March 24, 2020 Triage Judge Endorsement (COVID-19 Protocol)

SUPERIOR COURT OF JUSTICE, FAMILY COURT (HAMILTON) File #: 517/19

File Name: Ribeiro v Wright

Appearances: None

1 **AS A RESULT OF COVID-19** which has caused the suspension of regular Superior Court of Justice operations at this time, as set out in the Notice to the Profession dated March 18, 2020, **this matter was referred to me as Triage Judge**, for a determination as to how the file is to proceed. See the Notice to the Profession dated March 18, 2020 available at https://www.ontariocourts.ca/scj/covid-19-suspension-fam/

2 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.

3 At this point I have received and reviewed:

a. Emergency Notice of Motion of Applicant dated March 22, 2020 (with the return date marked "To Be Determined".
b. Affidavit of the Applicant dated March 22, 2020.

4 The issue:

a. The parties have had joint custody of their now nine year old son since a final order in 2012. Primary residence has always been with the mother.
b. The father has always had access. In 2019 he brought a motion to expand parenting time. That motion is currently outstanding.
c. The most recent access arrangement is set out in a (consent) temporary order dated September 6, 2019. The father has access on alternate weekends from Friday 6:00 p.m. to Sunday at 6:30 p.m.
d. The mother has brought an urgent motion to suspend all in-person access because of COVID-19.
e. The mother expresses concern that the father will not maintain social distancing for the child during periods of access.
f. In any event, the mother says she and her family are practicing social isolation in their home for the duration of the COVID-19 crisis. She doesn't want her son leaving the home for any reason – including seeing the father.

5 I want to clearly explain why, as Triage Judge, I am not authorizing this matter proceeding as an urgent hearing at this time.

6 The health, safety and well-being of children and families remains the court's foremost consideration during COVID-19. This is an extremely difficult and stressful period for everyone.

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.

14 And sadly, in some cases a parent's lifestyle or behaviour in the face of COVID-19 (for example, failing to comply with social distancing; or failing to take reasonable health-precautions) may raise sufficient concerns about parental judgment that direct parent-child contact will have to be reconsidered. There will be zero tolerance for any parent who recklessly exposes a child (or members of the child's household) to any COVID-19 risk.

15 Transitional arrangements at exchange times may create their own issues. At every stage, the social distancing imperative will have to be safeguarded. This may result in changes to transportation, exchange locations, or any terms of supervision.

16 And in blended family situations, parents will need assurance that COVID-19 precautions are being maintained in relation to each person who spends any amount of time in a household – including children of former relationships.

17 Each family will have its own unique issues and complications. There will be no easy answers.

18 But no matter how difficult the challenge, for the sake of the child we have to find ways to maintain important parental relationships – <u>and above all, we have to find ways to do it safely.</u>

19 Most of our social, government and employment institutions are struggling to cope with COVID-19. That includes our court system. Despite extremely limited resources, we will always prioritize cases involving children. But parents and lawyers should be mindful of the practical limitations we are facing.

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.

28 I would urge both parents in this case to renew their efforts to address vitally important health and safety issues for their child in a more conciliatory and productive manner.

29 My denial of authorization to proceed with an urgent motion is without prejudice to the issue being returned to court if more serious and specific COVID-19 problems arise. Any future motion would again have to be reviewed by the Triage Judge. However, I hope that both parents will understand the limitations of the family court process at this critical time.

30 None of us have ever experienced anything like this. We are all going to have to try a bit harder – for the sake of our children.

Justice A. Pazaratz

(Original copy will be placed in court file)