

**CITATION:** Wallegham v. Spigelski, 2020 ONSC 2663  
**COURT FILE NO.:** 4680/15  
**DATE:** 2020-04-28

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Kelli-Lyn Wallegham, Applicant  
**AND:**  
Kevin James Spigelski, Respondent  
**BEFORE:** The Honourable Mr. Justice A. Pazaratz  
**COUNSEL:** Ms. K. Junger, Counsel, for the Applicant  
Mr. J. Mountford, Counsel, for the Respondent  
**HEARD:** April 28, 2020 – Triage Endorsement

**ENDORSEMENT**

- [1] *AS A RESULT OF COVID-19*, the regular operations of the Superior Court of Justice are suspended at this time, as set out in the Notice to the Profession dated March 15, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>.
- [2] For the moment, the court is prioritizing “urgent” matters. A supplemental Notice to the Profession dated April 2, 2020 sets out a narrow list of less urgent matters the court will attempt to deal with, as time and resources permit. (Further information is available in the April 7, 2020 “Protocol Regarding Family and Child Protection Matters in Central South Region”.)
- [3] This motion was referred to me as Triage Judge for a preliminary determination of urgency and of how this matter should proceed. Determinations of urgency are summary in nature, and wholly without prejudice to both parties on the hearing of the motion itself.
- [4] Electronic materials were filed through the Courthouse email address: [Hamilton.Family.Superior.Court@ontario.ca](mailto:Hamilton.Family.Superior.Court@ontario.ca). Upon the resumption of court operations all materials will be duly filed in the physical record at the courthouse.
- [5] I have received and reviewed the following materials:
- a. Respondent father’s Notice of Motion dated April 27, 2020
  - b. Respondent father’s unsigned affidavit dated April 27, 2020

- [6] At 9:59 a.m. today the materials were served (by e-mail) on both the Applicant and Kathryn Junger. The materials set out that Ms. Junger has advised that she represents the Applicant, although Ms. Junger has not yet gone on record in relation to the current proceedings.
- [7] Obviously, the Applicant has not had an opportunity to respond to the Respondent's materials. It is vitally important that both parties have an opportunity to participate in the process.
- [8] However, as Triage judge it is apparent to me that there appears to be an important parenting issue which needs to be addressed quickly.
- a. The parties have joint custody of a five year old child pursuant to a final order dated July 21, 2016, made on consent.
  - b. Pursuant to that order, primary residence is with the mother. The father is to have access on alternate weekends and alternate Wednesdays overnight.
  - c. Timesharing appears to have proceeded, mostly in accordance with the order, for years.
  - d. The father's materials set out that the mother has taken the position that there is now to be no face-to-face access as a result of COVID-19 related issues.
  - e. The father's materials include a letter from Ms. Junger dated April 6, 2020, confirming that the mother "is not agreeable to reinstating face-to-face visits at this time..."
  - f. The father insists that there are no COVID-19 concerns which justify any interference with his access.
  - g. It is clear that the mother will be taking the position that access needs to be significantly reduced as a result of COVID-19 concerns.
  - h. I make no predetermination as to the outcome of this dispute.
  - i. But the mere fact that a long-standing time-sharing arrangement has been suspended by one of the parties, places this matter into the "potentially urgent" category. This is a preliminary determination, without prejudice to either party on the ultimate hearing of the motion.
- [9] The mother shall be permitted until Friday May 1, 2020 at 10:00 a.m. to serve and file her responding materials. These should consist of a single affidavit, not longer than the father's affidavit (i.e., no more than four pages of narrative) with no more than 10 pages in total (including attachments).

- [10] The father shall be permitted until May 4, 2020 at 12:00 noon to serve and file any reply. The reply may consist of a single affidavit not more than two pages long.
- [11] All materials are to be served and filed electronically.
- [12] The matter will be scheduled to be dealt with by a Judge on or after May 5, 2020.
- a. The Judge assigned to deal with the matter may decide to conduct a hearing by teleconference involving the parties and the lawyers. In that event, the parties will be advised by the court as to the date and time of the teleconference.
  - b. However, after reviewing the file, the Judge may determine that it is more appropriate to deal with the matter based solely on the written materials, without a teleconference. In that event, the parties will be forwarded a copy of the Judge's written decision.
  - c. The judge dealing with the matter will make a formal determination as to whether the materials filed – *and any responding materials* – raise any issues which meet the threshold of being “urgent”, as required in the Notice to the Profession. If urgency has been established, the Judge will make any necessary orders.
- [13] As Triage judge, perhaps I can offer some additional guidance in the hope of averting disaster for this family:
- a. In the less than two months since our court suspended ordinary operation as a result of the COVID-19 situation, sadly, many judges have had to deal with precisely the same issues which these parties are now grappling with.
  - b. Many of those decisions have been widely published and discussed. This court attempted to set out some general principles in one of the earliest cases, *Ribeiro v Wright*, 2020 ONSC 1829.
  - c. So while COVID-19 initially thrust parents and judges into “uncharted territory”, with dozens of decisions being reported weekly, we're quickly reaching the stage where there really should be no mystery about the balancing act courts are going to engage in.
  - d. Clearly, every case has its own ingredients. Here, the mother hasn't had an opportunity to present her side of the story. So I won't speculate about the most appropriate or likely disposition *for this child*.
  - e. But in general terms, most cases seem to be reinforcing the view that “COVID-19 awareness” and “meaningful timesharing” are not mutually exclusive. To the contrary, they can co-exist quite effectively *and safely* with just a little bit of extra work and cooperation among parents.

- f. In this, both parties consented to a “joint custody” designation. That’s not an empty label. It means both parties are presumed to have made a commitment to child-focussed creative problem-solving. *Which is exactly what COVID-19 requires.*
- g. So, before anyone files any more materials. Before the father proceeds with his threatened motion to change custody and primary residence. Before we further inflame matters with claims for things like costs and make-up time. *This would be a really good time for everyone to sit down and talk.*



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Pazaratz J.

**Date:** April 28, 2020