

CITATION: Phillips v. Beauchamp-Voutselas, 2020 ONSC 2087
COURT FILE NO.: F153/20
DATE: April 3, 2020

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

RE: Crystal Phillips (Applicant)

Konstantina Beauchamp-Voutselas (Respondent)

Dennis Phillips-Cada (Respondent)

BEFORE: Tobin J.

COUNSEL: Applicant, in person,

Stephanie Ouellette for the Respondent, Konstantina Beauchamp-Voutselas

Respondent Dennis Phillips - Cada, in person

HEARD: April 3, 2020

ENDORSEMENT -- COVID 19 PROTOCOL

[1] The applicant (“paternal grandmother”) moved on an urgent basis for interim custody of her granddaughter, Alora Lily Voutselas-Phillips, born February 11, 2016 (“child”). Her son, the respondent, Dennis Phillips-Cada (“father”), is the child’s father.

[2] On February 13, 2020, on a motion, Mitchell J. granted the paternal grandmother a temporary order for custody of the child. The order also provided that the child’s primary residence be with the paternal grandmother.

[3] On February 26, 2020, T. Price J. adjourned the paternal grandmother’s motion to April 14, 2020 but granted the respondent, Konstantina Beauchamp-Voutselas, the child’s mother (“mother”), the ability to bring the issue of interim custody back before the court on a date prior to April 14, 2020. The mother did so by notice of motion dated March 17, 2020 returnable March 25, 2020. In her notice of motion, she asked the court for an order granting her custody of the child or, in the alternative, joint custody of the child or, in the further alternative, access every weekend.

[4] By endorsement dated March 27, 2020, Henderson J. found both motions to be “presumptively urgent as contemplated by the notice to the profession dated March 15, 2020 ...”

[5] For reasons set out below, I find that this matter is urgent within the contemplation of the Memorandum to the Profession dated March 15, 2020.

[6] As a result of the COVID-19 pandemic 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 15, 2020, this urgent matter was heard by teleconference.

[7] Electronic materials were filed through the courthouse email address.

[8] The affidavit of Crystal Lynn Phillips provided electronically on March 30, 2020 was not sworn. In accordance with the Notice to the Profession, Ms. Phillips was present in the teleconference and her evidence was affirmed by me on the record.

[9] Upon the resumption of court operations, all materials will be duly filed in the physical record at the courthouse.

[10] I also heard the affirmed oral evidence of the mother who was examined by her counsel, cross examined by the paternal grandmother and questioned by me.

Urgency

[11] I reviewed all of the material filed on both motions in order to consider the issue of urgency, as well as the substantive relief sought.

[12] The Memorandum to the Profession contemplates urgent matters to include matters to “be determined relating to the well-being of a child.”

[13] In this case, the uncontradicted evidence is that the respondent mother did not return the child to the paternal grandmother following an access visit. The child was returned to the paternal grandmother once the order of Mitchell J. was granted.

[14] There is no court order nor apparently agreement between the parties regarding the time and circumstances whereby the child is to be in the mother’s care.

[15] An order is needed at this time to create a temporary plan of care until the court resumes normal operations. This is a case where the court wants to ensure that there are no further self-help actions and to avoid the need for police involvement.

[16] An order is also needed at this time to determine any conditions which may be appropriate to ensure the health, safety and well-being of the child while in the mother’s care.

[17] The health, safety and well-being of this child requires that there be some stability and predictability during these abnormal times.

Residence of the Child

[18] The motions before the court are cast as requests for interim custody. The legal principles to be applied on this type of motion are well settled.

[19] In *Perchaluk v. Perchaluk*, 2012 ONCJ 525, the court held, at para. 28:

In considering [the best interest factors under s. 24 of the *Children's Law Reform Act*] at a temporary stage in the proceedings, the most relevant factor the court must keep in mind is the principle of maintaining the status quo pending trial. Temporary orders are by their nature based on limited evidence without the scrutiny of cross-examination and are only intended to provide a reasonable acceptable solution to a difficult problem until trial. After a full investigation of the facts, a trial judge may very well come to a different conclusion.

[20] In *Grant v. Turgeon* (2000), 5 R.F.L. (5th) 326 (Ont. S.C.J.), the court held, at para. 15, that:

... generally, the *status quo* will be maintained on an interim custody motion in the absence of compelling reasons indicative of the necessity of a change to meet the children's best interests. This is so, whether the existing arrangement is *de facto* or *de jure*: See *McEachern v. McEachern* (1994), 5 R.F.L. (4th) 115 (Ont. Gen. Div.); *Papp v. Papp* (1969), [1970] 1 O.R. 331 (Ont. C.A.).

[21] In this case, the child has lived in the paternal grandmother's home for all but the first month of her life.

[22] While there is conflict in the evidence regarding the level of care the child receives in the paternal grandmother's home, the care has been constant. The only problem with the quality of care the court can find on the uncontradicted evidence is the child's need for dental care.

[23] It is the paternal grandmother who has provided the child with a stable home. The child has a routine that includes family support and neighbourhood friends.

[24] The paternal grandmother's involvement with a children's aid society is historical. The mother and father moved to the paternal grandmother's home to avoid having the child apprehended. Shortly after they arrived at her home, the local society twice visited to check on

the child's safety. There has been no other society involvement regarding the paternal grandmother's care of the child.

[25] The mother did not provide compelling evidence that would require the court to change the child's residence at this time.

[26] At the return of this motion, Ms. Ouellette did not ask that the child's residence change. The mother, to her credit, recognized that this was not the time to change the child's residence.

Time in the Mother's Care

[27] The mother participated in caring for the child until she moved out of the paternal grandmother's home. She had to leave this home because of domestic violence she suffered at the hands of the father. The mother has not lived with the child since sometime in 2018. After she moved out, the mother did not appear to have enough family or community support readily available. She needed time to re-establish herself.

[28] She now resides in Mississauga. As well, she secured part time employment but was laid off due to the effects of the pandemic.

[29] The mother has had little contact with the child since leaving the paternal grandmother's home. I make no finding why that was the case as the evidence is contradictory. The mother's evidence is that she was denied access most times she asked.

[30] This is not a case where there is an existing order that is presumptively correct that is to be followed, subject to government requirements to keep safe while the COVID-19 pandemic is ongoing.

[31] In *Ribeiro v. Wright*, 2020 ONSC 1829 (CanLII), the court articulated the following expectations where an order is in place;

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.

[32] Similar expectations are appropriate where there is no order or established access routine in place.

[33] While the motion was being argued, it became clear that the mother and paternal grandmother were advancing similar plans for the mother's access. The paternal grandmother did support the mother and child being together as long as it was safe for the child.

[34] The mother proposed that, while the pandemic was ongoing, that a safe and suitable place for her to have access was in the home of the paternal grandmother's close friend, Janet John. She proposed that this take place weekly but, in her evidence, stated that at this time she would be able to come to London about every other week. Her father is able to bring her to London.

[35] The paternal grandmother supported that plan as long as the mother did not use drugs or alcohol and that it did not interfere with the father seeing the child. She has confidence in Ms. John's ability to ensure the child is safe while in her home.

[36] At my request, and with the consent of the teleconference participants, Ms. John was asked to join in the teleconference call so that her willingness and ability to become involved could be assessed. She did.

[37] Ms. John is willing to allow the mother and child to spend time, including overnight, in her home. She has the space and amenities for this. She advised that she follows government guidelines for safe behaviour during the COVID-19 pandemic and intends to continue to do so.

[38] Ms. John lives in the same neighbourhood as the paternal grandmother and is able to safely bring and pick up the child when access takes place.

Order

[39] Accordingly, the following order shall go:

- a) The order of Mitchell J. dated February 13, 2020 shall continue until further order of the court.
- b) The respondent, Konstantina Beauchamp-Voutselas, shall have reasonable access with the child, Alora Lily Voutselas-Phillips, born February 11, 2016, (but not more often than every other week) including overnight as arranged with the applicant, Crystal Phillips. This access shall take place in the residence of Janet John, 296 Boullee Street, London. The applicant shall take the child to and bring her back from all access visits. The respondent mother shall not consume alcohol or non-prescription drugs 12 hours before or during any access visit. The parties shall engage in social distancing, hand-washing and any other conduct recommended by federal, provincial or municipal government officials on account of COVID-19.
- c) The respondent, Konstantina Beauchamp-Voutselas, shall have telephone or electronic access with the child, Alora Lily Voutselas-Phillips, born February 11, 2016, at least

twice each week as arranged by the applicant and her. If they are not able to agree, this access shall take place Tuesdays and Thursdays at 5:00 p.m.

- d) Service on the respondent, Dennis Phillips-Cada, may be by email at: dennisphillips922@gmail.com.
- e) The motions and application are adjourned to June 3, 2020 to be spoken to regarding next steps.



Justice Tobin

DATE: April 3, 2020