

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Natalie Betty-Ann Tessier, Applicant, self-represented  
-and-  
Tyreese Jamal Bradley Damon Rick, Respondent, self-represented

**BEFORE:** Justice P. MacEachern

**HEARD:** April 14, 2020, by teleconference

**E N D O R S E M E N T**

**E N D O R S E M E N T -- COVID 19 PROTOCOL**

1. The Applicant mother seeks to suspend or vary the Respondent father's access to the parties' three-and-a-half-year-old child, due to allegations that the father is exposing the child to significant risk due to not complying with COVID-19 safety measures.
2. The factual background to this motion is set out in *Tessier v. Rick*, 2020 ONSC 1886.
3. The evidence before me is as follows:
  - a. Two affidavits from the father, one filed on March 24, 2020, and one filed March 30, 2020; and
  - b. Three affidavits from the mother, one dated March 24, 2020, one dated March 25, 2020, and one dated April 1, 2020.
4. At the outset of the hearing, both parties affirmed on the record that the content of their affidavits was true to the best of their information and belief.
5. There is an existing final order in this matter, being the final order of Justice Kershman, dated October 23, 2018. This order provides for the father to have regular access to the parties' 3.5-year-old child, on alternate weekends from Friday at 6 pm to Sunday at 6 pm, and every Wednesday evening from noon until 6 pm.

6. The mother has raised concerns about the father's access due to the current COVID-19 situation.
7. The text exchanges between the parties during the second week of March 2020 confirm that the father was minimizing the mother's COVID-19 concerns and the safety precautions that should be followed. In general, I found the father's communications to be unnecessarily adversarial and aggressive, and generally unresponsive to the mother's concerns. The mother's communications demonstrate that she made greater efforts than the father to discuss COVID-19 concerns and how this may impact access. In the end, although the mother seemed to be of the mistaken view that she had the right to unilaterally change access when the father did not respond to her concerns, I find that the mother's communications were more reasonable.
8. The evidence before me also supports that there were unaddressed risks in the father's household, about which he failed to be forthright. The father was not forthright about the nature of his partner's health, simply advising that she was sick without providing assurance that this was unrelated to any contagion and that there was a visitor in the home, from another household, after he represented that the household was isolating.
9. A further concern was that the father does not drive (FRO has suspended his license), and therefore, his practice was to transport the child to and from access by public transit. The father's communications do not include any substantive proposal for how the father would take precautions on public transit.
10. I find that the above concerns amount to a material change in circumstances that warrants a change in the father's access.
11. At the hearing of the motion, both parties provided the Court with information regarding what protocols and precautions they were following in their respective households, and what steps they were taken to address risks posed by COVID-19. It was apparent that little of this information had been previously exchanged between the parties. That is unfortunate.
12. I accept the representations made by each party of the safeguards in place in their respective households due to the current COVID-19 situation. These were as follows:

- a. The father's household is made up of his partner, her two children from a previous relationship who are currently not leaving the household for access with their father, and the father's new child with his partner.
- b. The father's household also includes, during the weekday, his partner's sister's child. His partner's sister is an essential worker and has not yet been able to find alternate childcare. The father gave assurance that the sister is following all safety precautions and that her work does not expose her to additional risk.
- c. The father states that both he and his partner are immune-compromised and are therefore following all safety precautions. This includes ordering groceries online and having them delivered.
- d. The father states that his partner's oldest child is not residing in their household as she has moved out of the household and is not visiting the household.
- e. The father gave assurances that if the makeup of his household changed, or if there was a risk that any member of his household was exposed to COVID-19 infection, he would immediately advise the mother and provide her with full and forthright information.
- f. The father advised that he had access to his partner's mother's vehicle to transport the child. The partner's mother lives alone and is self-isolating. He gave assurances that before, and after such use, he would ensure that the vehicle was cleaned and "wiped" to reduce the risk of exposure.
- g. The mother's household is made up of her partner, her brother, and her parents. Her parents have underlying health issues and are therefore following all safety precautions.
- h. The mother gave assurances that if the makeup of her household changed, or if there was a risk that any member of her household was exposed to COVID-19 infection, she would immediately advise the father and provide him with full and forthright information.

13. Both parties indicated that they were largely satisfied with the safeguards that each stated were being followed in the other's household.
14. It is unfortunate that the parties have a history of poor communications and, in the majority of the information filed on this motion, tend to focus on past incidents and attempts to allocate fault between them. The father's focus has been on the number of minutes that the child spends in his care, and when he will get make up time for every missed moment, rather than on a more holistic and cooperate exchange regarding the child's best interests, and failing to communicate relevant, helpful, and important information.
15. Now, more so than ever, parents need to focus with renewed clarity on the best interests of the child. This requires parents to act responsibly, to treat each other with respect, to exchange important information related to the COVID-19 health protocols each household is following, to advise, in a timely way, if they have been a risk of exposure to infection, to show mutual respect, and to adjust the parenting schedule as needed in a manner that provides creative and realistic solutions to the present crises.
16. It is also unfortunate that in March, at the outset of this pandemic, the father's exchanges minimized the COVID-19 risk and minimized the need for safety precautions. But the COVID-19 situation has rapidly evolved. Parties should expect that it will continue to evolve, along with public health protocols and our understanding of the risks associated with this virus. Given this, I am prepared to find that the father was simply uninformed at the time of his initial communications that minimized the risks, and that he has now adopted practices that rectify these concerns.
17. At the hearing of the motion, I asked both parties to provide their proposal for realistic solutions for the father's access.
18. The mother proposed that, temporarily, due to the COVID-19 public health concerns, the father's alternate weekend access be extended, but that the weekly Wednesday visits be suspended. This would minimize the number of trips between the households, and related travel issues. The mother also proposed that the child be transported to and from access by private vehicle, and she committed to sharing this transportation equally with the father. The mother has access to a vehicle, but it is not reliable. The mother asked that the father secure

access to a vehicle to do half of the transportation. The mother's proposal, therefore, was that the father has access on alternate weekends, from Friday at noon to Sunday at 6 pm.

19. The father's proposal was similar to the mother's, but he sought more time to "makeup" for the loss of weekly Wednesday access. He initially proposed that his weekends be extended from Friday at 8 am to Sunday at 8 pm. But when asked when the child normally went to bed (the child is 3.5 years old), he agreed this was too late. The father proposed, instead, Thursday at 6 pm to Sunday at 6 pm. The father did not object to the child being transported by private vehicle and agreed to be responsible for one half of the transportation.
20. I find that the mother's proposal is more reasonable than the father's proposal, provides a creative solution to the current situation, addresses the concerns with using public transport, and is in the child's best interests.
21. I do not find that it is in the child's best interests to extend the weekend to include a further overnight, as the father proposes. Adding another overnight would mean that the child was with the father for three consecutive overnights. I do not have any evidence before me that such a change, which is significant, is in the child's best interests. I also expressly dismiss the notion that any adjustment to the access schedule should be reduced to simply counting time, to ensure that father has exactly the same amount of time as he would have otherwise had. The question before me is not simply about counting time. The question requires consideration of all of the factors that go into the child's best interests, given the change in circumstances due to the COVID-19 situation. These factors include a focus on the quality of time, maintaining the child's connection to both parents, in a manner that also provides a safe, secure, and stable environment. It is not simply a mathematical question of adding up access time.
22. I also comment on the issue of video access. The mother has proposed regular and frequent video access, such as through Skype or Facetime. The father's position is that the child is not interested in video access. The father also has some mental health issues, that he states would be triggered through video access.
23. I accept that video access has significant limitations for a three-and-a-half-year-old child. I also accept that the father does not wish to have video access, and I will not impose this on

him. However, if the child wishes to initiate communications with the father, either through a phone call or a video conference, I urge the mother to facilitate this communication and for the father to accept such calls if his health permits him to do so.

24. Given the above, I make the following temporary orders:

- a. The final order of Justice Kershman dated October 23, 2018 is changed, on a temporary basis, due to the COVID-19 situation, as follows:
  - i. Paragraph 4) is changed to provide:
    1. The father's mid-week Wednesday access shall be temporarily suspended;
    2. The father's weekend access shall be temporarily changed to be from Friday at noon to Sunday at 6 pm. The child shall be transported to and from access by private vehicle, and not by public transportation. Each party shall be responsible for transporting the child one-way for each weekend access. The transfer location, when the mother is transporting the child, shall be the gas station near the father's residence. The transfer location, when the father is transporting the child, shall be the Circle K near the mother's residence.
    3. The provision requiring makeup time, at paragraph 4 e. is suspended until further court order or agreement between the parties.
  - ii. The holiday schedule at paragraph 5) shall continue to apply.
- b. Each parent shall ensure that all members of their respective households follow the most current Ottawa Public Health advisories. Each parent shall immediately advise the other parent, forthwith, if there is any reason to believe that any member of their household may have been exposed to COVID-19 infection, and shall, forthwith, provide the other parent, in writing, with full and forthright information regarding the potential exposure and any further steps being taken as a result.

- c. These temporary orders are being made on the basis that I have deemed this motion as being brought within the mother's intended motion to change proceedings. The mother shall serve and file proper pleadings for her motion to change (by filing her Motion to Change, Change Information Form, and a Form 35.1 – see the *Family Law Rules*) as soon as possible and no later than June 19, 2020. The father shall then serve and file his responding material (including Response to Motion to Change and Form 35.1) as soon as possible after that and no later than July 17, 2020.
- d. This order shall constitute authority for the parties' respective pleadings to be filed with the Court during the Court's suspension of regular operations if required.
- e. Because of the COVID-19 emergency, this order is being issued under my electronic signature. This order is enforceable without the present need for a signed or entered formal order. Once the Court can expand operations during the current period of suspension, a copy of this order shall be filed with the Court. This order is an effective and binding order through its issuance under my electronic signature and email a copy of which is being sent to the family counter in Ottawa.

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Justice P. MacEachern

Dated: April 20, 2020