

CITATION: B-M. V M. 2020 ONSC 1958
COURT FILE NO.: FS-20-15517
DATE: 20200330

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: L. B-M., Applicant

AND:

M.M., Respondent

BEFORE: Kiteley J.

COUNSEL: Ella L.J. Bernhard, for the Applicant

Roslyn Tsao, for the Respondent

HEARD: Monday, March 30, 2020

ENDORSEMENT AT TELEPHONE CASE CONFERENCE

- [1] The application was issued February 14, 2020. The Applicant served an urgent motion and affidavit sworn March 26, 2020 that was served by email on Ms. Tsao. On March 27, 2020, the Family Law Team Leaders made an order delegating consideration of the matter to me.
- [2] I held a conference call today with counsel and their clients. Ms. Tsao initially took the position that the matter was not urgent and that the court should hold a case conference before the hearing of the motion. In the course of hearing submissions from both counsel on the issue of urgency, I raised the prospect of convening a case conference during the week of April 6 and, failing resolution, setting a motion date before another judge after that date and likely in the week of April 13. Concerned about the delay, Ms. Tsao reconsidered and agreed that the motion by the Applicant and her client's anticipated cross-motion should be heard during the week of April 6.
- [3] Although counsel ultimately agreed that there was urgency, it is nonetheless my responsibility to assess whether it does meet the criterion of urgency on two levels: whether urgent within the meaning of the Chief Justice in the Notice to the Profession dated March 15, 2020 announcing the suspension of regular court operations and whether urgent within the meaning of the Family Law Rules that a motion be heard before a case conference.

- [4] I am satisfied that the parenting motion by the Applicant and the anticipated cross-motion by the Respondent are urgent. The children are 9 and almost 11. When the Applicant left the matrimonial home on January 12, 2020, she took both children with her. Since February 6, 2020, the younger child has been with his father and the older child has been with her mother. The children are not routinely seeing each other and not routinely seeing the other parent. I have the evidence of the Applicant in her affidavit sworn March 26. I have no responding material but I allowed Ms. Tsao some latitude in referring to the evidence that the Respondent would provide. Based on the evidence and information that is available to me, the parents have significantly different versions of what is in the best interests of the children. The parents have agreed to a s. 30 assessment but, assuming it is started in April or May, there will be no immediate resolution to the parenting issues.
- [5] I am satisfied that the motion by the Applicant for temporary child and spousal support is urgent. The Respondent has provided some funds, subject to agreement by the parties that he will get “credit” of some nature. For purposes of adjourning the hearing of this urgent motion, Ms. Tsao indicated that her client would agree to pay on April 1, 2020 \$20,000 or \$25,000 without allocation as to whether child or spousal support and therefore without immediate income tax consequences. Ms. Tsao also indicated that her client acknowledged that he has an obligation to pay child and spousal support but that the court needed evidence as to his 2019 actual income and 2020 projected income before making an order. The Applicant is in temporary accommodation until the end of April. In order to obtain more permanent accommodation, she needs to show income. A single payment on April 1, 2020 will not respond to her circumstances. Furthermore, if the Respondent now committed to paying \$20,000 or \$25,000 per month, that would not respond to the allegations of her need and his ability to pay. The court must have his evidence available as to projected income.
- [6] I am scheduling the delivery of materials and the hearing of the motion. I asked counsel to be mindful that the hearing will be conducted by telephone and all materials will be filed electronically. In their communications with the Trial Co-ordinator, counsel should be clear as to the materials that I need for the motion. I did not have the Applicant’s Application or Form 13.1 or Form 35.1 and will need all for the motion. Counsel should also be selective as to the volume of exhibits that are required for the motion and will ensure that all material is paginated.
- [7] Counsel raised the issue of initialization of the names of the parties. When the Applicant filed the Application, Ms. Bernhard said it did not contain all of the allegations with respect to the children because of the nature of those allegations. Her client has referred to that evidence in her affidavit in support of the motion. Ms. Tsao also referred, albeit briefly to the nature of the response that the Respondent would provide. Based on the submissions of counsel, I am satisfied that it is in the best interests of the children that the style of cause be initialized.
- [8] As indicated above, the parents have agreed to a s. 30 assessment. The assessor has agreed in writing to undertake the assessment. Ms. Bernhard was of the view that the assessor would conduct psychological testing or would arrange it. Although the parties

have consented, I will not make an order for a s. 30 assessment subject to receiving more details including: the date the assessment will begin and the expected completion date; whether the assessor will use remote technology to conduct the assessment; whether the assessor will conduct or arrange psychological testing of either parent or either child; whether the assessor will hold a disclosure meeting with the parties to be followed by preparation of the assessment report, in which case, the expected date for completion of the assessment report; whether the parties have agreed on the cost and the payment of the cost. Since counsel have agreed on the fundamental issue, I anticipate that before the hearing of the motion, they will agree to the terms of the s. 30 order and will forward an approved draft order to my attention.

- [9] It is unfortunate that a case conference cannot be heard before the motion. Counsel advised that the parties had agreed to “triage mediation” that was ended because it appeared a s. 30 assessment would be required. I strongly urge the parties to consider returning to that mediator with a view to making an agreement that will address the immediate parenting issues and the immediate spousal and child support issues until the assessment is completed at which time a comprehensive case conference will be held.
- [10] I encourage the parties to agree that the parenting aspects of these motions are heard in the context of the amendments to the Divorce Act effective July 1, 2020.
- [11] At the outset, I indicated to counsel and the parties that I had recorded the hearing. At the conclusion, when I turned off the recording device, there was an indication that a record had not been made. There will be a recording of the hearing of the motion.

ORDER TO GO AS FOLLOWS:

- [12] Effective immediately, the style of cause will be initialized as indicated above.
- [13] The Respondent shall file an Answer to the existing Application as indicated below.
- [14] On the advice of counsel, the Applicant may seek to amend to include the allegations to which I was referred. If so, the Respondent will respond to the Amended Application. These steps are not required for purposes of the hearing of the pending motions.
- [15] The motion by the Applicant and the anticipated cross-motion by the Respondent on parenting issues may proceed without a case conference and will be heard before me on Wednesday April 8, 2020 from 2:00 to 4:00 p.m. by telephone conference call. The Trial Co-ordinator will provide notification to the lawyers as to the conference call details.
- [16] By Thursday, April 2, 2020 at noon, the Respondent shall serve and file: (a) his affidavit responding to the Applicant’s motion and in support of his motion; (b) his notice of motion on parenting issues; (c) Answer; (d) form 13.1; and form 35.1.

- [17] By Monday April 6, 2020 at noon, the Applicant shall serve and file her affidavit responding to the Respondent's notice of motion on parenting issues.
- [18] By Tuesday April 7, 2020 at 2:00 p.m., the Applicant and Respondent shall serve and file a summary of the position each takes on the motion that attaches a draft order. A factum as contemplated by the Family Law Rules is not required.
- [19] Once the decision is released on the motion, I will schedule submissions as to costs and a case conference.

Kiteley J.

Date: March 30, 3020