

**CITATION:** Matour v. Hashemian, 2020 ONSC 2112  
**COURT FILE NO.:** FS-54665-19  
**DATE:** 2020-04-06

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Fazileh Matour, Applicant  
Ramin Hashemian, Respondent

**BEFORE:** Madam Justice L. Madsen

**COUNSEL:** Ramanjit K. Gill, Counsel for the Applicant  
Richard M. Van Buskirk, 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 Applicant mother, Ms. Matour. She asks that the court make an order on an urgent basis for sole custody and that the parties return to the parenting arrangements which she says were in effect before the onset of the pandemic.

[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] Ms. Matour filed the following materials by email to the Superior Court of Justice in Kitchener, Ontario:

- a. Notice of Motion dated April 3, 2020; and
- b. Affidavit of Ms. Matour dated April 3, 2020, with exhibits.

[7] Ms. Matour's affidavit states that she reviewed her affidavit via Facetime with her lawyer and swears the contents to be true but was unable to sign the affidavit physically in front of her lawyer.

[8] The Notice of Motion states that this is a motion *with notice*. However, no affidavit of service was provided with the materials.

[9] Ms. Matour asserts the following in her affidavit:

- a. The parties were married for 9 years and separated two years ago on April 6, 2018. They have two children, an 8 year-old and a 10 year-old.
- b. Since the summer of 2019 the parties have cared equally for the children, with the children being in Mr. Hashemian's care from Thursday after school until Monday morning and with the mother the rest of the week. There is no order or written agreement. Ms. Matour says this is simply what the *status quo* has been.
- c. Ms. Matour is a nurse at Grand River Hospital in Kitchener-Waterloo. The parties' schedule mirrors the mother's work schedule, such that when she is working, the children are not in her care, and vice versa.
- d. Ms. Matour says that on March 23, 2020 when the children were scheduled to come back to her care, Mr. Hashemian withheld them, citing concerns with respect to COVID-19. Ms. Matour says that he stated that he wanted to keep the children for a couple of weeks until the virus had peaked because he was worried that Ms. Matour would come into contact with the virus through her employment.
- e. After some negotiation between counsel, including the provision by the mother's counsel of a copy of Pazaratz J.'s decision in *Ribeiro v. Wright*, 2020 ONSC 1829, to Mr. Hashemian's counsel, and Ms. Matour's assurances regarding safety measures she was taking, the children were returned to Ms. Matour on March 30, 2020.
- f. The children were then scheduled to return to Mr. Hashemian's care on Thursday April 2, 2020, as per the regular parenting schedule. Ms. Matour says that Mr. Hashemian is now refusing to take the children back into his care. As he did not take them back on April 2, 2020, she was compelled to take an unpaid emergency day off.

- g. Ms. Matour believes that Mr. Hashemian is trying to force her to choose between working as a nurse, or having the children in her care. She states that her work schedule is Thursday through Monday morning, and that her attendance at work is essential. She fears losing her job if she is not able to be available for work.
- h. Ms. Matour seeks a return to the *status quo* parenting schedule as soon as possible.

[10] The court does not yet have the father's perspective on the issues set out above.

[11] 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.

[12] In *Ribeiro v. Wright*, 2020 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 factors through employment or associations, may require controls on direct contact of 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.

[13] 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.

[14] 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.

[15] In *Thomas v Wohleber*, 2020 ONSC 1965, at paragraph 38, Kruz J. provided guidance on what constitutes urgency at the present time:

1. The concern must be immediate; that is one that cannot await resolution at a later date.
2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children.
3. The concern must be a definite and material rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical;
4. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.

[16] In my view, applying the Notice to the Profession and the developing caselaw on this issue, the motion brought by the mother is urgent. The mother states that without a return to the *status quo* parenting arrangements, she is unable to attend work as she does not have other childcare options, and that if she cannot work, she risks losing her employment. This is a potentially serious and immediate harm.

[17] Mr. Hashemian's perspective on these issues is required.

[18] I direct the following next steps in this matter:

- a. The motion materials shall be immediately served on Mr. Hashemian's counsel by email if that has not already been done; an affidavit of service shall be filed with the court.
- b. Mr. Hashemian shall have until **Tuesday April 7, 2020 at 5:00 p.m.** to serve and file responding materials.
- c. Ms. Matour shall have until **Wednesday April 8, 2020 at 5:00 p.m.** to file brief reply materials if any.
- d. All materials shall be filed at [Kitchener.Superior.Court@ontario.ca](mailto:Kitchener.Superior.Court@ontario.ca) with the style of cause and file number in the subject line of the email. Service of all materials related to this motion may be by email between counsel.
- e. This motion will be heard by teleconference no later than **Friday April 10, 2020 at 5:00 p.m. at a time to be determined by the Trial Coordinator**. The Trial Coordinator will advise counsel of the call-in information for the motion.

[19] The timelines for the exchange of materials in this matter are short, recognizing the urgency of the issue. While I considered making an order on an *ex parte* basis, I find that it is preferable for Mr. Hashemian's perspective to be before the court before a temporary decision is made, but the matter must be heard quickly.

[20] Court staff are requested to serve both counsel with a copy of this endorsement by email.

[21] 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, and submit materials by Form 14B to the court.



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L. Madsen, J

**DATE:** April 6, 2020