

CITATION: E.M.B. v. M.F.B, 2020 ONSC 3171
COURT FILE NO.: FS-17-90706-00
DATE: 2020 05 25

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
E. ("M.") B.) Jared Teitel, Counsel for the
) Applicant
)
Applicant)
)
- and -)
)
M.F.B) Rachel Radley, Counsel for the
) Respondent
)
Respondent)
)
) **HEARD:** May 15, 2020 by
) teleconference

2020 ONSC 3171 (CanLII)

Reasons for Judgment

LEMAY J

[1] I have been case managing this action for more than a year. At the last case conference on February 26th, 2020, I completed the Trial Scheduling Endorsement Form and placed the matter on the May 2020 blitz list. As part of that form, I indicated that neither party could bring any further motions without my leave. I have most recently made a ruling in this matter late last month (see

2020 ONSC 2472), in which I specifically addressed counselling, an issue that has a significant connection to access in this case.

[2] The trial had to be adjourned as a result of the ongoing pandemic, and it has been rescheduled to the January 2021 blitz list. The date is preemptory to both sides and will proceed with or without counsel. The rest of my orders made at the case conference on February 26th, 2020 did not change.

[3] On May 1, 2020, Mr. Teitel, counsel for the Applicant wrote to the Superior Court of Justice and sought an urgent hearing pursuant to the Practice Direction of the Superior Court of Justice respecting urgent hearings in family law matters. In his correspondence, Mr. Teitel does not mention either that I am case-managing the matter or that the Trial Scheduling Endorsement Form requires my leave to bring any further motions. He did seek leave to bring the motion, however.

[4] Mr. Teitel sought an urgent hearing because his client alleges that access has been unilaterally suspended by the Respondent since March 15th, 2020. Mr. Teitel alleges that this matter is urgent because of the fact that the Respondent was unilaterally breaching the agreed upon access schedule.

[5] The matter was placed before Fowler Byrne J., who scheduled a conference call with the parties for 9:30 a.m. on May 15th, 2020. In the course of her detailed review of the submissions from the parties, Fowler Byrne noted the following points:

- a) The Trial Scheduling Endorsement Form clearly stated that any motions in this matter were only to be brought with my leave.

- b) Ms. Radley, on behalf of the Respondent, was objecting to the motion proceeding on the basis that only I had jurisdiction to grant leave.
- c) Ms. Radley had initiated her own request for relief, which appears to be a cross-motion, and had not sought any leave for that motion.

[6] As a result, Fowler Byrne J. advised the parties that I would join the conference call at the beginning, and consider the leave requests. If leave was granted, Fowler Byrne J. would then consider the merits of the motion.

[7] At the outset of the call, I reviewed the issues with counsel. Mr. Teitel's explanation for not seeking leave from me was, in essence, that the Trial Scheduling Endorsement Form did not take the urgent situation involving the pandemic into account.

[8] I do not view this explanation as being sufficient. Case management serves a number of important functions, particularly in high conflict cases such as these. One of those functions is to ensure that disputes are adjudicated in an orderly way. Another function is the supervision of the parties. This supervision is best exercised by the case management judge because he or she knows the parties, is familiar with their dispute, and is in the best position to determine, at least procedurally, what should be done, when and how it should be done.

[9] No effort was made to contact my judicial assistant. Nothing was said in Mr. Teitel's May 1, 2020 letter about the fact that I was a case management judge. This is not a fact that would have been known to the triage judge for Brampton unless it was included in Mr. Teitel's letter. Given that the practice direction permits correspondence from **only** the moving party in the first instance, I am of the view that Mr. Teitel was obligated to set out both the fact that I was

the case management judge and the substance of my order from the Trial Scheduling Endorsement Form in his materials. It is then likely that the matter would have been referred to me first for submissions.

[10] This brings me to the cross-motion. Ms. Radley, on behalf of the Respondents, was bringing a motion to have all in-person access stayed and that the matter return to me after the Courts resume regular operations on (or after) July 6th, 2020. In support of this motion, materials showing the Applicant's failure to follow social distancing protocols were filed as well as some medical evidence to demonstrate that the child in question may have an underlying medical condition that puts her more at risk for Coronavirus.

[11] After hearing submissions, I determined that both motions should be heard. I came to that conclusion on the basis that there was *prima facie* evidence that the matter was urgent. I reached that conclusion on the basis that there is a current Court Order that was not being obeyed, and on the basis that the Respondent's explanation for the failure to follow this Order might allow the Court to consider issuing the order she was seeking.

[12] I advised the parties that I had not read all of the materials filed for the motion, as it was not necessary to do so given the fact that I only had to determine the question of whether I would grant leave for the matter to be heard.

[13] However, I provided the parties with complete directions as follows:

- a) The matter was urgent on a *prima facie* basis, and Fowler Byrne J. would determine whether it was actually urgent based on all of the materials filed.

- b) Given that substantive relief relating to access was being sought, I was of the view that this was not an appropriate matter for me to hear, given my involvement in the case management process. Fowler Byrne J. was designated to hear the matter.
- c) Anything that either side wishes to raise regarding any part of any aspect of this case is to go through me first. In accordance with the practice direction, a letter of not more than two pages is to be sent to my assistant. I will then review the letter and provide further directions to the parties.
- d) After the conclusion of the most recent motion that Fowler Byrne J. heard, cross-motions are not permitted. Any party seeking to bring a cross-motion must initiate it in accordance with the practice direction.
- e) **Anyone** who breaches these Orders will be viewed by me as being in contempt of Court, and the first order of business when in-person sittings resume will be a contempt hearing.
- f) There are no costs of the leave hearing. The costs of the merits hearing are in Fowler Byrne J.'s jurisdiction.

[14] My requirements were shared with the parties at the conclusion of my involvement in the call on May 15th, 2020. At that time, I advised the parties that I would issue an endorsement outlining the requirements. This is that endorsement. There is one further matter that I did not canvass during the conference call. Counsel are expected to copy the other side on **any** communications with my judicial assistant.

LEMAY J

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