

[4] The parenting schedule imposed in my Reasons followed a six day trial. The parties were granted joint custody over their son, with the applicant having access to their son every other Tuesday from 9:00 am to Wednesday at 4:00 pm, and every other Friday from 9:00 am to Tuesday at 4:00 pm.

[5] In early March 2020 the parties' son developed a fever and sore throat which caused him to be kept home from school for a few days leading up to the scheduled March break. Pursuant to the parenting schedule, the respondent was to have access to their son during the March break.

[6] Since then, the respondent has refused to allow the applicant to resume his regular access time. In reviewing the respondent's responding Affidavit, it appears that the basis for her decision consists of the follownig:

- a) the applicant's alleged drug use, including an allegation made during argument of the motion that the applicant has recently shaved his head to avoid subjecting himself to a drug test;
- b) the alleged unclean state of the applicant's apartment, which is less than ten minutes' walking distance from the respondent's apartment;
- c) the fact that the applicant's apartment building has a common entry and elevators;
- d) the applicant needing to leave his apartment several times a day to walk his "not fully trained one year old dog";
- e) the need for a structured routine and stable environment for their son, as opposed to "flip flopping between homes with different standards";
- f) her apartment being the safest place for their son; and,
- g) her general mistrust of the applicant going back many years.

[7] During argument of the motion, I asked the respondent whether she was relying upon any specific evidence that the applicant has ignored or failed to comply with any government COVID-19 protocols such as not practicing social distancing or ignoring common sense health precautions. In response, the respondent essentially repeated the general positions in her responding affidavit as set out above.

[8] For his part, the applicant gave evidence that he has not been at work since March 11, 2020 and has isolating at home and social distancing in accordance with the provincial and municipal COVID-19 health guidelines. The applicant further testified that he attempted to reason with the applicant with a view to avoiding this motion, but was left with no choice as the respondent wished to suspend the applicant's access on "a temporary basis".

[9] While these are indeed unprecedented times, since the onset of the COVID-19 pandemic the relevant jurisprudence has confirmed that the family law focus is and should always be the best

interests of the child no matter what situation in which parents may find themselves. I repeat and adopt the comments of Justice Pazaratz in *Ribeiro v. Wright* 2020 ONSC 1829 (CanLII):

“None of us know how long this crisis is going to last. In many respects we are going to have to put our lives “on hold” until COVID-19 is resolved. But children’s lives – and vitally important family relationships – cannot be placed “on hold” indefinitely without risking serious emotional harm and upset. A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of *both* parents, now more than ever.

In most situations there should be a presumption that existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing.

In some cases, custodial or access parents may have to forego their times with a child, if the parent is subject to some specific personal restriction (for example, under self-isolation for a 14 day period as a result of recent travel; personal illness; or exposure to illness).

In some cases, a parent’s personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child.

And sadly, in some cases a parent’s lifestyle or behaviour in the face of COVID-19 (for example, failing to comply with social distancing; or failing to take reasonable health-precautions) may raise sufficient concerns about parental judgment that direct parent-child contact will have to be reconsidered. There will be zero tolerance for any parent who recklessly exposes a child (or members of the child’s household) to any COVID-19 risk.

Transitional arrangements at exchange times may create their own issues. At every stage, the social distancing imperative will have to be safeguarded. This may result in changes to transportation, exchange locations, or any terms of supervision.

And in blended family situations, parents will need assurance that COVID-19 precautions are being maintained in relation to each person who spends any amount of time in a household – including children of former relationships.

Each family will have its own unique issues and complications. There will be no easy answers.

But no matter how difficult the challenge, for the sake of the child we have to find ways to maintain important parental relationships – and above all, we have to find ways to do it safely.”

[10] Parting with a child in the face of a growing pandemic where statistics, government strategies and medical knowledge may vary week to week, if not day to day, may not be comforting and can even cause dread until care and control is returned. However, Justice Pazaratz is certainly correct in holding that, especially in the face of anxious and distressing times, any child will most benefit from the love, connection and support shared with both parents.

[11] On the evidentiary record before me, there is little to no evidence raising a concern about the applicant’s approach to keeping their son safe during this COVID-19 pandemic. The applicant is following the applicable provincial and municipal COVID-19 protocols. The applicant’s judgment has not been called into question, other than the respondent’s attempts to revisit allegations she advanced during the trial of this proceeding before me late last year. My disposition of the majority of those allegations led to my imposition of the parenting schedule in the first place.

[12] The unilateral actions of the respondent should not be condoned by this Court. A party cannot use the new, temporary reality of the COVID-19 pandemic to revisit trial results with which he/she may not be pleased. Ironically, what she now seeks (ie. an interim variation of the parenting schedule imposed by my Reasons) ought to have required her to try and seek urgent relief instead of forcing the applicant to bring his motion.

[13] There is no reason why the existing parenting schedule should not continue, especially given the parties both adhering to all applicable COVID-19 precautions and protocols. The applicant’s motion seeking an Order mandating the respondent to comply with my parenting schedule, is indeed urgent and is hereby granted. The respondent shall forthwith resume full compliance with the parenting schedule set out in my Reasons.

[14] With respect to the applicant’s request for make-up access time with the parties’ son, to my review the applicant is owed five overnight access visits. In the event the parties cannot resolve this issue, they may address it in writing as part of their costs submissions, which shall total no more than five pages (including a Costs Outline) and be delivered in accordance with the following schedule:

- a) the applicant’s costs submissions shall be served and filed within 7 business days of the release of this Endorsement; and,
- b) the respondent shall thereafter have an additional 7 business days from the receipt of the applicant’s costs submissions to serve and file his responding costs submissions.

[15] In summary, I make the following interim Order:

CITATION: Tudor Price v. Salhia 2020 ONSC 2271
COURT FILE NO.: FS-12-380806
DATE: 20200415

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JEREMY DAVID TUDOR PRICE

Applicant

– and –

SABRINA SALHIA

Respondent

ENDORSEMENT

Diamond J.

Released: April 15, 2020