

CITATION: White v. Best, 2020 ONSC 2816
COURT FILE NO.: 396/20
DATE: 2020-05-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Samuel White, Applicant
AND:
Amanda Best, Respondent (deceased)
BEFORE: The Honourable Mr. Justice A. Pazaratz
COUNSEL: Mr. R. Shawyer, for the Applicant
HEARD: In Chambers – Triage Decision

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] 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.
- [3] Electronic materials were filed through the Courthouse email address: 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.
- [4] I have received and reviewed the following materials:
- a. Application of Applicant father dated April 29, 2020.
 - b. Applicant’s 35.1 Affidavit sworn April 29, 2020.
 - c. Applicant’s Notice of Motion dated May 4, 2020.
 - d. Affidavit of articling student Valeria Consales sworn May 4, 2020.
- [5] This is a matter requiring some sensitivity. But given the fact that the subject matter is a four year old boy, I also have to ensure that basic precautions are taken to safeguard the child’s best interests.
- [6] The father’s Application is not a sworn document, but it sets out the following narrative.

- a. The father and mother had a child of an unmarried relationship. That child is now four.
 - b. The mother has another child who appears to be living with that child's father, and is not subject of this application.
 - c. During the relationship the mother had problems with mental health and drug abuse.
 - d. The parties had an acrimonious separation in August 2018. The mother retained custody of the child. The father experienced some frustrations in being allowed to maintain as much contact with the child as he would have wanted.
 - e. As of August 1, 2019 the mother cut off the father's access completely.
 - f. Around September 1, 2019 the father contacted Hamilton CAS expressing concern about the child's well-being.
 - g. On September 7, 2019 Hamilton CAS advised the father that the mother had passed away on August 29, 2019. No one had notified him. Following the mother's death the child was placed temporarily with his maternal aunt.
 - h. However, around September 10, 2019 CAS placed the child in the care of the father. The child has remained in his care ever since. The father and the child reside with the paternal grandmother.
 - i. On December 17, 2019 CAS sent the father a letter which is attached to his materials. The letter confirms the Society had been involved with the family since May 2019 as a result of concerns about the mother. It confirms the child has been with the father since September 10, 2019, and that there have been no concerns about the father's care for the child. The letter refers to various appropriate steps the father has been taking to ease the child through this difficult period. The letter confirms that the Society has no safety concerns and that it is closing its file.
 - j. The father's materials set out that since the child has come to his care, the father has had virtually no cooperation from the maternal side of the family with respect to release of the child's belongings, government documents, or medical records.
- [7] I have no reason to disbelieve that narrative, but in terms of evidentiary issues I must note:
- a. The Application is not a sworn document.
 - b. The Applicant's s.35.1 Affidavit is not properly prepared. Several sections are simply stroked out.

- c. The Affidavit in support of the motion is not signed by the Applicant. It is signed by an articling student and sets out an abbreviated narrative which amounts to pure hearsay. There is no explanation as to why the supporting affidavit is signed by a member of the lawyer's staff rather than the father himself. It is inappropriate for evidence to be presented by a lawyer or any staff member, when the first-hand information could be attested to by one of the parties.
- d. The letter from Hamilton CAS is quite important and reassuring. But the letter is now five months old. Particularly given the fact that the s.35.1 affidavit is not properly completed, the court will require updating confirmation that there has been no involvement by any child protection agency since that letter was issued.

[8] The father seeks an immediate custody order to make it easier for him to arrange medical appointments for the child, and to obtain government documentation for his son.

[9] I am satisfied that the father has done an extraordinary job in stepping up after the mother's death, and assuming full responsibility for the child. I am also satisfied that he requires a court order to give him authority to make necessary decisions and arrangements for the child.

[10] However, in light of the above noted evidentiary deficiencies, I am only prepared to make a temporary order at this time. It will still give the father all of the rights and protections he needs. But it will mean that the court will want one further opportunity to update the child's situation, based on proper evidence.

[11] Final order:

- a. Service of this application on any other party is dispensed with.
- b. The Applicant is determined to be the biological father of the child J.
- c. The Applicant shall be permitted to change the child's name without the consent or participation of any other person.

[12] Temporary order:

- a. The Applicant shall have custody of the child J.
- b. The Applicant shall be entitled to communicate with, instruct, and receive information from any third party service provider, agency, health care provider or other professional in relation to the child.
- c. The Applicant shall be entitled to apply for and obtain any government documentation in relation to the child, including a birth certificate, health card, and passport, without the consent or participation of any other person.

- d. The Applicant shall be entitled to travel outside of Canada with the child without the consent or participation of any other person.
- e. The Application shall be adjourned to the timelines.
- f. Upon the resumption of normal court operations – but in any event, no later than September 1, 2020 -- the Applicant shall file an updating section 35.1 affidavit; together with an updating affidavit as to the child's circumstances; an updating letter from Hamilton CAS to confirm whether they have had any further involvement; and a draft final order.



Pazaratz J.

Date: May 5, 2020