Court File Number / *Numéro de dossier du greffe*
F1245/16-01

Ontario Superior Court of Justice, Family Court (London) Endorsement / *Page 1 d'inscription*

Applicant(s) / *Requérant(e)(s):*
Crystal Grace Claire Banks
Respondent(s) / *Intimé(e)(s):*
Adam Adib Shhadeh

DATE HEARD: July 30, 2020

DATE OF ENDORSEMENT: July 31, 2020

APPEARANCES: Holly Watson, counsel for the Applicant Ms. Banks
Eric Vallillee, counsel for the Respondent Mr. Shhadeh
Respondent Mr. Shhadeh

1. This is the Respondent father's motion that seeks the following relief:

   i) An order that, so long as services at Merrymount Family Support and Crisis Centre remain unavailable to the public on account of Covid-19, he shall have video access and contact with the children, Ezekiel Adam Shhadeh DOB August 20, 2018, Malachi Phoenix Shhadeh DOB May 19, 2017 and Isaiah Theodore Shhadeh DOB August 20, 2018 for at least 20 minutes every Saturday at 1pm, or at such other time as the parties mutually agree to in advance through legal counsel.

   ii) An order that he be permitted to have in-person contact with the children in the presence of OCL clinician John Butt, should Mr. Butt consent to facilitate such contact, for the purposes of conducting his s.112 investigation.

   iii) An order that, should Mr. Butt consent to facilitate such in-person contact, the Applicant and Respondent shall cooperate with him and schedule the contact time which shall be of a duration and length as recommended by Mr. Butt, and the parties shall ensure that the children do attend the contact or access times as scheduled.

   iv) An order that when Merrymount's services are once again available to the parties, the access specified in Grace J.'s interim order of January 10, 2020 shall immediately resume and replace any video access ordered on this motion.

2. The parties met in 2013 and began living together shortly thereafter. The Respondent deposes that he purchased a home for them in 2015 (using inherited funds), which was sold in 2017. He indicates that from February 2017 onward the Applicant worked to financially support the family while, or so he says, he stayed home to care of the child Ezekiel.

3. The Respondent further deposes that he assisted the Applicant in Malachi's care until she returned to work when he resumed primary responsibilities.

4. The Applicant disputes this deposing that the Respondent was never, at any point, the primary caregiver.

5. While the Applicant's evidence seems far more credible on this point, it is not a factual dispute I can resolve today.

6. In June 2019, the Respondent was charged with assaulting the Applicant (including historical assaults). Although I am not entirely sure when, I am told that at some point he completed the Changing Ways and Caring Dads programs. The Respondent says that he is "working diligently and successfully on finding better strategies for anger management".

7. On January 10, 2020 – at a settlement conference – the parties consented to an order that would allow the Respondent in-person access with the children every other weekend at Merrymount. This order is in effect.

8. The problem is, for one reason or another, this access was never instituted before the Covid-19 outbreak. The parties blame each other but this is neither here nor there. What is important is, not only was this access not instituted before Covid-19, the outbreak itself has prevented it from commencing as Merrymount is not currently offering this service. The Respondent is not seeing the children at all and as I understand it has not since June 2019.

9. What concerns the Respondent is that, prior to the January order, it is the Applicant who proposed video access visits but now, all of a sudden, does not think they are appropriate. The Respondent puts it this way at para. 16 of his July 20th affidavit:

> The Applicant has refused my multiple requests for video access over the past several months. She has told me that this is my own fault for refusing her previous offers for video access in 2019, long before covid-19. At the time that the Applicant offered me video access in 2019, I did not think that it was appropriate for me to be restricted to just video access and wanted face to face access. I also did not have legal counsel at the time so I just wasn't sure what the best way forward was.

10. The Applicant opposes this motion and resists any form of video access which, while I do not wish to minimize the Respondent's assaultive behaviour, makes little sense given her position on video access before covid-19. In fact, allowing him video access appears to have been her predominant position before Grace J.'s order (or at least until he retained counsel in, I believe, October 2019).

11. In the Applicant's affidavit she divulges information that I did not find to be all that helpful. For instance, she speaks to the Respondent's infidelity, pressure she says he exerted to get an abortion, and his out-of-control spending after the home's sale. She does raise legitimate concerns which do impact upon his ability to care for the children including, of course, his assaultive behaviour and his, in her view, unsavoury associates. However, the impact of this is somewhat tempered (at least for the purposes of this motion) as we are talking about temporarily introducing brief, once-weekly, video visits as a substitute for the supervised access that has already been ordered. Were he looking for expanded and/or unsupervised access this may have been important, but in these circumstances it is of limited value.

12. We must remember that the overarching consideration is what is in the children's best interests, not the parties, and surely it would be beneficial for these children to have a relationship with their father. This is the starting point. Again, this is not to diminish the many valid concerns raised by the Applicant, but we are talking about temporarily addressing the fact that, for reasons beyond his control, the Respondent cannot see his children. It is for this reason that I find the Respondent's motion urgent.

13. With that, is the relief sought appropriate?

14. It is, I suspect, clear from my comments to this point that I believe there should be a mechanism to facilitate the Respondent's access to his children. That said, I am sympathetic to the Applicant's reluctance to have a man who she says assaulted her essentially being invited into her home, albeit by video feed. On the face of it, and all else being equal, this is a valid concern. However, I am still having a hard time squaring this with her position on access after their split, and before Grace J.'s order.

15. Furthermore, the Applicant has not offered any constructive alternatives, other than to imply that the Respondent is continuing his cruelty by merely making this request. In fact, her counsel casts this motion as evidence that the Respondent has learned nothing from the Changing Ways program. She says the Respondent has unnecessarily created a "firestorm", which I find to be a bit hyperbolic.

16. Furthermore, it appears as though the Applicant is advocating that for access to be appropriate it needs to occur in a therapeutic setting, or that the Respondent provide proof of counselling, or that we first need to learn more about his mental health issues. At the risk of repeating myself, while this may become a significant issue, and perhaps even a deciding factor in how much access the Respondent is ultimately granted, it is inconsequential to the issue before me. The Respondent has, right now, court-ordered supervised access at Merrymount, which he cannot exercise. The Applicant does not seek to alter that order, nor is there a motion before me asking that I impose a counselling condition. We are simply looking for a way to bridge the gap between now and whenever the supervised access at Merrymount can commence.

17. I note also that the Respondent is not asking that the 20 minute weekly video visit be unsupervised. The Applicant can leave the door open and/or have any one she wishes sit close by to monitor.

18. In my view, the Respondent's request is modest and, in the circumstances, appropriate.

19. That leaves the issue of whether to allow for in-person visits so long as the OCL clinical investigator is present. That I am not prepared to order. First of all, while the letter the Respondent cites in his affidavit indicates that proceeding with such an observation session is on the table, it appears as though – at least based on Mr. Butt's correspondence of July 15th and 16th – that the OCL no longer considers this an option. Second, such an order would be far too ambiguous. Third, I should not be dealing in hypotheticals. Meaning, if we knew for certain that this was an option and the OCL was committed to carrying out this part of its investigation in that way, then, yes, an order allowing it would have to be considered. That, however, is not the state of the evidence before me. This aspect of the Respondent's motion may be revisited upon receipt of further and better information from the OCL about how it is in fact going to conduct its investigation.

20. For these reasons, I make this order:

    i) Order to issue on the terms set out in paras. 2 and 5 of the Respondent's Notice of Motion.

    ii) Balance of motion is dismissed, without prejudice to the Respondent's right to revive it should the OCL deem his suggested approach appropriate.

21. I trust that two adults, each with highly competent counsel – and through their counsel – will be able to sort out the timing of and any logistics surrounding the exercise of the access just ordered. In the event they cannot, they may make arrangements with the trial coordinator to speak to the matter before me at which point, and after hearing from counsel, I will provide further clarity.

22. This is a mixed result with divided success. No order for costs.

Justice Jonathon C. George