- TRANZAZZJONI –
ACCESS U MANTENIMENT TA' MINURI -
- KOLLOX INKORPORAT F'SENTENZA -

IL-PRIM' AWLA TAL-QORTI CIVILI

IMHALLEF

ONOR. RAYMOND C. PACE LL.D.

Seduta ta' nhar il-Hamis, 13 ta' Gunju 2002

Kawza Numru: 42
Citazzjoni Numru: 1940/00/RCP

Roberta Pecorella

vs

Clive Camilleri

Il-Qorti,

I. PRELIMINARI.

Rat ic-citazzjoni attrici a fol. 1 fejn gie premess:-

Illi l-kontendenti kellhom relazzjoni, minn liema relazzjoni twieldet tarbija Michaela Camilleri, li llum ghandha tliet (3) snin.

Illi bis-sahha ta' Digriet numru 651/2000 moghti mill-Onorabbli Sekond' Awla tal-Qorti Civili fl-10 ta' Mejju 2000, il-kura u l-kustodja tal-imsemmija tifla minuri giet fdata f'idejn l-attrici (Dokument "A");

Illi, bis-sahha ta' Digriet numru 907/2000, moghti mill-Onorabbli Sekond' Awla tal-Qorti Civili fit-22 ta' Gunju 2000, dina l-Onorabbli Qorti kkonfermat illi l-kura u l-kustodja tal-minuri kellha tigi fdata lill-attrici ossija l-omm, b'dan illi l-istess Onorabbli Qorti stipulat granet u hinijiet matul is-sena meta l-missier ossija l-konvenut ikollu access ghall-imsemmija minuri. Oltre dan l-istess Onorabbli Qorti ordnat ukoll illi l-konvenut ghandu jhallas lill-attrici manteniment ghall-minuri f'dik is-somma u taht dawk il-kundizzjonijiet u termini stipulati fl-istess digriet (Dokument "B");

Illi huwa fl-interess tal-imsemmija tifla minuri illi l-kura u l-kustodja taghha tibqa' fdata lill-attrici ommha, u li l-konvenut jigi ordnat jikkontribwixxi ghall-manteniment ta' bintu minuri.

Illi l-istess attrici talbet lil dina l-Qorti sabiex:

(1) Tordna u tikkonferma illi l-kura u kustodja tat-tifla minuri Michaela Camilleri, tigi fdata f'idejn ommha l-attrici;

(2) Tistipula dawk il-granet u hinijiet matul is-sena illi fihom il-missier ossija l-konvenut ghandu jezercita d-dritt tieghu ta' access ghall-imsemmija minuri;

(3) Tillikwida u tiffissa, okkorrendo bl-opera ta' periti nominandi, dik ir-retta alimentari illi l-konvenut ghandu jivversa lill-attrici, f'kull zmien li jigi ordnat minn dina l-Onorabbli Qorti, ghall-manteniment ta' bintu minuri;

(4) Tikkundanna lill-konvenut sabiex ihallas lill-attrici, f'dik il-modalita' u taht dawk l-ordnijiet u stipulazzjonijiet illi jidhru xierqa lil dina l-Onorabbli Qorti, dik ir-retta alimentari illi tigi hekk likwidata u ffissata ghall-manteniment tat-tifla minuri.

Bl-ispejjez kontra l-konvenut illi minn issa jibqa' ngunt ghas-subizzjoni.

Rat id-dikjarazzjoni attrici a fol. 3 u 4 tal-process;

Rat il-lista ta' xhieda u d-dokumenti esebiti a fol. 5 sa 12 tal-process;

Rat in-nota tal-eccezzjonijiet tal-konvenut tal-14 ta' Marzu 2001 a fol. 17 fejn gie eccepit:

(1) Illi huwa ma jopponix it-talba illi l-kura u l-kustodja tat-tifla minuri tieghu tibqa' fdata f'idejn l-attrici peress illi f'dan l-istadju ta' hajjitha, m'hijiex fl-interess tal-istess tifla illi tinhareg mill-ambjent domestiku li ghexet fih mindu twieldet;

(2) Illi huwa lanqas ma jopponi illi l-hinijiet tal-access illi jinkludu wkoll l-opportunita' illi kultant, it-tifla torqod ghand il-konvenut fid-dar tal-genituri tieghu biex dina jkollha konoxxenza tal-membri tal-familja estiza taghha;

(3) Illi l-eccipjenti qieghed ihallas direttament lill-attrici s-somma minima ta' Lm50 fix-xahar ghall-manteniment tat-tifla, u jkompli jhallas il-mizati tal-iskola privata tat-tifla u spejjez ohra edukattivi, kif dejjem ghamel, pero' jammetti illi l-istat finanzjarju tieghu huwa prekarju u limitat fil-prezent;

(4) Illi l-eccipjenti ma jopponix ghar-raba' talba.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-konvenut a fol. 17 sa 20 tal-process.

Rat il-verbali tal-14 ta' Gunju 2001 fejn il-Qorti giet infurmata li

hemm possibilta' ta' soluzzjoni bonarja; tal-25 ta' Settembru 2001; tat-12 ta' Dicembru 2001; tas-6 ta' Frar 2002; tat-23 ta' April 2002 u tas-6 ta' Gunju 2002 fejn Dr. Tanya Sammut ghall-attrici pprezentat nota ta' tranzazzjoni bejn il-partijiet, bl-intiza li din tigi nkorporata fis-sentenza. Il-kawza giet differita ghall-lum 13 ta' Gunju 2002 ghas-sentenza.

Rat l-istess nota kunguntiva tal-kontendenti datata 6 ta' Gunju 2002 fejn abbazi ta' ftehim bejn il-partijiet datat 12 ta' Dicembru 2001 u anness bhala Dok. "A" mal-istess nota l-partijiet iddikjaraw li :-

(i) That a minor child, Michaela Camilleri, was born to the parties out of wedlock on the 6th February 1997;

(ii) The parties wish to regulate all matters concerning their respective rights and obligations in respect of their minor child;

The parties hereto are appearing on this agreement and do hereby agree and contract as follows:-

(i) The care and custody of the minor child is entrusted to appearer Roberta Pecorella, save for the visitation rights stipulated hereunder in favour of the father;

(ii) Appearer Clive Camilleri shall enjoy a right of access to the

said minor child every Wednesday, between 3:00 p.m. and 6:30 p.m. and on such other weekday and at such times as may be agreed upon between the parties from time to time, regard being had to the parties' respective conditions and the health, recreational and educational requirements of the said minor child. In addition to the above, the father shall also enjoy a right of access to the minor child on one (1) day during each weekend, on the alternate basis between Saturday and Sunday, from 12:00 noon up to 6:30 p.m. In all cases appearer Clive Camilleri shall be obliged to collect the minor child from, and return her to, the mother's place of residence at the stipulated time;

(iii) Appearer Clive Camilleri will furhermore, by prior agreement with the mother or her parents, be entitled to collect the minor child from school and drive her to mother's place of residence;

(iv) On every alternate occasion between Christmas Day, Easter Sunday, New Year's Day and the minor child's birthday, the father shall have access to the minor child between 1:00 p.m. and 7:00 p.m. The parties agree that on every Father's Day, the child shall spend the day with her father, whereas the mother will spend every Mother's Day with the minor child;

(v) The above stipulations shall not deter the parents from agreeing that the weekday access may include other visits

which are agreed upon mutually on an ad hoc basis, regard always being had to the parties' respective conditions and the health, recreational and educational requirements of the said minor child;

(vi) In addition to the obligations of payment stipulated under the immediately following paragraph of this agreement, appearer Clive Camilleri hereby obliges himself to pay unto appearer Roberta Pecorella a monthly contribution of fifty Maltese Liri (Lm50), payable every month in advance with effect from the date of this agreement, towards the maintenance of the said minor child. The said maintenance contribution shall, subject to what is hereafter stipulated, automatically cease when the minor child reaches majority age;

(vii) In addition to the maintenance contribution stipulated under the immediately preceding paragraph, appearer Clive Camilleri hereby obliges himself to punctually pay all bills and expenses relating to the minor child's education (including any school and private tuition fees, school transport, books, stationary and adequate sets of school uniforms);

(viii) The said rights of access and maintenance contribution, will be subject to review as soon as the father finds gainful full-time employment or otherwise engages himself in a business, whether on his own account or in partnership with others. In

any case, the maintenance contribution shall be increased in an amount equivalent to any proportionate increase in the cost of living index as may be announced by the Government of Malta from time to time after the date of this agreement;

(ix) The parents agree that the said minor child, shall not travel from the Island of Malta and its dependencies, save with the consent of both parties given in writing or, in cases of medical necessity or disagreement between the parties, in virtue of an order of the competent court;

(x) The parties shall consult and support each other on any issue which is required in the best interests of the minor child;

(xi) The parties agree that any disagreement arising between the parties, on any issue regarding the minor child, shall be resolved and determined by reference to the Second Hall of the Civil Court;

(xii) The parties finally agree that the terms of this agreement are to be incorporated in a court judgement in the pending law suit which the mother has filed against the father before the First Hall, Civil Court (Cit. No. 1940/00), the costs of which proceedings are to remain "bla taxxa". The parties otherwise agree to withdraw all other court proceedings which have been filed against each other; either party to bear his / her own costs;

(xiii) Parties agree and declare that saving what is contemplated in this agreement, the said parties possess no reciprocal rights or claims.

Rat id-dokumenti esebiti.

Rat l-atti kollha l-ohra tal-kawza.

II. KONSIDERAZZJONIJIET.

Illi din il-kawza saret mill-attrici sabiex tigi regolata b'sentenza ta' din il-Qorti l-kura u kustudja tal-minuri Michela Camilleri bejn il-kontendenti u l-access ghall-istess minuri, u sabiex jigi ffisat il-manteniment li l-konvenut ghandu jhallas lill-attrici ghall-beneficcju tal-istess minuri.

Illi kif fuq inghad il-partijiet transigew din il-kawza bl-iskrittura privata datata 12 ta' Dicembru 2001 a fol. 28 sa 30 tal-process, u l-istess Qorti *stante* dan il-ftehim, ser taderixxi ruhha mal-istess rikjesta tal-partijiet, u dan ukoll ghaliex jidher u jirrizulta li dan il-ftehim sar fl-interess tal-istess minuri.

III. KONKLUZJONI.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**,

billi *ai termini* ta' tranzazzjoni bejn il-partijiet hekk milhuqa skond skrittura datata 12 ta' Dicembru 2001, **tilqa' t-talbiet attrici**, b'dan li din il-Qorti qed tinkorpora dan l-istess ftehim fil-parti dispozittiva tas-sentenza taghha b'dan illi:-

(1) Tordna u tikkonferma illi l-kura u kustodja tat-tifla minuri Michaela Camilleri, tigi fdata f'idejn ommha l-attrici salv ghad-drittijiet ta' access a favur il-konvenut kif hawn stipulat kollox skond l-istess ftehim bejn il-partijiet datat 12 ta' Dicembru 2001.

(2) Tiddeciedi dwar l-access tal-istess konvenut ghall-minuri li:-

(a) Illi l-istess l-konvenut Clive Camilleri qed jinghata dritt ta' access ghall-minuri bintu kull nhar ta' Erbgha bejn it-3:00 p.m. u s-6:30 p.m. u f'gurnata ohra matul il-gimgha skond il-hinijiet li jistghu jiftehmu fuqhom l-kontendenti fl-ahjar interess tal-imsemmija minuri u l-partijiet ghandhom jiehdu in konsiderazzjoni f'dan ir-rigward ic-cirkostanzi partikolari ghall-partijiet rispettivi f'dak iz-zmien u wkoll il-htigijiet ta' sahha, edukattivi u rekreazzjonali tal-istess minuri.

(b) Illi inoltre l-konvenut qed jinghata d-dritt ta' access ghall-istess minuri f'gurnata fil-*weekend*, darba s-Sibt u darba l-Hadd, fuq bazi alternattiva, min-nofsinhar (12:00 p.m. (*noon*) sas-6:30 p.m.

(c) Illi f'kull access il-konvenut ghandu jigbor u jirritorna lill-minuri mir-residenza ta' l-omm fil-hin miftiehem. Bi ftehim minn qabel mal-attrici jew mill-genituri taghha, l-istess konvenut Clive Camilleri jkun jista' wkoll jigbor lill-minuri bintu mill-iskola u jwassalha sar-residenza t'ommha.

(d) Illi f'kull okkazjoni ta' granet tal-festi tal-Milied, Hadd il-Ghid, l-Ewwel tas-Sena u l-gheluq snin tal-imsemmija minuri rispettivament, il-konvenut ikollu dritt ta' access fl-istess festi b'mod alternattiv mal-attrici, liema access ikun mis-1:00 p.m sas-7:00 p.m. u dan skond kif premess fil-paragrafu (iv) tal-istess ftehim fuq citat.

(e) Illi bi qbil bejn il-partijiet il-minuri ghandha tqatta' l-gurnata kollha ta' Jum il-Missier mal-konvenut u Jum l-Omm mal-attrici.

(f) Illi *nonostante* dak kollu premess, xejn minn dak fuq fuq ordnat ma jimpedixxi lill-partijiet li jiftehmu li fl-access ta' matul il-gimgha ikun jinkludi access ulterjuri ghall-granet fil-gimgha ohra jew hinijiet differenti fuq bazi *ad hoc* u specifici, u dan dejjem tenut kont tal-*fattispecie* tal-kondizzjonijiet ezistenti bejn il-partijiet f'dak iz-zmien u relattiv ukoll ghall-interessi tas-sahha, edukazzjoni u rekreazzjoni tal-istess minuri, u dan kollox kif stipulat fil-paragrafi (i) (ii) (iii) (iv) u (v) tal-istess ftehim ta' tranzazzjoni bejn il-partijiet datat 12 ta' Dicembru 2001.

(g) Illi l-istess minuri m'ghandhiex thalli Malta jekk mhux bil-kunsens taz-zewg partijiet bil-miktub, jew ghar-ragunijiet ta' sahha jew f'kaz ta' nuqqas ta' qbil bejn il-partijiet b'decizjoni tal-Qorti kompetenti.

(h) Illi l-partijiet ghandhom jikkonsultaw u jghinu lil xulxin f'kull haga li jkun hemm bzonn fl-interess tal-istess minuri.

(i) Illi f'kaz ta' nuqqas ta' qbil bejn il-partijiet fuq kull haga li tirrigwarda l-istess minuri, din ghandha tigi risolta b'riferenza ghas-Sekond' Awla tal-Qorti Civili fl-interess tal-istess minuri u salv dak hawn kontenut u hawn ordnat l-partijiet ma ghandhom l-ebda dritt jew pretensjoni ulterjuri kontra xulxin skond kif minnhom indikat f'paragrafu (xiii) tal-istess ftehim, u ghalhekk l-istess il-partijiet ghandhom jirtiraw u jcedu kull azzjoni ohra li huma setghu istitwew kontra xulxin, b'kull parti thallas l-ispejjez taghha, minbarra din il-kawza, li giet tranzatta bil-ftehim precitat hawn inkorporat b'din is-sentenza.

(3) Tillikwida l-ammont ta' manteniment li ghandu jhallas il-konvenut lill-attrici a beneficcju tal-istess minuri fl-ammont ta' hamsin lira Maltija (Lm50) fix-xahar, pagabbli bix-xahar bil-quddiem b'effett mid-data tat-12 ta' Dicembru 2001, liema rata ta' manteniment tibqa' jsehh sa ma l-minuri tilhaq l-eta' ta' maggorenni u dan minbarra s-somom li l-konvenut odjern huwa tenut li jhallas ghall-ispejjez ta' edukazzjoni, inkluzi mizati tal-

iskola privata, trasport, kotba, *stationery* u settijiet tal-uniformi tal-minuri,

Illi f'kaz li l-konvenut isib xoghol fiss kemm bhala impjegat *full time* jew inkella jidhol jaghmel xi negozju, kemm ghal rasu u kemm bi shab ma terzi, dan ghandu jwassal sabiex jigu riveduti dawn id-drittijiet ta' access u manteniment fuq stipulati, b'dan li l-ftehim ta' bejn il-partijiet fuq riferit dwar l-istess drittijiet ghandu jigi rivedut.

Illi dan l-ammont ta' manteniment ghandu jizdied proporzjonalment u maz-zieda ta' l-gholi tal-hajja li tigi stabbilita mill-Gvern ta' Malta minn zmien ghal zmien.

(4) Tikkundanna lill-konvenut ihallas lill-attrici a benificcju ta' u bhala manteniment ghall-istess minuri l-ammont ta' hamsin lira Maltija (Lm50) fix-xahar, pagabbli bix-xahar bil-quddiem b'effett mid-data tat-12 ta' Dicembru 2001, liema rata ta' manteniment tibqa' ssehh sa ma l-minuri tilhaq l-eta' ta' maggorenni. Illi apparti il-Qorti tikkundanna wkoll lill-konvenut odjern sabiex *oltre* ghar-rata ta' manteniment fuq stipulata l-istess konvenut ghandu wkoll jhallas ta' spejjez ta' edukazzjoni tal-istess minuri, nkluzi mizati tal-iskola privata, trasport, kotba, *stationery* u settijiet tal-uniformi tal-minuri, b'dan li tali hlasijiet ghandhom jkunu puntwali.

Illi kif fuq indikat fl-eventwalita' li l-konvenut isib xoghol *full time* jew jidhol f'xi forma ta' negozju kemm jekk ghal rasu, u kemm bi shab ma terzi persuni, ghandhom jigu riveduti kemm id-dritt ta' access u kemm ir-rata ta' manteniment fuq ordnati u stabbiliti u kemm dawk inkorporati fil-ftehim bejn il-partijiet premess.

Illi kif inghad l-ammont ta' manteniment ghall-minuri fuq stabbilit ghandu jizdied proporzjonalment mar-rata ta' zieda ta' l-gholi tal-hajja li tigi stabbilita mill-Gvern ta' Malta minn zmien ghal zmien.

Illi l-ispejjez ta' din il-kawza jibqghu bla taxxa bejn il-partijiet, ukoll skond l-istess ftehim.

Moqrija.

Onor. Imhallef Raymond C. Pace LL.D.
13 ta' Gunju 2002

Mario Debono
Deputat Registratur
13 ta' Gunju 2002