

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sarah-Ann Warry-Poljanski, Applicant

AND:

Shaun Darral Poljanski, Respondent

BEFORE: The Honourable Madam Justice M. McLaren

COUNSEL: Ms. K. Junger, Counsel, for the Applicant

Ms. C. Haber, Counsel, for the Respondent

HEARD: April 14, 2020

ENDORSEMENT

- [1] As a result of COVID-19, which has led to the suspension of regular Superior Court of Justice operations at this time, this motion is before me to determine if it is urgent. The Notices to the Profession can be found at: <https://www.ontariocourts.ca/scj/covid-19-suspension-fam>.
- [2] The Respondent Father brought a motion seeking an order that the parties' child be placed in his care on an urgent basis.
- [3] The matter went before the Triage Judge in late March and Justice Pazaratz released an endorsement on March 27th, 2020. Justice Pazaratz was of the view that the matter was "potentially urgent." It was set for a further determination so that the Applicant Mother could file responding material. She then brought a cross-motion.
- [4] The matter was before the court again on April 2nd, 2020 and it was set for a motion and cross-motion by teleconference on April 14th, 2020 at 10:20 a.m. It was clear however, in Justice Bale's endorsement on April 2nd, 2020 that both motions were subject to a determination that urgency had been established.
- [5] Some brief background would be helpful. The parties separated in 2018 but were residing in the same home. The home was scheduled to be sold on Friday, August 30th, 2019 and school was starting again on Tuesday, September 3rd, 2019. A motion was heard on Friday, August 30th, 2019 on the issue of the child Aiden's residency. Aiden was born on June 2nd, 2007. I made a temporary-temporary without prejudice order on September 1st, 2019, that Aiden would share time equally between the parties on a "2-2-3" timesharing

basis. I anticipated that the matter would be returned to court once some representation for Aiden was in place. As of August 30th, 2019, a referral to the Office of the Children's Lawyer (OCL) had been made but counsel had not heard back from them. At that point, there was an understanding that if the OCL declined to assist, that a private clinician would be hired.

- [6] A letter was sent from the OCL on October 8th, 2019 declining involvement. No other professional person was hired by the parties to assist as a result of this letter.
- [7] In addition to some procedural relief, the Respondent has asked for the following:
- a) A dismissal of the Respondent's motion.
 - b) An order for "facilitating counselling and therapeutic reconciliation" for the parties and Aiden with Lourdes Geraldo.
 - c) An order that the Respondent is not to be in contact with Aiden during the Applicant's time.
 - d) An order that the Respondent not discuss the Applicant or her family in a negative fashion in the presence of the child, and that he not permit others to do so.
- [8] I was given five affidavits to read, being:
- i. The Respondent's Affidavit sworn on March 25th, 2020.
 - ii. The Affidavit of the Applicant's mother, Judy Ann Warry, sworn March 31st, 2020.
 - iii. The Applicant's Affidavit sworn April 1st, 2020.
 - iv. The Respondent's Affidavit sworn April 7th, 2020.
 - v. The Applicant's Affidavit sworn April 9th, 2020.
- [9] The material was all electronically filed and some of the affidavits contained numerous exhibits.
- [10] Ms. Haber, for the Respondent, asked me to strike parts of the Applicant's affidavit of April 1st, 2020, being Exhibit C, Exhibit F, and Exhibit O.
- [11] Exhibit C was a handwritten note and email letter from a psychotherapist who provided counselling to the Mother. It mentions many of the things that the Mother told the doctor. It does not "confirm" all the negative things about the Respondent Father that the Applicant says it does in her affidavit. It is merely an account of what the Applicant told the doctor in her sessions. It is not helpful or reliable and I will strike it.

- [12] Exhibit F is a short letter from Dr. Doyle who said that to the best of her knowledge, Aiden had lived with the Applicant since 2009 when Dr. Doyle became the doctor. The letter was said to be for purposes of the child tax benefits. At the bottom of the letter Dr. Doyle wrote in handwriting “Ms. Warry-Poljanski is the custodial parent since joining this practice.” The Applicant says this note confirms that she has been the custodial parent since 2009. The parties did not separate until 2018 so Dr. Doyle’s description of the Applicant as being the custodial parent since 2009 makes no sense. Perhaps she meant that the Applicant is the one who brought Aiden in to see her but that is not what she says. This handwritten addition to a letter written for purposes of the Applicant obtaining the child tax benefit is unhelpful and unreliable. I will strike it.
- [13] Exhibit O is an article called “Parental Alienation Techniques and Diagnosis.” The name of the author does not appear but it is an article about the findings of several professional people who wrote about “parental alienation syndrome.” The article is a little over two pages and it was provided by the Applicant to show how the Respondent has been alienating her in relation to Aiden. There is no way in a motion by affidavit evidence that I can come to a conclusion that parental alienation has taken place, let alone that a diagnosis of parental alienation syndrome should be made. The article is improper. I do not even know who wrote it or where it may have been published. It has no value to this motion and it will be struck.
- [14] The Respondent brought this motion because Aiden left the Applicant’s home on March 21st, 2020. The Father referred to this as Aiden running away. When the Respondent returned home from work on March 21st, 2020 he found Aiden waiting for him in a police car. Something similar happened in December 2019. According to the Father, Aiden made it clear that he wanted to remain with his father on both occasions.
- [15] In his initial affidavit sworn on March 25th, 2020, the Respondent said that arrangements were made for Aiden to return to the Mother on March 23rd, 2020 but Aiden wanted to stay with him.
- [16] It was in the context of these two times when Aiden ran away from his Mother’s home that Justice Pazaratz said the matter was potentially urgent.
- [17] The mother pointed out in her material that Aiden has left her home twice without her permission since the September 1st, 2019 order was made and that she handled it appropriately. He was back in her care when the Respondent swore his affidavit in March. She says that her relationship with Aiden has been good since his return and they have found ways to problem solve. The Applicant had contact with the CAS about the incident and they suggested a program for her to look into called “Parenting Teens.” The CAS did not say anything critical about her in their letter.
- [18] The Applicant said that the incident on March 21st, 2020 involved Aiden going to his room and slamming the door because she said they would not be having hamburgers for dinner. She said Aiden became angry and started saying things to her that sounded like he learned them from the Respondent.

- [19] The Applicant said that the occasion in December 2019 when Aiden left the home was when she would not let him go to his grandmother's home to play video games. He was then described as slamming his door, screaming at her and bringing up adult issues that were between the parties.
- [20] The motions were argued by teleconference. During the arguments, there were submissions about the merits of the motions themselves in addition to the arguments about urgency. This was in order to give some background but it was also helpful in the event that I found there was some urgency in which case a further court attendance would not be necessary.
- [21] I was not in receipt of the case law referred to by Ms. Haber but the principles were well known. I do have two cases mentioned by both counsel in regard to the issue of urgency during the COVID-19 crisis. These are *Ribeiro v Wright* 2020 ONSC 1829 and *Thomas v. Wohleber* 2020 ONSC 1965 and I have reviewed them.
- [22] I have read the five affidavits filed, and considered the submissions and the law and I am of the view that urgency has not been established for either of the motions.
- [23] I have no doubt that the Father would be concerned when Aiden left the Mother's home abruptly and the police were called. The Mother has offered a reasonable explanation, however. I cannot test credibility on all the evidence presented by the parties, including the Mother's claims of alienation, by affidavit.
- [24] The Respondent seeks to now have an order that gives him interim primary residence with access as arranged between the Mother and the child. He appears to be taking advantage of an incident that will drastically change the status quo.
- [25] This child was back in the Mother's care when the Father brought his motion and swore his affidavit. The child returned to his mother on March 23rd, 2020. While it's a concern that the Mother has had some disagreements with the child that have led him to flee (especially the one time during a pandemic), I believe she handled it appropriately.
- [26] I am aware that the Father believes that if the child could express his views and preferences to a qualified professional, that he would say he wants to reside with his father. This however is not a reason to completely change the nature of the current timesharing after an incident that was resolved prior to the motion being filed and appears to have been handled in a reasonable manner by the Applicant. Aiden was acting out over the dinner menu and left the house. The Applicant was concerned and called the police. If there are aspects of this situation in dispute, then credibility can be tested at trial if there is a trial.
- [27] In the meantime, I do not find it to be a matter of urgency. The child was not at risk in my view, when this motion began for the reasons set out. He was back in his mother's care and the normal time sharing was resumed and is being followed.

- [28] When my order was made on September 1st, 2019, I indicated that some sort of professional assistance was anticipated by both parties. This was brought to be someone appointed through the OCL, or a privately retained clinician. No one has been hired since the OCL declined to get involved in early October, so the Respondent's motion was premature even without the test of urgency.
- [29] The Applicant's cross-motion appears to have been brought in case I found urgency in the Respondent's motion. Without the Respondent's motion there is little point in allowing the cross-motion. The request that I order therapeutic reconciliation counselling is not one of urgency in any event.
- [30] I indicated earlier that I would strike three exhibits from the Respondent's affidavit. This is a moot point now that the motion is not proceeding but this issue was dealt with so I will include the order. It may be of help if the same material is used again at some point.
- [31] There was a great deal of information in the affidavits about the parties' efforts to find professional assistance in the absence of the OCL. It is clear that the Respondent favours a "views and preferences" approach and the Applicant favours a "best interest" approach and a more in depth investigation. It is disappointing that they have not resolved this issue yet but there is no meeting of the minds as to which approach to take.
- [32] In my view, it would be in Aiden's best interest to have a determination made soon as to which professional person will assist. The parties can consent to having a "Motion in Writing" brought. I would deal with it because I know the background. The affidavit filed by each party would only need to deal with each client's proposal. I would expect it to be clear what each party is suggesting with some names given of people who could assist. A C.V. should be attached for the person suggested along with an indication of that person's willingness to assist and their availability.
- [33] No affidavit should be more than 10 pages long, plus any attachments that are necessary for me to deal with the issue at hand.
- [34] I hope counsel will consider this option. For further information, I refer them to the memos dated April 2nd, 2020 and April 7th, 2020. This motion would be a way of moving this matter along.
- [35] I will include a provision for costs, and I will give the parties sufficient time to address costs.

Final Order to Issue

1. Exhibits C, F, and O of the affidavit of the Applicant sworn on April 1st, 2020 are struck.
2. The motion set out in the Respondent's Notice of Motion signed on March 25th, 2020 and the motion set out in the Applicant's Notice of Cross Motion signed on April 1st, 2020 shall not proceed because urgency as not been established.

3. If counsel are unable to agree on how to handle the issue of costs, then written submissions of no more than five pages plus any attachments shall be served and filed as follows:

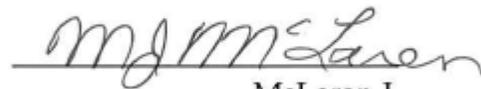
- Applicant by June 2nd, 2020
- Respondent by June 16th, 2020
- Any reply by June 26th, 2020

If the parties agree to a later timetable for the handling of costs, they may extend the time if it is on consent, and written consent is forwarded to my attention by June 26, 2020.

If no submissions and no consent are filed by June 26, 2020 then the issue of costs shall be considered settled.

4. The parties may bring a Motion in Writing for my attention, if they consent, on the issue of professional assistance to help with the issues of custody and access. If the parties choose to bring such a motion, and it is on consent, then the following directions shall be followed:

- i. Reference shall be made to the memos to the profession dated April 2nd, and April 7th, 2020.
- ii. No affidavit shall be more than 10 pages long plus any attachments needed for the issue before the court.
- iii. Best efforts shall be used to obtain a C.V. for any professional person proposed along with an indication of that person's availability and willingness to act.
- iv. Facts and case law are not required but a brief summary of the argument as set out in the Memo dated April 7th, 2020 is permitted. If the parties agree to file case law and a factum, then they shall be limited to two pertinent cases and a factum of three pages.


McLaren J.

Date: April 20, 2020