

CITATION: Peerenboom v. Peerenboom, 2020 ONSC 2533
COURT FILE NO.: FS-13-398633
DATE: 20200423

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Nicole Peerenboom, Applicant

AND:

Robert Peerenboom, Respondent

BEFORE: Nishikawa J.

COUNSEL: *Dani Frodis*, for the Applicant

Laurie Pawlitzka, Justyna Waxman and S. Mistry (student-at-law), for the Respondent

HEARD: April 22, 2020 (By teleconference)

ENDORSEMENT

[1] The Applicant, Nicole Peerenboom, brings an urgent motion for an order for the immediate return of the parties' four children, Alexandra (15), Benjamin (11), Payton (9), and Frederick (8), by the Respondent, Robert Peerenboom, in accordance with the residential schedule contained in the consent order of Goodman J. dated October 10, 2017 (the "Order").

[2] Pursuant to the Endorsement of Hood J. dated April 17, 2020, the motion was determined to be urgent and assigned to be heard by me to determine the next steps or to hear the matter.

[3] Based on my review of the motion material, I determined that this matter falls within the direction of the Chief Justice dated March 15, 2020, as updated on April 2, 2020. At the hearing on April 22, 2020, I further determined that the matter was of sufficient urgency to warrant proceeding without the need for a case conference: see r. 14.(4.2) of the Family Law Rules.

[4] Ms. Peerenboom brings this motion on the basis that contrary to the Order, Mr. Peerenboom has withheld the children from her during her scheduled time and refuses to return the children to her unless she agrees that the children will not be in contact with the children of her current partner, Robin Godfrey. Mr. Godfrey shares custody of his four children, who are between the ages of 4 and 15 (the "Godfrey children"), with his ex-spouse, Melinn Godfrey.

[5] Mr. Peerenboom does not wish to change the schedule in the Order but seeks a term that the children will not meet in person with any other children or attend at any other home other than Ms. Peerenboom's home during her parenting time until the health restrictions are lifted.

[6] A preliminary issue was the Respondent's objection to three reply affidavits filed by the Applicant as contrary to the endorsement of Hood J., which did not allow for reply affidavits. Given that these motions are scheduled to be heard on an urgent and expedited basis and counsel and the courts are working under significant constraints, such conduct is discouraged. However, I have determined that as there is no significant prejudice to the Respondent, the affidavits are admissible. In any event, I place minimal weight on the affidavit of Dr. Grant Lum, which contains few specifics and is based entirely on information provided to him by Mr. Godfrey. Similarly, I place minimal weight on the affidavit of Marci Cook, the real estate agent who has been assisting Ms. Peerenboom and Mr. Godfrey. Respondent's counsel was able to make extensive submissions on the substance of the third affidavit, which was sworn by Mr. Godfrey.

[7] The issue in this motion first arose with the outbreak of the COVID-19 pandemic, when the children were in Florida with Ms. Peerenboom, Mr. Godfrey and the Godfrey children for March break. On March 13, 2020, Ms. Peerenboom advised Mr. Peerenboom that due to the outbreak, the children would not be returning on their scheduled commercial flight the next day. Mr. Peerenboom, who was to have the children for the second week of the March break, then had to make arrangements for the children to return from Florida with his parents on a private plane on March 21, 2020. Ms. Peerenboom and Mr. Godfrey returned, with the Godfrey children's live-in nanny, Cecilia Fortuna, by private plane on March 22, 2020. The Godfrey children had returned on March 18, 2020. While Mr. Peerenboom alleges that Ms. Peerenboom did not follow self-isolation requirements during the fourteen-day period after her return, Ms. Peerenboom denies this. All parties have now completed the self-isolation period.

[8] On April 2, 2020, Mr. Peerenboom refused to return the children to Ms. Peerenboom unless she agreed that they would not be in contact with the Godfrey children. Ms. Peerenboom, through her counsel, agreed to this. However, she has subsequently admitted that contrary to her agreement, the children were with the Godfrey children on April 6 and 7, 2020. Mr. Peerenboom then withheld the children from Ms. Peerenboom on her scheduled time on April 13 and 14, 2020. Ms. Peerenboom then had the children during her usual weekend, beginning on April 17, 2020, but only after agreeing that the children would not see the Godfrey children that weekend.

[9] Ms. Peerenboom seeks to enforce the Order and submits that Mr. Peerenboom cannot prescribe the conditions on which she has access to the children. She submits that she and Mr. Godfrey are in a committed relationship and that, together with their respective children, they form a blended family. Each has access to their respective children on Mondays and during the same alternate weekends, and the children have all spent significant time together over the past year. According to Ms. Peerenboom, the children see Mr. Godfrey as a step-father and the Godfrey children as their step-siblings. At present, Ms. Peerenboom and Mr. Godfrey each maintain a separate residence, as neither house has a sufficient number of bedrooms for all of the children. They have been looking for a house but have not found one large enough to accommodate all of them. While Ms. Peerenboom's affidavit did not state that the children slept at Mr. Godfrey's home, Mr. Godfrey's affidavit confirms that Ms. Peerenboom and the children sleep at his home on the weekends.

[10] Mr. Peerenboom shares a residence with his fiancée, Kristen Walton Barnicke, and her three children. As Ms. Barnicke also has her children on the same alternating weekends as Mr. Peerenboom has the children, their respective children also spend significant time together. Ms. Peerenboom acknowledges that Mr. Peerenboom, Ms. Barnicke and their respective children form a blended family.

[11] Mr. Peerenboom maintains that he and Ms. Barnicke are a single household because they live together. However, he disputes that Ms. Peerenboom and Mr. Godfrey are a “household.” Mr. Peerenboom’s view is that when they and the children are all together, this makes a gathering of 11 people (including the Godfrey children’s nanny, Ms. Fortuna) which would violate public health orders that limit gatherings to no greater than five people who are not from the same household.

[12] The COVID-19 pandemic raises significant health concerns for everyone. The circumstances present exceptional challenges that everyone is dealing with on a daily basis. Parents, who are responsible for the health and well-being of their children, have concerns and worries and justifiably seek to minimize the risks to which their children are exposed. This is sometimes difficult, because the advice as to best practices and what activities are safe has been changing on a weekly, or even daily, basis.

[13] The response to the current health crisis is not, however, to disregard or cast aside existing agreements and orders that have been negotiated and/or considered at length, and that have been determined to be in the children’s best interests. Nor should public health orders and protocols be used as a basis to restrict access or to engage in self-help.

[14] As Pazaratz J. stated in *Ribeiro v. Wright*, 2020 ONSC 1829, at para. 11 “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.” Parents are not simply permitted to disregard a court order because they believe they know better. This would lead to significant chaos and disarray: *Skuce v. Skuce*, 2020 ONSC 188, at para. 36. In addition, as Pazaratz J. emphasized (at para. 10) “children need the love, guidance of emotional support of both parents now more than ever.”

[15] Under the Order, the existing arrangement is that Ms. Peerenboom has the children on Monday and Tuesday nights and alternating weekends. The pandemic does not change this. Mr. Peerenboom agrees. The question is whether, under the circumstances, an additional condition prohibiting contact with the Godfrey children should be required. Although this is the Applicant’s motion, since it is the Respondent who seeks the additional condition, he bears the onus of demonstrating that this is warranted based on an increased risk to the health and safety of the children.

[16] Based on the evidence on the motion, Mr. Peerenboom has not satisfied me that the existing arrangement raises such risks to the health and safety of the children that a term limiting contact with the Godfrey children is required.

[17] In my view, the fact that Ms. Peerenboom and Mr. Godfrey each have a house does not necessarily mean that they, together with their children, are not a “household.” They have been together for two years. Over the past year, when the children are with the Applicant, they have spent their Mondays and weekends with the Godfrey children. They attend family events together and have travelled together.

[18] While Mr. Peerenboom now alleges that Ms. Peerenboom, Mr. Godfrey and their children do not constitute a household, in earlier correspondence between counsel, he requested information about the Godfrey children’s travel back to Toronto because the children would be spending time with their “blended household.” There was also an acknowledgement that Ms. Peerenboom and Mr. Godfrey live together.

[19] In addition, Mr. Peerenboom does not object to the children spending time with Mr. Godfrey. Mr. Godfrey, however, has regular contact with the Godfrey children. If the children are already exposed to Mr. Godfrey, it is not clear to me that the risk is increased by spending time with the Godfrey children. That is, of course, provided that everyone in the Godfrey household, including Ms. Fortuna, is strictly adhering to all social distancing requirements and public health orders and protocols. There are no specific allegations that they are not following those requirements.

[20] Needless to say, it is in the children’s best interests that they be able to maintain strong relationships with both parents. At this time, if contact with the Godfrey children does not pose an additional risk to the health and safety of the children, it is also in their interest to maintain their relationships with the Godfrey children, especially at a confusing and stressful time when they are unable to attend school, participate in their usual activities, and spend time with friends.

[21] This determination is not to be interpreted as an exception to the provincial government’s emergency order prohibiting gatherings of more than five people of a “single household” or Toronto Public Health Guidelines prohibiting gatherings of more than five people, excluding “people who live together.” It is simply acknowledging that in the case of a blended family, the fact that the family members are not always under the same roof does not necessarily mean that do not constitute a household.

[22] At the hearing, both parties cited the others’ conduct and relied on my decision in *Herman v. Kideckel*, 2020 ONSC 2021, at para. 16, in which I stated that “now is not the time to be evasive, confrontational or strategic; what is needed is flexibility, transparency and compassion.” Based on the affidavits filed on this motion, it is clear that this proceeding and the parties’ relationship have been acrimonious, for which both parties must accept some responsibility. I have significant concerns about the recent disputes that have taken place in the children’s presence. In addition, while Ms. Peerenboom is correct that Mr. Peerenboom withheld the children from her on April 13, she also unilaterally determined not to return with the children from Florida when the federal government’s advice was for all Canadians to return as soon as possible. While this was due to concerns about potential health consequences to one of the children in particular, it is unclear how the children would have returned if Mr. Peerenboom had not arranged for a private plane.

[23] Parents are expected, at all times, to behave in a responsible, reasonable and cooperative manner in fulfilling their shared parenting responsibilities. This responsibility is enhanced during this unprecedented, global pandemic when transparency and cooperation are necessary to minimize risks to the children's, and others', health and safety. Moreover, it is inexcusable for parents to add to the children's stress and anxiety at a time when they should be providing a comforting and secure environment to alleviate that stress. I take this opportunity to remind both parties that they must conduct themselves in a manner consistent with their responsibilities and, at the very least, avoid exposing the children to their conflicts and hostility.

[24] Ms. Peerenboom seeks make-up time for the time that she missed on April 13 and 14, 2020. Mr. Peerenboom also missed parenting time over the March break but had the care of the children during the self-isolation period after their return. While the parties are free to agree to make-up time, no make-up time will be ordered.

[25] While Ms. Peerenboom seeks a term authorizing the police to enforce the order, I see no need for such a term at this time.

[26] The parties have consented to additional terms regarding compliance by all members of their households with all COVID-19 safety measures, as set out in the Canadian Public Health Advisories, or by the City of Toronto and/or the Province of Ontario, and limiting the children's contact with others, other than Ms. Barnicke and the Barnicke children.

[27] At the close of the hearing, I requested that counsel discuss the issue of costs. Counsel subsequently advised that they agreed that the successful party would be entitled to \$8,000.00 in costs payable forthwith. The Respondent is ordered to pay costs of the motion to the Applicant of \$8,000.00 forthwith.

[28] The motion is granted. Order to go in accordance with the order signed today.

Nishikawa J.

Date: April 23, 2020