



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

**ONOR. IMHALLEF  
NOEL CUSCHIERI**

Seduta tas-26 ta' Jannar, 2012

Citazzjoni Numru. 378/2009

Number on list: 24

**A B C in her own name,  
and as curator 'ad litem' acting on behalf of her minor  
son D E  
vs  
F E**

**The Court,**

Having seen the sworn application by virtue of which plaintiff [The Mother] premised and requested: that the child D E was born on the 6<sup>th</sup> of April 2008 from a relationship between the parties; that plaintiff is bringing up the child on her own, since the defendant [The Father] resides in the United Kingdom, and comes to Malta occasionally to see his son; that when the Father is in Malta, problems arise since he wants to take the child with

him to the UK, and the Mother's fears that the child be abducted from Malta has led her to request and obtain a warrant of prohibitory injunction against the father; that the Father is not paying any maintenance to the Mother in respect of the child; on the strength of the above, the Mother is requesting this Court to order [1] that exclusive care and custody of the child be granted to her; [2] that defendant pays her maintenance in respect of the child; [3] that defendant be inhibited permanently from removing the child from these Islands; with costs;

Having seen that defendant did not file a sworn reply;

Having seen the note registered in the records of the proceedings during the sitting of the 10<sup>th</sup> June 2010, which textually reads as follows: "The defendant is declaring that he has no objection to care and custody of the minor being granted to plaintiff provided that adequate visitation rights be granted to him." Also that "The parties agree that both their habitual residence and that of the child D E is Malta";

Having seen all the acts of the case;

Having heard evidence on oath;

Having considered;

### **The Action**

That by virtue of this action the Mother is requesting that she be granted exclusive care and custody of her minor child D E; that the Father be ordered to pay her maintenance in respect of the child needs; and that the Father be permanently inhibited from removing the child from these islands.

### **The Facts**

That as a result of a relationship between plaintiff, a Maltese national, and defendant, a British national, both living in Malta, the child D E was born on the 6<sup>th</sup> April 2008. After the birth of the child, defendant expressed his wish that they all go to live in the United Kingdom. After

some time plaintiff acceded to the defendant's request to go to England with a view to meeting his relatives, mainly so that the child meets his grandparents. Plaintiff alleges that once in England, she was given the cold shoulder, whilst defendant expressed his wish that the child remains with him in the UK. Eventually, she came back to Malta with the child, where she has her family's support. Subsequently, also defendant came back to Malta with a view to spending time with his son, and he also took up residence here.

### **Care and Custody**

The Mother's claim in this respect is that, since birth she has been the carer of the child, even though she does not have a job and is on social assistance, she is to have exclusive care and custody of the child, and that the Father's access is to be supervised by her since she believes that he will take this opportunity to manipulate the child against her mother and her relatives. Besides, she expressed her fears that, since the Father is abusive of alcohol, the child may not be safe solely in his care. Also, she fears that the Father will take the child to the UK without her consent.

On his part, the Father denies having any problems with alcohol, and states that his only wish is to stay close to his son and establish a bond with him. He explains that this was the only reason why he decided to come to Malta and settle here.

The Court, having examined the evidence produced, has arrived to the conclusion that it would be in the child's best interests that exclusive care and custody be granted to the Mother. However, important decisions regarding the child's health and his education are to be taken by both parties jointly and in writing. Also, that the child's habitual place of residence is Malta, and is not to be taken away from these islands by any party, except with the written consent of both parties or with the court's authorization.

Regarding the Father's visitation rights, the Court is of the opinion that *rebus sic stantibus* the request for supervision

is unwarranted, and that the Father is to enjoy unsupervised access on the following days and times, due regard being had to the age of the child: on Tuesdays and Thursdays, from 5.00pm till 6.00pm; and on Saturdays and Sundays, alteranatively, from 9.00 am till-4.00 pm during the winter schedule; whilst during the three summer months, access during the week will extend till-8.00 pm and access during the weekend will extend from 10.00 am till 8.00 pm

### **Maintenance**

From the evidence it emerges that in 2010, plaintiff, who has another son from a different relationship, receives €8,400 in social benefits, whilst defendant's gross income is of €18,072.

Also, although plaintiff is only 36 years old, at present she is not gainfully employed, even though she used to work as a fitness instructor; and no evidence has been brought to the effect that she is unable to work due to medical reasons.

The Court, after having taken into account the above facts, as well as the running expenses of the parties, and those relating to the child, has come to the conclusion that the sum of €200 every four weeks is adequate maintenance for the support of the child. Also, in view of the difference in the income of the parties, and plaintiff's necessary limitations for work due to the young age of her children, the Court considers it just that medical expenses of an extraordinary nature, and expenses relating to the child's education are to be borne by the parties in unequal shares: plaintiff is to bear one third [1/3], whilst the remaining two-thirds [2/3] are to be borne by defendant.

The Court orders that the above maintenance be paid to plaintiff by defendant; together with 2/3 of the extraordinary health, and education expenses.

### **Decide**

For the above reasons, the Court decides this case by:

Kopja Informali ta' Sentenza

[1] acceding to plaintiff's first request granting her exclusive care and custody of the minor child, whilst the access of defendant is to be regulated as above established and ordered in the section entitled "Care and Custody";

[2] acceding to plaintiff's second request in the terms and as above established and ordered in the section entitled "Maintenance";

[3] acceding to plaintiff's third request limitedly and in the sense that none of the parties are to take the child out of these Islands without the written consent of both parties, or the court's authorization.

Expenses are to be borne by defendant.

**< Sentenza Finali >**

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