

II. BACKGROUND CIRCUMSTANCES

[3] The Applicant is the mother of the two children. The Respondent, Shabnam Shafi, is the sister of their father, Shuaib Shafi, who has been incarcerated.

[4] On September 19, 2019 Justice Fragomeni of this court made an interim order, after hearing the parties to the motion before me, that the primary residence of the children be with Shabnam Shafi; and that the Applicant be given supervised access to them. His Honour's order of October 28, 2019 did not change the first order in a manner material to this motion.

[5] Shabnam Shafi lives with her parents and the two children; her husband is currently out of the country for a number of months.

[6] The Covid 19 pandemic has now taken place.

III. ANALYSIS AND ORDER

[7] The Applicant contends that Shabnam Shafi has not complied with the Covid 19 protocols released by the various levels of governmental authorities; and that, therefore, the children are in danger. Accordingly, she has moved for the variation of the orders of Justice Fragomeni.

[8] In order to secure the variation she seeks, the Applicant must prove on a balance of probabilities a material change in circumstances, which is a change in

circumstances which, if known at the time the order in question was made, would likely have resulted in different provisions in that order. For that proposition I rely upon *Willick v. Willick*, [1994] S.C.J. No. 94 (S.C.C.) and Coats et al., *Ontario Family Law Practice* Volume 1, (Toronto, LexisNexis Canada Inc. 2019) at 201.

[9] The only evidence adduced by the Applicant of the alleged non-observance by Shabnam Shafi of the relevant protocols, the alleged material change in circumstances, is the hearsay evidence of the children, save for one exception. It is agreed by the parties that Shabnam Shafi is accompanied by her brother-in-law to exchanges of the children; and that he does not live in her household.

[10] The Respondent, Shabnam Shafi, contends that she has complied with applicable protocols regarding the pandemic, and is agreeable to substituting one of her parents on the exchanges for her brother-in-law.

[11] I am not satisfied that the Applicant has proven a material change in circumstances on the evidence adduced.

[12] I find that the following comments of Justice Pazaratz in *Ribeiro v. Wright*, [2020] O.J. No. 1267 at para. 21 are apposite, although the issue addressed was a different one:

21 We will deal with COVID-19 parenting issues on a case-by-case basis.

- a. The parent initiating an urgent motion on this topic will be required to provide specific evidence or examples of behavior or plans by the other parent which are inconsistent with COVID-19 protocols.
- b. The parent responding to such an urgent motion will be required to provide specific and absolute reassurance that COVID-19 safety measures will be meticulously adhered to - including social distancing; use of disinfectants; compliance with public safety directives; etc.

[13] I, therefore, dismiss the Applicant's motion for a variation. However, I make the following order in addition to that dismissal: (a) both parties are to comply with all applicable governmental directives and recommendations relating to Covid 19, including all that relate to their care for the two children; (b) in particular, the children are not to be taken on visits to other households by either party; and (c) the Respondent, Shabnam Shafi, may be accompanied by one of her parents, M. Shafi Parvaiz and Shahid Kalsoom, on any exchange of the children with the Applicant, but not by anyone else.

[14] I will receive written submissions on costs. Each set of submissions is to be no more than 3 pages, excluding a bill of costs. The submissions of the Respondent, Shabnam Shafi, are to be served by one e-mail addressed to the Applicant and my assistant, Sara Stafford, whose e-mail address is Sara.Stafford@ontario.ca; service is to be within 14 days of release of this endorsement; no affidavit of service is necessary. The submissions of the Applicant are to be served by one e-mail addressed to the Respondent and Ms.

Stafford; service is to be within 14 days of service of the Respondent's submissions. There shall be no reply.

[15] Each party is also ordered to file with the court all materials relied upon on this motion once normal court operations resume, and to pay any applicable fee.

Justice Ivan Bloom

DATE: April 23, 2020

CITATION: Bedi v. Shafi, 2020 ONSC 2461
COURT FILE NO.: FS-19-95307-00
DATE: 2020 04 23

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Deepti Bedi

Applicant

- and -

Shuaib Shafi and Shabnam Shafi

Respondent

ENDORSEMENT

Bloom J.

Released: April 23, 2020