

CITATION: Valentini v. Sweet, 2020 ONSC 3004
COURT FILE NO.: 412/20
DATE: 2020-05-13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Marla Valentini, Applicant

AND:

Laura Sweet, Respondent

BEFORE: The Honourable Mr. Justice A. Pazaratz

COUNSEL: Mr. C. Runco, Counsel, for the Applicant

No counsel on record for the Respondent

HEARD: In Chambers – 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. However, with the passage of time the court has been able to gradually increase the services available during the COVID-19 suspension, as set out in the following documents which are available online:
- a. April 2, 2020 Supplemental Notice to the Profession
 - b. April 7, 2020 Protocol Regarding Family and Child Protection Matters in Central South Region
 - c. April 28, 2020 Notice to the Profession 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. 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 on behalf of the Applicant maternal grandmother:

- a. 14B Motion Form dated May 12, 2020.
- b. Applicant's Affidavit sworn May 12, 2020.
- c. Affidavit of Service dated May 12, 2020.

[6] The subject matter:

- a. The maternal grandmother has brought an urgent motion for sole custody of her 15 year old grandson.
- b. The grandmother's materials set out a long history of concerns about the mother's (her adult daughter's) care for the child. The grandmother says the mother has an unstable lifestyle and tends to associate with unsavoury and dangerous men.
- c. The grandmother says she has always been actively involved in the child's life. At times both the boy and the mother have lived with her. At times only the boy has lived with her.
- d. She says most recently the child has been living with her since the end of march 2020. She says the child wants to stay with her and doesn't want to live with the mother because the child fears the mother's adult partner.

[7] I have no doubt that there are complicated, important issues here, and we need to make sure we get it right. But as triage judge I have to address the threshold issue of whether this matter should proceed urgently, or in some other fashion.

[8] A number of factors cause me to conclude that the matter should not proceed urgently:

- a. The mother has only very recently (today) been served, by e-mail. She has not had an opportunity to respond.
- b. The maternal grandmother has not named the child's biological father as a party. Although he is described as not being very involved in the child's life, he still needs to be a party to any proceeding in which custody and access of his child are to be determined. The grandmother says he lives in the Calgary area. There may be a separate issue about service. But he needs to be a party.
- c. The grandmother's materials set out that quite some time ago when everyone lived in Brampton, the grandmother applied for sole custody in the Brampton court. She attaches a copy of minutes of settlement dated June 19, 2008 which provided that the grandmother and the mother would have joint custody of the child. It is unclear from the materials whether the minutes were incorporated into an order. If an order was made, then the current proceeding should be framed as a motion to change. If there is no previous order, then the current proceeding should be framed as a non-parent application.
- d. However, as I understand it the application has not yet been formally commenced, and there is no file number. There should be some clarity about the nature of the proceeding before orders are made.
- e. Apart from procedural considerations, we are dealing with a 15 year old boy who has been changing households. The grandmother says he has elected to stay with her since the end of March and that he has resisted any efforts by the mother to

get him to come live with her. The grandmother says he wants to stay where he is, and there is nothing in the materials to suggest that his preferences are in any imminent danger of being disrespected or overridden.

- f. The grandmother says CAS has looked into the matter, but they will not become involved because there are no protection issues.
 - g. The grandmother expresses fear that the mother will try to enlist the police to physically remove the child from the grandmother's home. But her affidavit also says "As there is no current court order, the police have been reluctant to physically remove him from our home." So it doesn't appear that an emergency family court order is required to prevent the police from acting.
 - h. Included in the grandmother's motion she seeks an order that the Children's Aid Society of Hamilton "provide an updated letter in regards to any past or current concerns or involvement with any of the parties of children in this matter." There is no indication that CAS has been served with the motion. It is unclear what "parties" or "children" the grandmother is referring to. If the grandmother is seeking CAS records in relation to the biological father, that's all the more reason that he should be added as a party and served.
- [9] The bottom line is that according to the grandmother's materials, her 15 year old grandson has decided to stay with her for about the past seven weeks. The mother may have made attempts to get the child to return to her, but the child appears to be doing whatever he wants.
- [10] In the circumstances, I am not satisfied that this matter is "urgent". It is important. It will need to be dealt with soon. But unless something changes, it is not urgent.
- [11] After counsel for the grandmother addresses the various procedural considerations, a Case Conference should be scheduled.



Pazaratz J.

Date: May 13, 2020