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MALTA

**QORTI TAL-MAGISTRATI
(GHAWDEX) GURISDIZZJONI SUPERJURI**

**MAGISTRAT DR.
PAUL COPPINI**

SEDUTA TAT-18 TA' NOVEMBRU, 2004

CITAZZJONI NUMRU. 173/1998/1

IN THE COURT OF MAGISTRATES (GOZO)
AS A COURT OF SUPERIOR JURISDICTION IN ITS
GENERAL COMPETENCE

MAGISTRATE DOTTOR PAUL COPPINI LL.D.

Today Thursday 18th November, 2004 .

Writ of Summons No.173/1998

Jurgen Sixt .

vs

Rosemarie Sixt .

The Court,

Having seen the writ of summons filed by plaintiff wherein
he stated that :

The parties are German nationals and were married in Germany on the 23rd January 1989, and of this marriage they had a son, Maximilian, who is now nine (9) years old ;

This marriage was dissolved by means of a divorce decree given by the Court of Munich, in Germany on the 2nd October 1996, although the community of acquests existing between them had not yet been liquidated and partitioned ;

In the beginning of the year 1997, criminal proceedings were instituted against him in the Court of Magistrates (Gozo), and this after defendant filed a report against him alleging that he had abused their son, which accusations plaintiff however categorically denies and were the consequence of his refusal to accept the terms dictated by his wife, with the assistance of the partner Colin Best, for the liquidation and partition of the community of acquests ;

He has not seen his son Maximilian for the past year and nine months and defendant is doing her best in preventing him from having access to his son and is using same against him and is furthermore indoctrinating Maximilian to hate his father ;

He suspects that his minor son Maximilian is suffering from a guilty conscience after having allowed himself to be persuaded to invent false accusations against his father ;

He filed two applications with the Court of Magistrates (Gozo) as a Court of Voluntary Jurisdiction, praying that he be allowed access to his son, and by means of two decrees of the 10th March 1998 and 2nd June 1998 respectively, copies of which are annexed and marked as Doc. "A" and "B" that court rejected his demand ;

He wishes to see his son ;

Plaintiff therefore requested defendant to state why this Court should not for the stated reasons :

1. revoke and overrule the decrees pronounced by the Court of Magistrates (Gozo) in its Voluntary Jurisdiction of the 10th March 1998 and the 2nd June 1998 (Docs. "A" and "B" herewith annexed) ;
2. grant him access to his minor son Maximilian Sixt, and this with the intervention of experts to be appointed, and under those conditions that this Court may deem fit in the circumstances of the case .

With costs, including those of the two applications filed in the Court of Voluntary Jurisdiction and that of the other application filed together with this writ of summons, against defendant,

Having seen the Declaration of the facts confirmed on oath by plaintiff .

Having seen Defendant's Statement of Defence wherein she pleaded that :

1. plaintiff's request for access to his minor son Maximilian Sixt deserves to be again rejected because it is legally unsustainable and on the merits it is not in the interests of said minor to have any contact with plaintiff ;
2. in the first place plaintiff did not request that all decrees handed down by this Court in its Voluntary Jurisdiction be overruled, so that even were his first demand accepted, the decree given by that Court of Voluntary Jurisdiction in February 1997 would still be applicable and preclude plaintiff from seeing the minor child Maximilian Sixt ;
3. there is no reason why the mentioned decrees of this Court in its Voluntary Jurisdiction be revoked and overruled . On the contrary they ought to be confirmed and any contact between plaintiff and the minor child Maximilian Sixt is to be avoided ;

4. on the merits, defendant again opposes plaintiff's demand for access to the minor child and this in the interest of same child . Presently criminal proceedings are pending against same Jurgen Sixt in which he stands charged with having repeatedly violated and raped the minor child Maximilian Sixt during the period when the child was between four and seven years old . These serious abuses occurred during the time plaintiff had access to his minor son and were revealed by the same minor to his mother and Dr. Peter Muscat who gave evidence during the mentioned criminal proceedings and stated that he believed what the minor had stated .

5. Contrary to the remorse attributed to him by plaintiff, the minor child is terrified of his father and lives constantly in the fear of meeting him again and having to submit himself to the deprivations he suffered under his father . In fact the minor child was examined by the Psychiatrist Dr. Peter Muscat who concluded that the minor child is suffering from serious psychiatric problems as a consequence of his father's actions . The same Dr. Muscat not only gave evidence that the minor child should not see his father again, but also suggested that, after such an experience, it was not in the child's interest to receive presents from his father ;

6. As regards the false allegations made against her, her son and Colin Best, respondent states that plaintiff is well aware of his unpardonable conduct with his son and that she is not willing to negotiate any comprehensive agreement by which the criminal proceedings against him would be terminated or much less that he be given access to his minor son . Although furnished with facts which obviously exclude any form of planned blackmail, plaintiff still chose to make false allegations against her, for which he will have to answer later ;

7. Finally it has to be revealed that one of the conditions for plaintiff being granted release on bail pending the criminal proceedings against him, was not to

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approach or communicate with the same minor child Maximilian Sixt .

Having seen defendant's Declaration of facts duly sworn .

Having seen the decision of the Court of Appeal of the 3rd March 1999 whereby it was determined that this case be heard with urgency .

Having seen its decree whereby Dr. (today Mr. Justice) Joseph Azzopardi was appointed legal referee in this case .

Having seen the report filed by the same legal referee on the 17th May 2002 and confirmed on oath on the 9th June 2003 .

Having seen its decree of the 27th February 2003 whereby the case was put off for judgement for today .

Having seen all the other acts of the case, including all evidence and documents produced .

Considers that :

Plaintiff in this case is praying that the Court revoke two decrees given by this same Court in its Voluntary Jurisdiction, whereby his demands to have access to his minor son Maximilian were refused and consequently to grant him such access . Defendant is opposing these demands saying it is not in the minor's interest to see his father .

The parties in this case are divorced and defendant resides with her son in Gozo . Plaintiff saw his son regularly until late in 1996 when, according to defendant, the boy alleged that his father used to molest him when he was with him . She reported this to the Gozo Police, and when plaintiff arrived in Malta in December of that year, he was arrested and duly arraigned . He has not seen his son since .

In 1998 plaintiff filed two applications for access to his son but both were refused . By means of the present law suit he is requesting that these decrees be revoked .

As a preliminary plea defendant contended that even were these decrees to be revoked, there remained the obstacle of another earlier decree delivered by this court in its Voluntary Jurisdiction, some time in the year 1997 . However no proof was ever furnished of such a decree, and therefore this primary plea is being rejected forthwith .

As to merits of the case the Court has to determine whether the demands made by plaintiff in this writ of summons are justified. Without going into the details of all the evidence that has been produced in this case, it is sufficient here to state that plaintiff kept denying emphatically the accusations made against him by his wife and son . Of course he could hardly do otherwise pending the criminal proceedings filed against him, and which were only definitely concluded in his favour after he was found not guilty in a trial by jury which was held subsequently to the report filed in this case by the legal referee . He also kept insisting throughout the sittings held by the legal referee that the allegations were made up by either by the child himself for some inexplicable reason or else on the insistence of his mother as a leverage in the divorce proceedings pending between the parties in Germany . This notwithstanding he never denied that he believed in skin contact with his child and that he used to shower together with his son and sleep with him in a common bed .

On the other hand defendant gave evidence and produced witnesses to the effect that her son revealed what had happened only after suffering from bouts of constipation following visits to his father . A psychiatrist and a psychologist had the opportunity of examining the child and both concluded that Maximilian Sixt had suffered some bitter emotional experience.

Be that as it may, the Court agrees with the legal referee that what is to be decided is not whether plaintiff was guilty of the actions which his son has alleged to have occurred but whether it is in the interest of the minor child that his father sees him and have the relevant access . Indeed the sole interest of the child was emphasized by the Court of Appeal in its preliminary ruling in this case when it stated that :

"This Court has repeatedly stated that in matters of custody and access to children, the primary consideration is not the wishes of the parents but the welfare and best interests of the child" .

The legal referee concluded his report by stating that it was not advisable for the minor child to be forced to see his father, pending the criminal proceedings against him . These proceedings were terminated on the 18th November 2002 and in fact plaintiff was acquitted of all charges . However the court is still perturbed by the fact that when the minor child was giving evidence before the legal referee on the 25th February 2002, when he was already thirteen years of age, he was still adamant in refusing to see his father and held to his version of the events as he had related them to his mother more than six years previously .

In these circumstances, in view of plaintiff's acquittal of the criminal charges filed against him, there does not seem to be any further obstacle to granting his demands . However keeping in mind the best interest of the minor child, especially now that Maximilian Sixt is fifteen years old, and presumably of sufficient intellect to decide such matters for himself, the court does not deem it opportune to force the child, to see his father even against his will .

It therefore decides the case in the following manner :

1. while acceding to the first demand and revokes and overrules the decrees of this Court in its Voluntary Jurisdiction of the 10th March 1998 and the 2nd June 1998 whereby plaintiff was denied access to his minor son Maximilian Sixt ;

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2. it leaves it up to the same minor child to decide the modalities of such access by his father, making it clear however that it is in no way forcing him to meet his father against his will .

In the particular circumstances of the case, costs are to be borne equally by the parties .

< Sentenza Finali >

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