

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Gar Yee (Cathy) Zee) *Dani Z. Frodis* for the Applicant
)
Applicant)
)
- and -)
)
Tony Quon) *In person, self-represented*
Respondent)
)
)

HEARD: March 27, 2020

ENDORSEMENT

E. L. NAKONECHNY, J.:

Background

[1] By Endorsement of Shore, J. dated March 26, 2020, I was designated to conduct a telephone hearing with the parties to address the Applicant’s motion seeking urgent relief. In accordance with the Chief Justice’s Notice to the Profession dated March 15, 2020 (“the Notice”), Shore, J. reviewed the Applicant’s motion materials and found that since the matter related to, *inter alia*, the suspension of the Applicant’s access to an eight year old child (especially in light of the current COVID-19 situation in the greater Toronto area and the rest of Canada) and that the Respondent be restrained from contacting the Applicant’s place of employment, the motion fit the “urgency requirement” as set out in the Notice.

[2] Having now (i) reviewed both parties’ motion materials and (ii) conducted the telephone hearing with the parties today, I share Shore, J.’s view and agree that the Applicant’s motion is presumptively urgent and warrants interim relief from the Court for the reasons below.

[3] The Applicant’s motion materials were served upon the Respondent on March 25. The Respondent served and filed the following documents today: Draft Response of Tony Quon (unsworn), an undated letter signed by the parties’ eldest child, Gregory, born October 21, 2001 (aged 18) citing his complaints about his mother and her behaviour toward him and his siblings, a letter from Dr. Ian Pun dated March 26, 2020 offering the opinion that due to the Applicant’s high risk profession as a physiotherapist at Sunnybrook Health Sciences Centre, the child should

stay with Mr. Quon, and a letter from Dr. Sandeep Singh Sandhu, an Obstetrics/Gynaecology resident physician on placement at Sunnybrook Health Sciences Centre offering the opinion that healthcare providers are at an elevated risk of spreading the COVID-19 infection and should be practicing vigilance. Mr. Quon had no sworn evidence before me. I heard lengthy submissions from him both setting out his position and responding to the issues raised by the Applicant in her motion materials.

Summary of Key Facts

[4] The parties were married on August 8, 2000 and separated on September 8, 2016. The parties have three children, Gregory, Nathaniel, born October 16, 2005 (“Nathan” aged 14) and Olivia born November 11, 2011 (aged 8).

[5] The parties share joint custody of Nathan and Olivia pursuant to the consent Order of Czutrin, J, dated September 24, 2019, (“the Order”). The parties negotiated a Parenting Plan with Laurie Stein dated January 16, 2019 (“the Plan”) which is attached as Schedule A to the Order. The Plan sets out the regular 2/2/5 schedule, the holiday schedule which supersedes the regular schedule and other agreed upon terms of custody and access.

[6] The Applicant states that the Respondent has influenced the two older boys to withdraw from a relationship with her. She does not have meaningful contact with Gregory or Nathan. The Applicant fears that the Respondent is attempting to do the same with Olivia by isolating the child from her. The Respondent denies the allegations of alienation and states that it is the Applicant’s own behavior which has resulted in the two boys not wanting to spend time with her.

[7] Pursuant to the Order, the Respondent had agreed upon March Break access with the children beginning March 12, 2020. The Applicant states that the parties had an agreement that the Respondent would take the children on two of her usual days (March 12 and 13) and in return, Olivia would return to the Applicant’s care on March 22, 2020 and reside with her for the following week. The Applicant booked holiday time to care for the child.

[8] The Respondent denies that there was any agreement between the parties for this block holiday time. It is his position that the regular schedule would resume on March 23. The Applicant’s first day with Olivia would be March 25.

[9] The Respondent and the children returned early from their March Break holiday around March 13. In a series of emails exchanged over Our Family Wizard, the Applicant advises the Respondent that she has taken the week of March 23 off to be with Olivia and that the regular schedule will resume on March 30. She also confirms that she is not working on April 1 and 2, her days with Olivia in the next week.

[10] The Respondent suggests that, rather than going back and forth between the two homes that the child should stay in one home to minimize risk. The Applicant confirms that she will take two weeks off work to have Olivia in her care.

[11] The Respondent is a microbiologist. He is not required to return to work until April 6.

[12] The Respondent asks for specific details as to how the Applicant will care for the child in those two weeks. He insisted on proof from the Applicant's employer that she had vacation time with the child. Although it is not the usual practice, the Applicant was able to obtain a letter from Sunnybrook confirming her vacation time.

[13] The Respondent then raised concerns about the Applicant's possible exposure to the COVID-19 virus and that the child could be in danger of contracting the virus while in her care. The Applicant confirmed that she and her employer were taking all recommended precautions and following all mandated regulations. This was not sufficient for the Respondent. His position was that Olivia should stay in his care "until the coronavirus pandemic resolves".

[14] The Respondent's emails state: "This is a matter of Olivia's and public safety. If you cannot understand the importance, then perhaps you should read more." and "I hope you educate yourself more regarding the coronavirus and the steps one must do to protect those around you. Please do not continue to give the children false information regarding the pandemic." This last sentence is inexplicable since the Applicant has had no contact with any of the children since March 11.

[15] The Applicant attended at the Respondent's home on March 22. The Respondent refused to give Olivia to her.

[16] The Applicant attempted to enlist the assistance of the police. The police attended at the home and did a wellness check to ensure the children were present and safe. They did so and observed that all three of the children were in the home and wearing masks. The police could not enforce the Applicant's residential time under the Order because the Order did not provide for this.

[17] The Respondent states that the Applicant has endangered the lives of the family and the police and their families by requesting that the police attend at the Respondent's home and disobey government orders to "shelter in place".

[18] After attending at the Respondent's home, the police reported the matter to the Children's Aid Society. The case worker contacted the Respondent. The Respondent confirmed to the CAS that it was his position that Olivia should remain in his care until the pandemic resolves, at which time the regular schedule should resume. During this period (the duration of which is unknown), the Applicant can communicate with the child by Facetime. I have no evidence as to what position the CAS takes in this matter.

[19] On March 23, 2020, the Respondent contacted the Applicant's supervisor at Sunnybrook to confirm that she wrote the letter produced by the Applicant. He also asked if the Applicant could be recalled to work during her vacation and whether staff members had tested positive for COVID-19. The supervisor confirmed that the Applicant would not be recalled to work during her vacation and that no members of the Applicant's unit had tested positive for COVID-19.

[20] The Applicant was understandably concerned that the Respondent had contacted her employer and involved them in this personal dispute. The Applicant had provided the Respondent with all of the information he requested regarding her time off work and her adherence to the necessary health precautions. By contacting the Applicant's supervisor directly, the Respondent created both personal and professional difficulty for the Applicant at a time which is already stressful.

[21] The Respondent states that the Applicant is putting her own needs before the needs of the child. He states that the Applicant's disregard for public safety and resources during a pandemic should call into question her ability to parent.

[22] The Respondent concedes that neither parent can say they have not been exposed to COVID-19. He also states that when the Applicant returns to work at Sunnybrook, she is potentially exposing the child to a deadly virus.

Decision

[23] I find that the matter before me is sufficiently urgent to warrant the Applicant's motion proceeding in the absence of a case conference. Under Rule 14(4.2) of the *Family Law Rules* the Court may dispense with the case conference if it is of the opinion that there is a situation of urgency or hardship or that a case conference is not required for some other reason in the interests of justice.

[24] Even if I do not find urgency or hardship, I may still dispense with the requirement of the case conference in the interests of justice under sub rules 2(3) to 2(6) of the *Family Law Rules*. In *Chateauvert v. Chateauvert*, 2019 ONSC 81, Kurz, J., held that dealing with cases justly under the *FLR* centres on fair process, proportionality and the proper allocation of limited judicial resources: "The court promotes the primary objective through active case management and the promotion of both settlement and non-litigious processes." at paras 58 and 59.

[25] In *Rosen v Rosen* 2005 CanLII 480 (ONSC) Wildman, J. held that in addition to a matter being urgent, a motion shall proceed in the absence of a case conference if the moving party provides evidence (a) that he/she has made inquiries about the availability of case conference dates, and (b) of his/her efforts to settle the matter outside the court process.

[26] I am satisfied that the Applicant has met the test in Rule 14(4.2) and the case law. The Superior Court of Justice's operations are suspended as per the Notice and case conferences cannot be scheduled. The Applicant has attempted directly and through counsel to reinstate the court ordered access.

[27] These are difficult times for parents both in separated and intact families. The health and wellbeing of their children is paramount. The COVID-19 situation is in constant flux.

[28] The opinions letters of Dr. Pun and Dr. Sandhu are hearsay and not admissible evidence before me pursuant to Rules 14(18) and (19) of the *Family Law Rules*. That said, I understand

the Respondent's concern regarding the higher risk of exposure based on the Applicant's workplace.

[29] I am concerned by the letter written by Gregory which is in the Respondent's materials. The letter contains a very scathing attack by an 18 year old son against his mother. It alleges he and his siblings suffered verbal and emotional abuse at the hands of their mother and states that he "strongly disagrees" with his mother's "unnecessarily extreme, inappropriate measures" to remove his sister from his father's care as a "relentless pattern of abuse" and "harassment, dishonesty, manipulation etc." The letter states this behavior is a testimony to his mother's "lack of virtue."

[30] The issue of alienation is not before me and is strongly denied by the Respondent. However, I am mindful of the Applicant's concerns that she has no relationship with Gregory and has not had meaningful contact with Nathan since January, 2020. The Respondent suggests that he will keep Olivia with him until the pandemic resolves. This could be many months.

[31] The position in Gregory's letter is that the Applicant is reckless and uncaring to her children and will intentionally put Olivia in harm's way for her own benefit. This position is effectively the same one argued by the Respondent, albeit in more diplomatic language.

[32] It is not clear that the parties had an agreement that the Applicant would have further block time with Olivia after the return from March Break. Without such an agreement the regular access schedule would have commenced on March 23. Currently, the Applicant has time off work until April 10. The Applicant may take a further leave of absence depending on her ability to make arrangements with her employer.

[33] It is in the child's best interests to return to the equal time sharing schedule that has been in place for some time. The Respondent's proposal that the child remain with him for an indefinite period with only Facetime access to the mother is not in the child's best interest. It disrupts the status quo and it signals to the child that the mother may not be capable of caring for her and keeping her safe. Based on Gregory's letter, I am not convinced that this message would not be sent to Olivia, overtly or covertly, in the Respondent's home.

[34] The Applicant is a health care professional. She and her employer are well aware of the protocols to prevent transmission of infection. If the Applicant is required to return to work, I am satisfied that she will take all necessary precautions to keep her child safe while in her care.

[35] In *Ribeiro v. Wright*, Endorsement dated March 24, 2020, Pazaratz, J., held:

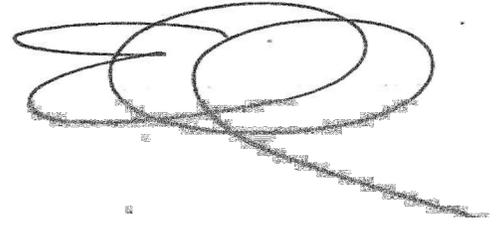
"In most situations there should be a presumption that existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing." at para. 11.

"If a parent has a concern that COVID-19 creates an urgent issue in relation to a parenting arrangement, they may initiate an emergency motion - but they should not presume that the

existence of the COVID-19 crisis will automatically result in a suspension of in-person parenting time.” at para. 20.

[36] I make the following Order:

- a) Leave is granted to the Applicant to bring her motion in advance of a case conference.
- b) Service of the motion materials on the Respondent by email to tquon66@gmail.com is hereby validated. The Respondent may be served by email at tquon66@gmail.com. The Applicant may be served by email through her counsel, Mr. Frodis.
- c) During the currency of the COVID-19 situation in Ontario, affidavits in this matter may be commissioned by telephone
- d) The Applicant shall pick up the child, Olivia Quon, born November 11, 2011 (“Olivia”) from the Respondent’s home at 7 p.m. today, Friday March 27, 2020.
- e) Olivia shall remain in the care and control of the Applicant until 9 a.m. on April 6, 2020 or another time on April 6 agreed upon between the parties. Commencing April 6, 2020, the regular parenting schedule set out in the Order of Justice Czutrin dated September 24, 2019 shall resume with the child being in the Applicant’s care for the weekend of April 11-12, 2020.
- f) The Toronto Police Services, The York Regional Police, the Ontario Provincial Police, and any other necessary police force shall assist as required with the enforcement of the terms of this Order and the Order of Justice Czutrin dated September 24, 2019, and shall take all such action as is required to locate, apprehend, and deliver the child, including the power of search and entry at any time.
- g) The Respondent is restrained and prohibited from contacting the Applicant’s employer and/or her fellow employees except as he might be required to do as a patient requiring hospital services
- h) As per the terms of the Justice Shore’s Endorsement dated March 26, 2020, this Endorsement is an Order of the Court enforceable by law from the moment it is released.
- i) I encourage the parties to agree upon costs of today. If they cannot, they may each make costs submissions of no more than 2 pages exclusive of Bills of Costs to be exchanged by email within seven business days and sent to me through the Family Scheduling Office.

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends downwards and to the right.

E.L. Nakonechny, J.

Released: March 27, 2020

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COURT FILE NO.: FS-16-412436
DATE: 20200327

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