

**CIVIL COURTS
(FAMILY SECTION)**

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

Today 4th October 2023

Application no.: 51/2019 JPG

Case No: 19

RZ

Vs

MYT

The Court:

Having seen the application filed by Plaintiff dated 25th of February 2019, at page 1 et seqq., wherein it helds:

- 1. That the applicant had a relationship of over two (2) years with the defendant MYT and on the 3rd November 2016, at Mater Dei hospital, twins, that is M and E Z T were born, as resulting from their birth certificates herewith attached and marked Dok.RZ1 and Dok. RZ*
- 2. That this Court ought to know that the defendant refused to register the twins as the biological children of the applicant despite the fact at the time they used to cohabit, and she instead chose to register the children as offsprings of an “unkown father”;*
- 3. That the applicant had no choice but to file a filiation suit against the defendant so that he is put down as the twins’ biological father and after DNA tests confirmed his version of events, the Court handed down a judgment on the 19th June 2018 wherein it*

was held that the twins are the biological children of the applicant, and for this reason the birth certificates of the minor children had to be amended to reflect the truth (Dok. RZ3);

- 4. Despite the failure of the defendant's Machiavellian plan, she was still adamant on making it difficult for him to exercise access to his children. Access is always exercised according to T's rules and anything for no reason at all the defendant would either burst out in a rage against the applicant (in front of the minors) or she would find some excuse so that access does not take place.*
- 5. Moreover, the defendant imposes several conditions on the applicant, one being that if the applicant wants to exercise his access to his children, then the applicant must be accompanied by the defendant's other twelve year old son – fruit of a previous relationship the defendant had whilst still living in U;*
- 6. That the applicant did his utmost to avoid filing the second lawsuit against the defendant, and he offered several solutions for an out of court settlement. Unfortunately, his efforts were all in vain. As can be seen from the decree herewith attached and marked Dok RZ3, mediation sittings were carried out but regrettably they were unsuccessful.*
- 7. That this court case had to be filed for the above-stated reasons;*
- 8. Since the parties are English speaking, this sworn application had to be filed in both the Maltese and English Language;*

Thus, and for the afore-mentioned reasons, the applicant respectfully asks this Honourable Court to:

- 1. Decide and declare that the care and custody of the minors M and E T is jointly entrusted to both parties, whilst their principal place of residence is the defendant's residence;*
- 2. Orders that the applicant's access to his minor children is set out in the manner below:*

Week One: Every Monday and Wednesday (or any other two week days) from 4pm till 7pm, and a sleep-over at the applicant's residence from Friday at 5pm till Saturday at 5pm.

Week Two: Every Monday and Wednesday (or any other two week days) from 4pm till 7pm, and a sleep-over at the applicant's residence from Saturday at 5pm till Sunday at 5pm.

Thus, with this mode of access alternating every week, gives both parents the opportunity to have Sunday lunch with their children once a fortnight.

- 3. Orders the applicant to have adequate access to his children on Father's Day and on his birthday, as well as access for at least three (3) hours on the twins' birthday;*
- 4. Orders the applicant to have access to his children on both Christmas Day as well as New Year's Day, and such access will be set in such a way that each party will have the opportunity to have either Christmas Day lunch or New Year's Day lunch in that particular year; and such arrangement will be alternated between the Parties from year to year;*
- 5. Orders that the maintenance that the applicant has to pay to the defendant for the benefit of the minors is the same amount he has been voluntarily passing on, that is the monthly sum of three hundred euro for both children (one hundred and fifty euro per child);*
- 6. Orders that the minors' health and educational expenses are shared equally between the defendant and the applicant;*
- 7. Declares that domicile and residence of the minors be established in Malta;*
- 8. Orders that the minors always have a valid passport and orders that the applicant keeps possession of one of the twins' passport, whilst the defendant keeps the other child's passport in her possession.*
- 9. Orders that the minor children will not be allowed to travel from the Maltese Islands without the prior consent of the parties, which consent must be given in writing.*

With costs.

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 MYT dated 28th of May 2019, wherein she objected to the demands of the Plaintiff for reasons therein cited;

Having seen that on the 5th 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 7th October 2019, vide fol 42;

Having seen the decree dated 14th of October 2019, vide fol 44;

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

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

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

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

Having seen this Court's decree dated 2nd March 2023;

Having seen the exhibited documents and all the case acts;

Having heard oral submissions of the parties and the written submissions of Defendant;

Considers;

The Mother testified by means of an affidavit (vide fol 28 et seq in 46/2019JPG) and explained

that she met the Plaintiff in 2015, and after a few months into their relationship she found out that she was pregnant. She contends that Plaintiff was not happy about this especially when she found out that they were having twins. She affirms that Plaintiff was not very interested in her since after her trip to U, on her return, Plaintiff 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 3rd of November 2016, at Mater Dei hospital. After the birth, Plaintiff spent three days with her at the hospital. Her mother's husband had suggested that it would be best for Plaintiff to go and live with them, so that they would live together as a family. Plaintiff agreed and was happy to move in with them. However, she soon realised that it was not a good idea; Plaintiff was drinking, constantly shouting and arguing, he expected her to do all the housework, and never contributed financially towards any of the expenses. Defendant affirms that she had refused to sign documents which indicated that Plaintiff was the father, and this was when Plaintiff started to threaten that he would be taking legal action against her. After this incident she had asked Plaintiff to move out.

After a year of no contact, she had received a judicial letter, and after their first court sitting, Plaintiff had started to constantly call her again asking to see the children. She refers to a number of incidents, where Plaintiff 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 Plaintiff 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, Plaintiff had started once again questioning her ability to take care of the children. Defendant makes reference to other episodes wherein Plaintiff did not adhere to her feeding instructions, occasions where he lost the children's bottles. Defendant affirms that Plaintiff kept insisting on applying for the minors' passports which she refused, and also that Plaintiff was refusing to pay maintenance in the amount of EUR 300.

Defendant testified on the 31st October 2022 (vide fol 118 et seq in 46/2019JPG) and explained that she met Plaintiff around six (6), seven (7) years ago and after a year, they decided to go and live together. Defendant got pregnant and this came as a shock since she got to know that she was pregnant when she was already five months pregnant. Plaintiff was very happy about this, however she was not and wanted to go back to U, however it was too late for an abortion. Defendant 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 Defendant gave birth, Plaintiff initiated paternity proceedings, and it was then that Defendant ordered him to move out. Defendant testified that she did not allow Plaintiff to see the children for a whole year. Defendant adds that Plaintiff

was also very aggressive towards her eldest son from a previous relationship, who is sixteen (16) years old and suffers from epilepsy. Defendant confirms that when the twins were born, Plaintiff was not registered as the father as Defendant affirmed that she did not want Plaintiff to be the father of her children. Defendant confirms that Plaintiff is paying two hundred (EUR 200) euros per month as maintenance.

Plaintiff testified on the 31st of October 2022 (vide fol 120 et seq in 46/2019JPG) and explained that when the children were born he stayed with Defendant for two days and two nights in hospital, and only cohabited with Defendant for the first three months after the twins were born. Plaintiff adds that Defendant's mother was not happy with their relationship, and she even paid a flight for Defendant to have an abortion, however, Defendant had to come back as it was too late to have an abortion. Plaintiff confirms that he was always very happy about the pregnancy. Plaintiff explains that when he realised that Defendant had not registered him as the father, he had spoken to a lawyer to initiate Court proceedings. This was when Defendant threw him out of the house, however, even during the court case, Plaintiff contends that he had tried to see whether their relationship could progress for the sake of the children. However, Defendant's mother had told Defendant that she would not help her any longer if she were to resume her relationship with Plaintiff. Plaintiff explains that his own mother had offered to help with the children.

Plaintiff 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. Plaintiff 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. Plaintiff also explains that on one occasion the children were painting, and dirtied their clothes.

IM, Plaintiff's mother, testified on the 2nd of March 2023 (vide fol 125 et seq in 46/2019JPG) and explained that she got to know Defendant after her son had been with her for about four to five months, and in fact the first time she met Defendant, Defendant 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 Defendant had decided to terminate the pregnancy. At the time they already knew that they were having twins. Witness recalls that she had called Defendant herself since her son had told her that Defendant'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 Defendant but this was to no avail. However, Defendant eventually did not terminate the pregnancy. When the twins were born, her son had gone to live with

Defendant and the babies and he used to give Defendant his salary. However after four months, Defendant's mother had put all her sons clothes in garbage bags and left them in the corridor and told him to leave. At this point, Plaintiff went back to live with his mother. Defendant then registered the children, but did not register her son as the father and then her son had to start 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, Defendant tends to file a police report, without contacting or communicating with Plaintiff prior to filing the report. She contends that she would like to continue supervising the access, and so would her daughter (Plaintiff's sister) who is now in Malta to try and ameliorate the situation. Witness explained that Defendant does not wish to apply for the children's passport, and that she would very much like to take the children to visits 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 3rd 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.¹

The Court also makes reference to the considerations of the Court of Appeal in its judgment in

¹ **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 general, 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 jirriżultaw mill-provi tal-każ li jrid jiġi riżolut...*”

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 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 23rd 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.²

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

² “*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 tenni din il-Qorti diversi drabi, l-interess tal-minuri huwa iprem mid-drittijiet tal-ġenituri. “Il-Qorti ttrileva illi filwaqt li dejjem taġġti piż għad-drittijiet tal-ġenituri, l-interess suprem li żżomm quddiemha huwa dejjem dak tal-minuri, kif anke mgħallma mill-ġjurisprudenza kostanti taġġna hawn ‘il fuq iċċitata.”*”

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.

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...jirriżulta mid-disposizzjonijiet tal-Liġi, li l-ġenituri għandhom l-istess obbligi versu l-ulied tagħhom, u għalhekk it-tnejn li huma għandhom jikkontribwixxu għat-trobbija tal-istess, aktar u aktar meta illum il-miżewwġin huma f’posizzjoni ta’ ugwaljanza u għandhom 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).³

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 irriteriet illi l-ġenituri ma jistghux jabdikaw mirresponsabilita` tagħhom li jmantnu lil uliedhom materjalment, hu kemm hu lintrojtu tagħhom. Dejjem kienet tal-fehma illi kull ġenitur għandu l-obbligu li jmantni lil uliedu anke jekk il-meżzi tiegħu huma baxxi jew jinsab diżokkupat. Il-Qorti ma tista qatt taċċetta 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

³ 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)

(219/2018) deċiża mill-Prim' Awla Qorti Ċivili fit-2 ta' Ottubru 2019)⁴

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 mċahhdin minn dawk l-affarijiet li d- dinja tal-lum tikkunsidra bhala neċessita` għall-edEazzjoni u għall-iżvilupp tagħhom.”⁵

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.

⁴Translation: “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)”

⁵ 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.”

(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.

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-interess 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.”⁶

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 3rd 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 19th of February 2019 (Sworn Application No: 46/2019) and by the Father on the 25th 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

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

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.

The Court notes that throughout the progression of the proceedings, it has handed 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 U 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 17th 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's 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 15th June 2022 and 2nd 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 paternal grandmother's residence and in her presence or in the presence of Plaintiff'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 is to 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 p.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.⁷ This Court has also seen that during the sitting of the 5th 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's considered opinion that the father shall pay two hundred Euros (200 Euros) a month for each child that is four hundred Euros (400 Euros) a month for the 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 Defendant's choosing. The Court orders that any benefits, and/or allowances offered by the state are to be received by Defendant.

For these reasons, the Court:

- 1. Orders that the care and custody of the minor children M and E, twins, born on the 3rd November 2016 is to remain jointly vested in the parents, MY T and Ramon Z, who jointly are to take any decisions relating to but not limitedly to the children's education, health, and the issuance of any passports; Orders that the minor children's primary residence is to be with the Mother MY T, and that the children's**

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

domicile and habitual residence is Malta;

2. Orders that the Father, Ramon 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 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 father's/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 father's or grandmother's residence at 11:00am on New Year's Day.

Easter: Next Easter is to be spent with the Mother, while the following Easter is to be spent 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 and are to be picked up by the Mother at 6:30pm

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 and are to be picked up by the Mother at 6:30pm.

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.

3. Abstains from taking further cogisance of the third request in view of that decided in the second decide.

4. Abstains from taking further cogisance of the fourth request in view of that decided in the second decide.

5. Orders the Father to pay the Mother the sum of EUR 400 by way of maintenance for the two minor children every month which sum includes the father's half the amount relating to the children's educational, medical, and extra 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 Defendant's choosing. Orders that any benefits, and/or allowances offered by the state are to be received by Defendant.

6. *Abstains from taking further cogisance of the sixth request in view of that decided in the fifth decide.*
7. *Declares that domicile and the residence of the minor shall be established in Malta.*
8. *Orders that the minors shall have a valid passport which shall be applied to and renewed by both parties jointly.*
9. *Orders that the minor children will only be allowed to travel with the prior written consent of both parties.*

Each party shall pay its own costs.

Read.

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

**Lorraine Dalli
Deputy Registrar**