



**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)**

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-3 ta' April, 2008

Citazzjoni Numru. 1146/2003

**AB
vs
C D**

The Court,

Having seen the writ of summons whereby plaintiff states that the parties were married in Russia in 1986, and on the 25th of March 1988 a son by the name of Sergei was born, also in Russia; that subsequently, on the 6th of November 2000, their marriage was dissolved by a Russian court, and the parties decided that the child was to live with his mother, the plaintiff, in Malta; that defendant resides and works in Malta; that subsequent to the annulment of the marriage, the defendant had failed to contribute financially to the upbringing of the child, notwithstanding repeated requests by plaintiff who, consequently had to bear the whole financial burden to maintain and educate the minor child. On the strength of

the above, plaintiff is requesting that defendant be ordered by this Court, to [1] quantify the maintenance allowance due to her by his father, the defendant, in respect of the child; as well as, [2] to condemn defendant to pay to plaintiff a sum of money by way of maintenance arrears dating from November 2000 till the day the child becomes of age on the 13th March 2006, which sum is to be quantified by this Court; together with all the judicial expenses.

Having seen the pleas filed whereby defendant pleaded: that the law applicable to this case is Russian law and not Maltese law; that no juridical relation exists between the parties, since the marriage had been annulled, and that therefore the present proceedings should have been insisted by plaintiff on behalf of the minor, and not in her name; that regarding plaintiff's request for the payment of maintenance arrears, plaintiff should have proceeded earlier, at the appropriate time; that defendant began paying plaintiff maintenance for their son in the monthly sum of Lm50 from the 5th of February 2004 and in the monthly sum of Lm60 following a court order issued on the 14th September 2004; that defendant was not in the financial position to pay the Lm50 monthly prior to the 5th February 2004; that also plaintiff has the duty to contribute towards the maintenance of their son;

Having seen the declarations on oath, the lists of witnesses and the affidavits filed by the parties;

Having seen the preliminary judgment handed down by this Court on the 27th February 2007¹ whereby the Court rejected the first plea, and confirmed that the law applicable to this case is Maltese Law;

Having seen the records of the proceedings, including the note of submissions filed by the parties;

Having heard the evidence on oath;

¹ Vol.2 – fols.411 *et seq.*

Having considered;

Action

That in virtue of the present action, plaintiff is requesting this Court to condemn defendant to pay maintenance in respect of their child Sergei, as well as to quantify the maintenance arrears due from the 6th of November 2000. Defendant is opposing this action basically on lack of financial means on his part to pay maintenance from the above date till the 5th of February 2004, and that he does not have adequate means to pay a monthly allowance in excess of Lm50 per month.

The Facts

That from the evidence it emerges that the parties, both Russian nationals, got married in Russia on the 11th October 1986, and on the 25th March 1988 a son by the name of Sergei was born to them from this marriage. In October 1994 the parties came over to Malta with the intention of living here; in fact both parties found work in Malta.

Subsequently on the 6th November 2000 a Russian Court dissolved the marriage; however it abstained from making provision regarding the maintenance of their son since the parties had declared that "an agreement of the maintenance of the child between us has been reached."²

Subsequently defendant married a Russian woman on the 19th of September 2002, and on the 20th November 2002 a daughter was born from this marriage.

On the 25th March 2006 the child Sergei, still living with his mother, became of age.

That from the evidence it results that both parties work in Malta with the Malta Olympic Committee, and documentary evidence of their respective income was presented to this Court. Plaintiff's request for maintenance extends from the 6th November 2000, the day of the

² Declaration of Divorce filed by plaintiff, and signed by both parties [fol.183]

dissolution of the marriage, till the 25th March 2006 when Sergei became of age.

In her evidence plaintiff explains that she had made no claim for maintenance during the divorce proceedings since there existed a verbal agreement between the parties in the sense that her husband was to transfer to her his share of a flat in Russia in full and final satisfaction of his obligation to contribute for the maintenance of their son. However, defendant failed to live up to this promise, and subsequently had asked the Russian courts to quantify his share in that same property. This explains why plaintiff brought forward her claim for maintenance three years after the dissolution of marriage, when she realised that defendant had no intention of honouring their agreement.

Regarding the payment effected by defendant to plaintiff, for the sum of Lm800 as evidenced by the deposit slip dated 7th February 2001³, plaintiff, rebuts defendant's claim that this payment represented payment of maintenance for their son; she explains that this amount represented her share of the value of the car Kia Pride number BAB 463 owned by the parties which she soled to defendant.

Plaintiff's version of the facts in this respect, finds comfort in the evidence given by the representative of the Licensing and Testing Department who confirmed that the vehicle remained registered on Miss AB till the 7th February 2001 when it was transferred to C D.⁴

Regarding plaintiff's financial position during the period at issue, it results from the evidence produced that plaintiff had a full time job with the Malta Olympic Committee carrying an annual salary of Lm4,500 gross in the years 2000 till 2003, Lm4,733 gross in 2004, Lm6,008 gross in 2005 and Lm6,137 gross in 2006, as evidence the relative FS3 produced.⁵

³ Fol.220

⁴ Dep. Christopher Darmanin fols.219

⁵ Fols.372 *et seq.*

In her evidence, plaintiff produced a statement, at fol.56 of the records of the proceedings, of the expenses involved together with the receipts relating to the education of the child for the period between 2000 and 2005.⁶ Plaintiff maintains that defendant knew all along that their son had been attending the Russian school in Malta, since defendant used to deliver physical education classes in that same school during scholastic year 2000 and 2001.

Defendant on his part explains that during the years 2000 he was employed with The Malta Amateur Athletic Association with an annual income of Lm3,120 gross, and from 2001 till 2003 he was employed with the Malta Olympic Committee with an annual income of Lm3,850 gross, Lm2,009 gross, Lm2,550 gross, and during the year 2004 he was employed with W&M Zammit Tabona Ltd. with an annual income of Lm5,193. In 2005, during the months extending from February till May defendant received a basic pay of Lm400.

In his affidavit, defendant denies the existence of a verbal agreement between him and plaintiff regarding the maintenance of their child; and states that at the time of the application for the divorce proceedings his wife was not interested in the question of maintenance contribution, but "she wanted divorce only." Also, defendant maintains that the afore mentioned payment of the sum of Lm800 made by him to his wife, represented his financial contribution towards his son's maintenance, and not, as stated by his wife, her share of the value of the car.

Defendant explains that between January and February 2002 his girlfriend made in vitro fertilization operations which cost more than LM1,000. In fact, he states that he had to borrow money from a friend of his to help him out in this respect. Later, on the 19th September 2002 he married his girlfriend, and on the 20th November 2002 a daughter was born.

⁶ Fols.56 *et seq.*

He criticizes plaintiff for not claiming maintenance at the appropriate time, from 2000 till 2003, and attributes plaintiff's present action, to jealousy on her part. Defendant states that he had agreed to pay the weekly rate of Lm10, but plaintiff refused. Subsequently, in January 2004 he started paying her the monthly sum of Lm50, which on the 14th September 2004 was increased to Lm60; and it appears that the parties are in agreement as to these payments effected from January 2004.

Considerations of the Court

According to Maltese law "Both parties are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute to the needs of the family."⁷ Also, and more specifically to the point at issue, "Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children."⁸ On the matter of maintenance in general, our law states that "Maintenance shall include food, clothing, health and habitation." and "In regard to children and other descendants, it shall also include the expenses necessary for health and education."⁹ Also, "Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto."¹⁰

That it is the considered opinion of this Court, after having taken into considerations the means of both parties, and after having given due consideration to the fact that during the period in question plaintiff's income was higher than that of defendant, that the monthly allowance of Lm50 for the period extending from November 2000 till August 2004, as well as the monthly allowance of Lm60 for the period between September 2004 and March 2006, together with a share of the expenses relating to the

⁷ Art.3 of Chapter 16 of the Laws of Malta

⁸ Art.3B Ibid.

⁹ Art.19[1][2] Ibid

¹⁰ Art.20[1] Ibid

education of the child, represents adequate maintenance contribution by defendant.

Moreover, regarding the education expenses, including transport expenses, purchase of books and school clothing, which are indicated in detail in the statements presented by plaintiff at fol.18 and 56 of the records of the case, the Court is of the opinion that, having regard to the difference in income of the parties during the period in question, defendant's contribution should be of 1/3 of the expenses for the years 2000, 2001, 2002, 2003, 2005 and 2006 and ½ for the year 2004.

The Court considers the amounts indicated in the statement inserted at fol.56 of the records to be satisfactorily substantiated. Also the amounts of Lm150, Lm60, and Lm50 representing education expenses relating to the child per year, and which are indicated in the statement at fol.18, to be adequately proven. It is to be noted that although no receipts have been produced regarding the latter amounts, the Court considers them to be reasonable, in so far as they extend from November 2000 to June 2004, amounting to a total of Lm1,040, defendant's contribution being amounting to Lm390¹¹.

On the strength of the above, the amount due by defendant as his share of the education expenses for the years 2000 till 2003 and for the years 2005 and 2006, as indicated under items [1a] till [4a], [5b], [5d] till [5f] and [6b][6c][6d]¹² is one third of the sum of Lm2,818 amounting to Lm939.33; whilst the amount due by him for the year 2004, as indicated under the rest of the items, is of ½ of the sum of Lm889.25 amounting to Lm444.62.¹³

Therefore the total sum due by defendant to plaintiff as his share of the education expenses of the child for the above period is of Lm1,773.95¹⁴.

¹¹ 1/3 of [260 x 3] + ½ of 260 = Lm390

¹² These represent Lm680 fee to Swatar Centre for period October 05 to April 06 as per statement dok.MAI at fol.237, and Lm80 for resits – dok.17 fol.198

¹³ Statement at fol.56

¹⁴ Lm390 + 939.33 + 444.62 = Lm1773.94

The amount still due by defendant as his monthly allowance in terms of the above, is of Lm1,900 representing monthly allowance of Lm50 from the 6th November 2000 till the 31st December 2003.

Therefore the global amount due by defendant to plaintiff as his contribution to the maintenance of the child Sergei, including the education expenses is of 8,558 euros, equivalent to Lm3673.95¹⁵

That at this stage the Court considers the following observations worthy of mention:

[1] The Court considers as truthful plaintiff's version of the facts relating to the payment of the sum of Lm800. The established fact that the transfer of the vehicle to the defendant was effected on the same date of the payment of the said sum to plaintiff, affords ample support to plaintiff's claim that the payment was made in consideration of plaintiff's sale of her share of the vehicle, and that it was extraneous to the maintenance issue between the parties.

[2] The fact that, subsequent to the dissolution of the marriage, the defendant married another woman and had a daughter to support, should not prejudice his son's right to adequate maintenance by his parents, including his father. The Court is of the opinion that, prior to entering into further financial burdens, defendant should have given prime consideration to his obligations and duty towards his son who was born prior to his father's second marriage and prior to the subsequent birth of his father's daughter. Multo magis when considering the fact that the defendant had to spend a relative large sum of money to pay for the in vitro fertilization operations.

[3] That regarding defendant's claim that he had not been consulted on matters relating to the education of Sergei, the Court, in view of the established facts of the case,

¹⁵ Lm1,773.95 + Lm1,900 = Lm3,673.95

considers it difficult to accept as truthful this allegation. Besides, the expenses incurred by plaintiff for the education of their son, are reasonable and, save for the Swatar Centre fees, may be considered to be within the financial reach of both parents together. Regarding the latter expenses, it is observed that the financial burden borne by defendant has been alleviated by the fact that his contribution has been limited to 1/3 of the education expenses, save for the year 2004 where the education expenses have been limited to ½.

[4] That regarding defendant's second plea relating to the plaintiff's juridical interest to promote these proceedings, the Court observes that it is plainly clear that the plaintiff qua mother and parent having the care and custody of the minor and responsible for his daily upbringing, has a juridical interest to institute a maintenance action for her son's maintenance, in her own name.

[5] That regarding defendant's third plea, the Court is satisfied of the truthfulness of the version of the plaintiff that prior to the divorce proceedings the parties had reached a verbal agreement on this issue, which agreement defendant had later failed to honour.

[6] That the Court considers as untruthful defendant's allegation that he did not have adequate means to pay maintenance between "November 2000 till August 2003"¹⁶

Decide

On the strength of the above, and within the limits of the above considerations, the Court decides this case by acceding to both requests made by plaintiff, and consequently quantifies the amount due to plaintiff by defendant as his share for the maintenance, including the education of his son, in the amount of eight thousand, five hundred and fifty eight 8,558 euros, equivalent to Lm3,673.95; and orders defendant to pay plaintiff this amount.

¹⁶ Note of pleas – fol.30

Kopja Informali ta' Sentenza

Costs are to be borne totally by defendant.

< Sentenza Finali >

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