

CITATION: Masse v. Phillip, 2020 ONSC 2906
COURT FILE NO.: F310/20
DATE: May 8, 2020

**SUPERIOR COURT OF JUSTICE – ONTARIO
FAMILY COURT**

RE: Jennifer Masse, applicant

AND:

Tyler Phillip, respondent

BEFORE: MITROW J.

COUNSEL: Stephanie Ouellette for the applicant

Kelsey Long for the respondent

HEARD: May 7, 2020

ENDORSEMENT

INTRODUCTION

- [1] The applicant mother issued an application on April 8, 2020, seeking custody of the parties' two children, Sophie and Mia, ages 9 and 7 respectively. The mother also brought an urgent motion for interim access to both children.
- [2] The respondent father has brought his own motion, seeking an interim order that the applicant should have access but that the access should be supervised by the applicant's sister or maternal grandparents.
- [3] Both parties were prepared to concede that there was urgency in accordance with the notice dated March 15, 2020 and posted on this court's website in relation to COVID-19 as a result of the cessation of normal court operations. There is urgency in my view and, accordingly, both motions were heard via teleconference. The applicant was affirmed and testified that the contents of her two unsigned affidavits dated April 16 and May 5, 2020 were true.
- [4] For reasons that follow, the applicant will have unsupervised access, which is staged as set out in the order below.

BRIEF BACKGROUND

- [5] Some of the affidavits were unduly lengthy. There was much conflict in the evidence. I intend to discuss briefly only the salient facts.
- [6] The parties began to cohabit in 2005 and separated on a final basis in late 2019. In April 2019, the applicant was charged with assault. The parties agree that the charge did not proceed. I infer from the evidence of both parties that the charge was withdrawn.
- [7] The parties later resumed living together until late December 2019. The respondent argues that the applicant has contradicted herself. The respondent submits the applicant stated in her first affidavit that she did not reconcile with the respondent after April 2019, whereas in her last affidavit she refers to this as a reconciliation. The important fact is that the parties resumed living in the same residence. Although there is an apparent contradiction in the applicant's evidence, I find that little turns on it for the purpose of the motions.
- [8] The applicant describes her relationship with the respondent as being physically and emotionally abusive. She deposes that she never called the police because, as a child, she was the victim of abuse and was "never aided by the police." The respondent's curt response to these allegations is a succinct and complete denial.
- [9] The applicant deposed in her first affidavit that the respondent "has a criminal record" that included destroying her truck window in approximately 2007. In his "paragraph-by-paragraph" response to this affidavit, the respondent skips over this allegation. In his form 35.1 affidavit, the respondent discloses that in 2007 he was charged with breaking the applicant's truck window, for which the "sentence" was a "peace bond."
- [10] Whether or not the respondent was convicted, the applicant's evidence that he destroyed her truck window remains largely unchallenged, and is indicative of conduct suggesting anger or emotional dysregulation.
- [11] For his part, the respondent describes the applicant as someone who has struggled with mental health issues during their relationship. The respondent described the mental health issues as consisting of depression and episodes of rage.
- [12] The respondent deposes observing the applicant having excessive mood swings, having scattered thoughts, speaking quickly and in nonsensical phrases.
- [13] In his evidence, the respondent describes an occurrence, which he characterizes as an episode of rage that occurred during Christmas 2019. The respondent deposes that the applicant's conduct included biting the respondent. The children were present. Police eventually were called and the applicant was charged and removed from the home. The applicant's form 35.1 affidavit discloses outstanding charges of assault and theft under \$5,000. The applicant is bound by a no-contact order with the respondent.

- [14] The applicant addresses briefly the foregoing allegations. She deposes that she suffered bouts of depression during the relationship due to the respondent's emotional and physical abuse. The applicant describes dealing with this by going to doctor's appointments and making changes as to her physical fitness, diet, medication and overall selfcare. The applicant does not address directly the events, as alleged by the respondent, that transpired during Christmas 2019.
- [15] The applicant describes herself as the children's primary caregiver. The respondent disputes this claim and deposes that both parties participated equally in caring for the children. However, even if the respondent's characterization of the parties' parenting is true, it still shows that both parties were significant caregivers for both children.
- [16] There is much bickering and accusations in the material regarding the applicant's ability in attempting to have parenting time with the children following the parties' separation at the end of December 2019 after the applicant was charged with the criminal offences. No useful purpose will be served in reviewing that evidence. The focus needs to be on the applicant's future parenting time with the children.
- [17] The allegations made by each party against the other are concerning. It is not possible on this motion to make findings as to each party's conduct given the conflicting affidavit material.
- [18] The applicant does admit to some mental health issues, although the applicant blames the respondent's abusive conduct, denied by the respondent, as contributing to the applicant's mental health issues.
- [19] For the purpose of the motions, I find that the evidentiary record points to a likelihood that the parties have had a longstanding, high-conflict relationship for which each party bears responsibility. I take that into account in assessing the children's best interests. I do not place much weight on the respondent's evidence and exhibits regarding the involvement of the Children's Aid Society.
- [20] Both counsel, when asked, agreed there was no evidence as to whether the child protection worker had spoken to either the applicant or the children. In any event, the brief letter, and also the subsequent brief email from the child protection worker, without more, do not provide sufficient information as to the extent of the society's involvement and any conclusion reached by the society.

DISCUSSION

- [21] The parties had agreed to adjourn the applicant's motion to allow the respondent time to retain counsel and file material. On April 23, 2020, a consent interim interim order, pending the adjournment, was made providing access to the applicant on two successive Saturdays from 10 a.m. to 4 p.m. The access was required to occur in the presence of the applicant's sister.

- [22] The evidence is that the visits took place without incident and were enjoyed by the children.
- [23] Considering the entire evidentiary record, I am not persuaded that the applicant's access visits need to be supervised. In coming to this conclusion, I have considered, among other factors, the age of the children (Sophie will be age 10 in June and Mia will be age 8 in July), the applicant's significant involvement with the children's lives prior to separation and the two positive supervised access visits.
- [24] I do find that the order should provide for some staging of the access. The applicant needs to provide some credible third party information that she has taken appropriate steps to address her mental health issues. Given the COVID-19 situation, this may be more difficult than usual to obtain, but the applicant needs to make thorough efforts to do so, including telephone or other virtual consultations.
- [25] The order below includes most of the provisions incidental to access exchanges that were contained in the consent order and which also were requested in the respondent's notice of motion. The applicant was content to continue those provisions in any new order.
- [26] The applicant's motion sought an interim without prejudice order for access on alternate weekends from 5 p.m. Friday to 7 p.m. Sunday, every other Saturday from 11 a.m. to 7 p.m. and videoconferences twice per week on Monday and Thursday.
- [27] The order below takes into account that the applicant resides in Woodstock and the respondent resides in London and that the children are not attending school currently due to COVID-19.
- [28] The applicant's counsel should provide the trial coordinator with an approved draft order in Word format for digital signature.

ORDER

- [29] I make the following order:
1. The applicant shall have unsupervised parenting time on an interim basis with both children as set out in this order.
 2. Initially, the applicant's parenting time shall be:
 - (a) three consecutive Sundays from 11 a.m. to 7 p.m. commencing Sunday, May 10, 2020 (Mother's Day); and
 - (b) three consecutive Wednesdays from 11 a.m. to 7 p.m. commencing Wednesday, May 13, 2020.
 3. Thereafter, the applicant's parenting time with both children shall be:

- (a) every weekend from 4 p.m. Saturday to 7 p.m. Sunday, commencing Saturday, May 30, 2020; and
- (b) every Wednesday from 11 a.m. to 7 p.m. commencing June 3, 2020.
4. Commencing immediately, the applicant shall have access to the children via videoconferencing at 4 p.m. on every Monday and every Thursday. The parties may agree, in writing, to change the videoconferencing to a different day and/or different time.
 5. The motions are otherwise adjourned before me via teleconference to June 18, 2020 and the trial coordinator shall provide the time and call-in details. On that day, submissions will be heard as to any changes that should be made to the applicant's parenting time.
 6. Each party may serve one affidavit no later than noon June 15, 2020, limited to four pages plus any exhibits, dealing solely with relevant events since the date of this order, including evidence as to the applicant's parenting time with the children.
 7. Further, the applicant, in her affidavit, shall include evidence as to all steps she has taken since the date of this order to address mental health issues.
 8. The parties are encouraged to obtain a case conference date in accordance with the procedure published in the notice on this court's website. The case conference date should be scheduled before me and may be scheduled for the same time as the return of the motions.
 9. Access exchange shall take place at Finley Crescent and Coronation Drive and shall be facilitated by a third party.
 10. Neither party shall speak negatively about the other party in the presence of the children or within earshot of the children, nor allow third parties to do the same.
 11. Neither party shall expose the children to cigarette/marijuana smoke, nor allow any third parties to do the same while the children are present.
 12. Neither party shall be under the influence of alcohol when the children are in their care.
 13. Both parties shall practice strict social distancing, both during parenting and outside of their parenting time. This means following public health recommendations regarding avoiding unnecessary out-of-home errands, frequent hand washing, and any other public health directives.
 14. Both parties will impose strict social distancing on the children including no in-person play dates and no use of public playgrounds or any other prohibited community place as per the public health directives.

15. This order is made pursuant to the *Children's Law Reform Act*, R.S.O. 1990, c. C.12.

16. Costs are reserved to the judge who disposes of both motions before the court on a final basis.



Justice Victor Mitrow

Date: May 8, 2020