

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
 Kyle Perkins)
) Anne Marie Roodal for the Applicant
 Applicant)
)
 – and –)
)
 Agata Macierzynska)
) Josh Shanbaum for the Respondent
 Respondent)
)
)
) **Heard: In Writing**

ENDORSEMENT

SHELSTON J.

[1] Pursuant to the Notice of Profession from Chief Justice Morawetz dated March 15, 2020, only urgent and emergency family law matters are to be heard at this time. The list of matters that qualify as urgent is very narrow and the initial determination of urgency is to be made by the judge receiving a request for a hearing or determination.

[2] Only the following urgent family law events as determined by the presiding Justice will be heard during the emergency period, including:

- a) requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);
- b) Urgent issues that must be determined relating to the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child;

- c) Dire issues regarding the parties' financial circumstances including for example the need for a non-depletion order.

[3] Electronic materials were filed through the courthouse email address. Upon the resumption of court operations, all materials will be duly filed in the physical record at the courthouse.

[4] As the Local Administrative Judge (LAJ), my role is to triage all requests for urgent family law matters. I have reviewed the following documents:

- a) Form 14 B Motion Form;
- b) Affidavit of the applicant dated March 24, 2020;
- c) Affidavit of Veronica Perkins dated March 18, 2020;
- d) Affidavit of the respondent dated March 26, 2020;
- e) Copy of the order of Justice Kershman dated June 27, 2019.

[5] The applicant has requested an urgent motion to be heard because of the unilateral action of the respondent to move the child, Kylo, age 5, from her habitual residence in Ottawa to live with her maternal grandmother in Trenton, Ontario. The applicant submits that the respondent is in breach of the temporary order of Justice Kershman dated June 27, 2019 by unilaterally suspending the applicant's access of having the child every Tuesday from 8:30 AM through Friday at 8:30 AM and by removing the child from the city of Ottawa.

[6] The respondent's affidavit indicates that on March 17, 2020, the respondent was taking care of the child because the applicant had pneumonia. Counsel for the respondent contacted counsel for the applicant confirming that the applicant would have the child on Thursday morning but that the correspondence was not provided to the respondent until later the following day. On March 18, 2020, the child started to have a dry cough. The respondent was worried, the child's symptoms got worse and she started exhibiting flulike symptoms. The respondent was afraid for the child's life and asked her mother in Trenton to care for the child as her respiratory symptoms became worse. The maternal grandmother took the child to a hospital in Trenton where she was treated and was informed that the child would make a full recovery with medication and rest and that according to the doctors note, the child should fully recover within a week.

[7] The respondent cannot provide a specific timeline for a return to the access schedule but indicates that she is hoping to resume it before mid-April.

[8] Prior to sending the child to Trenton, the parties were following a parenting regime pursuant to a valid existing court order. The COVID-19 pandemic requires that parents and the court ensure the health and safety of all children. However, parties must adhere to court orders subject to the court varying any such orders based on changes in circumstances that affect the best interests of a child.

[9] I accept that when the applicant had pneumonia, the parents acted prudently by the child remaining with the respondent. However, the respondent did not have the right to decide what is in the best interests of the child in the face of a valid existing court order. She should have consulted with the applicant and if no agreement was reached, the respondent should have brought leave for an urgent motion.

[10] I have reviewed the affidavits filed with the exhibits and I am not satisfied that the child should remain with the maternal grandmother until sometime in mid-April. I cannot find, on the evidence provided, that the applicant has failed, is unable or has refused to adhere to the COVID-19 protocols.

[11] The respondent's affidavit indicates that the child was taken to a hospital by the maternal grandmother but does not provide any information as to the date or which hospital. The respondent refers to a doctor's note but provides no note for the court to consider. Further, the respondent's evidence is that according to the doctor who saw the child, with medication and rest she should fully recover within one week.

[12] I find that this matter is urgent because of the unilateral action of the respondent to move the child outside of Ottawa and with no firm date indicating when the child is to return. In my view, the child should return to the father's care on Tuesday, March 31, 2020 failing which I will schedule an urgent motion to be heard by April 3, 2020.

[13] I order counsel for the parties to provide the court with an update by 10 AM on March 31, 2020.



Mr. Justice Mark Shelston

COURT FILE NO.: FC-19-87619-367-2

DATE: 20200327

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Kyle Perkins, Applicant

AND

Agata Macierzynska, Respondent

BEFORE: Mister Justice Mark Shelston

COUNSEL: Anne Marie Roodal for the Applicant

Josh Shanbaum for the Respondent

ENDORSEMENT

Shelston J.

Released: March 27, 2020