant MM was referred to a psychiatrist by his doctor, however MM refused to go, even though he clearly requires medical assistance in order to cure his illnesses which cause him to be aggressive, violent and disillusioned, among other things.*

*7) That, notwithstanding that the Applicant requested MM not to enter the property belonging to her, he nonetheless began posing a threat to the life of the Applicant and their child and this for the reason that during the middle of night he would approach the property and perform vandalism acts in order to make his way into the said property*

*8) That, recently the defendant MM began obsessing and imagining untrue scenarios, such as thinking that he is a victim of a whole conspiracy by the I Police in order to torture him for a criminal act of which is suspected of having committed. This obsession brought him to the extend where he also sent a letter to the Prime Minister of I, copy of which is hereby attached and marked as Doc C, wherein he explained that he is being tortured by the Police and that microphones have been implanted into his body and is therefore under constant surveillance by the Police.*

9) *That, in the month of June of the year 2017, the defendant also began to send emails to the parents of the Applicant NCW, and even though he rarely ever made contact with the, by virtue of which he would threaten to murder them (copy attached as Doc D), which as a result thereof the parents of NCW would resort to filing Police reports (Dok E), as well send a letter to the Commission of Police (Doc F) and request an investigation by virtue of a complaint (Doc G).*

10) *That, as a result of the unstable and violent behaviour on the part of MM, the Applicant and her minor child began feeling threatened in their own home, fearing that at any moment they would be faced with the defendant MM, making a scene similar to those he would frequently carry out and exert violence against the Applicant and her minor daughter.*

11) *That, the Applicant never resorted to the I Police so as to file a report against the defendant MM and this was due to the fear that the defendant MM would seek revenge on her or the minor LM;*

12) *That, it is important to note that members of the Agency for the Protection of Minors received reports lodged by third persons with regards to the aggressive behaviour of MM against the minor and the Applicant and subsequently also began investigating the case;*

13) *That, the Applicant had no other alternative other than that of abandoning her own property situated in I as well as all her belongings in order to protect her daughter from the defendant MM;*

14) *That, the Applicant returned to Malta together with her daughter LM on the 25<sup>th</sup> of February of the year 2018 and presently lives and resides together with her parents here in Malta, in order to ensure that her daughter LM is brought up in a safe environment, away from all fear and dangerous behaviour on the part of the defendant MM, whilst providing all the necessary support for her proper upbringing.*

15) *That, in view of the above, the Applicant is referring to the Maltese Courts since according to article 8 of European Council Regulation Number 2201/2003 (Brussels*

*II), “The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.” Furthermore, in accordance with Premise 12 of the same Regulation, “The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity.*

*16) That, in light of the above, it clearly transpires that it is the Applicant who is vested with the care and custody and authority of the parent of her minor LM. Furthermore, the minor requires to be protected from her father MM who subsequently has no right over the said minor LM, as explained above;*

*17) That, it is to be observed that by virtue of the urgent application bearing reference number 131/2018RGM, the Applicant requested to be recognized as the person having the exclusive care and custody of the minor LM;*

*18) That, the Applicant NCW proceeded by initiating mediation proceedings and this in accordance with the Judicial Procedure of Maltese law;*

*19) That, according to a message sent to the Applicant, the defendant MM was recently arrested in London by the Police and this as a consequence of vandalizing property by breaking the windows;*

*20) That, by virtue of the Court Decree bearing reference number 406/18RGM (Copy hereby attached and marked as Doc H), after having taken cognizance of the note filed by the Mediator on the 2<sup>nd</sup> July of the year 2018, whereby the Mediator stated that the mediation did not take place, the Court proceeded by declaring the mediation proceedings to be closed.*

*21) That, by virtue of the decree mentioned in the preceding paragraph, the Court authorized the Applicant to proceed with filing a court case.*

*Therefore, the Applicant is hereby respectfully requested this Honourable Court to:*

- 1) Order that the care and custody of the minor LM is vested exclusively in the hands of the Applicant;*

- 2) *Order that the minor LM lives together with the Applicant;*
  - 3) *Order that all rights vested in a parent over their child are to be exclusively vested in the hands of the Applicant;*
- And this under any provisions that this Honourable Court deems fit to impose.”*

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

Having seen that the Respondent failed to file his reply and also failed to appear, therefore the Respondent is contumacious (See Verbal of the 2nd of July 2020 at page 125);

Having seen that the court granted to the Respondent the right to file his submissions and this according to Article 158(10) of Chapter 12 of the Laws of Malta (See Verbal of the 2nd of July 2020 at page 125);

Having seen that Respondent failed to file any submissions;

Having seen all the acts of the case;

**Considers:**

**Applicant** testified by means of an affidavit at fol. 114 *et seqq.* that she is a Maltese national and that she had moved to I where she lived for twelve years and where she had had a child, LM, with Respondent who is an I citizen, adding the parties were never married. She testified that the parties' daughter was born with a rare congenital conditional, "Hirschsprung Disease", for which she received treatment in I, England and the United States of America over the course of five years, with financial help from her parents. She explained that both parties were unemployed since she was unable to work in order to take care of the child while Respondent claimed that he suffered from depression, and that due to this they had to live on social benefits which were not sufficient, causing her to default on mortgage payments and credit card loan repayments. She continued that Respondent never paid for the child's needs, and it was always her parents who helped her financially and made it possible for her to buy basic things for herself and the child, adding that Respondent never even took the steps necessary at law in order

to obtain joint guardianship of the child or to be recognised as a father for the purposes of care and custody, such that she was vested with the right to decided alone on matters relating to the child.

She testified that in the months before she returned to Malta, Respondent started exhibiting signs of mental instability and psychological problems, explaining that he had developed various obsessions, such as that someone had implanted a microchip into his brain, and he had also sent threatening emails to her father. She explained that she had asked Respondent repeatedly to seek medical help and that Respondent's family members has also tried to get him to see a psychiatrist, but all these efforts were in vain. She added that in February 2018 Respondent had also destroyed their daughter's toys, broke part of the walls of the house and kicked a stair which hit and bruised the child, causing her to ask him to leave the home since this behaviour was scaring both her and the minor and the child was insisting on sleeping with her mother because she was terrified of her father. She continued that following this, there were several instances where Respondent went knocking on the door in the middle of the night, and had once started throwing stones at the window panes in an attempt to force her to open the door.

She stated that she left I on the 25<sup>th</sup> of February 2018, after advising Respondent's parents, who had themselves told her to leave to protect herself and her daughter. She said that she has lived in Malta with her parents since then, who have been giving her the emotional, financial and psychological support she requires, and that since then the parties' daughter is feeling better and wishes to start a new phase in her life.

**JCW**, Applicant's father, testified by means of an affidavit at fol. 119 *et seqq.* that Applicant had emigrated to I in 2006, and had started a relationship with defendant in 2009, from which the parties' minor child LM was born on the 3<sup>rd</sup> of December 2010. He testified that the child was diagnosed with the congenital condition Hirschsprung Disease, causing her to undergo several surgical interventions in I, England and the United States of America, adding that he and his wife had paid for the treatment in the USA since the treatment that the child received in I and the UK had not solved her medical problems.

He testified that he and his wife used to visit the parties in I once or twice a year, and Respondent was often verbally aggressive towards them, adding that despite this, they used to send the parties around €10,000 a year because they were aware that the parties could not cope

with all their expenses since they were both unemployed and living on social benefits. He testified that in December 2014 the child needed another surgical intervention and they were informed that she would need a temporary colostomy while her intestines recovered from surgery, which led the Respondent to become agitated and have a panic attack. He continued that Respondent had decided to cancel the appointment for surgery and started insulting them and informing them that he did not want to see them anymore, and then fed the child an excessive amount of food in spite of instructions that she was to fast before her planned surgery. He added that the following morning Applicant informed them that they would be going ahead with the surgery, but just after surgery Respondent left the hospital and left Applicant and their child on their own in the UK for a few weeks, despite the fact that the child suffered complications after surgery and had to remain in hospital for about a month. He continued that upon the child's return to I he had offered to support the parties' to take the child for more care at the Great Ormond Street Hospital for Sick Children in London but Applicant had refused, adding that however, in April 2015, Applicant had approached him to ask for help to take the child for treatment in the United States of America, which they had paid for and which had cost \$43,000.

He testified that despite improvements in the child's health, Respondent continued to refuse to work and he did not allow Applicant to work either. He continued that Respondent regularly sent them abusive emails which caused them to realise that he has mental health issues, adding that he had in fact advised Respondent to seek medical help when he had once phoned him and spoken to him abusively, but that Respondent had reacted badly to this suggestion. He added that when Respondent's email starting becoming threatening he and his wife had lodged a report with the Maltese police, but had decided against requesting that the Maltese police contact Interpol about the matter, because they feared for Applicant and her child. He testified that in December 2017 Respondent had phoned him crying and apologising for blaming them for sending people to murder, stating also that Respondent had told him that he was on the verge of a breakdown because he had serious financial problems, adding that he and his wife had advised him to first help himself by seeking a psychiatrist.

He explained that in February 2018, Applicant had informed him that Respondent was aggressive towards her and the child and that because of this, they were living in fear of being harmed. He continued that due to this he had offered Applicant to come live with them here in Malta, and he had made arrangements for her and the child to come to Malta the following day, on the 25<sup>th</sup> of February 2018. He testified that when they came to Malta, it was evident that they

were traumatised and he had encouraged Applicant to book medical appointments for herself and the child, and they had also immediately sought to enrol the child in a school, upon being granted authorisation to do so by the Court, so that the child started attending school in Malta in May 2018 at St. Catherine's High School in Pembroke. He testified that since Applicant and the child have been living with them, he has noticed a marked improvement in the child's behaviour and that he and his wife are caring for the child on a full-time basis so that Applicant can work, since she now works as a clerk at a local bank.

### **Deliberates;**

This is a judgement following an application filed by Applicant NCW who is seeking exclusive care and custody and parental authority of the parties' minor child LM.

The Court recalls that according to the jurisprudence of the Maltese courts the care and custody of children is regulated by the principle of the best interests of the child, and the best utility and best advantage to the interests of the child.<sup>1</sup>

According to the judgement in the names of **AB vs CD** decided on the 23<sup>rd</sup> of February 2018, the Court has the power to entrust the care and custody of a minor solely in the hands of one of the parents when this is the minor's best interests, in accordance with Article 56 of the Civil Code, and that while the parents' rights are a relevant consideration, the child's best interests are the Court's primary consideration.<sup>2</sup>

From the acts of the case, it results that the parties were in a relationship starting from 2009, from which relationship they had a child, LM, in December 2010. From the uncontested

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<sup>1</sup> **Maria Dolores sive Doris Scicluna vs Anthony Scicluna**, First Hall of the Civil Court, decided 27 November 2003: "*Apparti l-ħsieb ta' ordni morali u dak ta' ordni legali, li għandhom setgħa fil-materja ta' kura u kustodja tat-fjal in ġenerali, il-prinċipju dominanti 'in subjecta materia', li jiddetermina normalment u ġeneralment il-kwistjonijiet bħal din insorta f'dina l-kawża, huwa dak tal-aktar utilita' u dak tal-aqwa vantaġġ u nteress tal-istess minuri fl-isfond taċ-ċirkostanzi personali u 'de facto' li jkunu jirrizultaw mill-provi tal-każ li jrid jiġi riżolut...*"

<sup>2</sup> "*Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili. Illi kif kellha l-okkażjoni ttenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. "Il-Qorti tirrileva illi filwaqt li dejjem tagħti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġurisprudenza kostanti tagħna hawn 'il fuq iċċitata."*"



testimony of Applicant and her father, it results that while the parties were living together Respondent was always unemployed and did not attend to the child's needs, while also not allowing Applicant to seek employment herself. It further results that Respondent failed to offer any support as a parent when the parties' child was undergoing various surgical interventions due to the rare congenital condition that she suffers from, and that there was an occasion where he even tried to sabotage a planned surgical intervention without reasonable justification. From the testimony tendered before this court it appears that Respondent was aggressive and cause Applicant to fear him.

In this regard, the Court makes reference to the judgement in the names of **F T K P D vs R K P G** decided on the 22<sup>nd</sup> of March 2018 where, in circumstances similar to those in the case at hand, the Court had considered that Articles 56 and 56A of the Civil Code are applicable and relevant even in the context of a request made by a parent to be granted exclusive care and custody of the child outside of personal separation proceedings and had *ex officio* divested the father of parental authority so that this authority would be exercised exclusively by the mother.<sup>3</sup>

The Court notes furthermore that according to Article 149 of the Civil Code:

***“Notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.”***

The Court recognises that in normal circumstances both parents have an important and fundamental role in the upbringing and life of their children, and therefore no one of them should be excluded from the child's care unless there are serious reasons which lead the Court to take such a drastic measure. However, as has been said, in these matters the Court must be guided by the best interests of the child, and therefore the Court must examine whether, in the circumstances, it is in the best interests of the child for one of the parents to be divested of parental authority.

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<sup>3</sup>“*Il-Qorti, wara li ezaminat ic-cirkostanzi partikolari kollha ta' dan il-kaz, b'mod partikolari li l-missier abbanduna lill-minuri b'mod assolut, tiddikjara li jezistu l-estremi sabiex iccahhad lill-missier mill-awtorita' ta' genitur sabiex tali awtorita' tigi ezercitata esklussivament mill-omm.*”

The Court has seen that although according to I law, Respondent had to file a court case in order to be granted parental authority and/or care and custody of the parties' child. Respondent failed to take such an initiative. The Court has also seen that despite having been served with the acts of the case in October 2018, Respondent never filed his reply and never appeared, either personally or through a mandatory, before this Court, in order to defend himself against Applicant's claims and secure his rights as the child's father. The Court has seen that the defendant has never contributed financially towards the child's upbringing and that he does not seem to have any interest in the child. In fact, no evidence was tendered before this Court showing that there has been any communication or attempt thereto between Respondent and the child since Applicant came to Malta with the child in 2018.

The Court has also seen that from the testimony it results that Applicant is afraid to contact Respondent due to his behaviour. Applicant's testimony in this regard was corroborated by her parents' testimony, and the Court notes that in these proceedings Applicant is not asking for a maintenance award. The Court considers that in view of this lack of communication between the parties, occasioned by the behaviour of Respondent himself, it would not be in the child's best interests for care and custody to be vested jointly in both parents, since this would evidently occasion unnecessary litigation every time a decision which concerns the child needs to be taken.

Furthermore, in view of the evidence produced by Applicant as explained earlier, the Court is convinced that there exist the extremes necessary for Respondent to be divested of parental authority over the parties' child, so that this authority is exercised exclusively by Applicant.

**For these reasons, the Court accedes to Applicant's requests and:**

- 1. Orders that the Applicant shall be vested with the exclusive care and custody of the parties' child LM;**
- 2. Orders that LM's residence shall be with Applicant;**

- 3. Orders that Applicant shall exercise on her own and to the exclusion of Respondent parental authority over the minor child LM.**

**All expenses of these proceedings are to be paid by Respondent.**

**Read.**

**Madame Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)**

**Lorraine Dalli  
Deputy Registrar**