

**CITATION:** Chin v. Omeally, 2020 ONSC 2029  
**COURT FILE NO.:** FC-19-FO-000216-0001  
**DATE:** 2020-04-02

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Suan Suyen Chin, Applicant  
Oswald Omeally, Respondent

**BEFORE:** Madam Justice L. Madsen

**COUNSEL:** Carmelo Runco, Counsel for the Respondent

**HEARD:** In Chambers

**ENDORSEMENT – COVID-19 PROTOCOL**

[1] **AS A RESULT OF COVID-19**, the regular operations of the Superior Court of Justice are suspended at this time, as set out in the Notice to the Profession dated March 15, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>.

[2] In accordance with the Regional Notice to the Profession dated March 24, 2020, electronic materials were filed by the Respondent father, Mr. Omeally. He asks that the Court make an order on an urgent basis for the resumption of his regular parenting time.

[3] This matter was referred to me as Triage Judge for a determination of urgency and of how this matter should proceed.

[4] Determinations of urgency are summary in nature, and wholly without prejudice to both parties on the hearing of the motion itself. A determination of urgency is not intended to be a motion unto itself and is intended to be simple and expeditious.

[5] For the reasons set out below, I find that this matter is urgent at this time, and I set out the next steps for the hearing of the motion.

[6] Mr. Omeally filed the following materials by email to the Superior Court of Justice in Kitchener, Ontario:

- a. Notice of Motion dated April 2, 2020;

- b. Affidavit of Oswald Omeally sworn March 31, 2020; and
- c. Exhibits including the Final Order of Justice Walters dated June 9, 2019.

[7] Although the Notice of Motion indicates that the motion is on notice, a copy of the Affidavit of Service regarding service on Ms. Chin was not included in the materials.

[8] Mr. Omeally asserts the following in his affidavit:

- a. The parties are the parents of Z.M.O., born January 24, 2018.
- b. A final court order of Justice Walters dated June 6, 2019 provides that the parties have joint custody, and that Mr. Omeally shall have regular parenting time on alternate weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m.. The order also provides for regular mid-week visits between the child and Mr. Omeally.
- c. Ms. Chin commenced a motion to change in December 2019, seeking to change custody, access, and child support terms. Mr. Omeally served a response on March 5, 2020, and a case conference was set for May 21, 2020. That has now been adjourned to be spoken to in June, pursuant to the Notice to the Profession.
- d. Ms. Chin has suspended Mr. Omeally's parenting time. Mr. Omeally attached as an exhibit a copy of an email which appears to be from Ms. Chin to Mr. Omeally's counsel. That email states that he can have "make-up time" for access "for this week" but on the other states that "I will be home with our son this week and you can advise him that I will be home caring for our child and no one else will have care and control of him that will jeopardize his safety during this time period."
- e. Mr. Omeally states that Ms. Chin has not shown that he will put their child at risk of contracting COVID-19, and seeks to have his regular parenting time reinstated.

[9] It does not appear that any temporary orders have been made within the motion to change.

[10] The Notice to the Profession issued by the Chief Justice provides that urgent matters may include matters related to the safety of a parent or a child, or urgent issues related to the wellbeing of a child.

[11] In *Ribeiro v. Wright*, ONSC 1829, released March 24, 2020, Pazaratz J. set out principles to aid in the determination of urgency with respect to parenting issues in this difficult time. Those principles are as follows:

- a. In most situations, there is a presumption that existing parenting arrangements and schedules should continue, subject to modifications to ensure that COVID-19 precautions are adhered to, including social distancing.
- b. In some cases, a parent may have to forego scheduled time with a child, for example if a parent is under personal restrictions such as self-isolation for 14 days, due to travel or exposure to the illness.
- c. In some cases, personal risk factor through employment or associations may require controls on direct contact on a child.
- d. Further, lifestyle or parental behavior in the face of COVID-19 may necessitate restrictions on parenting time. There would be zero tolerance for a parent who recklessly exposes a child to any COVID-19 risk.

[12] I would add that there may be risk factors related to the health or other circumstances of a child or other members of a household that may necessitate adjustments.

[13] Pazaratz J. stressed that no matter how difficult the challenge, or what modifications or restrictions may be appropriate, we must find ways to maintain important parental relationships, above all in a safe way.

[14] Parents are expected to make their best efforts to make any such reasonable modifications to parenting time to recognize risks in a specific situation, through discussion and on consent.

[15] See also *Chrisjohn v. Hillier*, London Court File No. F1098/18 in which Mitrow J. held that parents must act responsibly in the face of the COVID-19 pandemic to ensure that children's safety is protected, but that this should not result in a "widespread suspension of in-person parenting time" between a child and a parent. Further, see *Skuce v. Skuce*, 2020 ONSC 1881 in which Doyle J., in the context of a COVID-19 access case, found the question of withholding parenting time in contravention of a court order to be an urgent issue within the meaning of the Notice to the Profession. See paragraph 37.

[16] In my view, applying the Notice to the Profession and the developing caselaw on this issue, and having regard to final court order which provides for regular parenting time for Mr. Omeally, I find that the motion brought by him is urgent. I direct the following next steps in this matter:

- a. The motion materials shall be served on Ms. Chin forthwith by email if that has not already been done; An Affidavit of service shall be filed with the Court;

- b. Ms. Chin shall have until Tuesday **April 7, 2020 at 5:00 p.m.** to serve and file responding materials;
- c. Mr. Omeally shall have until Thursday **April 9, 2020 at 2:00 p.m.** to file brief reply materials if any.
- d. All materials shall be filed at Kitchener.Superior.Court@ontario.ca with the style of cause and file number in the subject line of the email.
- e. This motion will be heard by teleconference on **Wednesday April 15, 2020 at 10:00 a.m.** The Trial Coordinator will advise the parties by email of the call-in information for the motion.

[17] Court staff are requested to serve counsel for Mr. Omeally as well as Ms. Chin with a copy of this endorsement by email.

[18] Notwithstanding Rule 25 of the *Family Law Rules*, this endorsement is effective from the date it was made and enforceable as an order of the court without the need for an order to be prepared or approved by the parties and then issued by the court. No formal order is necessary unless an appeal or a motion for leave is brought, or alternatively unless one is necessary for enforcement by a third party. A party who wishes to prepare a formal order for approval and issuance may do so, but only orders relating to matters or urgency will be formally issued until the court returns to regular operations.

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L. Madsen, J

**DATE:** April 2, 2020