

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ██████ Douglas (Applicant) v. ██████ Douglas (Respondent)

BEFORE: Justice W.L. MacPherson

APPEARANCES: None

COUNSEL: Virginia Workman
Applicant

Bruce Macdonald
Respondent

ENDORSEMENT -- COVID 19 PROTOCOL

[1] **AS A RESULT OF COVID-19** regular Superior Court of Justice operations are suspended at this time as set out in the Notice to Profession of the Chief Justice of Ontario. See the Notice to the Profession dated March 18, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/> [“the Chief’s Notice”].

[2] In accordance with the Regional Notice to Profession dated March 18, 2020 and replaced by a subsequent Notice dated March 24, 2020, electronic materials were filed by the applicant’s counsel through the Courthouse email address.

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

[4] At this point I have received and reviewed the following:

- a) Form 14B Motion Form dated March 24, 2020;
- b) Affidavit of the Applicant sworn March 24, 2020 and various exhibits, including emails between the parties.

[5] The following evidence has been provided by the father:

- a) The parties were married on August 26, 2011 and have been separated since December 10, 2018. There is one child, H[REDACTED], who is 6 1/2 years of age.
- b) A court action was commenced by the father. A case conference was held on January 10, 2020. The Office of the Children's Lawyer was requested to be become involved, but they declined. There are currently no court orders in place dealing with parenting time.
- c) The father alleges that the mother has demonstrated a pattern of denying access. Nevertheless, since in or about February 2019 the father has apparently had regular time with the child on alternating weekends from Friday at 4 p.m. until the commencement of school on Monday and if it is a non-school day return of the child takes place at 8:00 a.m. In addition, the father has had the child each Thursday following his access weekend from 4:00 p.m. to 7:00 p.m.
- d) The father last had access to the child during the weekend of March 13, 2020 to March 16, 2020.
- e) On March 18, 2020 the mother advised the father by email that the child would remain in her care. She noted concerns about the father's exposure to the COVID-19 virus at work (as an Assistant Manager at Lowe's); the need for social distancing and that she was practicing same in her household, her workplace (location not disclosed) and the State of Emergency declared in the Province of Ontario; that travel from one parents' home to the other (according to the father being a 14 minute car ride) was "unnecessary travel"; and the child having recently been ill (weekend of March 13, 2020 for which the mother had provided detailed treatment instructions as that was father's access weekend.
- f) When the father expressed his disagreement that the child should remain with the mother, she then raised additional concerns about potential exposure while in the father's care due to: a recent national hiring day at Lowes; he had allowed the child to play with another child; the father's family travels and the need for them to be self-isolating and not involved in caring for H[REDACTED]. No assurances by the father to address each of these concerns were acceptable to the mother who insisted that the child must remain in her care.
- g) On March 19, 2020 the father attended at the mother's home to exercise the regular Thursday access, but this was refused by the mother.
- h) Facetime visits have been requested by the father and although it appears from the emails that the mother did offer such a visit on March 18, 2020, according to the father, as of March 24, 2020, no such visits have taken place.

[6] The father has brought a motion seeking the reinstatement of status quo arrangements permitting the father to have access to H[REDACTED] on alternating weekends and alternating Thursdays.

[7] The issue to be determined: Is this motion urgent?

[8] The COVID-19 pandemic is unprecedented. The situation changes daily, if not hourly. To address the risks posed by the virus, as those risks are known at any particular time, government authorities and public health officials issue directives to address the perceived risks.

[9] There is no game plan for how parents should react, and many are understandably worried for themselves and their families and confused about what to do in such an atmosphere. It is certainly expected that parents would act in the best interests of their own child which consideration must include not only the child's physical well-being, but also their emotional well-being. Total removal of one parent from any child's life must be exercised cautiously.

[10] This is uncharted territory for the court, as well. The safety and well-being of children and families remain the principal concerns for the court. However, the court must take guidance from the Chief's notice that confirms that all court operations are suspended with the exception of those that are **urgent and emergency** matters. The Chief's notice defines such matters in the context of family files to be relative to "the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child."

[11] The matter is understandably very important to the father. However, in my view it is not urgent nor is it an emergency. There is no indication that H[REDACTED]'s safety is at risk. While father's counsel might wish to have this court interpret the mother's actions as wrongfully retaining the child, from my perspective, the language used in the Chief's notice was done purposefully to mirror the language under the *Convention on Civil Aspects of International Child Abductions* (the "*Hague Convention*") and would not be applicable when the issue is parenting time. It may be that there will be some limited scenarios involving an abduction of a child where relief is sought under the *Children's Law Reform Act*, and a court finds such matter to be urgent. But this is not one of those cases.

[12] Within that context, I find that the motion is not urgent at this time.

[13] I would point out that in the Chief's notice, the Chief Justice of Ontario called "upon the cooperation of counsel and parties to engage in every effort to resolve matters" during the period of suspension of regular court operations.

[14] The parties have experienced family law counsel representing them. It does not appear that mother's counsel has responded to father's counsel in any meaningful way to reach a reasonable resolution. He is encouraged to do so. Surely a complete termination of all contact between the child and his father cannot be in the child's best interests even in these unprecedented times.

[15] Finally, all counsel and parties must be aware that actions taken in these unusual circumstances, may very well be judged once court operations resume, as not being appropriate nor in the best interests of their children.

Justice W.L. MacPherson

DATE: March 25, 2020