

**CIVIL COURTS  
(FAMILY SECTION)**

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

**Today 4<sup>th</sup> October 2023**

**Application no.: 46/2019 JPG**

**Case No: 17**

**MT**

**Vs**

**RZ**

**The Court:**

Having seen the application filed by Plaintiff dated 19th of February 2019, at page 1, wherein it stated:

*That the parties had an intimate relationship on the third (3) of November two thousand and sixteen (2016), at Mater Dei Hospital, twins, that is M and E ZT were born, as resulting from their birth certificates attached and marked as Doc A and Doc B respectively;*

*That by means of a judgment given by this Honourable Court on the nineteenth (19) of June two thousand and eighteen (2018) the defendant R Z was declared to be the biological father of the minors M and E Z T (Doc C);*

*That the minors are factually in the care and custody of the applicant mother, who has always taken care of the needs of the minors M and E Z T;*

*That the applicant is the person that is the most ideal to be trusted with the care and*

*custody of the minors;*

*That the defendant has never shown any interest towards the minors during the applicant's pregnancy, and he has never contributed financially towards the upbringing of the minors;*

*That the defendant is not paying any maintenance towards the needs of the minors;*

*That by virtue of a decree of the Honourable Court (Family Section) the applicant was authorised to proceed with the opening of the case against the defendant [Dok D].*

*Thus, and for the aforementioned reasons, the applicant respectfully asks this Honourable Court to:*

- 1. Order that the case and custody of the minors M and E Z T is exclusively entrusted in the hands of the applicant mother, saving limited access for the respondent under the supervision of the applicant.*
- 2. Liquidate the maintenance that the defendant is obliged to pay towards the minors, that is to also include health and education expenses, and order that the defendant pay this said maintenance in the manner this Honourable Court deems fit to impose.*

*With costs against the defendant summoned so that reference to evidence be made.*

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

Having seen the reply filed by Defendant dated 8<sup>th</sup> of April 2019, vide page 36 wherein he denies allegations made by Plaintiff; affirms that he was always involved in the life of the twins; that it was Plaintiff who refused to register the twins as being fathered by Defendant such that he was constrained into filing the requisite proceedings and undertake DNA Testing; and it was only by virtue of the Court Judgement dated 19<sup>th</sup> June 2018 that the Court ordered the necessary correction in the certificate of the twins to reflect Defendant's paternity of the twins; Defendant affirmed that Plaintiff made it very difficult and almost impossible for Defendant to have access to his

children; affirms that he always paid 300 Euros in maintenance every month and that therefore the Court should deny the first request of Plaintiff; declare care and custody be vested jointly in the parties whilst the principle residence of the minors ought to be with the Plaintiff with adequate access in favour of Defendant.

Having seen that on the 5<sup>th</sup> of June 2019, the parties reached a **pendente lite** compromise, which compromise was endorsed by this Court's order, vide fol 40;

Having seen this Court's decree dated 7<sup>th</sup> October 2019, vide fol 42;

Having seen the decree dated 14<sup>th</sup> of October 2019, vide fol 44;

Having seen this Court's decree dated 18<sup>th</sup> November 2019, vide fol 45;

Having seen this report filed by FSWS dated 20<sup>th</sup> November 2019, vide page 49, and this Court's relevant decree dated 17<sup>th</sup> February 2020;

Having seen the parties arrangements regarding access dated 14<sup>th</sup> June 2021, vide page 57;

Having seen this Court's reaffirmation regarding access, dated 15<sup>th</sup> June 2022, at page 64;

Having seen this Court's decree dated 2<sup>nd</sup> March 2023;

Having seen the exhibited documents and all the case acts;

Having heard final oral submissions of the parties and the written submissions made by MY T.

**Considers:**

*The Mother testified by means of an affidavit (vide fol 28 et seq)* and explained that she met the Defendant in 2015, and after a few months into their relationship she found out that she was pregnant. She contends that Defendant was not happy about this especially when she found out that they were having twins. She affirms that Defendant was not very interested in her since after her trip to U. On her return, Defendant left for a month and half to U and return a few weeks before she was due to give birth. The twins were born on the 3<sup>rd</sup> of November 2016, at Mater Dei

hospital. After the birth, Defendant spent three days with her at the hospital. Her mother's husband had suggested that it would be best for Defendant to go and live with them, so that they would live together as a family. Defendant agreed and was happy to move in with them. However, she soon realised that it was not a good idea; Defendant was drinking, constantly shouting and arguing, he expected her to do all the housework, and never contributed financially towards any of the expenses. Plaintiff affirms that she had refused to sign documents which indicated that Defendant was the father, and this was when Defendant started to threaten that he would be taking legal action against her. After this incident she had asked Defendant to move out.

After a year of no contact, she had received a judicial letter, and after their first court sitting, Defendant had started to constantly call her again asking to see the children. She refers to a number of incidents, where Defendant went to her place of work and at her house and caused scenes and she had filed a number of police reports in relation to said incidents. After some time, she explains that she had agreed on access, and they decided that Defendant was to see the twins at Selmun Park, however this resulted in the parties having arguments. Eventually during mediation, access was agreed upon, however after a month, Defendant had started once again questioning her ability to take care of the children. Plaintiff makes reference to other episodes wherein Defendant did not adhere to her feeding instructions, occasions where he lost the children's bottles. Plaintiff affirms that Defendant kept insisting on applying for the minors' passports which she refused, and also that Defendant was refusing to pay maintenance in the amount of EUR 300.

***Plaintiff testified on the 31st October 2022 (vide fol 118 et seq)*** and explained that she met Defendant around six (6), seven (7) years ago and after a year, they decided to go and live together. Plaintiff got pregnant and this came as a shock since she got to know that she was pregnant when she was already five months pregnant. Defendant was very happy about this, however she was not and wanted to go back to U, however it was too late for an abortion. Plaintiff explains that she decided to go through with the pregnancy. She eventually got to know that she was expecting twins and this made her very happy. After Plaintiff gave birth, Defendant initiated paternity proceedings, and it was then that Plaintiff ordered him to move out. Plaintiff testified that she did not allow Defendant to see the children for a whole year. Plaintiff adds that Defendant was also very aggressive towards her eldest son from a previous relationship, who is sixteen (16) years old and has epilepsy. Plaintiff confirms that when the twins were born, Defendant was not registered as the father and Plaintiff affirmed that she did not want Defendant to be the father of her children. Plaintiff confirms that Defendant is paying two hundred (EUR 200) euros per month as

maintenance.

***Defendant testified on the 31st of October 2022 (vide fol 120 et seq)*** and explained that when the children were born he stayed with Plaintiff for two days and two nights in hospital, and only cohabited with Plaintiff for the first three months following the birth of the twins. Defendant adds that Plaintiff's mother was not happy with their relationship, and she even paid a flight for Plaintiff to have an abortion, however, Plaintiff had to return to Malta as it was too late to have an abortion. Defendant confirms that he was always very happy about the pregnancy. Defendant explains that when he realised that Plaintiff had not registered him as the father, he had spoken to a lawyer to initiate Court proceedings. This was when Plaintiff threw him out of the house, however, even during the court case, Defendant contends that he had tried to see whether their relationship could progress for the sake of the children. However, Plaintiff's mother had informed her that she would not help her any longer if she were to resume her relationship with Defendant. Defendant explains that his own mother had offered to help with the children.

Defendant explains that he would have liked to take the children to visits his family in U, although now he cannot as a result of the war. He confirms that he earns between Eur 600 and 800 euros a month. Defendant testified that during access he has rules regarding the amount of screen time the children can watch, however the children are not very happy about this. Defendant also explains that on one occasion the children were painting, and dirtied their clothes.

***IM, Defendant's mother, testified on the 2nd of March 2023 (vide fol 125 et seq)*** and explained that she got to know Plaintiff after her son had been with her for about four to five months, and in fact the first time she met Plaintiff she was already pregnant. Witness explains that her son was very happy about the pregnancy, however after around two weeks, her son had told her that Plaintiff had decided to terminate the pregnancy. At the time they already knew that they were having twins. Witness recalls that she had called Plaintiff herself since her son had told her that Plaintiff's mother was not too keen about their relationship, and that she wanted to find a Maltese husband for her daughter. Witness affirms that she had offered to help Plaintiff but this was to no avail. However, Plaintiff eventually did not terminate the pregnancy. When the twins were born, her son had gone to live with Plaintiff and the babies and he used to give Plaintiff his salary. However after four months, Plaintiff's mother placed all Defendant's clothes in garbage bags and left them in the corridor and told him to leave. At this point, Defendant went back to live with his mother. Plaintiff then registered the children, but Defendant was not registered as the father of the twins so that Defendant had to initiate court proceedings to prove that he was the twins'

father.

Witness affirms that the children love their mother very much, however, at the slightest inconvenience, Plaintiff tends to file a police report, without contacting or communicating with Defendant prior to filing the report. Witness contends that she would like to continue supervising the access together with her daughter (Defendant's sister) who is now in Malta to try and ameliorate the situation. Witness explains that Plaintiff does not wish to apply for the children's passport, and that Defendant would very much like to take the children to visit their extended family in U once the situation is stable. Witness explains that her son works in gypsum and that they have to pay the rent together with utility bills.

### **Considers:**

This is a judgement relating to the care and custody, access and maintenance of the parties' minor twin children M and E Z T born on the 3<sup>rd</sup> November 2016, and who are now almost seven (7) years old.

### ***Care and Custody***

In proceedings which involve the rights of minors and those belonging to the parents, the Court has a duty to take into account that which is solely in **the best interests of the child** and this is due to the fact that in the majority of cases its decisions will inevitably have a lasting effect on the life of the child. The jurisprudence of the Maltese Courts has always been consistent in that, issues regarding the care and custody of children are to be solely regulated by the principle of the best interests of the child, the best utility and best advantage to the interests of the child.<sup>1</sup>

The Court also makes reference to the considerations of the Court of Appeal in its judgment in the names: *Sylvia Melfi vs. Philip Vassallo* decided on the 25th of November 1998:

***In this case the Court must seek to do what is in the sole interest of the minor child in its decision whether the care and custody of the child should be given to one***

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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-tfal in generali, 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 jkun jirriżultaw mill-provi tal-każ li jrid jiġi riżolut..."*

*parent or the other the Court must solely be guided by what is most beneficial to the child [...] The Court should at all times seek the best interests of the child irrespective of the allegation, true or false, made against each other by the parties. Such allegations often serve to distance oneself from the truth and serve to render almost impossible the search of the Court for the truth. This is why it is the duty of the court to always look for the interests of the child. Exaggerated controversies between the parties often make one wonder how much the parents have at heart the interest of their children. Sometimes parents are only interested at getting at each other and all they want is to pay back the other party through their minor child.*

**Similarly, the European Court of Human Rights affirms:**

*The child's best interests may, depending on their nature and seriousness, override those of the parents (see Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII).*

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

Although this Court has always held that it is generally in the best interest of the child that the child's relationship and rapport with both parents is preserved and protected, irrespectively of the nature of the relationship between that same child's parents, 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>2</sup> “Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wiehed 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-ġjurisprudenza kostanti tagħna hawn ‘il fuq iċċitata.””

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.”***

### ***Maintenance***

The legal principle regulating maintenance is based on article 7(1) of the Civil Code which provides as follows: ***“Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.”***

The parents, therefore, have the same legal obligation towards their children, with both parents having to contribute to the upbringing of their children. The quantum of this obligation of a child’s maintenance is calculated according to the parents’ needs, and the criteria set out in article 20 of the Civil Code.

Article 20 of the Civil Code provides that:

- (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.***
- (2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.***
- (3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.***
- (4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.***
- (5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.***



In the case in the names of *Georgina Schembri pro et noe vs Dino Schembri* decided on the 28th November 2002, the Court held that:

*“L-obbligi ta’ manteniment tal-konjugi huma regolati bl-artikolu 3 tal-Kap 16...jirrizulta mid-disposizzjonijiet tal-Liġi, li l-ġenituri ghandhom l-istess obbligi versu l-ulied tagħhom, u għalhekk it-tnejn li huma ghandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f’posizzjoni ta’ ugwaljanza u ghandhom l-istess drittijiet, u allura anke skont l-artikolu 2 tal-Kap 16, “jerfghu responsabbiltajiet indaqs matul iż-żwieġ tagħhom” (Ara Eoll Jennifer Portelli pro et noe vs John Portelli (Rik Nru 2668/1996) deċiża fil-25 ta’ Ġunju 2003).<sup>3</sup>*

The obtaining Jurisprudence illustrates that the obligation of the parents is an absolute obligation, and persists even where the parents are unemployed (*Vide Maria Bugeja pro et noe vs Spiridione sive Stephen Bugeja First Hall Civil Court (FD) (154/94)*).

The Court recognizes the fact that according to law, parents have an obligation to maintain their children according to their means. However, local Courts have always stressed that:

*Il-Qorti dejjem irritereniet illi l-ġenituri ma jistghux jabdikaw mirresponsabilita` tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu lintrojt tagħhom. Dejjem kienet tal-fehma illi kull ġenitur ghandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. IlQorti ma tista qatt taççetta li persuna ġġib it-tfal fid-dinja u titlaq kull responsabbilta` tagħhom fuq il-ġenitur l-iehor jew inkella fuq l-istat.” (Vide Tiziana Caruana vs Redent Muscat (272/2018) deċiża mill-Prim’ Awla Qorti Ċivili fl-24 ta’ Ġunju 2019; Liza Spiteri vs LEe Farrugia (219/2018) deċiża mill-Prim’ Awla Qorti Ċivili fit-2 ta’ Ottubru 2019)<sup>4</sup>*

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<sup>3</sup> Translation: “the obligations of maintenance by spouses are regulated by article 3 of Chapter 16... according to the obtaining provisions of law, parents have the same obligation towards the children, and therefore, both have to contribute to the upbringing of the same, this applies even more so today, since the spouses are now equal under the law and have the same rights, and therefore, in terms of Article 2 of Chapter 16, are burdened with equal responsibilities during marriage.” (Vide also Jennifer Portelli pro et noe vs John Portelli (App np. 2668/1996) decided 25th June 2003)

<sup>4</sup> Translation: “The Court has always reiterated that parents cannot abdicate their responsibility of materially maintaining their children, and this independently of the quantum of their income. It was always the considered opinion of the Courts that a parent is in duty bound to maintain his children, even where his income is low or when he is unemployed. The Court can never accept a situation where a person brings a child into the world and assigns all responsibility to the other parent or to the State. (Vide Tiziana Caruana vs Redent Muscat (272/2018) decided from First Hall (Civil Court) on the 24th of June 2019; Liza Spiteri vs LEe Farrugia (219/2018) decided from First Hall (Civil Court) on the 2nd of October 2019)”

Of relevance is also the dicta of the Court of Appeal in *Marina Galea vs Mario Galea* decided on the 31st of January 2019:

***“Il-manteniment tat-tfal, fil-verita` izjed milli dritt tal-ġenitur li qed irabbihom, huwa dritt tat-tfal minuri li ma jisfawx m`caħħdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neċessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”***<sup>5</sup>

**Access:**

This Court has always held that it is generally in the best interest of the child that the child’s relationship and rapport with both parents is preserved and protected, irrespectively of the nature of the relationship between that same child’s parents. Article 57 of the Civil Code provides as following:

**Article 57:**

***(1) Whosoever may be the person to whom the minor children are entrusted, the spouses shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law: Provided that this right may be suspended if the exercise thereof would put either the children or the other parent at a risk of harm.***

***(2) It shall be in the discretion of the court, according to circumstances, to fix the time, place, and manner in which the spouses shall have access to the children: Provided that the right of access may be withdrawn by the Court when the spouse who is granted such right of access fails to exercise such right without reasonable cause.***

***(3) It shall be lawful for the court entirely to forbid such access to their minor children if it may be detrimental to the welfare of such minors or to the welfare of anyone of the parents.***

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<sup>5</sup> Translation: “With regard to maintenance due to children, in reality, rather than being a right of the parent who is looking after them, maintenance is a child’s right in order that children are not denied material things which are in today’s world considered as necessary for their education and development.”

Of particular relevance are sub articles (2) and (3) of the above-indicated disposition of the Civil Code. In proceedings which involve the rights of minors and those belonging to the parents, the Court has a duty to take into account that which is solely in the best interests of the child and this is due to the fact that in the majority of cases its decisions will inevitably have a lasting effect on the life of the child. In fact, the Court of Appeal has affirmed the following:

*“Din il-Qorti tibda biex taghmilha cara li, fejn jidhlu minuri, m’hemmx dritt għall-access, izda obbligu tal-genituri li t-tnejn jikkontribwixxu għall-izvilupp tal-minuri li, għal dan il-ghan, jehtigilha jkollha kuntatt ma’ ommha u anke ma’ missierha. Kwindi lil min jigi fdat bil-kura tal-minuri u kif jigi provdut l-access, jiddependi mill-htigijiet tat-tifla u mhux mill-interest tal-genituri...Huma l-genituri li jridu jakkomodaw lit-tfal, u mhux vice versa. -Limportanti hu l-istabbilita` emozzjonali tat-tifla, u li din ikollha kuntatt mal-genituri tagħha bl-anqas disturb possibbli.”<sup>6</sup>*

Similarly, the **European Court of Human Rights** affirms:

*The child’s best interests may, depending on their nature and seriousness, override those of the parents (see Sahin v. Germany [GC], no. 30943/96, § 66, ECHR 2003-VIII).*

### **Considers:**

From the acts of the case, it transpires that the parties had an intimate yet brief relationship, and from this relationship, the parties had twins, M and E, born on the 3<sup>rd</sup> November 2016. The parties’ relationship ended a few months after the birth of the children.

Proceedings for the care, custody, access and maintenance were initiated by the Mother on the 19<sup>th</sup> of February 2019 (Sworn Application No: 46/2019) and by the Father on the 25<sup>th</sup> February 2019 (Sworn Application No: 51/2019). The Court underscores that as apparent from the acts of the case, the two cases have been progressing together before this Court as presided, and the evidence adduced in one, is relevant and applicable to the other.

As mentioned above, this Court is duty bound to determine the merits of the case based solely on the minor children’s best interest.

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<sup>6</sup> Vide decisjoni tal-Qorti tal-Appell datata 3 ta’ Ottubru 2008 fl-ismijiet Miriam Cauchi vs Francis Cauchi.

The Court notes that throughout the progression of the proceedings, the Court has meted out a series of *pendente lite* decrees addressing the father's access and the maintenance due for the children. The Court has also seen the report compiled by social worker Xenia Scicluna Regugio dated 27 September 2019.

After careful consideration, it is this Court's considered opinion, that the care and custody of the twins is to remain joint between the two parents, however, the children's primary residence is to remain with the Mother, in Malta. The Court also orders that the children's domicile and habitual residence is here in Malta. Although the Court commends the Mother's efforts to fully integrate the children into Malta by speaking solely Maltese and English, the children need to also be familiar with their Ukrainian roots, and thus encourages both parents to help the children become acquainted with their native language and customs. The Court in accordance with its *pendente lite* decree dated 17<sup>th</sup> February 2020 also orders the parties to complete a Co-parenting course and this in the best interest of their minor children. Both parties have the right to request information regarding the children education and health.

With regards to the Father's access, this Court orders that the Father is to exercise access in accordance with the *pendente lite* decrees dated 15<sup>th</sup> June 2022 and 2<sup>nd</sup> March 2023, namely:

- 1. Mondays and Wednesdays from 3:00pm to 6:30pm.***
- 2. A sleepover from Friday 6:30pm to Saturday 6:30pm on the first week, while the following week, the sleepover is to take place from Saturday 6:30pm till Sunday 6:30pm, on alternate basis.***
- 3. The sleepover is to occur at the father's mother's residence and in her presence or in the presence of the father's sister. The mother is to take the children to the paternal grandmother's residence and is also to pick them up at the termination of access.***

If the children are unwell, and access cannot take place, the Father's access shall be replaced in the following days with the same amount of hours lost.

Furthermore, the Court orders that access on special occasions is to be exercised as follows:

- 1. Christmas Eve: The Children are to spend next Christmas Eve with their***

- Father. The Children are to have a sleep over with the Father under the modalities indicated above, and the Mother is to pick up the Children on Christmas Day at 11:00am.*
- 2. Christmas Day: The Children are to spend next Christmas Day with the Mother, after the Mother picks up the Children from the Father's residence at 11:00am on Christmas Day.*
  - 3. New Year's Eve: The Children are to spend the next New Year's Eve with the Mother.*
  - 4. New Year's Day: The Children are to spend Next New Year's Day with the Father. The Mother is to take the children to the paternal grandmother's residence at 11:00am on New Years Day and pick them up at 6.30 p.m.*
  - 5. Easter: Next Easter is to be spent with the Mother, while the following Easter is to be spent with the Father from 11.00 a.m. to 6.30 p.m.*
  - 6. Access on these special occasions is to alternate the following year.*
  - 7. Mother's Day: the children are to spend the day with the Mother.*
  - 8. Father's Day: the children are to spend the day with the Father from 11.00 a.m. to 6.30 p.m. and are to be transported by the Mother.*
  - 9. Mother's Birthday: the children are to spend the day with the Mother. If the Mother's Birthday falls on a day where the Father customarily exercises access, access with the Father is to take place on another day.*
  - 10. Father's Birthday: the children are to spend the day with the Father from 11.00 a.m. to 6.30 a.m. and are to be transported by the Mother.*
  - 11. Children's Birthday: If the children's birthday falls on any of the week days when the Father customarily has access, access is to be exercised indicated above, provided that the minor children are to be picked up at 6:00pm instead of 6:30pm so as to allow the Mother to have equal and adequate time with the children prior to their bedtime. If the children's birthday falls on the weekend,*

*the weekend is to be equally split between the two parents.*

With regards to maintenance, the Court has seen that the Mother exhibited a number of payslips for the year 2019 and FS3s for the years ending 2018, 2017, 2016, and 2015. The Mother also exhibited a list of monthly expenses she incurs for the minor children.<sup>7</sup> This Court has also seen that during the sitting of the 5<sup>th</sup> of June 2019, the parties informed this Court that they had agreed that the father is to pay the sum of EUR 300 by way of maintenance for the minor children. This Court observes that both parents earn a relatively low income, and this as evidenced by the documents submitted in the acts of the case and the parties' viva voce testimony.

It is this Court considered opinion that the father should pay 200 Euros a month for each child, that is 400 Euros each month for the two children which maintenance allowance shall include the father's share of the medical, educational and extra curriculum expenses of the two minor children.

Such amount is to increase according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minor stops pursuing his studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years if the minor child decides to pursue his studies on a full-time basis. Said amount is to be deposited directly in a bank account of Plaintiff's choosing. The Court orders that any benefits, and/or allowances offered by the state are to be received by Plaintiff.

**For these reasons, the Court:**

- 1. Orders that the care and custody of the minor children M and E, twins, born on the 3<sup>rd</sup> November 2016 is to remain jointly vested in the parents, MY T and R Z, who jointly are to take any decisions relating to but not limitedly to the children's education, health, and the issuance and renewal of any passports; Orders that the minor children's primary residence is to be with the Mother MY T, and that the children's domicile and habitual residence shall be in Malta;**
- 2. Orders the Father to pay the Mother the sum of four hundred euros (EUR 400) by way of maintenance for the two minor children every month which sum includes the father's share relating to the children's educational, medical, and extra**

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<sup>7</sup> Vide documents in the acts of the application 46/2019/2 at page number 17 et seq.

curricular expenses. Such amount is to increase according to the cost of living adjustment each year, until the minor reaches the age of eighteen (18) years if the minor stops pursuing his studies and starts working on a full-time basis or payable up to the age of twenty-three (23) years if the minor child decides to pursue his studies on a full-time basis. Said amount is to be deposited directly in a bank account of Plaintiff's choice. Orders that any benefits, and/or allowances offered by the state are to be received by Plaintiff.

3. <sup>8</sup> For easy reference, the Court is reproducing its decisions relating to the father's right of access to the children of the parties as decided in the proceedings 51/2019 in the inverse names hereunder.

**Each party shall bear its own costs.**

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1. <sup>8</sup> Orders that the Father, R Z, is to have access as per the following modality:

- i. *Mondays and Wednesdays from 3:00pm to 6:30pm.*
- ii. *A sleepover from Friday 6:30pm to Saturday 6:30pm on the first week, while the following week, the sleepover is to take place from Saturday 6:30pm till Sunday 6:30pm, on alternate basis. The sleepover is to occur at the paternal mother's residence and in her presence or in the presence of Defendant's sister. The mother is to take the children' to the paternal grandmother's residence and is also to pick them up at the termination of access.*
- iii. **Furthermore, the Court orders that access on special occasions is to be exercised as follows:**

*Christmas Eve: The Children are to spend next Christmas Eve from 11.00am with their Father, with a sleep over with the Father under the modalities indicated above, and the Mother is to pick up the Children on Christmas Day at 11:00am.*

*Christmas Day: The Children are to spend next Christmas Day with the Mother, after the Mother picks up the Children from the Father's residence at 11:00am on Christmas Day.*

*New Year's Eve: The Children are to spend the next New Year's Eve with the Mother.*

*New Year's Day: The Children are to spend Next New Year's Day with the Father. The Mother is to take the children to the paternal grandmother's residence at 11:00am on New Year's Day.*

*Easter: The children are to spend next Easter with the Mother, while the following Easter the children shall spend it with the Father.*

*Access on these special occasions is to alternate the following year.*

*Mother's Day: the children are to spend the day with the Mother.*

*Father's Day: the children are to spend the day with the Father from 11.00 a.m. to 6.30 a.m. and are to be transported by the Mother.*

*Mother's Birthday: the children are to spend the day with the Mother. If the Mother's Birthday falls on a day where the Father customarily exercises access, access with the Father is to take place on another day.*

*Father's Birthday: the children are to spend the day with the Father from 11.00 a.m. to 6.30 a.m. and are to be transported by the Mother.*

*Children's Birthday: If the children's birthday falls on any of the week days when the Father customarily has access, access is to be exercised indicated above, provided that the minor children are to be picked up at 6:00pm instead of 6:30pm so as to allow the Mother to have equal and adequate time with the children prior to their bedtime. If the children's birthday falls on the weekend, the weekend is to be equally split between the two parents.*

**Read.**

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

**Lorraine Dalli**

**Deputy Registrar**