

COVID-19 RESOURCE CENTER

Co-parenting during COVID-19

March 30, 2020

What constitutes an emergency during an emergency? That is the difficult question facing many parents already involved in family law matters before the court during the COVID-19 pandemic. Separated parents, who are often already mistrustful of the other parent's ability to care for children, may feel lost and without recourse. Worse, they may feel like they must take matters into their own hands.

Recently, a new case from Ontario is providing parents with some guidance in this area. In *Riberio v Wright* (2020 ONSC 1829), the father had an outstanding application to increase the child's parenting time with him. However, once the novel coronavirus pandemic struck, the child's mother applied to suspend the child's parenting time with their father. The thrust of the mother's argument was that the father could not adequately care for the child in the circumstances.

With almost no evidence received from the father, Justice Pazaratz still declined to hear the mother's application to suspend the child's parenting time with their father. In doing so, the Justice provided the following helpful advice to parents involved in litigation who are also navigating this strange new world:

[7] On the one hand, in this case there is an existing parenting order. There is a presumption that all orders should be respected and complied with. More to the point, there is a presumption that the existing order reflects a determination that meaningful personal contact with both parents is in the best interests of the child.

[8] On the other hand, the well-publicized directives from government and public health officials make it clear that we are in extraordinary times; and that our daily routines and activities will for the most part have to be suspended, in favour of a strict policy of social distancing and limiting community interactions as much as possible.

[9] Parents are understandably confused and worried about what to do. Similarly, this is uncharted territory for our court system. We all have to work together to show flexibility, creativity and common sense – to promote both the physical and emotional well-being of children.

[10] None of us know how long this crisis is going to last. In many respects we are going to have to put our lives "on hold" until COVID-19 is resolved. But children's lives – and vitally important family relationships – cannot be placed "on hold" indefinitely without risking serious emotional harm and upset. A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of both parents, now more than ever.

[11] In most situations there should be a presumption that existing parenting arrangements and schedules

should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing.

[12] In some cases, custodial or access parents may have to forego their times with a child, if the parent is subject to some specific personal restriction (for example, under self-isolation for a 14 day period as a result of recent travel; personal illness; or exposure to illness).

[13] In some cases, a parent's personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child.

The Justice also provided helpful tips for parents who do decide that they want the Court to hear an urgent application during this health emergency:

[20] If a parent has a concern that COVID-19 creates an urgent issue in relation to a parenting arrangement, they may initiate an emergency motion – but they should not presume that the existence of the COVID-19 crisis will automatically result in a suspension of in-person parenting time. They should not even presume that raising COVID-19 considerations will necessarily result in an urgent hearing.

[21] We will deal with COVID-19 parenting issues on a case-by-case basis.

- a) The parent initiating an urgent motion on this topic will be required to provide specific evidence or examples of behavior or plans by the other parent which are inconsistent with COVID-19 protocols.
- b) The parent responding to such an urgent motion will be required to provide specific and absolute reassurance that COVID-19 safety measures will be meticulously adhered to – including social distancing; use of disinfectants; compliance with public safety directives; etc.
- c) Both parents will be required to provide very specific and realistic time-sharing proposals which fully address all COVID-19 considerations, in a child-focused manner.
- d) Judges will likely take judicial notice of the fact that social distancing is now becoming both commonplace and accepted, given the number of public facilities which have now been closed. This is a very good time for both custodial and access parents to spend time with their child at home.

[22] Everyone should be clear about expectations during this crisis. Parents want judges to protect their children. But with limited judicial resources and a rapidly changing landscape, we need parents to act responsibly and try to attempt some simple problem-solving before they initiate urgent court proceedings.

[23] Judges won't need convincing that COVID-19 is extremely serious, and that meaningful precautions are required to protect children and families. We know there's a problem. What we're looking for is realistic solutions. We will be looking to see if parents have made good faith efforts to communicate; to show mutual respect; and to come up with creative and realistic proposals which demonstrate both parental insight and COVID-19 awareness.

[24] In family court we are used to dealing with parenting disputes. But right now it's not "business as usual" for any of us. The court system will always be here to deal with truly urgent matters, especially involving children. But that means there will be little time or tolerance for people who don't take parenting responsibilities

or COVID-19 seriously.

[25] I have carefully reviewed the materials filed on this case. Even in the absence of responding materials from the father, I have had the benefit of considering the e-mails he exchanged with the Applicant's lawyer in relation to COVID-19 considerations.

[26] While the mother's concerns about COVID-19 are well-founded, I am not satisfied that she has established a failure, inability or refusal by the father to adhere to appropriate COVID-19 protocols in the future.

[27] Every member of this community is struggling with similar, overwhelming COVID-19 issues multiple times each day.

- a) The disruption of our lives is anxiety producing for everyone.
- b) It is even more confusing for children who may have a difficult time understanding.
- c) In scary times, children need all of the adults in their lives to behave in a cooperative, responsible and mature manner.
- d) Vulnerable children need reassurance that everything is going to be ok. It's up to the adults to provide that reassurance.
- e) Right now, families need more cooperation. And less litigation.



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