MALTA

QORTI CIVILI
(SEZZJONI TAL-FAMILJA)
ONOR. IMHALLEF
ABIGAIL LOFARO

Seduta tat-13 ta' Marzu, 2014

Citazzjoni Numru. 345/2008

A **B**

vs

C D

Il-Qorti:

Rat ir-rikors guramentat ipprezentat mill-attrici, li *in forza* tieghu, wara li ppremettiet :

1. Illi minn relazzjoni li kellha mal-konvenut twieled tifel jismu S fis-26 ta’ Dicembru 2004;
2. Illi ir-relazzjoni ta’ bejn il-partijiet intemmet madwar sena ilu;
3. Illi minn meta twieled, il-minuri S dejjem baqa’ jghix fir-residenza tal-esponenti;
4. Illi l-konvenut ikkontribwixxa manteniment regolarment li pero’ fl-ahhar xhur naqqas l-ammont imhallas;
5. Illi minkejja tentattivi sabiex jintlahaq ftehim anki permezz tal-process ta’ medjazzjoni, baqa’ ma ntlahaq l-ebda ftehim u ghalhekk kellha tinghalaq il-medjazzjoni;

6. Illi l-esponenti taf b'dawn il-fatti personalment;

Talbet li l-konvenut jghid ghaliex din il-Qorti m'ghandhiex :

1. Tafda il-kura u l-kustodja tal-minuri S f'idejn l-attrici, b'access ghall-konvenut fil-hinjiet u l-granet li tiffissa din l-Onorabbli Qorti u taht il-kundizzjonijiet li din il-Qorti jidhrilha xierqa u fl-ahjar interess tal-minuri;
2. Tordna lill-konvenut ihallas manteniment ghall-minuri S skond kif iffissat mill-istess Onorabbli Qorti;
3. Tiehu dawk il-provvedimenti kollha l-ohra li din l-Onorabbli Qorti jidhrilha xierqa sabiex jithares l-ahjar interess tal-minuri S;

Bl-ispejjez komprizi dawk tal-proceduri kollha inkorsi mill-attrici kontra l-konvenut ingunt minn issa in subizzjoni;

Rat il-lista tax-xhieda tal-attrici;

Rat ir-risposta guramentata tal-konvenut, li *in forza* taghha huwa eccepixxa :

1. Illi preliminarjament jigi sottomess li huwa minnu li l-eccipjenti kellu relazzjoni twila mar-rikorrenti, u li frott ta' din ir-relazzjoni nhar is-26 ta' Dicembru tas-sena 2004 twieled il-minuri bl-isem ta' S, izda jghid li kienu lkoll jghixu flimkien bhala familja;
2. Illi l-esponenti jaqbel ukoll li r-relazzjoni ta' bejn il-partijiet tkissret b'mod irrimedjabbli madwar sena ilu;
3. Illi l-esponenti jaqbel ukoll li din l-Onorabbli Qorti ghandha tippronunzja ruhha dwar il-kura u l-kustodja tal-minuri kif ukoll dwar manteniment iffissat ghall-istess minuri izda dan mhux bil-mod kif qeghda tikkontendi r-rikorrenti u ghaldaqstant, l-istess esponent qieghed jipprezenta kontestwalment kontro-talba. L-esponent isostni li r-rikorrenti mhix idonea sabiex trabbi hi lil minuri kif ser jigi pruvat fil-mori tal-kawza u ghalhekk il-kura u l-kustodja tal-minuri ghandha tigi fdata f'idejn l-esponent u r-

rikorrent omm jkollha hinijiet ta' access ffissati sabiex tara l-minuri;

4. Illi minghajr pregudizzju ghas-suespost, kuntrarjament ukoll ghal dak li ssostni r-rikorrenti, l-esponent dejjem hallas u ghadu jhallas manteniment xieraq ghal ibnu;
5. Illi minghajr pregudizzju ghas-suespost, r-rikorrenti omm tahdem ukoll 'full-time' bhala pulizija u ghalhekk hija ghandha wkoll tikkontribwixxi ugwalment ghall-manteniment tal-minuri;
6. Illi minghajr pregudizzju jigi rilevat ukoll li l-partijiet kienu waslu ghal ftehim bonarju li l-esponent kien beda jsegwi minn hafna qabel inbdiet u inghalqet il-medjazzjoni izda ghal ragunijiet imputabbli unikament lir-rikorrenti li bdiet tressaq pretensjonijiet inaccettabli u tista' tghidilhom frivoli u vessatorji u mhux fl-ahjar interess tal-minuri, tali ftehim ma ntlahaqx u ghalhekk ghandha tkun ir-rikorrenti li fi kwalunkwe kaz ghandha tbaghti l-ispejjez ta' dawn il-proceduri;
7. Illi minghajr pregudizzju ghas-suespost, f'kaz li l-kontro-talba ta' l-esponent ma tigix milqugha, fi kwalunkwe kaz il-kura u l-kustodja tal-minuri ghandha tibqa kongunta u jigi konfermat l-istatus quo li gie applikat miz-zewg partijiet f'dawn l-ahhar xhur ghal dak li jirrigwarda manteniment u access kif ser jigi pruvat fil-mori tal-kawza;
8. Illi minghajr pregudizzju ghas-suespost, fi kwalunkwe kaz, l-esponent jitlob umilment li din l-Onorabbli Qorti taghti dawk l-ordnijiet li thoss neccessarji u opportuni fl-ahjar interess tal-minuri;
9. Salv eccezzjonijiet ulterjuri;

Rat il-lista tax-xhieda tal-konvenut;

Rat il-kontro-talba tal-konvenut, illi permezz taghha ippremetta :

1. Illi l-partijiet kellhom relazzjoni twila u li frott ta' din ir-relazzjoni nhar is-26 ta' Dicembru tas-sena 2004 twieled binhom il-minuri S D;
2. Illi r-relazzjoni ta' bejn il-partijiet tkissret b'mod irrimedjabbli;
3. Illi kif ser jigi pruvat fil-mori tal-kawza huwa fl-ahjar interess tal-minuri li l-kura u l-kustodja ta' l-istess minuri tkun fdata f'idejn l-

intimat rikonvenzjonant C D u dan b’access adegwat favur ir-rikorrenti omm rikonvenzjonata;

Talab ghar-ragunijiet premessi li l-attrici rikonvenzjonata tghid ghaliex din il-Qorti m’ghandhiex :

1. Tafda l-kura u l-kustodja tal-minuri S D f’idejn ir-rikonvenzjonant missier C D;
2. Tiffissa access adegwat favur l-omm A B taht dawk il-kundizzjonijiet kollha li din l-Onorabbli Qorti jidhrilha li huma xierqa u oopportuni fic-cirkustanzi;
3. Tiffissa manteniment adegwat ghall-minuri S D u tordna lil A B thallas l-istess somma kif hekk iffissata lil C D f’data ffisata minn din l-Onorabbli Qorti kull xahar;
4. Tiehu dawk il-provvedimenti l-ohra kollha li din l-Onorabbli Qorti jidhrilha li jkunu xierqa u opportuni fic-cirkustanzi, u dan dejjem fl-ahjar interessi tal-minuri;

Bl-ispejjez kollha kontra A B li hi minn issa ngunta ghas-subizzjoni;

Rat il-lista tax-xhieda tal-konvenut rikonvenzjonanti;

Rat ir-risposta guramentata tal-attrici ghall-kontro-talba rikonvenzjonali tal-konvenut; li permezz taghha eccepiet :

1. Illi l-ewwel, t-tieni u t-tielet talba tal-konvenut rikonvenzjonanti ghandhom jigu michuda peress illi huwa fl-ahjar interess tal-minuri S D li l-kura u kustodja tieghu jigu fdati f’idejn l-attrici rikonvenzjonata u l-access jigi ffissat ghall-konvenut rikonvenzjonanti, kif ser jigi ppruvat fil-mori tal-kawza;
2. Illi l-attrici rikonvenzjonata ma toggezzjonax ghar-raba’ talba tal-konvenut rikonvenzjonanti u fil-fatt hija ukoll ghamlet l-istess talba fir-rikors guramentat taghha;

3. Salv eccezzjonijiet ulterjuri;

Bl-ispejjez kontra l-konvenut rikonvenjent;

Rat il-lista tax-xhieda tal-attrici rikonvenzjonata;

Semghet lix-xhieda illi tressqu;

Rat id-dokumenti li gew esebiti, il-provi li gew prodotti u l-atti ta' dan il-procediment;

Rat id-digriet taghha tat-18 ta' April 2012 li permezz tieghu hatret lil Dr Anna Mallia bhala perit legali, bis-soliti fakultajiet;

Rat ir-rapport tal-perit legali, minnha mahluf fid-29 ta' April 2013;

Rat id-domandi li saru mill-avukati difensuri tal-partijiet in eskussjoni tar-rapport tal-perit legali;

Rat ir-risposti tal-perit legali ghad-domandi illi saru lilha mill-avukati difensuri in eskussjoni;

Rat illi l-kawza thalliet ghas-sentenza ghallum;

Ikkunsidrat :

Illi, a skanz ta' ripetizzjoni, il-Qorti qeghda tirriproduci is-sunt tal-provi tar-rapport maghmul mill-perit legali kif gej :

"Provi attrici

A fol 26 et l-**attrici fl-affidavit taghha** tas-sena 2008 tghid li r-relazzjoni taghhom bdiet madwar tmien snin ilu u C mar jghix fid-dar taghha ftit xhur wara li bdew ir-relazzjoni. L-inwkiet kien minhabba l-hrug ta' C u l-importanza li kien jaghit lil hbieb.

Wara tlett snin riedet it-tfal u hu accetta. Meta harget tqila u qalet lil C huwa mmuta u wara ftit beda jirrimetti bl-inkwiet. Hija ddispjaciha hafna u wara tlett xhur korriet. Peress li kellha 33 sena riedha terga tipprova u regghet harget tqila. Din id-darba C ha l-ahbar tajjeb izda ma kienx imur maghha ghal visti tat-tabib u ghal klassijiet tat-tqala. Anke matul it-tqala l-hbieb u l-hrug kienu jigu l-ewwel u qabel kollhox u anke wara li twieled it-tifel baq l-istess hajja – jsiefer, johrog mal-hbieb u jmur camping wahdu.

Meta twieled it-tifel fis-26 ta' Dicembru 2004 fl-ewwel tlett xhur hi kienet tqum bil-lejl u C forsi qam hames darbiet. It-trobbija tat-ifel kienet f'idejha u C baqa ghaddej kif kien qabel, xoghol, korsijiet, komputer, gym jew hrug mal-hbieb u qatt ma rrifjuta xejn biex ikun mattifel.

l-attrici tghid li C huwa dasxejn superficjali u immatur u jimpurtah mid-dehra. Darba minnhom meta t-tifel kellu xi sena marru tas-Sliema u inqaleb it-temp u t-tifel beda jiksah, hija harget jergy u kienet ser tlibbisulu izda C oggezzjona ghax l-jersey ma ghogbux izda hija ma

cedietx. Anke issa hafna drabi tibghat lit-tifel b'gakketta bil-kmiem twal u minflok ilibbislu l-gakketta jlibbislu sidrija biex jidher iktar helu.

Saret taf li kellu relazzjoni ma' mara ohra jisimha Claire izda hija ma keccietux – huwa telaq u mar jghix ma' Claire li ghandha tifla jisimha Klesey.

Tghid li hija ma tridx li t-tifel jiehdu fuq id-dghajsa ta' siehbu li hija ta' madwar tlettax-il pied ghax thoss li t-tifel ikun fil-periklu minhabba li missieru jixrob l-birra u jkun fix-xems u ghax it-tifel lanqas ma jaf jghum.

Ma waslux ghal ftehim bonarju. Biex turi kemm huwa inaffidabbli tghid li fis-Sajf li ghadda t-tifel kellu s-soghla u l-flissjoni izda C tellghu fuq id-dghajsa u hadu Kemmuna ghalkemm avzatu biex ma jiehdux il-bahar. Meta t-tifel ikun mieghu fil-weekend jigi mbengel u meta ssaqsih jghdilha li t-tfalkollha jitbenglu. Hija tghid li dan jigri ghax ma jiehux hsiebu sew. Gieli t-tifel gie lura bi gdim ta' nemus infettata u C lanqas indenja ruhu jaghmel xi repellent ghan-nemus. Fit-28 ta' Novembru 2008 it-temp kien kiesah hafna u riefnu, t-tifel kellu soghola u kien qed jiehu medicina, avzatu biex ma johorgux fil-maltemp u ghalkemm assugarha li hekk ser jaghmel xorta wahda hareg bit-tifel biex jixtri rigal ghal Claire. Haga ohra hija li C juza kliem baxx quddiem it-tifell u t-tifel jispicca jirrepitihom. Tghid li juza dixxiplina zejda mat-tifel u apparti li jipponta subgahjr ma' wiccu b'mod aggressiv jibghatu wahdu imsakkar bhala 'time out'.

Hemm problema aktar serja u hija dik li waqt l-access imur ghand Claire u bintha. It-tifel mar qallha li l-papa ma jhobbux ghax issa ghandu lil Kelsey t-tifal ta' Clarie u meta qaltlu b'dan C xorta baqa jaghmel l-istess.

Hija ma tridx li t-tifel ikun ma’ Claire jew ma’ Kelsey waqt l-access.

Tghid li t-tifel ma jridx imur ghall-access u anke meta jcempillu missieru t-tifel isodd widnejh. Ricentement it-tifel kien ma jiflahx u kien ilu ma jara lil missieru u meta ghaddielu cemplet lil C biex jidhu izda ahjar ma johorgux izda meta qaltlu hemm C ipprefera li johrog ma’ Claire u Kelse milli jqatt hin ma’ ibnu. L-weekend li ghadda mar weekend break u ma marx jara t-tifel u anek isiefer madwar erba sa hames darbiet fis-sena.

Meta ftit ilu kienu qed iqallbu r-ritratti ta ‘ meta kien baby t-tifel hariglu d-dmugh meta ra ritratti taghhom kollha tlimkien.

Sakemm jikber ftit iehor ma tixtieqx li jkun hemm overnight stayds u l-access ikun kull nhar ta’ Erbgha mill-5pm sas-7.30pm u fi tmiem jew nhar ta’ Sibt jew nhar ta’ hadd mid-9am sas-6pm.

Tghid li hu jghix f’dar haddiehor u qed jitlob l-kura u kustodja tat-tifel. Tghid li huwa immatur u egosit biex jiehu hsiebu sewwa. Apparti hekk Godron jahdem u anke ommu tahdem.

L-attrici tghid li hija pulizija stazjonata l-arjurport u ghandha paga ta’ €1130 kif ukoll €96.76c allowance kull erbgha gimghat. Huwa jahdem surget tal-pulizija u ghandu introjut ta’ €1200 u allowance ta’ €96.76 u €164 tal-Hdud kull erba gimghat olte extra duties u tal-festi. Hija ma jollhiex extra duties ghax tahdem f’ufficju.

L-attrici qed titlob lil konvenut ihallas manteniment ta’ €268 fix-xahar liema somam tizdied kull sena skond l-indici tal-gholi tal-hajja flimkien ma ‘ nofs l-ispejjes kollha medici u dukattivi tat-tifel.

Omm l-attrici, **Rose-Marie B** (fol 30) xehdet li peress li l-attrici tahdem hija zzommilha t-tifel sakemm tigi lura mix-xoghol. Hafna drbai C jigbor it-tifel mid-dar taghha. It-tifel ma jiehux pjacir imur ma' missieru u jeqred li ma jridx imur mal-papa u ma jobbux l-papa. Huwa joqghodu attenti hafna li ma jghidux kontra missieru anzi dejjem jghidu lit-tifel biex ihaobb lil missieru. Dan l-ahhar kienet qed taqralu storja u t-tifel qallha li hu ma ghandux papa izda hija qaltlu li ghandu lil papa C. It-tifel imur fuq qalbu ma' missieru u dan wara li missieru jkollu jzieghel bih sakemm joqghod.

A fol 43 l-attrici esebiet is-segwenti dokumenti:

Dok A – rapport ta' incidenti li nqala bejn il-partijiet. (fol 44et)

Dok B Stqarrija rilaxxata mill-attrici fejn qed twaqqa kull azzjoni kontra l-konvenut fir-rigward tal-incident tad-9 ta' April 2009. (fol 46 et)

Dok C Ritratt li juri l-hin propju meta l-kovnenut jigbor lit-tifel. (fol 48)

Dok D u E Zewg ritratt li juri gidma ta' nemusa infettata u tbengila li sofa l-minuri mta kien qeighed ma missieru. (fol 49)

Dok F Traskrizzjoni guramentata ta' messaggi mibghuta mill-konvenuta. (fol 50 et)

Dok G Traskrizzjoni guramentata ta' konversazzjoni mal-minuri. (fol. 63et)

Dok H Cd li jikkontjeni r-ritratti, l-messaggi u r-recordings tal-konversazzjoni msemmijien iktar il fuq u li taghhom gew esebiti t-traskrizzjonijiet rilevant, kif ukoll video recordings tal-minuri. (fol.81).

A fol 101 xehed **Alexander Mizzi mis-Salaries Section Police Headquarters** li pprezenta l-fs 3 tal-partijiet. A fol 113 hemm dik tal-konvenut li tghid li fis-sena 2008 huwa dahhal gross €22069.84c u a fol 114 hemm dik tal-attrici ta' €17099.39c gross.

A fol 102 xehed is-**Surgent Joseph Farrugia** li esebixxa l-hinijiet tax-xoghol tal-attrici li huma fissa pero huma jcemplu ghad-detail kuljum wara l-hamsa ta' filghaxija (5pm) biec jiccekja x'ha jkun imissu xoghol l-ghada. Jekk ma jkunx hemm commitment specjali dawk huma l-hinijiet skond Dok SJF1 (fol 115) . dan japplika ukoll ghal C D. Huwa esebixxa Dok SJF2 (fol 116) li hargu fis-sena 1998 u li bhalissa jahdem weekend wiehed u l-weekend ta' wara l-granet jalternaw cioe s-Sibt jigi off duty u l-Hadd eight (8) hours duty. L-hinijit jistghu jinbidlu skond l-esigenzi. C D huwa reliever tal-lock up u jista jahdem anke bil-lejl. It-tibdil jordnah l-maggur li jaghmel id-detail li tohrog kuljum wara l-hamsa ta' filghaxija (5pm). Huwa jcemplu skont fejn ikun stazzjonat l-ufficjal u jiccekja. Xehed li C D huwa stazjonat ma' spettur pero skont ir-records tal-HR huwa mnizzel bhala Economic Crimes. L-ispettur jista' jbiddel l-hinijiet skond l-esigenzi.

A fol 207 l-Qorti awtorizzat lill-attrici tipprezenta xewg xhied aohra cioe lil Maria u Anabelle kunjomha mhux maghluq minkejja li l-provi tal-attrici kienu maghluqa.

A fol 211 **Maria Farrugia** xehedet li hija qatt ma semghet lil attrici tghid li hija trid li jillha tifel mill-konvenut minhabab d-dehra tighu kif xehed l-konvenut fl-affidavit tieghu.

A fol 212 **Annabelle Ellul** xehedet li ma tiftakarx li l-attrici qalet li hija ghaxlet lil C biex ikun missier it-tarbija taghha biex il-wild jitwieled sabih kif semma C fl-affidavit tieghu.

Provi konvenut

A fol 105 xehed **Ivan Cilia** permezz ta' affidavit li huwa membru fil-korp tal-pulizija u jaf lil partijiet. Fis-Sajf johrog bid-dghajsa li ghandu u hija attrezzati skond ir-regolamenti tal-bahar inkluzi life jackets ghal adulti u tfal kif ukoll flares. Ghandu licenzja nawtika ghalkemm id-dghajsa li ghandu ma tiehtieg dan u kemm il darba ha lil partijiet fuq din id-dghajsa u gabu lit-tifel S maghhom. Dak iz-zmien l-attrici ma kienet tikkomplejnja dwar id-dghajsa u qatt ma hasbet li kien hemm xi forma ta' periklu ghat-tifel taghhom u t-tfal tieghu.

In kontro-ezami (fol 158) Ivan Cilia spjega li l-attrici fuq id-dghajsa mieghu giet wahedha u mhux bit-tifel u meta t-tifel mar fuq id-dghajsa kien akkumpanjat minn C u l-partijiet tieghu Claire kienet tmur maghhom xi sena jew sentejn wara.

A fol 106 xehed l-konvenut **C D** bil-lingwa ingliza u raguni ta' dan ma tax. Il-perit legali qed tirrelata li xehed hu bil-lingwa ingliza sabiex ma jkunx hemm problemi ta' interpretazzjoni.

Il-konvenut jghid li permezz tal-affidavit huwa ser jirrispondi jew jikkummenta fuq numru ta' allegazzjonijiet li ghamlet l-attrici fl-affidavit taghha.

Dwar it-tieni paragrafu tal-affidavit taghha, jghid li he got sick when she gave him the news that she was pregnant due to a permanent medical condition that he was suffering from, that is, hiatus hernia

and anti reflux and that any worries he encounters affect his stomach. He feared that they were not prepared for the change but it had nothing to do with the miscarriage of the chiild. He denies that he did not attend hospital visits with her when she became again pregnant and that when there were occasions that he did not attend was because he had work commitments and not because of lack of interest or lack of care. In fact the plaintiff seems to have forgotten the time when he and his mum took her to hospital when she discovered a trace of blood.

The plaintiff wanted a child at all costs because she felt she was growing older and did not want to miss out on the possibilit of being a mother. There were times when she specifically told him that if they were not together she would have gone to the UK to have a child by means of aritifical insemination. He also got to know after the baby was born that she told her friends Annabelle and Maria that she chose him as the father of her child as he is fair and has the same complexion as her and the fact that both of them had bluse eys would make the baby 'look nice'. Her friends accoding to him were shocked to hear such words .

Regarding the time he spent out and with friends, the defendant states that she is totally blowing this out of proportion. He admits there were times he attended a work function or some other social activity but these were rare occasions and not as frequent she is making them out to be. He denies that he travelled three times a year but on a stretch of years. In fact three of such visits were work-related and concequently he did not have the option to refuse. Re camping, she never wanted to join heim both before and after the birth of her son.

He admits that the birth of his son had a dramatic change on his life and from the very first day he wanted to be there for him. He had a very active part in S's upbringing and nurtures, changed, fed and

washed him. When the baby was born, she was on maternity leave whilst he was still working nights and this is one of the main reasons why the plaintiff used to wake up during the night. He denies that the did not help her and in fact at the time she never complained about her involvement because ehe was always present and it is now that the relationship is over that she is trying to picture him as uncaring and irresponsible father. He denies that she brought up the child on her own and claims that she did not opt for reduced hours to stay with the child but started working on full time basis agains, that is from from 7.30am till 17.30pm and left the baby with her mother.

The defendant cannot understand why she is objected to decent clother than than cheap tatty oversized ones because there is nothing wrong with wanting his son to look smart. His son suffers from excesive body termperature and excesive clothing make him irritable and uncomfortable and that is the main reason whcy he always prefer to cloth him in lighter clothes. he is more than capable of knowing when his son is feeling cold and not and it has nothing to do with appearances but it is only about S’s own comfort.

He admits that by the end of 2006 their relationship was deteriorating and several attempts were made to resolve this but no compromise was reached. Hewanted to spend more quality time with the plaintiff and even suggested aholiday as he felst that their relationship was threatened due to various stree factors and pressure related to work. But she refused claiming that she did not want to leave S aloen with her mother not only for two days. They came to a point where she refused to acknowledge his presence at home for no reason whatsoever and the relationship ended.

Both of them are now living with their respective partners and it is not true that when he broke up he went to live with his current girlfriend. He lived alone in xaghra ffor a couple of months because he moved in with Claire. He accepts that the plaintiff is now with another man

and cannot understand why she does not accepts his situations of his relationship with Claire. He misses his son and makes sure that the few hours he is with him he makes the most of them.

Regarding the episode when he took S on a boat to Comino on a friend's boat, he streeses that he would never jeopardize anyone's safety let alone his own son'f life on a boat. Secondly all the children on the boat on that day were wearing life-jackets , were given constant sun block and were always in the shade as they had an umbrella. He watched over him at all times and contrary to what she is alleging, he did not allow the boy to swim that day as he was aware that he had cough . Ivan Cilia the owner of the boat has a nautical license although such license is not required by law in view of the size of his boat and A was never comfortable on boats as she always refrained from coming on his or on Ivan's boat. The boy enjoys himself a lot on the boat.

Regarding her allegations that the boy gets bruised when he takes him on the swings because according to her he does not take care of him properly, the defendant states that the boy does not live in a glas s dome and that when he is with him he feels free and he makes sure that the boy enjoys his play-time and makes sure that he is safe. It is not the first time that the boy has fallen over or injured himself whilst playing or riding his bicycle however in no instance was this done because of the defendant's negligence.

He cannot understand why she is accusing him of negligence when the boy was admitted to hospital and ended up with two butterfly stitches for an open would on his forehead when he was with her for failing to put on his seatbelts. In fact the boy still has a scar on his forehead.

With reference to the mosquito bites, he took his son camping last Summer and although he took the necessary creams and sprays the boy got bitten like most of them.

He states that when on 28 November 2008 the boy had a cough and was taking medicin he took the boy in an enclosed place where his son's health would not be jeopardized.

Regarding the allegated that he uses foul language or even swears in front of the boy, he denies this and admits that both of them slip the occasional foul word. He states that he would not even dream of disciplining him too much and by sending him on time-out makes him learn that he needs to obey his parents. He admits that there times when he was adamant to discipline the boy and make him eat solid foods as he is old enough to do that to make up for the baby food that his mother still makes him eat till this very day.

The defandant says that the plaintiff is trying to make up stories and his son remains his priority .

Regarding the boys' birthday party, both he and A have steady partners who both have their own children and he paid for half of the expenses and agreed that it would be better if the boy sees his parents together and enjoy all his cousins and friends. He says that she is twisting the facts in that if she did not wish his partner's daughter to be present neither did he wish her partner's children to be present.

He feels that the mother is not passing on a good message to their son and cannot understand why she is against the sleepovers. The boy enjoys every moment that he is with him; he plays with his partner's child and they get on very well together; they are more or

less like brother and ister. Presently the boy seems more than willing to spend more time with him and on many occasions asked his mother to stay with him.

When he went on a weekend break with his partner he wanted to take the boy Monday following instead of Sunday but she refused.

In the near future he would like to take the boy to see his great grandmother and his other cousins in the UK where they live. When he travels to the UK he goes to visit his family and this happened only twice.

He states that the plaintiff is an impatient unstable person and ever since he left she always tried to impose how to treat S, where to or not to take him what or not to dress him. She treats him like a child.

She refused to allow him to speak to the boy over the phone and had to ask the Court to be able to do this. Although there is a court decree there is no specific time and told him to call the boy at her house between 6pm and 7pm and not on her mobile. He noticed that when he is talking to the boy the call is put on loudspeaker. He wishes this to stop so he can talk to his son in private.

He is worried about the boys' nutrition. At four and a half years of age he (in 2009 when affidavit was done) he was still on baby food and told his mother so. The boy eats adult food such as chicken nuggets, sausages, ravjul, pasta and pizza when he is with him.

Regarding his education, the boy was accepted at St Benild's Church School in Sliema which means that eventually the boy will be attending Stella Maria College. However she refused and argued that

the boy is happy at his present school the Pieta government school. He even encourages her to send the boy for scouts, gymnastices and other recreational hobbies but she refuses.

A fol 163 l-konvenuta pprezenta s-segwenti dokumenti:

Dok GB(i) – kopja ta’ diversi ‘sms’ li gew skambjati bejn il-partijiet bejn it-30 ta’ Gunju 2008 u 2 ta’ Dicembru 2008 (fol 164 et) ;

Dok GB(ii) – kopja ta’ diversi ‘sms li gew skambjati bejn il-partijeit bejn id-9 ta’ April 2009 u 14 ta’ Gunju 2009 (fol 169 et).

A fol 182 l-Qorti awtorizza tlil konvenut jipprezenta rapport tal counselling psychologist and family therapist Ingrid Grech Lanfranco Dok GBI.

A fol 192 xehed C D l-intima tu pprezenta Dok LB1 l-pagamenti tal-loans li ghandu (fol 196). . Xehed li ghandu €515 monthly repayment tal-house loan, cioe €512.15c bhal sehmu tad-dar fiz-Zurrieq fejn jghix ma’ Claire. Tali dar hija bejnu u bejn Claire izda Claire sehemha tal-house loan diga halsitu. Il-loan jghajjat lit-tnejn u r-raguni hija ghax l-kuntratt tal-post jghajjat lit-tnejn. Apparti dan il-loan ghandu spejjez ghal hajja, spejjez personali, spejjez legali u manteniment tat-tifel. Dak kollu li jinqala ghat-tifel dak li jkollu bzonn jixtrihulu wkoll li jikkonsisti hwejjeg, ikel u spejjez ta’ hrug. Fil-fatt meta siefer bit-tifel hallas kollox.

A fol 191 fis-seduta tal-5 ta’ Novembru 2010 l-konvenut pprezenta r-rapport ta’ Ingrid Grech Lanfranco Dok IGL1 (fol 197 et).

A fol 205 l-konvenut tramite l-avukat tiegħu Dr Joanne Vella Cuschieri ddikjara li huwa lest li joqghod ghad-digriet ta' din il-Qorti ghal dak li jirrigwarda l-access, kura u kustodja u manteniment apparti li l-minuri ma jistax jitla fuq dghajjes u li fuq dan ihalli f'idejn il-Qorti.

A fol 205 il-konvenut iddikjara li ghalaq il-provi ghajr xi kontro-ezamijiet.

Il-partijiet ghalqu l-provi u ghamlu noti ta' sottomissjonijiet."

Illi l-perit legali ghaddiet sabiex taghmel is-segwenti Konsiderazzjonijiet;

"Il-partijiet minn relazzjoni li kellhom twieled tifel S fis-26 ta' Dicembru 2004. Il-partijiet mhux mizzewgin u llum kull parti ghandha relazzjoni ma' haddiehor.

L-omm tghid li r-ragel mhux affidabbli u spejgat okkazjonijiet biex tipprova dan, fosthom gdim ta' nemus li garrab it-tifel meta jkun mieghu, li jiehdu fuq id-dghajsa ta' siehbu meta jkun ma jiflahx u li jlibsu hejjeg hfief meta t-tifel ikun liebes hwejjeg shan. Li jixrob il-birra meta jkun mat-tifel u ma jaghtix kazu u li t-tifel jiddejjaq imur ma' missieru ghax ikun hemm it-tifla ta' sehbithu.

Il-missieru jirribatti dan billi jghid li n-nemus gidmu meta hadu camping minkejja li uzda repellants, li t-tifel fuq id-dghajsa jiehu pjacir, li huwa jlibsu hwejjeg aktar pulitu u hwejjeg aktar hfief ghax it-tifel ibaghti bil-fwawara. Jghid li mhux minnu li t-tifel jiddejjaq joqghod mat-tifla tal-partner tieghu anzi qishom ahwa jilghabu flimkien.

Il-mara tghid li t-tifel xtaqitu hi u li huwa ma kienx jaghti kazha kemm meta kellha miscarriage l-ewwel darba kif ukoll meta kienet tqila bit-tifel. Il-missier jghid li l-ewwel darba kien hassu hazin ghax kien ma jiflahx u mhux ghax qaltlu li hi tqila u meta harget tqila bit-tifel kien imur maghha l-isptar u jattendi l-klassijiet u meta ma marx kien biss ghax kien ikun xoghol.

Il-partijiet prezentaw l-pay slips rispettivi taghhom stante li t-tnejn jahdmu full-time.

Il-mara prezentat ritratti, sms, u dokumenti ohra biex turi l-irresponsabilita tat-tifel u r-ragel iprezenta l-sms ukoll biex jipprova l-istess.

Kull parti trid li kollha l-kura u kustodja kongunta tal-minuri.

Kura u kustodja

Dwar il-kura u kustodja l-Qrati dejjem irritenew li ghandu jkun hemm bilanc bejn id-drittijeit tal-omm bhala primary carer u dawk tal-missier u l-minuri bl-ghajn li jigi zviluppat relazzjoni soda u b'sahhitha bejn l-missier u l-iben. (**sentenza Qorti tal-Appell per Prim Im v De Gaetano tad-9/6/2009 A vs B** li kien kaz ta' genituri mhux mizzewgin bhal f'dan il-kaz.

Fil-kaza fl-ismijiet **John Cutajar vs Amelia Cutajar et (deciza Prim Awla 28/1/1956** l-Qorti qalet hekk: "*apparti l-hsieb ta' ordni morali u dak ta' ordni legali li ghandhom setgha fil-materja ta' kura u kustodja tat-tfal in generali, l-principju dominanti in subjecta materia' li jiddetermina normalment u generalment l-kwistjonijiet bhal din insorta f'din il-kawza huwa dak tal-aktar utilita u dak tal-aqwa vantagg u*

interess tal-istess minuri fl-isfond tac-cirkostanzi personali u 'de facto' li jkunu jirrizultaw mill-provi tal-kaz li jrid jigi rizolut" u "fil-kamp li fuqu qeghdin nitkellmu, ghalkemm il-parti umanitarja ghandha certment l-importanza taghha fir-relazzjoni tal-persuni li jkunu taw il-hajja lill-istess minuri, eppure l-istess ma ghandhiex tipprevali fuq l-interess u vantagg dirett tal-istess tfal; bhal ma ghandhiex ikollha fil-hajja ta' kuljum – kif l-esperjeza tghallem – prevalenza l-affezzjoni jew l-attakkament lejn persuna anki jekk dettt minn natura, fuq id-dover impost mir-raguni fl-azzjonijiet tal-bniedem that bhala membru tal-familja kemm bhala membru tal-komunita' li lilha jkun jappartjeni. Meta l-ghajn tar-raguni f'xelta ta' l-azzjoni li bniedem jkun irid ta' bilfor jaghzel li jaghmel, turi dover, impellenti versu certa linea ta' kondotta ghalkemm dik l-ghazla tkun timporta azzjoni drastika fil-kamp umanitarju, eppure dik il-hruxija ma tkunx hlief apparentement tali; in kwantokke li bilanci tal-mohh id-dover li jelva l-bniedem u mhux ibaxxieh, ikun ghaleb kwalunkwe konsiderazzjoni ohra li di fronti ghalih (dover) tkun anqas tajba u anqas dinjituza."

L-artikolu 56 tal-Kap 16 jghid li l-Qorti ghandha meta taghmel l-konsiderazzjoni ewlenija tkun il-gid tal-minuri.

Dan l-Qorti qieset ic-cirkostanzi kollha tal-kaz meta fis-6 ta' April 2009 hija ddecidiet li l-kura u kustodja tal-minuri ghandha tkun provizorjament kongunta (fol 40).

Tajjeb jinghad li kull parti ghadha qed tinsisti li hija jkollha l-kura u kura tal-minuri esklussivament hi.

Il-perit legali ma tarax ghalfejn ghandha tiddisturba l-ordni tal-Qorti stante li mid-data tad-digriet fis-6 ta' April 2009 ma jidhirx li graw xi okkazjonijiet jew incidenti li ghandhom ibidlu dan. Veru li l-attrici ppruvat turi li l-intimat mhux kapaci ghax gidmuh n-nemus izda dan jista jigri fuq kulhadd u minghajr ma wiehed ikollu kontroll fuq dan; u kif hi allegat li t-tifel ikollu wkoll tbengil anke hu allega li t-tifel meta

kien maghha spicca l-isptar ghax meta kien fil-karozza maghha ma kienx liebes seat belt.

Ghalhekk fl-umli fehma tal-perit legali l-kura u kustodja tal-minuri ghandha tibqa kongunta u jigi carat li:

1. l-kura u kustodja tal-minuri ghandha tibqa kongunta f'idejn il-partijiet u decizjonijiet dwar sahha, edukazzjoni u safar jittiehdu mill-partijeit konguntivament b'dan li jekk ikun hemm xi dizgwid kull parti dejjem tista tirrikorri ghal din il-Qorti. Kemm-il darba xi parti tkun assenti minn dawn il-Gzejjer jew inkapaci li tassumi dawn l-obbligazzjonijiet taghha, tali kura u kustodja tigi fdatha lil parti l-ohra sakemm tali parti tkun assenti minn dawn il-Gzejjer jew ghal perjodu li tkun inkapaci li tassumi dawn l-obbligazzjonijiet.

2. Decizjonijiet ordinarji ta' kuljum jittiehdu mill-parti li jkollha maghha l-minuri.

3. Ir-residenza tal-minuri ghandha tibqa mal-omm.

4. Kull parti tkun intitolata ghal kull informazzjoni minghand l-parti l-ohra u minghand terzi dwar s-sahha, l-edukazzjoni u l-welfare tal-minuri. Kull parti hija intitolata tircevi mill-iskola tal-minuri kull informazzjoni dwar l-istess minuri u l-attivitajiet li jsiru hemmhekk.

5. L-iskola tal-minuri ghandha tibqa dik pezenti b'dan li jekk ghal gid tal-minuri jkun ghaqli li jibdel din l-iskola u l-partijiet finanzjarment ikun jistghu jaghmlu dan, tali skola ghandha tinbidel ghal gid tal-istess minuri dejjem bil-kunsens taz-zewg partijiet moghti preventivament.

6. dwar l-attivitajiet extra kurrikulari, fosthom scouts li jixtieq l-intimat, tenut kont li t-tifel ghandu disgha (9) snin llum, ghandhom jigu rispettati x-xewqat tieghu u jattendi l-attivitajiet extra kurrikulari li jhobb jaghmel.

Access

Jigi rilevat li l-Qrati taghna dejjem irritenew li l-access huwa mhux biss dritt tal-genituri izda wkoll dritt tat-tfal u jrid ikun hemm

ragunijiet gravi u serji biex parti ma jkollhix access . (Appell per Prim Imh S Camilleri deciza 19/10/10 fl-ismijiet A v B).

Il-partijiet jaqblu li l-access ghandu jibqa kif inhu fil-prezent (fol 205 l-konvenut u l-attrici a fol 242).

Illi l-access huwa fil-present regolat kif gej:

A fol 131 digriet tal-21 ta' Jannar 201 fejn l-Qorti stabiliet li r-ragel ikollu access ghal minuri kull nhar ta' Erbgha mill-5.30pm sas-7.30pm. u l-bqija jigi ezercitat kif mitlub f'paragrafu (ii) u (iii) tar-rikors u cioe matul il-vaganzi l-access isir darbtejn fil-gimgha u cioe t-Tlieta u l-Hamis izda jingabar mir-residenti tal-omm fis-sitta ta' filghaxija (6pm). U fi tmiem il-gimgha meta l-access ikun imiss mill-Gimgha sas-Sibt it-tifel jingabar fis-7pm dejjem mir-residenza tal-omm jitwassal lura l-ghada fis-7pm u mea l-accessikun imiss mis-Sibt ghal Hadd it-tifel jingabar mir-residenza tal-omm fis-6pm u jigi ritornat fis-6pm l-ghada.

A fol 41 din il-Qorti ordnat li temporanjament l-minuri ma jittehidx fuq id-dghajjes ghalissa.

A fol 42 l-Qorti ordna li l-missier ghandu kull dritt jikkomunika mal-minuri permezz tat-telefon darba kuljum.

A fol 94 , l-Qorti ordnat li (a) meta l-missier ikun xoghol ghandu dritt jezercita l-access fi granet ohra b'dan li ghandu jipprovdi kopja tad-detail relattiv lill-omm; (b) Meta l-minuri ma jkollux skola u l-omm tkun xoghol u l-missier le, l-missier ikollu dritt izomm mieghu lil minuri u jirritornah meta l-omm tirritorna lura d-dar mix-xoghol u (c) Fil-granet pubblici b'mod alternat, cioe darba iva u darbe le l-

missier ikollu dritt ta’ access fil-konfront tal-minuri mid-9am sal-5pm.

Ghaldaqstant l-access ghal missier ghandu jkun kif gej:

- kull nhar ta’ Erbgha mill-5.30pm sas-7.30pm;

- matul il-vaganzi l-access isir darbtejn fil-gimgha u cioe t-Tlieta u l-Hamis izda jingabar mir-residenti tal-omm fis-sitta ta’ filghaxija (6pm) liema access fl-umli fehma tal-perit legali ghandu jigi estiz sad-disgha ta’ filghaxija (9pm) stante li t-tifel ikun bil-vaganzi.

- fi tmiem il-gimgha meta l-access ikun imiss mill-Gimgha sas-Sibt it-tifel jingabar fis-7pm dejjem mir-residenza tal-omm jitwassal lura l-ghada fis-7pm u meta l-access ikun imiss mis-Sibt ghal Hadd it-tifel jingabar mir-residenza tal-omm fis-6pm u jigi ritornat fis-6pm l-ghada.

- l-missier ghandu kull dritt jikkomunika mal-minuri permezz tat-telefon darba kuljum bejn is-6pm u s-7pm jew f’hin iehor li jiftehmu dwaru l-partijiet u fuq numru tat-telefon li tiprovdi l-omm minn issa u li l-omm ma ghandhiex tpoggi dan it-telephone fuq li speaker. .

- meta l-missier ikun xoghol ghandu dritt jezercita l-access fi granet ohra b’dan li ghandu jipprovdi kopja tad-detail relattiv lill-omm;

- Meta l-minuri ma jkollux skola u l-omm tkun xoghol u l-missier le, l-missier ikollu dritt izomm mieghu lil minuri u jirritornah meta l-omm tirritorna lura d-dar mix-xoghol

- Fil-granet pubblici b’mod alternat, cioe darba iva u darbe le l-missier ikollu dritt ta’ access fil-konfront tal-minuri mid-9am sal-5pm.

- Hija l-umli fehma tal-perit legali li fil-vaganzi tas-Sajf l-missier ghandu jaghmel kull mezz biex jiehu lit-tifel ghal gimgha shiha sabiex ikompli jibni r-rapport mieghu.

- Fil-Milied u l-Ewwel tas-Sena tali access ghandu jkun ta' sena t-tifel ikun mal-omm u s-sena ta' wara mal-missier u meta l-minuri jkun mal-omm fil-Milied, l-minuri jkun mal-missier fl-Ewwel tas-Sena. L-hinjiet ikunu mill-ghaxra ta' filghoxu (10am) sas-sitta ta' filghaxija (6pm).

- Il-missier ikun jista jiehu lil minuri fuq id-dghajsa kemm-il darba t-tifel jaf jghum t-tifel ikun jixteiq hekk u fuq id-dghajsa jkun hemm l-apparat kollu ta' sigurta.

- Fil-birthday tat-tifel li huwa fis-26 ta' Dicembru l-partijiet ghandhom jiehdu hsieb li jew jaghmlu party ghal minuri bi spejjez ghat-tnejn u jistiednu l-hbieb u kugini tal-istess minuri jew iqattghu tali gurnata nofs bin-nofs cioe sena l-missier jiehu lil minuri mid-9am sas-2pm u s-sena ta' wara jiehu lil minuri mit-3pm sat-8pm, salv kull hin iehor li jiftehmu dwaru l-partijiet.

- Fil-Mother's Day l-minuri jkun mal-omm u fil-Father's Day l-minuri jkun mal-missier mid-9am sas-6pm.

- Il-missier ghandu jaghmel kull sforz biex tali access ikun hu mat-tifel u mhux ihallih jilghab mat-tifla tal-partner tieghu sabiex b'hekk dan it-tifel jibqa jhoss li missieru lilu jhobbu aktar mit-tifla tal-partner tieghu.

Telefonata kuljum

Jidher li hemm qbil dwar din il-modalita tal-access ghajr dak li xehed ir-ragel dwar it-telefonata li huwa intitolat li jaghmel lir-ragel kuljum. Issa li t-tifel ghandu 8 snin u ser jaghlaq f'Dicembru li gej, r-ragel ghandu dritt jikkomunika ma' ibnu anke fuq il-mobile tal-mara u hija

ma ghandhiex thalli t-telephone fuq li speaker kif skond l-intimat hija qed taghmel.

Ghalhekk it-telefonata tkompli ssir kuljum bejn is-sitta ta’ filghaxija (6pm) u s-sebgha ta’ filghaxija (7pm) fin-numru tat-telephone li tissuplixxi minn issa l-attrici b’dan li hija ma taghmilx tali telephone fuq li speakers.

Illi tenut kont l-access kif inhu fil-prezent, jidher li l-problema tal-overnight stays giet meghluba.

Impediment biex it-tifel ma jittiehidx fuq id-dghajjes

Jigi rilevat li a fol 41 u dan kien fit-28 ta’ April 2009 din il-Qorti ordnat biex temporanjament l-minuri ma jittehidx fuq id-dghajjes ghalissa.

It-tifel twieled fis-26 ta’ Dicembru 2004 u llum ghandu disgha (9) snin u dak iz-zmien tad-digriet t-tifel ma kienx ghadu jaf jghum. Illum ma saret ebda prova li t-tifel jaf jghum u jekk huwa llum jaf jghum, l-perit legali ma tara xejn hazin li t-tifel imur fuq id-dghajsa ma’ missieru tenut kont li fl-umli fehma taghha l-missier jidher li huwa persuna responsabbli. Dan dejjem jekk it-tifel ikun irid imur fuq id-dghajsa u dan isir meta t-temp ikun jippermetti.

Safar

Il-minuri ghandu jkollu passaport ghalih u ma ghandux isiefer hlief bil-kunsens taz-zewg partijiet moghti preventivament. Kull parti ghandha tavza lil parti l-ohra mill-anqas xahar qabel meta hija tkun behsiebha ssiefer bil-minuri b’dan li ghandha tghaddi lil parti l-ohra wkoll dettalji dwar is-safra, dwar l-akkomodazzjoni u l-parti li tibqa Malta jkollha

dritt li ccempel lil minuri darba kuljum f'numru tat-telefon provdut mil-parti l-ohra u hin li tiftiehem dwaru mal-parti l-ohra. Il-minuri ghandu nies missieru l-Ingilterra u ghalhekk l-perit legali tqis li din ir-rabta l-minuri ghandu jistabiliha u jsahhaha.

F'nuqqas ta' qbil hemm din il-Qorti kull parti tista dejjem tintavola proceduri.

Manteniment

L-obligu tal-manteniment dejjem gie ritenut li jkun skond l-mezzi. L-artikolu 7(1) tal-Kodici civili jinghad li:

"Il-genituri ghandhom l-obbligu jiehdu hsieb imantnu u jghalmu u jedukaz lil uliedhom kif stabilit fl-artikolu 3B ta' dan il-Kodici.

Huwa minnu li l-artikolu 3B tal-Kap 16 jitkellem dwar tali obligu ghal tfal mwielda miz-zwieg *izda l-l-principji l jirregolaw l-istess dmirijiet u obbligazzjonijiet tal-genituri vero l-istess ulied specjalment ghal manteniment tal-istess fit-termini preskritti fl-artikolu 19(1) u (2) u l-artikolu 20 tal-kap 16 jinkludu kontribuzzjoni ghall-ikel, ilbies, sahha u abitazzjoni u spejjez mehtiega ghall-istess ahha u ghall-edukazzjoni taghhom u skond il-bilanc bejn il-bzonn u l-mezzi, kalkulati ai terminit as-subartikoli tal-istess artikolu 20 .* (vide *sentenza Prim Awla per RCP kawza 1396/2001 deciza 2/10/2003 fl-ismijiet Lea Tabone pro et noe vs Jesmond Tabone).*

Gie ritenut koll fil-kawza per **Qorti tal-Appell fis-sentenza Anthony Licari vs Caroline Licari pro et noe deciza 6/4/1992** li "*l-obbligu tal-attur li jmantni lil uliedu jigi qabel l-obbligu tal-konvenuta"* u inoltre skond sentenza tal-**Prim Awla fl-ismijiet Maria Bugeja pro et noe vs Spridione sive Stephen Bugeja cit nru 154/94** li "*Illi dan l-obbligu ghall-manteniment mhuwiex marbut bl-ebda mod mal-impjieg jew mal-introjtu tal-missier izda huwa obbligu assolut".*

A fol 40 datat 6 ta' April 2009 l-Qorti ordnat lil konvenut ihallas lil omm is-somma ta' €250 kull erba gimghat ghal minuri.

L-omm tghid li dan id-digriet inghat ameta t-tifel kellu erba snin u tixtieq li ma tali somma l-intimat ihallas ukoll nofs l-ispejjez tal-edukazzjoni u sahha tal-minuri u li l-manteniment jizdied skond l-indici tal-gholi tal-hajja.

l-intimat jghid li s-somma ta' €250 hija aktar minn bizzejjed u li din ghandha tkopri kollox. ghandu l-loans tad-dar xi jhallas u ma jistghax jaghti aktar.

Is-somma ta' €250 kull erba gimgha l-perit legali tqis li hija wahda gusta u ghalhekk l-omm tahdem ukoll, t-tifel aktar ma jikber aktar jikbru l-esigenzi tieghu.

Il-perit legali tqis li fic-cirkostanzi, u in vista tas-sentenzi tal-Qorti kif hawn fuq citati, huwa minnu li ghandu loans mal-banek xi jhallas izda kif l-intimat jaffordja jzomm dghajsa minkejja li ghandu l-loans ghandu jaffordja jhallas nofs l-ispejjez tal-edukazzjoni ta' natura straordinarja u nofs l-ispejjez ta' sahha ta' natura straordinarja tal-minuri purche li dawn isiru bi qbil bejn iz-zewg partijiet u jigu provduti l-ircevuti. Huwa ghandu jhallas ukoll nofs l-ispejjez tal-attivitajiet extra-kurrikulari tal-minuri jekk ikun l-kaz.

B'dan nifhmu privatijiet, uniformijiet, trasport, ezamijiet, zraben tal-iskola, hwejjeg ohra tal-iskola fost ohrajn.

Ghalhekk l-missier ghandu jghaddi lil mara s-somma ta’ €250 kull erba gimghat liema somma tizdied kull sena skond l-indici tal-gholi tal-hajja kif ukoll nofs l-ispejjez ta’ natura straordinarja ta’ sahha u ta’ edukazzjoni u nofs l-ispejjez tal-attivitajiet extra-kurrikulari, purche li dan isir bil-kunsens tat-tnejn u l-parti li titlob l-hlas titlob l-ircevuta.”

Illi peress illi l-Qorti taqbel mal-konkluzzjonijiet peritali qeghda taddotta l-imsemmija relazzjoni u taghmilha bhala taghha.

Illi l-perit legali irrakkomandat kif gej dwar it-talbiet attrici :

“l-ewwel talba: michuda u fl-umli fehma ghandha tkun kif gej:

Il-kura u kustodja tal-minuri ghandha tibqa kongunta u jigi carat li:

1. l-kura u kustodja tal-minuri ghandha tibqa kongunta f’idejn il-partijiet u decizjonijiet dwar sahha, edukazzjoni u safar jittiehdu mill-partijeit konguntivament b’dan li jekk ikun hemm xi dizgwid kull parti dejjem tista tirrikorri ghal din il-Qorti. Kemm-il darba xi parti tkun assenti minn dawn il-Gzejjer jew inkapaci li tassumi dawn l-obbligazzjonijiet taghha, tali kura u kustodja tigi fdatha lil parti l-ohra sakemm tali parti tkun assenti minn dawn il-Gzejjer jew ghal perjodu li tkun inkapaci li tassumi dawn l-obbligazzjonijiet.

2. Decizjonijiet ordinarji ta’ kuljum jittiehdu mill-parti li jkollha maghha l-minuri.

3. Ir-residenza tal-minuri ghandha tibqa mal-omm.

4. Kull parti tkun intitolata ghal kull informazzjoni minghand l-parti l-ohra u minghand terzi dwar s-sahha, l-edukazzjoni u l-welfare tal-minuri. Kull parti hija intitolata tircevi mill-iskola tal-minuri kull informazzjoni dwar l-istess minuri u l-attivitajiet li jsiru hemmhekk.

5. L-iskola tal-minuri ghandha tibqa dik pezenti b’dan li jekk ghal gid tal-minuri jkun ghaqli li jibdel din l-iskola u l-partijiet finanzjarment ikun jistghu jaghmlu dan, tali skola ghandha tinbidel ghal gid tal-istess minuri dejjem bil-kunsens taz-zewg partijiet moghti preventivament.

6. dwar l-attivitajiet extra kurrikulari, fosthom scouts li jixtieq l-intimat, tenut kont li t-tifel ghandu disgha (9) snin llum, ghandhom jigu rispettati x-xewqat tieghu u jattendi l-attivitajiet extra kurrikulari li jhobb jaghmel.

Access kif gej:

- kull nhar ta’ Erbgha mill-5.30pm sas-7.30pm;
- matul il-vaganzi l-access isir darbtejn fil-gimgha u cioe t-Tlieta u l-Hamis izda jingabar mir-residenti tal-omm fis-sitta ta’ filghaxija (6pm) liema access fl-umli fehma tal-perit legali ghandu jigi estiz sad-disgha ta’ filghaxija (9pm) stante li t-tifel ikun bil-vaganzi.
- fi tmiem il-gimgha meta l-access ikun imiss mill-Gimgha sas-Sibt it-tifel jingabar fis-7pm dejjem mir-residenza tal-omm jitwassal lura l-ghada fis-7pm u meta l-access ikun imiss mis-Sibt ghal Hadd it-tifel jingabar mir-residenza tal-omm fis-6pm u jigi ritornat fis-6pm l-ghada.
- l-missier ghandu kull dritt jikkomunika mal-minuri permezz tat-telefon darba kuljum bejn is-6pm u s-7pm jew f’hin iehor li jiftehmu dwaru l-partijiet u fuq numru tat-telefon li tiprovdi l-omm minn issa u li l-omm ma ghandhiex tpoggi dan it-telephone fuq li speaker. .
- meta l-missier ikun xoghol ghandu dritt jezercita l-access fi granet ohra b’dan li ghandu jipprovdi kopja tad-detail relattiv lill-omm;
- Meta l-minuri ma jkollux skola u l-omm tkun xoghol u l-missier le, l-missier ikollu dritt izomm mieghu lil minuri u jirritornah meta l-omm tirritorna lura d-dar mix-xoghol
- Fil-granet pubblici b’mod alternat, cioe darba iva u darbe le l-missier ikollu dritt ta’ access fil-konfront tal-minuri mid-9am sal-5pm.

- Hija l-umli fehma tal-perit legali li fil-vaganzi tas-Sajf l-missier ghandu jaghmel kull mezz biex jiehu lit-tifel ghal gimgha shiha sabiex ikompli jibni r-rapport mieghu.

- Fil-Milied u l-Ewwel tas-Sena tali access ghandu jkun ta' sena t-tifel ikun mal-omm u s-sena ta' wara mal-missier u meta l-minuri jkun mal-omm fil-Milied, l-minuri jkun mal-missier fl-Ewwel tas-Sena. L-hinjiet ikunu mill-ghaxra ta' filghoxu (10am) sas-sitta ta' filghaxija (6pm).

- Il-missier ikun jista jiehu lil minuri fuq id-dghajsa kemm-il darba t-tifel jaf jghum t-tifel ikun jixteiq hekk u fuq id-dghajsa jkun hemm l-apparat kollu ta' sigurta.

- Fil-birthday tat-tifel li huwa fis-26 ta' Dicembru l-partijiet ghandhom jiehdu hsieb li jew jaghmlu party ghal minuri bi spejjez ghat-tnejn u jistiednu l-hbieb u kugini tal-istess minuri jew iqattghu tali gurnata nofs bin-nofs cioe sena l-missier jiehu lil minuri mid-9am sas-2pm u s-sena ta' wara jiehu lil minuri mit-3pm sat-8pm, salv kull hin iehor li jiftehmu dwaru l-partijiet.

- Fil-Mother's Day l-minuri jkun mal-omm u fil-Father's Day l-minuri jkun mal-missier mid-9am sas-6pm.

- Il-missier ghandu jaghmel kull sforz biex tali access ikun hu mat-tifel u mhux ihallih jilghab mat-tifla tal-partner tieghu sabiex b'hekk dan it-tifel jibqa jhoss li missieru lilu jhobbu aktar mit-tifla tal-partner tieghu.

t-tieni talba dwar manteniment: din ghandha tigi milqugha fis-sens li l-missier ghandu jghaddi lil mara s-somma ta' €250 kull erba gimghat liema somma tizdied kull sena skond l-indici tal-gholi tal-hajja kif ukoll nofs l-ispejjez ta' natura straordinarja ta' sahha u ta' edukazzjoni u nofs l-ispejjez tal-attivitajiet extra-kurrikulari, purche li dan isir bil-kunsens tat-tnejn u l-parti li titlob l-hlas titlob l-ircevuta.

Tielet talba : din ghandha tigi milqugha fis-sens li:

it-telefonata tkompli ssir kuljum bejn is-sitta ta' filghaxija (6pm) u s-sebgha ta' filghaxija (7pm) fin-numru tat-telephone li tissuplixxi minn issa l-attrici b'dan li hija ma taghmilx tali telephone fuq li speakers.

Illi tenut kont l-access kif inhu fil-prezent, jidher li l-problema tal-overnight stays giet meghluba.

Impediment biex it-tifel ma jittiehidx fuq id-dghajjes

Jigi rilevat li a fol 41 u dan kien fit-28 ta' April 2009 din il-Qorti ordnat biex temporanjament l-minuri ma jittehidx fuq id-dghajjes ghalissa.

It-tifel twieled fis-26 ta' Dicembru 2004 u llum ghandu disgha (9) snin u dak iz-zmien tad-digriet t-tifel ma kienx ghadu jaf jghum. Illum ma saret ebda prova li t-tifel jaf jghum u jekk huwa llum jaf jghum, l-perit legali ma tara xejn hazin li t-tifel imur fuq id-dghajsa ma' missieru tenut kont li fl-umli fehma taghha l-missier jidher li huwa persuna responsabbli. Dan dejjem jekk it-tifel ikun irid imur fuq id-dghajsa u dan isir meta t-temp ikun jippermetti.

Safar

Il-minuri ghandu jkollu passaport ghalih u ma ghandux isiefer hlief bil-kunsens taz-zewg partijiet moghti preventivament. Kull parti ghandha tavza lil parti l-ohra mill-anqas xahar qabel meta hija tkun behsiebha ssiefer bil-minuri b'dan li ghandha tghaddi lil parti l-ohra wkoll dettalji dwar is-safra, dwar l-akkomodazzjoni u l-parti li tibqa Malta jkollha dritt li ccempel lil minuri darba kuljum f'numru tat-telefon provdut mil-

parti l-ohra u hin li tiftiehem dwaru mal-parti l-ohra. Il-minuri ghandu nies missieru l-Ingilterra u ghalhekk l-perit legali tqis li din ir-rabta l-minuri ghandu jistabiliha u jsahhaha.

F'nuqqas ta' qbil hemm din il-Qorti kull parti tista dejjem tintavola proceduri."

Illi il-perit legali rrakkomandat kif gej dwar it-talbiet fil-kontro-talba :

"Talbiet tal-intimat rikonvenzjonant fil-kontro-talba tieghu.

l-ewwel talba michuda u kura u kustodja regolat kif spjegat hawn fuq.

Tieni talba michuda u access lilu regolat kif spejgat hawn fuq.

Tielet talba: Manteniment ghal minuri – michud kif spjegat hawn fuq.

Raba talba milqugha kif spjegat fit-talbiet kollha tal-attrici."

Ghaldaqstant, u ghar-ragunijiet kollha fuq imsemmija, u in rikapitulazzjoni, il-Qorti qeghda taqta' u tiddeciedi din il-kawza billi, dwar it-talbiet attrici :

Tichad l-ewwel talba u tordna li l-kura u kustodja tkun kongunta bejn il-partijiet, ir-residenza tal-minuri tkun mal-omm u il-missier ikollu access ghall-minuri kif spjegat aktar 'il fuq f'dan il-gudikat;

Tilqa' t-tieni talba u tordna li l-konvenut ihallas lill-attrici bhala manteniment ghall-minuri, sakemm jaghlaq 23 sena jekk jaghzel illi

jkompli jistudja fuq bazi “full time”, is-somma ta’ €250 fix-xahar illi toghla skond l-indici tal-gholi tal-hajja, oltre nofs l-ispejjez tas-sahha u edukazzjoni tal-minuri u nofs l-ispejjez tal-attivitajiet extra kurrikulari tal-minuri, b’dan illi dan isir bil-kunsens tat-tnejn u l-parti li titlob il-hlas tforni l-ircevuti relattivi;

Tilqa’ it-tielet talba bil-modalitjiet spjegati aktar ‘il fuq f’dan il-gudikat;

Illi dwar il-kontro-talba il-Qorti tichad l-ewwel u t-tieni talbiet, tichad ukoll it-tielet talba u tilqa’ ir-raba talba.

Il-Qorti tordna illi kull parti ghandha thallas l-ispejjez taghha.

< Sentenza Finali >

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