



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

**ONOR. IMHALLEF
ROBERT G MANGION**

Seduta tal-11 ta' Dicembru, 2012

Citazzjoni Numru. 194/2011

Number on list: 32

**A B
vs
C C**

The Court,

Having seen the Sworn Application of plaintiff filed on the 10th June 2011 whereby she premised that from a relationship between the parties a girl was born on the 29th December 2003, named G; that defendant acknowledged his paternity of the minor child; that defendant is today married to a third party and has another child; that plaintiff wishes to further her studies in the United States of America and for this purpose wishes to relocate both herself and the minor child to the United States for the time she pursues her studies in that

country; that defendant is objecting to the relocation of the minor child to the United States of America; that defendant knew from the very outset of their relationship about her plans to further her studies in the United States; that plaintiff is twenty five years of age and wishes to further her studies not only in her interest but also in the interest of the minor child;

Requests the Court:

1. To grant plaintiff sole care and custody of the minor child;
2. To declare that defendant has a duty to pay maintenance for the minor child;
3. To establish the amount of maintenance due for the minor child;
4. To order defendant to pay plaintiff maintenance for the minor child;
5. To establish days, times and conditions for the visitation rights of the defendant in favour of the minor child for both instances, when minor child is in Malta and for when the minor child is abroad and in particular for the holidays of Christmas, Easter and summer.

Having seen the list of witnesses and documents filed by plaintiff;

Having seen the Sworn Reply of defendant whereby a number of pleas have been raised:

1. That plaintiff's application cannot be considered by the Court since the legal time limit from the date of the Court decree authorising plaintiff to proceed to institute the court case was not respected;
2. That the Court should also take cognizance of another pending court case number 207/2011 filed by defendant on the 27th June 2011;
3. That defendant objects to plaintiff's request to relocate the minor to the United States of America. Defendant declares that in the event that

plaintiff decides to go to further her studies in the United States, he is prepared to take over the care and custody of the child during the absence of plaintiff from these Islands; the child is still eight years of age, attends school in Malta, all her friends are in Malta, and the minor's life is established in Malta;

4. That the graphic design course which plaintiff says she wants to follow may be followed either in Malta, or closer to home in another European Union member state;

5. That defendant does not have the financial means to travel on a regular basis to the United States of America to visit his minor daughter;

6. That defendant objects to plaintiff's request that she be given sole care and custody of the minor child;

7. That since the birth of the minor child, defendant has been paying child support to the mother in the amount of €280.00 per month;

8. That it was not necessary for plaintiff to include in her claims an order for child alimony since defendant was already paying child support and plaintiff's requests were only intended to increase the judicial costs of this case;

9. That defendant objects to plaintiff's request for sole care and custody of the minor child since according to defendant, plaintiff is not capable of taking care of herself and/or the minor child;

10. The plaintiff has interests in the United States of America and therefore there is the risk that if she is allowed to take the minor child with her, the latter will not return to Malta.

Having seen the list of witnesses of defendant;

Having seen the reports filed by the Child's Advocate;

Having seen all the acts of this case;

Having seen that during the sitting of the 23rd October 2012 the case was adjourned for today for judgment;

Considers;

EVIDENCE OF PLAINTIFF.

In her affidavit plaintiff explains that she is twenty five years of age, has both American and Maltese citizenship and was raised in Malta. Although she graduated in psychology from the University of Malta, she wants to pursue her studies in graphic design in the United States of America. She was brought up by a Maltese father and an American mother. During her childhood she travelled to the United States almost every summer, spending the summer months at the grandparents' home there and living next to many other relatives. She describes this as her second home. "I always knew that when I was old enough I would want to spend some time studying or living in this place which holds a part of my identity."

At fifteen her older brother, left Malta and went to a boarding school in Canada, attended several top universities and now has a very successful career in Belgium.

When she was sixteen years of age she met defendant, who was almost twenty five years of age, an Italian with a job and a car which she describes as "a typical Italian intensely romantic guy". They met through the internet. She says that he knew she wanted to follow her studies abroad before they met in person as she informed him during their chatting. However once they started dating he took control of her life and managed to alienate her from all her friends and her family. Her mother had even booked a place for her at the university abroad where her brother was studying but defendant managed to turn her around.

She explains that at that time defendant swore to her that he was sterile. Their relationship was not harmonious and plaintiff decided that it was best to terminate it. However immediately she terminated their relationship, she found out that she was pregnant with his child.

Defendant eventually went on to marry another woman in Malta and has another daughter. However he refuses to allow plaintiff's daughter to accompany plaintiff to the States. Plaintiff recalls that this state of affairs prevented her from travelling to the States with her daughter to visit her mother who was terminally ill and who eventually died.

Plaintiff summarises her concerns as follows: "I find it absurd that in this day and age a man can get a 16 year old pregnant through lies and malicious intent, fully aware of her dreams for the future, and then go on to restrict her future possibilities and dreams while he goes on pleasantly with his life. If I were able to travel relatively freely and pursue my studies and career-goals overseas, I also would definitely be coming back to Malta regularly for her to spend time with her father as well as her grandfather and aunts I have in Malta, since I never have had a problem for her to spend time with her father for her own benefit."

She describes herself as being stuck working mundane office jobs with very low pay since a qualification in psychology did not open any opportunities here in Malta. She contends that her whole life has been put on hold until her daughter turns eighteen years of age, and the minor is still eight years old.

Plaintiff's father, Emmanuel B, describes defendants' domineering and jealous character. Since the minor was born, plaintiff parents had supported plaintiff to provide the minor with the best education possible. They paid for the girl's education at a private school. The child alimony paid by defendant was hardly enough to cater for the minor's daily needs let alone for the minor's financial needs to attend a private school.

In their evidence by affidavit produced by plaintiff, Rebecca Atkinson and Katrina Farrugia recount episodes to corroborate parts of plaintiff's testimony.

On his part defendant filed an affidavit stating that he is prepared to assume the care and custody of the minor

child until she becomes of majority age. With his wife he can raise his child together with the one year old child he has from his marriage.

He expressed his worries that in the event that plaintiff is allowed to go to the United States with their child, she may in future change her plans and refuse to return to Malta. Defendant claims he does not have the funds, time and energy to pursue international abduction proceedings in the United States.

He contests plaintiff's claims, and insists that such a move at this time is not in the best interest of the child. "The child requires stability and requires constant and daily affection and discipline and education, which I feel it is in the best interest of my child that my child continues attending ***** School, because this is not the right moment to unsettle the child".¹

As regards the course that plaintiff would like to pursue in the States, defendant has this to say: "Courses of graphic designing can be pursued anywhere in Europe including Malta and I am truly and genuinely and honestly not convinced about A's wishes. I do know as a fact, because I went out with A B for some months, that A loves the USA, has great aunts and great uncles in the USA, want to live in the USA and wants to remain in the USA. This is my concern because A may have genuine requests now, but these genuine requests may change and may become more serious, placing me in a very difficult legal and factual situation, and placing all the more my child in an upbringing which may not be so healthy for my child, G needs mum just as she needs dad."²

Defendant also voices his concerns about what will happen to the child while plaintiff is attending college or university. With whom will she stay? he asks. She will be placed in the care of unknown third parties. The child will

¹ Fol. 50

² Fol. 51

end up with children coming from different backgrounds and upbringings.

“Once again I have no difficulty in raising G. I have no difficulty in giving A the requisite access to G when she is in Malta and I have no difficulty to take G to see her maternal grandfather and aunts and uncles and also her nephews and nieces from A’s side family throughout her studies.”

The Children’s Advocate filed two reports in order to inform the court about the minor’s views and wishes. In the first report dated 3rd January 2012³ the Children’s Advocate explained that the child was not aware that for her mother to follow a course in the United States they had to stay there for at least three years, the length of the course plaintiff wishes to follow. She thought they were going for a holiday and return. However when the minor was interviewed for the second time⁴ on the 30th January 2012 this is what she expressed: “... the child made it very clear that she wanted to live with her mother even if her mother had to go to America because she feels very much attached to her mother, even if this meant that she had to change school”.

PLEAS OF DEFENDANT.

In his first preliminary plea, defendant claims that the Court should not take cognisance of this case since plaintiff did not respect the legal time limits from the date of the court decree terminating the mediation process. Said court decree is dated 27th April 2011 and the present court case was filed on the 10th June 2011. The legal time limits were clearly observed by plaintiff. Defendant’s preliminary plea is manifestly unfounded and vexatious.

The second plea refers to the court case instituted by the sworn application of C C bearing number 207/2011 in the

³ Fol. 59

⁴ Fol. 64

names "C C vs A B" where Mr C is requesting, *inter alia*, court permission to travel with the minor child to Italy.

The third, fourth, fifth, sixth and eleventh pleas refer to plaintiff's request to be allowed to travel, together with the minor child, to the United States of America in order to follow a three year course in graphic design. These pleas shall be decided at a later stage of these proceedings.

In his seventh and tenth plea, defendant objects to plaintiff's request that she be granted sole care and custody of the child. He requests that care and custody be granted to him claiming that plaintiff is not in a position to take care of herself and/or of the minor child.

CARE AND CUSTODY.

Defendant claims that plaintiff is not capable of looking after herself and the minor child. Having examined all the evidence put forward by both parties the Court did not find evidence sustaining defendant's plea. From an examination of the evidence collected from both sides the Court is convinced that plaintiff is well capable of looking after herself and the minor child.

Plaintiff's teens were marked by her brief relationship with defendant. She was sixteen years of age, he was a twenty five year old. Plaintiff claims that the pregnancy at the age of sixteen was not planned and was the result of defendant claiming that he was sterile, a claim which defendant did not contest. It was only after she found the courage to terminate their relationship that she found out that she was pregnant with defendant's child.

Due to her pregnancy plaintiff had to postpone her studies to take care of her daughter until she started attending kindergarten.

It is an undisputed fact that plaintiff and defendant never lived under one roof, neither before G's birth nor after. G never had the opportunity to live with her mother and father together. The child was raised by plaintiff and from

the start the parties reached an agreement regarding visitation rights and the father's financial support for the child. This state of affairs went on for more than eight years until disagreement arose when plaintiff informed defendant that she wanted to take their daughter with her to the United States of America for a three years to follow a course in graphic design.

It is an undisputed fact that defendant contributes the sum of €280 per month as child support for G. He does not effect any direct contribution to the child's educational or health expenses. From the testimony of G's teacher and the school's headmistress it results that defendant hardly if ever attends any of G's school's activities.

G's extended family in Malta consists of her mother, the plaintiff, her father, the defendant, her sibling from her father's marriage, her maternal grandfather and a few other family members from her mother's side.

Defendant is Italian and his extended family resides in Italy. This is the reason why in the other court case above mentioned he has requested Court permission to allow G to travel with him for a short visit to Italy.

It is clear from the evidence that since G's birth, plaintiff has been her primary carer. The minor has lived uninterruptedly with her mother with visits to her father on a regular basis as agreed between the parties.

The Court finds no objective reasons to give defendant sole care and custody of G as he is requesting in his tenth plea.

On the contrary the Court is of the opinion that plaintiff should have sole care and custody of G with visitation rights in favour of the father with the frequency that they have been exercised during these last years according to the agreement reached between the parties.

As regards plaintiff's request to be allowed to relocate the minor child to the United States of America for the

duration of her studies there and having regard to the concerns expressed by defendant, the Court has this to state at this stage of the proceedings.

The issue about the care and custody of the minor child is being decided today, awarding sole care and custody to the mother.

RELOCATION OF THE MINOR TO ANOTHER COUNTRY.

In the literature seen by the court on the subject of requests to courts to relocate minor children to another country other than the country where the non-custodial parent resides, it has been often stated that “relocation cases present some of the knottiest and most disturbing problems.”⁵

One of the most enlightening works which the Court identified on the subject under discussion is the publication entitled “**A Judge’s Guide – Making Child-Centred Decisions in Custody Cases**” published by the American Bar Association – Child Custody and Adoption Pro Bono Project, Second Edition (2008). In their introduction the editors succinctly depict in real terms the scenario facing the courts in similar cases: “Child custody and visitation disputes are among the most difficult for judges to decide. These disputes entail complex legal, social, cultural, economic, mental health, and related issues. They require judges to predict likely future behaviour and outcomes, rely increasingly on competing expert testimony, and ultimately depend upon a broad, indeterminate standard of the ‘best interests of the child’”. The best interests’ standard demands that courts decide cases in a way that ensures the well-being of children.

THE CHILD’S DEVELOPMENTAL CONSIDERATIONS.

The Court’s main concern with regards to plaintiff’s request for the relocation, even if temporary, of the child,

⁵ “Tropea vs Tropea”, 665 N.E. 2nd 145, 148 (New York 1996).

is whether an authorised temporary relocation to the United States of America may have a negative impact on the child's development.

From birth the child has never been with both mother and father under one roof. She has always lived in a one parent household. Contact hours with her father are on average twice a week.

Infants from birth till eighteen months old have been defined as "sensorimotor beings". That is, through their senses they learn to control and interact with their environment. What may seem like small achievements to adults are monumental to infants.⁶ Living from birth with her mother and not with her father has undoubtedly been instrumental in nurturing a very close bond between the mother and her daughter. This explains the reaction of the child to the prospect of her mother going to the United States. The child cannot bear the thought of being separated from her mother. The child's views on this matter are crystal clear from the contents of the submissions of the Children's Advocate. This is one of the reasons why the Court is entrusting the mother with the sole care and custody of the child.

The daughter of the parties is now eight years of age. The age between eight and ten has been described as the "critical age of industry or productivity" as the child adjusts to more challenging schoolwork and increasing extracurricular activities. She needs a supportive learning environment at home as she faces increasing academic challenges. "Although independent in many respects, the child still needs adequate adult supervision and reinforcement of rules, expectations, and consequences. It is also at this time that the child has more realistic fears about the safety of loved ones and the potential loss of one or both parents. They need reassurance to maintain a sense of security."⁷

⁶ A Judge's Guide (2008) (ABA) (2nd Edit. 2008) p.50

⁷ Op. cit. p. 64

The fact that the parents have not lived together prior to their daughter's birth has, in a way, avoided the trauma on the child of her parents physically separating. Most authors on the subject are of the view that the physical separation of the parents is one of the most traumatic moments for a child of separating or divorcing parents. The parties' daughter was spared that trauma but she is definitely aware of the present dispute between her parents and that by itself is also traumatic for an eight year old child.

Plaintiff claims that relocating to the United States will be beneficial also for the minor child. The Court will be guided by the rule that any decision has to be taken in the best interest of the child.

The following extract from the publication "A Judge's Guide – Making Child Centred Decisions in Child Custody Cases" quoted above should provide an objective approach to the issue of the minor child's relocation:

"Attorneys, judges, child and family advocates, and mental health specialists have been struggling for years to develop child sensitive approaches to resolving relocation cases that also appropriately weigh each parent's interests. Relocation cases involve various competing interests, including the following:

- The child's right to stability and meaningful regular contact with both parents after a divorce.
- The custodial parent's right to move on with his or her life after a divorce without the interference and potential costly burden of litigation.
- The noncustodial parent's right to continue to have meaningful contact with his or her child after a divorce."⁸

One author has noted that "judges and child custody evaluators need to recognize the risk of those biases

⁸ A Judge's Guide (page 125)

[presumptions for or against the move] and set them aside when reaching conclusions about whether or not a specific child in a specific family moves with his or her parent.”

Before a Court decides a request to relocate a minor child together with a custodial parent, away from the non-custodial parent, a number of factors need to be taken into consideration. The following are the most salient:

- Whether the move will improve the quality of life for both the custodial parent and the child.
- Whether the motives of the relocating, custodial parent are in good faith and not simply intended to frustrate the noncustodial parent’s visitation.
- Whether the relocating, custodial parent will comply with the new visitation orders once he or she relocates.
- Whether the noncustodial parent’s motives for opposing the move are in good faith or simply to avoid paying support.
- The parents’ reasons for seeking or opposing the move.
- The quality of the relationships between the child and the parents.
- The impact of the move on the quantity and quality of the child’s future contacts with the noncustodial parent.
- The degree to which the child and custodial parent’s lives will be enhanced by the move.
- The feasibility of maintaining the relationship between the child and the noncustodial parent through suitable visitation.”

These and similar guiding principles are being adopted by this Court in assessing and deciding the request for the child’s relocation to the United States of America.

Defendant has also raised the issue about the possibility of plaintiff abducting the child and not returning to Malta. He contends that although the United States of America is signatory to the Hague Convention against Child Abduction, in practice it would be very difficult for him to enforce his visitation rights in the event that plaintiff unilaterally decides to remain in the United States. On

the other hand plaintiff contends that the American judicial system provides adequate safeguards against child abduction. The Court has examined the legal and judicial system in the United States of America and will pronounce itself on the matter in the final judgment on plaintiff's request to temporarily relocate the minor child to the United States of America.

CONCLUSION.

For these reasons the Court:

1. Rejects defendant's first, seventh and tenth plea.
2. Accepts defendant's eight plea.
3. Awards plaintiff sole care and custody of the minor G.
4. Orders defendant to pay plaintiff by way of child alimony for the minor G the sum of two hundred and eighty euros (€280) per month which sum shall increase on a yearly basis according to the official Maltese Index of Inflation. Defendant is to continue paying child alimony after G reaches the age of eighteen years in the event that she continues her full-time studies, up to the date she reaches her twenty third birthday.
5. Orders that defendant shall exercise his rights of access to G on a weekday and on one day of the weekend for three hours at a time

For the above reasons the Court is scheduling two dates one for the month of January and one for the month of February 2013 for all the evidence of the parties regarding (a) the pros and cons on the development of the minor child in the event that the request for relocation is granted and the pros and cons in the event that the request for relocation is rejected, and (b) the legal and practical consequences in the event that the minor child is not returned to Malta after the term for the temporary relocation expires.

Kopja Informali ta' Sentenza

Final judgment on plaintiff's request for the relocation of the minor child to the United States of America will be handed down in March 2013.

< Sentenza In Parte >

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