



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

**ONOR. IMHALLEF
NOEL CUSCHIERI**

Seduta tat-23 ta' Frar, 2012

Citazzjoni Numru. 170/2008

Number on list: 27

**A B in her own name
as well as in the name and on behalf of
her minor daughters C and D G**

VS

**Doctor Martin Fenech and Legal Procurator Veronica
Rossignaud**

**deputy curators in representation of E F G,
who is absent from these Islands; and by virtue of
Court decree**

**dated 6th May 2009 the appointment of the Deputy
Curators**

was revoked since defendant was duly notified

The Court,

Having seen the sworn application by virtue of which plaintiff premised and requested: that from a relationship between the parties, both British nationals, two children, C and De, were born; that these children are still under age, and are in the effective custody of plaintiff, as defendant works abroad and is consequently in constant travel; that a few years ago, the parties came over to settle in Malta with their children, whilst defendant' job required that he be abroad periodically; that after the termination of the relationship, defendant used to pay plaintiff as maintenance allowance for the two children the weekly sum of €300; that this sum was eventually arbitrarily reduced by defendant, and moreover payments were being made irregularly, with the result that plaintiff could not cope with the financial needs of the children, whilst on his part defendant has the necessary financial means to pay an adequate maintenance rate; that defendant has on occasions threatened plaintiff that he will take the elder child to live with him abroad against the wishes of plaintiff, when the children's place of residence is Malta as had originally been agreed to by the parties; on the strength of the above, plaintiff is requesting this Court to:

1. Award the sole care and custody of the minor children C and De G to the applicant A B to the exclusion of the respondent, and with rights of access in his favour;
2. Fix that amount that is to be paid by the respondent by way of maintenance for the said two minor children and condemn said respondent to pay the said amount to the applicant on behalf of the minor children; and
3. Order that the amount due by respondent by way of maintenance for the minor children is deducted from his salary and paid directly to the applicant on behalf of the said minor children.

With costs against the respondent whose oath is hereby made reference to.

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Having seen the sworn reply filed by the Deputy Curators whereby they declared that at that stage they were unaware of the facts of the case;

Having seen that by virtue of decree dated 6th May 2009, the appointment of the Deputy Curators was revoked, as defendant was duly notified;

Having seen all the acts of the case;

Having heard all the evidence on oath;

Having considered;

The Action

By virtue of the present action plaintiff is requesting this Court to grant her exclusive care and custody of the parties' two minor children, as well as to order defendant to pay a maintenance allowance to her for the children's needs.

The Facts

That the parties, both British citizens, had lived in Holland for a period of about five years. During this period C was born from this relationship. Subsequently, defendant bought a house in Malta, and between 2005 and 2006 the parties came to Malta to settle here, where eventually their second daughter, Mackenzie was born. In the meantime, defendant's job with Rhayl Engineering Limited required that he travels continuously, and came to Malta every six weeks.

In the first half of 2007 the relationship was terminated; and, whilst plaintiff continued to live in Malta with the parties' two daughters, defendant continued working abroad, whilst coming over to Malta to see his daughters during his leave period.

Plaintiff's version

Plaintiff complains that when the relationship terminated, the £500 weekly payments given to her by defendant to cater for the needs of the family, were arbitrarily reduced

by defendants to £250, and in October 2007, since defendant had stopped the home loan payments, she had to move out of defendant's house. Defendant had eventually stopped regular maintenance payments, and was making sporadic payments in lesser amounts to the tune of £180 a week which sum was reduced further owing to the exchange rate. In G, plaintiff was finding it very difficult to collect maintenance for the children from defendant; and as a result had to seek her parents' help in this regard.

Also, plaintiff states that defendant has never abided by the court decree¹ issue on the 27th October 2008 by virtue of which defendant had to pay the weekly sum of €300, and "he has not sent over any payments for several months now, thus completely abandoning the children in their needs."² This notwithstanding, plaintiff states that she has "never denied access to the children, and most often, when he is in Malta, the children are with him most of the time."³; and in her subsequent affidavit confirms that defendant "still does exercise his visitation rights when he comes to Malta."⁴

Regarding plaintiff request for exclusive care and custody, as well as the children's place of residence, plaintiff explains that she has been living in Malta with the children since 2005 and that now Malta is her home. "The children are settled, and at school, and any disruption of this normal, settled routine and stability will be detrimental to them. Also, [defendant] and I had agreed to bring the children up in Malta." and that taking them back to the United Kingdom will not be in their interests. Moreover defendant does not have a fixed address in the United Kingdom, and his job requires that he travel continuously without a fixed abode, thereby putting him in the impossible position of taking adequate care of the children.

¹ Fol.62

² Fol.169 – Aff. Dated 2.06.2010

³ Fol.27

⁴ Fol.169

Defendant's version

Defendant, who at present resides in the United Kingdom, claims to have a good relationship with his children: “when I am with my kids the relationship is fine, everything is great. They love being with me which I know. I spend all my free time, when I am not working, over here in Malta.... I do the best to see them whenever I can see them...”⁵

He wishes “to be involved in the upbringing of the children, and I would like to make decisions for them, and be part of their life”⁶. He wishes to have more access during weekdays, during the children’s scholastic holidays, and complains that he fails to understand why the children are not allowed an overnight stay during the weekends.

Defendant also states that if he can find work in Malta, he plans to take up permanent residence here with a view to being close to his children.

On the other hand, he accuses plaintiff of parent alienation, stating that the children are prevented from answering his phone-calls, and that “I never have telephone calls, and I am never involved in anything that goes on in their schools, playing activities, nothing at all.”⁷

Regarding maintenance, defendant claims that his average monthly earnings amount to £4,205; and states that he can only pay the monthly sum of €700 a month as maintenance for the two minor children, considering that his monthly expenses amount to “£3,466 per month, excluding normal social living expenses.”⁸

Finally, he denies the allegations of physical abuse made by plaintiff in her regard.

Care and Custody

⁵ Vol.2 – fol.281

⁶ Ibid. fol.284

⁷ Ibid.

⁸ Vol.2 – fol.293

Plaintiff presented an affidavit made⁹ by Psychiatrist Doctor John Xuereb who based his conclusions on “statements made by [plaintiff] over numerous sessions with [him].”¹⁰ This ex parte witness states that “when talking about her father, C manifests agitation and nervousness. Her usual tranquil behaviour shows signs of apprehension and dread.... [her] emotional and behaviour problems appear to be closely related to the complicated parental separation, and to [defendant’s] behaviour as they are correlated in time.”¹¹

The court-appointed expert Social Worker Therese Micallef, in her report¹², gives a different picture of the children’s attitude towards their father. She states that “During a visit while the children were with their father, both [children] were happily playing with their toys in their room. At intervals both children would separately rub up to their father and hug him. They also separately asked him to pick them up and hold them in his arms.” The court-expert observed that “During this visit both children showed that they would be happy if they could sleep over at their father’s house when he is in Malta.”¹³ She further observed that the children showed no signs of fear or discomfort in the presence of their father’s partner at that time.

During her evidence, Therese Micallef, explained that when the children told her that they would even like to sleep at their father’s house, their father was not present, and they were alone in the room.

The social worker concluded that, whilst both parents should have joint custody, defendant should have access on weekdays and during the weekend as detailed in her report; and also that defendant should have telephonic access whilst he is abroad.

⁹ On the 2 April 2010

¹⁰ Vol.1 – fol.162 *et seq.*

¹¹ *Ibid.*

¹² Sworn on the 15th October 2010

¹³ Vol.2 – fol.222

On this issue of care and custody, this Court is more inclined to accept the expert's conclusions on the children's relationship with their father, rather than give weight to the ex parte expert produced by plaintiff whose conclusions were, at least partially, based on plaintiff's version of events. Moreover, defendant's interest in the children is manifest, and has been confirmed by plaintiff in her testimony when she stated that "when he is in Malta, the children are with him most of the time."¹⁴; this fact weakens the probative effect of the psychiatrist observations.

Also, the Court considers it to be in the best interests of the children that their relationship with their father be allowed to continue to thrive into a healthier and more stable relationship; whilst granting defendant a more active and responsible role in the welfare of the children.

Therefore, for the above reasons, the Court is granting joint custody to both parents; however, the children are to continue residing with their mother in Malta where they are well-settled, and none of the parties may take the children abroad without their mutual written consent, or without the court's authorization. Moreover, plaintiff is bound to inform defendant on all matters regarding the children health, and their education.

On the other hand, defendant is to have access to his children, when in Malta, on Tuesdays and Thursdays from 2.30pm till-6.00 pm; and during the weekends, alternately, from Saturday 10.00 am till Sunday 6.30 pm, and from Friday 2.30 pm till Saturday 7.30 pm.

During the children's winter holidays, defendant's access during the week is to extend from 10.00am till 7.30 pm; whilst during the summer holidays access, both during the week and in the weekends, is to extend to 9.00 pm.

¹⁴ Fol.27

Also, defendant is being given the right to communicate daily with his children, via phone and email, whilst he is abroad.

Maintenance

That taking into account defendant's income and his necessary expenses, the needs of the minor children, who are now approximately 7 and 5 years old, and the fact that children have been and are being practically looked after solely by plaintiff who, apart from shouldering the burden which necessarily comes with the upbringing of children, caters for all their daily needs, the payment of a weekly sum of €300, is an appropriate maintenance rate in the circumstances.

Therefore, the Court *rebus sic stantibus* orders that plaintiff pays to defendant the weekly sum of three hundred Euros [€300] by way of maintenance for the two children till they reach the age of eighteen; this amount covers all health and education expenses, whilst health expenses of an extraordinary nature are to be borne by both parties in equal shares.

Moreover, the Court orders that the said weekly amount be deducted from defendant's salary, and sent directly to plaintiff at her Maltese address, or deposited directly in a bank account indicated by plaintiff to defendant.

Decide

For the above reasons, the Court decides this case by acceding to plaintiff's requests limitedly and in terms of what has been above established and ordered by this Court in the sections entitled 'Care and Custody' and 'Maintenance'.

Expenses are to be borne by defendant.

Finally, the Court observes that defendant has failed to produce any evidence in four consecutive sittings held before the Judicial Assistant of the 20th September

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2010¹⁵, 30th September 2010¹⁶, 27th January 2011¹⁷, 3rd.February 2011¹⁸ for no apparent valid reason, with the result that no progress was made during these sittings, thereby delaying unduly the progress of the case¹⁹; therefore by virtue of paragraph 10[1] Schedule A Chapter 12, the Court orders defendant to pay the sum five hundred eighty two Euros [€582] additional expenses in the Registry of this Court.

< Sentenza Finali >

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¹⁵ Fol.218

¹⁶ Fol.218

¹⁷ Fol.277

¹⁸ Fol.278

¹⁹ It is not amiss to point out that in his evidence of the 3 March 2011 defendant complains that the court sittings “cost me a lot of time and a lot of things don’t seem to be happening” [fol.282]