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1. [S.C. v. R.C., \[2020\] O.J. No. 1287](#)

Client/Matter: -None-

[S.C. v. R.C., \[2020\] O.J. No. 1287](#)

Ontario Judgments

Ontario Superior Court of Justice

Ottawa, Ontario

P. MacEachern J.

Heard: March 23, 2020 by teleconference.

Judgment: March 25, 2020.

Released: March 28, 2020.

Court File No.: FC-07-981-3

[2020] O.J. No. 1287 | 2020 ONSC 1845

Between S.C., Applicant, and R.C., Respondent

(28 paras.)

Counsel

S.C., Applicant, Russel A. Molot, Lawyer.

R.C., Respondent, Gilbert Terrance, Lawyer.

ENDORSEMENT

P. MacEACHERN J.

1 The issue is whether this matter is urgent, and should proceed as an exception to the March 15, 2020 directive issued by the Ontario Superior Court of Justice that all family matters are adjourned due to the **COVID-19** situation.

2 I find that this matter is not urgent, for the reasons set out below. This matter is adjourned, as set out under the March 15, 2020 directive.

Background

3 Before the March 15, 2020 directive, the Respondent mother scheduled a case conference for March 23, 2020.

4 This case conference would have been the second case conference in this Motion to Change. The mother initiated this Motion to Change in September of 2019. She seeks to change the custody and access provisions of the Order of Justice Blishen dated December 17, 2015.

5 The parties have two children, now ages 13 and 10. The children have resided with the Applicant father since May of 2014. At that time, child protection authorities removed the children from the mother's care due to child protection concerns. The children were placed with the father. Both children have special needs.

6 The December 17, 2015 Order provides that the father has sole custody, that the children primarily reside with the father, and that the mother is to have access for a minimum of six hours per week, as agreed to in writing between the parties.

7 In the mother's Motion to Change, and in her Response to the father's Response to her Motion to Change, the mother seeks sole custody of the children, primary residence of the children, and that the father have supervised access to the children on alternate weekends. The mother's position is that the father has not supported her relationship with the children. The mother did not have access to the children since approximately October of 2018, and blamed the father. The mother also argued that she would be better at ensuring the children's access to both parents, and in supporting the children's First Nation's identity.

8 There is a lengthy child protection history in this matter, as well as a Family Court Clinic assessment completed in August of 2015.

9 A case conference took place on December 2, 2019, at which time Justice Mackinnon made an order that included provisions for the mother to recommence access on an agreed-upon schedule. The schedule provided for telephone access and four 1.5 hour visits during the period from December 21, 2019, to January 4, 2020.

10 The father states that these access visits were to be supervised, although this is not specified in the order. It appears to be common ground that the visits took place with the assistance of third-party organizations that facilitated the visits.

11 Justice Mackinnon also ordered a Voice of the Children report. This report was completed on January 7, 2020. The report summarizes that:

"Both boys oscillated on their thoughts about seeing Ms. Boileau [the mother]. They each appeared conflicted, on the one hand wishing to have a better relationship with her, while on the other, not wanting to see her. There was a distinct lack of trust expressed by these boys toward their mother. It was made clear by each boy that if they were to see Ms. Boileau, it would be on a supervised basis. They also state that phone calls were acceptable."

12 The father states that on January 13, 2020, the youngest child wrote a note in which the child said he would kill himself if he had to call his mother again or visit her. The father states he immediately took the child to the hospital (CHEO) for assessment. He was advised that the child was not at imminent risk of committing suicide. The father states this is particularly so if the child does not have access to the mother, as the child's statements of self-harm were connected to such access. The father has arranged counselling for the child with a child psychologist, which has now started. The counselling can take place remotely (due to **COVID-19** restrictions).

13 The mother has not had any visits to the children since the last visit on January 4, 2020. The access schedule that forms part of Justice Mackinnon's December 2, 2019 order does not provide for any visits after the January 4, 2020 visit. Justice Mackinnon did direct, however, that the parties return for a further case conference in January or February of 2020.

Disposition

14 The mother argues that the case conference scheduled for March 23, 2020, should proceed because this matter is urgent. In effect, however, the mother is claiming that her Motion to Change should continue in its entirety, or at least on an interim basis because the mother is seeking that the court make orders granting her access to the children. I find that the mother's requested relief is not urgent, for the reasons set out below.

15 The focus of the mother's arguments is that the mention of suicide creates a situation of urgency, particularly because the children are First Nation's. While I agree that suicide is a very pressing and significant concern, particularly for First Nation's children, this urgency does not relate to the relief that the mother is seeking.

16 The mother's firmly held position is that the child's alleged note is a ploy by the father to stop her from having access. She wants the court to order supervised access between her and the children. Implied in this position is the mother's view that the child is not, in fact, suicidal at the prospect of having access to her.

17 On the one hand, then, the mother argues that the child is not suicidal, and her supervised access should be reinstated. Under this argument, the urgency is not the threat of suicide, but that the mother is not having supervised access. But given the current **COVID-19** situation, supervised access is doubtful to happen in any event. Most of the provinces in Canada have declared states of emergency. The Ontario government has ordered all non-essential services to be closed. All governments are directing social distancing. In this context, the mother's request to have supervised physical access to the children is not urgent.

18 In the alternative, the mother seeks access by skype or telephone. I also do not find that this constitutes an urgent situation in this context. The urgency exception under the March 15, 2020 directive is extremely limited. The mother did not have access to the children for approximately 14 months before the limited access provided for in the December 2, 2019 order took place. The children are conflicted about having access to their mother and have distinct concerns about such access. There is a reasonable basis to be concerned with the youngest child's reaction to

the limited access that took place. To the extent that a period of reintegration will be needed for the mother to resume access to the children, possibly with the support of therapeutic assistance, the current **COVID-19** situation imposes significant obstacles.

19 On the other hand, the mother argues that if the child is suicidal, she should be able to provide the father with a list of Aboriginal resources. This relief also does not create a situation of urgency - nothing is preventing the mother from forwarding suggested resources to the father through her counsel. A court order is not needed to allow this to happen.

20 At present, I agree with the father's counsel that the mother's requested relief does not meet the urgency exception to the March 15, 2020 directive adjourning all family matters before the Ontario Superior Court of Justice. The father has taken steps to respond to the urgent situation - being the child's risk of suicide or self-harm - by having the child assessed at the hospital and obtaining counselling for the child. The mother's request for supervised access on the basis that the child is not suicidal at the prospect of having access to her is not urgent. The mother's request to provide the father with Aboriginal resources if the child is suicidal is also not urgent.

21 This matter is adjourned, as set out under the March 15, 2020 directive. This adjournment includes all court appearances scheduled in this matter - including the motion scheduled for May 12, 2020.

Costs

22 The father seeks an order requiring the mother to pay costs for this appearance fixed at \$1,000. His fees for preparing and attending on this appearance total \$1,700. The father argues that although the mother has limited financial means, she should not be permitted to instigate unnecessary court appearances with impunity, and a cost order is required to impose some consequence on her for doing so.

23 The mother's counsel advises that his fees for preparing and attending this appearance total over \$3,000, although he states he is acting on a pro bono basis. He urges the court not to impose an award of costs against the mother because she scheduled this case conference before the March 15, 2020 directive and due to the mother's limited financial means.

24 The father's request for costs for this appearance fixed at \$1,000 is reasonable and proportional. The father was the successful party on this appearance. Before the conference, his counsel urged the mother's lawyer to avoid this conference because the matter was not urgent. The March 15, 2020 directive is clear that it applies to all matters scheduled before that date. The father is the successful party and is presumptively entitled to costs.

25 I am concerned, however, about the mother's limited financial means. The mother's income is limited to ODSP.

26 I am also conscious of the current economic environment that is creating significant financial uncertainty and hardship on large numbers of people. In this context, the father's financial situation is more uncertain than the mother's, as he is employed in the private sector, and is the

sole support for the two children. While the father's income is more than the mother's, it is still modest, particularly given that the two children are in his care. The father's income is also more exposed to the risks of economic downturns.

27 I agree that there needs to be some consequence to the mother for pursuing a court appearance that was not urgent and being the unsuccessful party. Not doing so would allow and encourage the mother to take similar unnecessary steps in the future.

28 Taking all of the circumstances into consideration, and the factors under Rule 24(12), I order the Respondent mother to pay costs of this appearance to the Applicant father fixed at \$500, payable at \$50 per month, commencing May 1, 2020.

P. MacEACHERN J.

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