

CITATION: Bartolini v. Hill, 2020 ONSC 2657
Court file number: FC211/90
DATE: 2020-04-28

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Samantha Lynn Bartolini, Applicant
AND: Desiree Hill, Respondent
BEFORE: Mr Justice Ramsay
COUNSEL: Maria Lucarelli for Bartolini; Respondent unrepresented and not appearing although served
HEARD: April 28, 2020 by telephone

ENDORSEMENT

- [1] The Applicant through counsel undertakes to file an Application for custody of her son. Care of the son is the subject-matter of an agreement that the Applicant entered into with the Respondent, the child's paternal grandmother. The father is not in the picture. The Applicant now moves for interim relief. I have granted leave for the motion for interim relief to proceed before a case conference and for it to proceed by telephone conference as if the underlying Application had already been filed.
- [2] The child was born on March 16, 2012. The agreement, made in June 2019, acknowledges that the child has lived with his grandmother since 2013. It provides for residence with the mother on alternate weekends during the school year and for consultation between the parties on important decisions. The child's principal residence is in Niagara Falls with his grandmother. The mother lives in Aylmer and arranges transportation.
- [3] The grandmother has not permitted access to the mother since March break because of the public health emergency. The mother has had virtual access but says that the lack of physical access is upsetting the child and that she is willing to take reasonable precautions to protect the child's health if visits are resumed.
- [4] I have no medical evidence. The science on the new virus is not yet settled. I have to be cautious about judicial notice: see *R. v. Baidwan*, 2020 ONSC 2349. I think I can, however, be guided by the provincial emergency orders.
- [5] There is no evidence that suggests that children are particularly vulnerable to the new virus. So far, the contrary seems to be the case. Recent family law jurisprudence suggests that my colleagues are generally taking the position that as long as both parties follow the emergency

orders, access should continue to take place as previously ordered, absent particular circumstances that militate otherwise.

[6] The parenting agreement is not a separation agreement within the meaning of s.20(7) of the *Children's Law Reform Act*: See s.54 of the *Family Law Act*. The Applicant is *prima facie* entitled to custody by virtue of s.20(1) of the *Children's Law Reform Act*. The Respondent is entitled to seek custody under s.21(1) of the Act, which she may do in her Answer in the present proceedings.

[7] In my view it is in the best interests of the child to continue the present arrangements until trial. I see no advantage to the child to adding "make-up time" as requested. Specific arrangements for transportation are not required by Section 5.7 of the agreement, but to avoid uncertainty, I accept the suggestion that the mother's chosen driver should be named in the order as a person who may drive the child. I am assuming that police enforcement will not be necessary. If it is, the party who does not obey my order can expect to pay the other party's legal costs if another motion is necessary.

[8] I make the following temporary order:

- a. The parties shall share parenting time in accordance with the terms of paragraph 5.4 of the parenting agreement. The mother's next alternate weekend parenting time shall commence on Friday, May 1, 2020 at 6 pm.
- b. The Applicant is entitled to have Randy Mangelson transport her and the child to and from access visits.

[9] Although unsuccessful, the Respondent is doing the Applicant the great favour of raising her child. I make no order as to costs.

[10] This order takes effect immediately. It may be issued and entered later.

J.A. Ramsay J.

Date: 2020-04-28