

ONTARIO COURT OF JUSTICE

CITATION: *Sezin v. Sheikh*, 2020 ONCJ 187

DATE: April 15, 2020

COURT FILE No.: D19-31260

B E T W E E N :

Laila Salam Sezin

Applicant

— AND —

Mohammad Ramadan Sheikh

Respondent

Before Justice Roselyn Zisman

Heard in Chambers

Reasons for Judgment released on April 15, 2020

Parineeta Chahal counsel for the applicant
Washim Ahmed counsel for the respondent

ENDORSEMENT

Zisman J.:

Introduction

[1] The issue before me is whether this matter should proceed as an urgent motion.

[2] The Respondent (father) has filed a form 14B motion for leave to proceed with an urgent motion for access to his newborn son. He has filed an affidavit in support of his motion.

[3] The Applicant (mother) has filed a Cross-Motion and affidavit in support of her request for an urgent motion for child support, an order that the father comply with the terms of his criminal recognizance and refrain from direct or indirect contact with her, an

order that the father and his family refrain from direct and indirect contact with her and her son and refrain from coming within 100 metres of her or their son. The mother also seeks an order that the issues of custody and access proceed on a date to be determined after her pleadings are amended to include relief related to their newborn son.

[4] The father filed a further affidavit in response to the mother's cross-motion.

Background

[5] The parties were married in Bangladesh on September 23, 2018. The mother came to Canada on a visitor's visa on November 11, 2018 and the father sponsored the mother on an immigration sponsorship application. The father agreed to support the mother for at least 3 years.

[6] The mother and the father lived in the home of the paternal family. The mother makes allegations, that are denied by the father, about her abusive treatment by the father and his family.

[7] On July 21, 2019 the father was arrested on 6 counts of assault against the mother, including one count of assault with a weapon. The mother alleges that she was kicked out of the paternal family home that day whereas the father alleges that she left voluntarily.

[8] The mother has lived with a friend since then. As a result of the immigration sponsorship agreement she is not entitled to social assistance or OHIP.

[9] The mother commenced family court proceedings in September 2019. The mother was granted leave to bring an urgent motion on notice to the father.

[10] The motion was heard before me on October 10, 2019. The father was self-represented. Based on the father showing the court his 2018 Notices of Assessment, on a temporary without prejudice order basis, he was ordered to pay spousal support of \$688.00 per month based on his income of \$42,773. The endorsement states that it was suggested to the father that in view of the mother's dire financial circumstances that he pay spousal support directly to the mother's counsel. Mother's counsel would provide a receipt to him until the Family Responsibility Office began to collect the support. The father was also given an extension to file his pleadings.

[11] A case conference was held before me on December 17, 2019. The father had just retained counsel. Costs were reserved as despite the prior extension, the father who had been served on September 29th had still not filed his pleadings. A further extension to January 6th was granted and then subsequently, a further extension to February 7th was granted.

[12] A further case conference was held on January 17th and both parties filed briefs and their counsel were present. The mother did not attend as she was near the end of her pregnancy and not feeling well and the father did attend as he was ill. The father had not filed his financial statement, but a copy of his November 29th pay slip indicated

an income of \$42,000 to date. The father was ordered to provide proof of his last pay stub for 2019, all 2020 pay stubs, his full Notices of Assessment with his social insurance number not blacked out. Further disclosure orders were made. The mother was given leave to amend her Application to add the child once it was born.

[13] The case was adjourned for a further case conference to April 27, 2020.

[14] On February 20th, counsel for the father once again sought leave for a further extension as he alleged that the court clerk did not give him a full copy of the endorsement of the last court attendance (despite the fact that he was present). In any event, a further extension was provided to March 10, 2020.

[15] The child, Lionel Sezin was born on [...], 2020. Counsel for the mother proposed that while the child was in the hospital that the father attend at the hospital for one 10 minute visit.

Father's position

[16] It is the position of the father that he became aware of his son's birth through his sister in law and became aware that the child had some complications at birth. He and his family are desperate to see him and wish ongoing access. It is his position that the mother is attempting to alienate him from his son.

[17] Attempts to negotiate access between counsel have been unsuccessful due to the mother's refusal to agree to vary the father's terms of his criminal release and he was not prepared to agree to the one-time meeting suggested by the mother.

[18] The father alleges that the mother has made false claims against him and his family and is attempting to cause him to breach the terms of his release.

[19] The father wishes to know about his child's medical complications. The father denies that the child suffered, as alleged by the mother, of poor diet and lack of the special care she required during her pregnancy due to her limited financial resources. The father alleges that any medical complications were due to the mother's self-harm and lack of care including, the misuse of medications, self-cutting and attempts to starve herself.

[20] The father denies any obligation under immigration law to support the mother as he withdrew the sponsorship application before the file was processed.

[21] The father submits that the mother's motion is not urgent and the issues raised can be dealt with at the case conference previously scheduled for April 27th.

Mother's position

[22] It is the position of the mother that the father was aware of her dire financial circumstances as revealed at the urgent motion and subsequent case conferences. Despite the spousal support order of October 10th, the father never paid her counsel directly and she did not begin to receive any funds until February 2020.

[23] The father was aware that her pregnancy was high-risk. The father was in possession of that evidence as it was provided in the case conference briefs. Despite this, he still did not pay spousal support in a timely fashion.

[24] The child has some internal organ problems and is under the care of a paediatrician and specialist at the hospital.

[25] The mother has no family in Canada and her family is prohibited from travelling to Canada due to COVID-19 travel restrictions.

[26] According to the mother, she was prepared to permit a one-time hospital visit for the father under the supervision of the hospital staff as well as her sister in law so as not to breach the terms of the father's bail. The father wanted her to secretly meet him in the hospital washroom without anyone else present and she would not agree. He also suggested that a nurse bring the child outside of the hospital so he and his family could see the child. Such a proposal would also have breached hospital protocols.

[27] The mother alleges that the father's family threatened to harm her and her unborn child if she did not withdraw the criminal charges against the father or if she did not agree to consent to a bail variation.

[28] Due to the mother's fear of the father and his family and her allegations of the threats they have made, she is not prepared to agree to consent to a variation of the bail conditions. She is also not agreeable to any unsupervised access.

Analysis

[29] The definition of what family law matters are considered to be urgent is set out in the Ontario Court of Justice March 28th Notice¹ as follows:

Urgent family court matters include:

- *Child, Youth and Family Services Act*: place of safety hearings (s. 90); temporary care and custody hearings (s. 94), restraining orders (s. 137), status review hearings (s. 113), and secure treatment orders (s. 161);
- Domestic matters: urgent custody/access motions; motions for restraining orders; Hague applications and non-Hague abduction cases; and
- Family Responsibility and Support Arrears Enforcement Act: refraining motions (s. 35).

[30] Urgency is not further defined.

[31] The March 15th and April 2nd Notices to the Profession and Public² issued by the Superior Court of Justice provides some further clarity and describes urgent family and child protection matters as including:

¹ <https://www.ontariocourts.ca/ocj/>

² <https://www.ontariocourts.ca/scj/covid-19-suspension-family>

- a. requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);
- b. urgent issues that must be determined relating to the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child;
- c. dire issues regarding the parties' financial circumstances including for example the need for a non-depletion order.

[32] In addition, there have been many helpful cases³ emanating from the Superior Court of Justice that have considered the issue of urgency in light of COVID-19.

[33] In the case of *Thomas and Wohlebar*,⁴ Justice Kurz, considered case law defining urgency pre-COVID-19.

[34] He noted that in the well-know case of *Rosen v. Rosen*,⁵ Justice Wildman set out the two key steps that must be taken to allow an urgent motion to proceed before a case conference; namely, that steps have been taken to arrive at a short term resolution before the matter returns to court and that the availability of case conference has been canvassed.

[35] In further analysing the issue of urgency in COVID-19 circumstances he suggested that the following factors are necessary to meet the requirement of urgency:

1. The concern must be immediate; that is one that cannot await resolution at a later date;
2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;
3. The concern must be a definite and material rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical;
4. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.,

[36] The reported cases in the Superior Court of Justice appear to only address the issue of urgency with respect to motions as a result of the court's limited resources and the need to deal with only the most serious and urgent cases. It is not clear if that court is also considering if a matter should be addressed through an urgent case conference.

[37] Despite this court's same limited judicial and administrative resources, we have been able to schedule urgent case conferences as a means of assisting parties to resolve their urgent issues as a less time-consuming process. Especially with respect to ongoing cases, the fact that the case has been case managed permits the judge who

³ *Ribeiro v. Wright*, [2020 ONSC 1829](#) (Ont. S.C.J.). This is one of first cases to consider the issues of urgency and has been quoted and followed in most subsequent cases

⁴ 2020 ONSC 1965

⁵ [2005 CanLII 480 \(ON SC\)](#), [2005] O.J. No 62 (S.C.J.). Wildman J. adopted this description of urgency set out by Belch J. in *Hood v. Hood*, [2001 CanLII 28129 \(ON SC\)](#), [2001] O.J. No. 2918 (S.C.J.):

has knowledge of the background of the dispute to assist the parties in resolving urgent matters expeditiously.

[38] In considering the facts of this case and the relief requested, I find that the motions do not meet the test for an urgent motion at this time. The issues raised do not affect the safety or well-being of the child.

[39] Although there is an immediate need for child support, before an urgent motion proceeds, an attempt should be made to resolve the support issues at a case conference.

[40] In this case, there is already an order for a case conference scheduled for April 27th.

[41] Although at the time it was contemplated that the case conference would proceed in person, there is no reason the conference cannot proceed remotely. I am prepared to consider this conference to be urgent.

[42] This is a case where a discussion between counsel with the assistance of the court may resolve most of the issues without the necessity of further affidavits, especially in light of the already high conflict that exists.

[43] At the case conference the parties will be able to address possible options for the father to see the child in consideration of the COVID-19 restrictions and the requirements of his bail terms.

[44] Further, the father has now filed his financial statement and his last pay stub for 2019. There is sworn evidence that his 2019 income was \$47,708.95 and accordingly there can be an adjustment of his spousal support and his child support obligations. Although there is urgency in the mother obtaining a child support order, I find that this can be easily dealt with at a case conference.

Order

[45] There will be an order as follows:

1. The Motion and Cross-Motion for leave to bring an urgent motion are adjourned.
2. A case conference will be held on April 27, 2020 at 10:15 a.m. by telephone conference.

Case conference briefs are dispensed with. Each party shall serve opposing counsel with a Form 17C confirmation attaching a one-page summary of the issues and positions in 12 point font and double spaced.

Confirmations are to be sent to the court by fax to the trial coordinator

3. The father shall attach to his confirmation a copy of his recognizance and any Divorcemate calculations he intends to rely upon.

4. The mother shall attach to her confirmation any Divorcemate calculations she intends to rely upon and a summary of any medical expenses she has incurred during the pregnancy and for ongoing medical expenses for the child. The actual receipts can be sent to opposing counsel but are not to be filed with the court.

Released: April 15, 2020

Signed: Justice Roselyn Zisman