

CITATION: Morley v. Doucette, 2020 ONSC 3402
COURT FILE NO.: F352/20
DATE: June 1, 2020

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

RE: Ruth Ann Morley and Codie Louis Joseph Morley, applicants

AND:

Mikayla Madisone Leanne Doucette, respondent

BEFORE: MITROW J.

COUNSEL: Stephanie Ouellette for the applicant, Ruth Ann Morley

David Wwinner for the applicant, Codie Louis Joseph Morley

Alexander Hodder for the respondent, Mikayla Madisone Leanne Doucette

HEARD: May 29, 2020 via teleconference

ENDORSEMENT

[1] This urgent motion brought by the applicant, Ruth Ann Morley, the child’s paternal grandmother (“the paternal grandmother”), was back before me on May 29, 2020. The applicant, Codie Louise Joseph Morley, is the child’s father (“the father”) and the respondent, Mikayla Madisone Leanne Doucette, is the child’s mother (“the mother”). The child is age two.

[2] The background facts and issues, and the finding that this was an urgent motion in accordance with the notice posted on the court’s website, were set out in my reasons dated May 21, 2020 (“the reasons”) in *Morley v. Doucette*, 2020 ONSC 3180, and will not be repeated save as required to provide some context to the parenting order being made below.

[3] The urgency arose because the mother had resorted to self-help and had taken the child to Prince Edward Island (“PEI”). Paragraph 30 of the reasons states:

[30] Despite the conflict in the evidence, there can be no doubt, on the balance of probabilities, that the mother has engaged in a self-help remedy. I find on the evidentiary record that the mother acted surreptitiously in taking the child to PEI without the knowledge of either of the applicants. There is no credible evidence from the mother to explain why she failed to

seek the approval of the court in London prior to unilaterally changing the child's habitual place of residence which, on the evidence, is London.

- [4] The order made on May 21, 2020 required the mother to return the child to London, Ontario by no later than 4 p.m. May 27, 2020 and to deliver the child by that time to the paternal grandmother.
- [5] The mother has complied with that order. The court now must make an interim parenting order.
- [6] For reasons that follow, the mother and paternal grandmother each shall have care and custody of the child for periods of time as specified in the order below, with access to the father.

DISCUSSION

- [7] Both applicants continue to present a united position. They seek interim joint custody of the child, with primary residence to the paternal grandmother and with the father to have day access twice per week as agreed between the applicants. The applicants propose a schedule of daytime access to the mother.
- [8] The mother's plan is that she should have interim custody of the child, with access to the paternal grandmother on alternate weekends and with the father to have access supervised by the paternal grandmother when the child is in the paternal grandmother's care.
- [9] Although the mother wrongfully resorted to self-help, this must be viewed in the context of the father being charged with assaulting the mother following an altercation that occurred approximately six days prior to the mother travelling to PEI with the child in order to have the support of her family there.
- [10] Although there was substantial conflict in the evidence between the parties, as discussed in greater detail in the reasons, including conflict in the evidence regarding the altercation that gave rise to the assault charge, the fact remains that the father was charged and the mother was not charged.
- [11] The father does, however, present a somewhat concerning profile. In addition to the assault charge against the mother, the father currently also is charged with robbery and break and enter. These appear to be separate occurrences from the assault incident. Of greater concern is the father's criminal record attached to his form 35.1 affidavit. This record indicates that while living in PEI, which is where he met the mother, that the father was convicted of ten criminal offences during the period March 2015 to September 2017. These convictions include three convictions of assault and one conviction of uttering threats.
- [12] The father, according to his form 35.1 affidavit, is currently 25 years of age. The extent of the father's unenviable criminal record at such a relatively young age speaks poorly to his ability to present to the child an appropriate parenting role model. The father's

criminal past is an undisputed fact and does not assist the father when he denies allegations of violence as alleged by the mother.

- [13] The mother's form 35.1 affidavit discloses no criminal record and no pending criminal charges.
- [14] There is little, if any, evidence regarding the father's current living arrangements and I find, on an interim basis, that the applicants' proposal of weekly daytime visits with the child is in the child's best interests. This also takes into account the father's undertaking given in the criminal proceeding not to communicate directly or indirectly with the mother, not to attend at the apartment where they resided and not to come within 25 metres of the mother.
- [15] As noted in the reasons, the paternal grandmother's evidence was that she had the child in her care for a minimum of two days per week; the father deposed that, for over one year, the paternal grandmother had the child every weekend (reasons, paras. 17 and 24).
- [16] Given the significant conflict in the evidence between the parties as to the mother's alleged parenting deficiencies, I find that an interim parenting order that meets the child's best interests should approximate some semblance of the paternal grandmother's role in the child's care prior to the parents' separation. The paternal grandmother's role was not that of a primary caregiver.
- [17] While the mother asserts a "bold denial" of the allegations questioning her parenting abilities (reasons, para. 22), the evidence as a whole does raise some questions regarding the mother's parenting ability.
- [18] However, I cannot, on the evidentiary record, reach a conclusion consistent with the applicants' position that the mother, on her own, is unable to parent the child.
- [19] Given all of the evidence, and taking into account the recent turmoil, it is in the child's best interests that the paternal grandmother should have a significant involvement in the child's care.
- [20] Despite the tensions between the parties, and the mother's poor judgment in taking the child to PEI, it remains critical for the mother and the paternal grandmother to cooperate in the care of the child. The paternal grandmother's role throughout has been to support the parents.
- [21] The parenting schedule set out in the order below is subject to an important caveat. Although the mother has the availability of the apartment where she lived with the father, until June 30, 2020 and which is paid for to that date and has been cleaned by the paternal grandmother (reasons, paras. 31-32), there must be evidence that the mother will have suitable accommodation for herself and the child subsequent to June 30, 2020. The order below adjourns the motions to provide evidence as to the mother's housing situation.

- [22] If the mother fails to obtain satisfactory housing, then the parenting plan may require changes to meet the child's best interests.
- [23] Although requested by the mother, I decline to make an interim order permitting the mother to visit with the child in PEI. The child was in PEI with the mother for most of May 2020. However, in the context of a final order, after the turmoil of the recent events has settled down, it may be reasonable to explore that option.

ORDER

[24] For the reasons set out above, I make the following order:

1. The following interim parenting order is made pursuant to the *Children's Law Reform Act*, R.S.O. 1990, c. C.12.
2. The child shall be in the care and control of the paternal grandmother from noon Thursday to noon Sunday every week, commencing Thursday, June 4, 2020.
3. The child shall be in the care and control of the mother at all other times, except that for the week commencing Monday, June 1, 2020 after 7 p.m. on that day, the child shall remain in the care and control of the paternal grandmother until 5 p.m. June 2, 2020.
4. The father shall have two periods of daytime access with the child for up to five hours each time, to be arranged with the paternal grandmother while the child is in the paternal grandmother's care and control, such access is to be exercised in London, Ontario.
5. The mother shall attend at the paternal grandmother's residence to pick up the child at the beginning of her parenting time. The paternal grandmother shall attend at the mother's residence to pick up the child at the beginning of her parenting time.
6. When the child's daycare reopens, the parties shall ensure that the child attends daycare and the parties may make arrangements for some of the exchanges of the child to occur at the daycare.
7. The mother and the paternal grandmother shall advise each other immediately as to any changes in address, telephone and email.
8. If the mother plans to move from the residence that she shared with the father, then the mother shall advise the paternal grandmother in writing as soon as she obtains a new residence and the mother shall permit the paternal grandmother to enter and view the new residence if the paternal grandmother so requests.
9. Pending the final disposition of this case, the child at all times shall reside in London, Ontario and the child shall not be removed from the Province of Ontario. If the mother wishes to take a trip with the child to a location that is more than 100

- kilometres from London, Ontario, then the mother first shall obtain the written consent of the paternal grandmother.
10. While the child is in the parties' respective care, the parties shall ensure that the child attends all medical appointments. All parties may attend the appointments, however, the father shall not attend in person at the appointments if the mother is present at the appointments.
 11. All parties shall comply with government protocols regarding COVID-19, including social distancing.
 12. The mother shall permit the paternal grandmother to enter the mother's residence and view the mother's residence if the paternal grandmother makes a written request for same. This request shall be made in writing on at least 24 hours notice, not to exceed two times per month.
 13. The paternal grandmother and the mother each shall have access to the child by way of videoconference on alternate days when the child is in the care of the other party. The father may join the paternal grandmother when she has a videoconference so long as the father does not violate the undertaking given by him in the criminal proceeding.
 14. This proceeding is adjourned before me to a case conference at 11:30 a.m. June 26, 2020 via teleconference with the call-in details to be provided via email by the trial coordinator. The case conferences briefs shall be served by email by 4 p.m. June 23, 2020 together with a copy via email to the trial coordinator.
 15. The motions are adjourned to the case conference in order to receive evidence regarding the mother's housing arrangements for the period after June 30, 2020. The issue of costs of the motions may also be spoken to.
 16. By 4 p.m. June 23, 2020, each party may serve a brief affidavit limited to two typed pages plus exhibits regarding the issue of the mother's housing arrangements. The affidavits shall be served on the parties and the trial coordinator via email.



Justice Victor Mitrow

Date: June 1, 2020

