

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Elizabeth Quinn Murphy, Applicant

AND:

John Connolly, Respondent

BEFORE: The Honourable Mr. Justice D.A. Jarvis

COUNSEL: Elizabeth Quinn Murphy, Self-Represented

John Connolly, Self-Represented

HEARD: In Writing

RULING ON MOTION

- [1] On March 12, 2019 Sutherland J. made a final Order (“the Order”) whose terms included the parties sharing joint custody of their daughter, EC, born October 24, 2009. The residential arrangements were 2-2-3 on an alternating weekend basis and an equal sharing of holiday time.
- [2] The mother started a Motion to Change on May 12, 2020 and has now brought an urgent motion to change the Order and to allow her to move from the Aurora area to Brock, Ontario, about an hour’s driving distance away. She asks that this be done without notice to the father. He has not been served with the Motion to Change or the urgent motion material. The mother says that she and her partner decided in mid to late April to move and that the father only became aware of this (likely through EC) on May 1, 2020. The father opposed the move. On May 10, 2020 the mother learned that there was a new residence in Brock Ontario the availability of which was suggested will remain open until June 15, 2020. The mother discussed her proposed move with the father on May 11, 2020: his position was unchanged. The next day she started these proceedings, although her Motion was not actually issued until May 14, 2020.
- [3] On March 15, 2020 the Chief Justice of Ontario suspended regular court operations as a result of the current COVID-19 pandemic. This was made known by a Notice to Profession, the Public and Media Regarding Civil and Family Proceedings of the Chief Justice of Ontario. See the Notice to the Profession dated March 15, 2020, as updated on May 13, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/> [“the Chief’s Notice”].

- [4] The Chief's Notice set out what may be considered urgent:
- (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;
 - (d) in a child protection case, all urgent or statutorily mandated events including the initial hearing after a child has been brought to a place of safety, and any other urgent motions or hearings.
- [5] The Central East Region ("CER") Notice to the Profession effective May 19, 2020 expands the range of matters permitted under the Chief's Notice to include matters qualifying as "pressing". Although decided under a previous iteration of the Chief's Notice, Kurz J. in *Thomas v. Wohleber*¹ framed the general outline for the requisite test which, in my view, should be only modestly relaxed:
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.
- [6] The mother says that she is fearful of the father's reaction to her starting these proceedings. He is already aware of those plans. The mother has already told the child about the proposed move. That was imprudent.
- [7] In my view, the mother's motion is not urgent but needs to be addressed as a pressing matter. In no way should that be interpreted though as expressing any opinion on the merits of the mother's proposed move. Clearly the father must be served with her material and a case conference proceed.

¹ 2020 ONSC 1965 at para 38.

[8] The following is ordered:

- (a) The mother shall forthwith serve the father with all her pleadings filed with the court;
- (b) A case conference shall proceed on a date to be scheduled by the court offices;
- (c) The mother shall deliver her case conference brief by May 19, 2020 (4:00 p.m.) and the father his brief by May 22, 2020 (4:00 p.m.);
- (d) The parties shall comply with the CER Notice effective May 19, 2020 governing the length and contents of conference briefs;
- (e) The parties shall attach to their briefs a copy of the draft Order they are asking of the court;
- (f) The conference shall proceed on or after May 22, 2020 as scheduled by the court offices before an assigned conference judge;
- (g) Service of all documents may be made by email;
- (h) Delivery of form 17F confirmations for the conference is dispensed with.

[9] The parties are cautioned not to discuss the matter of the proposed move with EC.

[10] In the circumstances of the COVID-19 emergency, this Order is operative and enforceable without any need for a signed or entered, formal, typed Order. The parties may submit a formal Order for signing and entry once the court re-opens.

Justice David A. Jarvis

Date: May 14, 2020