

Ontario Superior Court of Justice, Family Court (London)

Endorsement / Page
d'inscription

Applicant(s) / Requéran(t)e(s):

D [REDACTED] Chrisjohn

Respondent(s) / Intimé(e)(s):

K [REDACTED] Hillier

THIS MOTION HAVING BEEN HEARD BY TELECONFERENCE PURSUANT TO THE PROTOCOL IN PLACE DURING SUSPENSION OF NORMAL COURT OPERATIONS DUE TO THE COVID-19 OUTBREAK.

DATE: 26 March 2020

APPEARANCES: W. Scott Gallagher for the applicant;
The respondent in person

ENDORSEMENT

[1] This is the applicant's emergency motion for a police assistance order heard today.

[2] The parties are the mother and father of the child B [REDACTED] ("the child") who is age two. The child was placed with the applicant father pursuant to a temporary order dated October 9th 2019. This order described the placement with the father as being on an interim interim without prejudice basis. That order also provided the respondent mother with reasonable and liberal supervised access but with the requirement that the maternal grandmother be present for all overnight stays with the child.

[3] A temporary order dated February 20th 2020 provided that the mother shall have unsupervised parenting time with the child commencing February 24th 2020 for a period of two months. Pursuant to this order the mother's parenting time consisted of every Monday from 4:00 PM until 7:00 PM, every Friday from 2:00 PM until 5:00 PM, alternate Saturdays from 9:00

AM to 5:00 PM with a 2:00 PM check-in with the father and every Thursday from 4:00 PM to 6:00 PM.

[4] The child was not returned to the father's care after the mother's visit on Friday March 20th 2020. The child was scheduled to be with the father on the weekend commencing Saturday March 21st and the father made efforts through his counsel without success to pick up the child. The mother's reason for refusing to return the child is related to her concerns that the father is failing to practice appropriate social distancing as recommended by health and government authorities in relation to the COVID-19 pandemic. The mother deposes that the child is at risk being in the father's care during this time and that the child should remain with her.

[5] The mother's conduct in withholding the child is in contravention of the existing order and I find that this constitutes an urgent circumstance as described in the Notice to the Profession, the Public and Media regarding Civil and Family Proceedings dated March 15th 2020 and posted on this court's website.

[6] The basis of the mother's complaint is that the father has not been following government recommendations as to social distancing and has been exposing the child to risk. The mother deposes that there are numerous people living in the father's home, that there are various visitors who come and go from the father's home and that the father it takes the child to various locations in defiance of directives from government authorities.

[7] There is no dispute between the parties that the child does have some ongoing health issues. As an exhibit to her affidavit the mother included a letter dated March 19th 2020 from the registered nurse on behalf of Dr. Campbell at the neuromuscular clinic at Thames Valley Children's Center indicating that the child has a neuromuscular disorder with previous respiratory complications and is therefore at increased risk of contracting COVID-19 as well as having serious complications if she does contract the virus. The letter confirms the recommendation that the child should be kept at home during this time with the exception of medical appointments.

[8] It is the mother's position that she is in a better position to ensure that the child avoids risk of contracting the virus. The mother submits that the child should remain with her and that for now the father should have access via social media and not in-person access.

[9] The father explains in his evidence that he lives with his parents along with his current partner and their young daughter. Father also has an older daughter who lives in the same residence. Father deposes that his own father has asthma and because of that people are not leaving the house except to obtain necessities and that they are not having visitors to the home. The father deposes further that they are quarantining themselves in the house and that he has a

mask and wears gloves when he leaves the house. The father includes in his affidavit that he is content with the child being returned to his care on the basis that all the people living in the home not leave the home other than obtaining necessary supplies or for medical appointments or other essential reasons and that this continue until April 22nd at which time this matter should return to court for further directions. This suggested court date would coincide with the expiry of the two-month parenting schedule for the mother. For his part the father does not oppose the mother continuing to have in-person parenting time with the child if the child is returned to his care.

[10] It is trite that in Ontario and elsewhere in Canada that there are many families where parents are living separate and apart and the children spend parenting time with each parent either pursuant to a court order, a separation agreement or an informal arrangement between the parents. In each case parents must act responsibly in the face of the COVID-19 pandemic to ensure that their children are adequately protected.

[11] This should not result in a widespread suspension of in-person parenting time between a child and one of his or her parents. Each circumstance is unique and the parents will need to act reasonably in promoting the best interests of their children in relation to parenting time.

[12] I find helpful, and I adopt, the discussion of this issue by Pazaratz J. in *Ribeiro v Wright*, 2020 ONSC 1829 (S.C.J.), in particular at para. 20, stating that parents should not presume that the existence of COVID-19 will automatically result in the suspension of in-person parenting time.

[13] In the present case I am not persuaded on the evidence that the child should remain with the mother. The mother has adopted a self-help approach in contravention of an existing court order. The father's evidence describes measures taken to safeguard the health of the child. Although there are a number of people living in the father's home, it is noted that the paternal grandfather is exposed to additional risk because of his asthma condition which adds further awareness as to the importance of taking appropriate measures in that household to deal with COVID-19.

[14] The parties in this case clearly have differing views as to whether the non- primary care giving parent should have in-person parenting time. In relation to the letter from the nurse from Dr. Campbell's office, and ignoring whether this letter is admissible evidence, I find that the letter does not address adequately whether only one parent should have face-time parenting with the child. Also I have considered the detailed clinical report of Dr. Roach-Fox dated November 19th 2019 regarding the child. That report was filed as an exhibit to the father's affidavit. Both parents

were present during the consultation. There is little if anything in this report that would support the mother's position.

[15] The child shall be returned to the father's primary care. There is no necessity to impose conditions regarding the child's return to the father. The father has placed in evidence before the court the measures that he is taking to protect the child. Both parents will need to act reasonably in meeting their child's best interests in relation to COVID-19. It will be up to the mother as to whether she wishes to exercise her in-person parenting time as permitted by the existing order. If the mother elects otherwise, then the father will need to act reasonably to accommodate the mother's requests for other types of parenting time. There is no need to adjourn the motion to a further date in April. The parties acting reasonably should be able to agree to any extension of the parenting time when the two months have expired. Although I include a police assistance order in the order below, I would expect that based on the mother's submissions to the court today that it will not be necessary to resort to that provision.

[16] As discussed during the hearing of the motion, the father's counsel shall prepare a copy of the draft order to be forwarded to me through the trial co-ordinator to be signed digitally. Approval of the draft order is dispensed with.

[17] I make the following order: (1) the child shall be returned to the father by 5pm Friday March, 27, 2020; (2) subject to para (3), a police assistance order shall issue as requested in paras. 2 and 3 of the draft order appended to the father's affidavit; (3) the orders referred to in paragraph 2 of the draft order shall be photocopies of those orders, and not original or certified; (4) the police assistance order expires in six months; (5) the mother's alternate Saturday parenting time shall resume on April 4, 2020; (6) costs of the motion are reserved to the trial judge or the judge who otherwise deals with this case on a final basis.



Justice V. Mitrow

