

SUPERIOR COURT OF JUSTICE FAMILY– ONTARIO

RE: Jennifer Shank, Applicant

AND:

Jason Hagen, Respondent

BEFORE: Campbell J.

COUNSEL: Applicant, acting in person

Respondent, acting in person

HEARD: Considered in chambers

ENDORSEMENT

- [1] The Applicant seeks an order to have the Respondent found in contempt of the current parenting arrangement. Here the purpose of this motion is to enforce a “verbal” agreement between the parties. The email requesting the hearing of the urgent motion indicates that the Applicant is currently in New Brunswick, expecting to return to Ontario next week.
- [2] On March 15, 2020, the Office of the Chief Justice issued a “Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings” (*Notice to the Profession*). The *Notice to the Profession* advised that in order to protect the health and safety of all court users and to help contain the spread of the 2019 novel coronavirus (COVID-19), the Superior Court of Justice is suspending all regular operations, effective Tuesday, March 17, 2020, and until further notice. A further *Notice to the Profession* was released on April 2, 2020. That notice expanded matters to be dealt with by the Superior Court of Justice but did not affect requests for the hearing of urgent motions.
- [3] Section A of the *Notice to the Profession* describes those exceptional matters that may be heard during the suspension of regular court operations and provides that:

Until further notice, only the following **urgent and emergency** civil and family matters listed below shall be heard by the Superior Court of Justice.

. . . .

2. The following FAMILY AND CHILD PROTECTION matters:

Only urgent family law events as determined by the presiding justice, or events that are required to be heard by statute will be heard during this emergency period, including:

- a. requests for urgent relief relating to the safety of a child or parent (e.g., a restraining order, other restrictions on contact between the parties or a party and a child, or exclusive possession of the home);
- b. urgent issues that must be determined relating to the well-being of a child including essential medical decisions or issues relating to the wrongful removal or retention of a child;
- c. dire issues regarding the parties' financial circumstances including for example the need for a non-depletion order;
- d. in a child protection case, all urgent or statutorily mandated events including the initial hearing after a child has been brought to a place of safety, and any other urgent motions or hearings. [Emphasis in original.]

[4] Thus, as it pertains to the matter before me, para. 2 of the *Notice to the Profession* makes plain that the exception for “urgent and emergency” family matters that may be heard in the current exceptional period during which the regular operations of the court are suspended is available only where it is shown that:

- a. The children have been wrongfully detained.

[5] The onus is on the applicant to establish these elements to the satisfaction of the court.

[6] In this case, I am not satisfied that the onus has been met.

[7] While this proceeding appears to be ongoing in the Superior Court of Justice, there are no Court orders. Therefore, it is hard to conclude from the material I have been provided with that the Respondent is in contempt of any enforceable order.

[8] More likely, the Applicant is seeking to obtain an interim order for residency. That would be apparently based on the Respondent’s refusal to return the children to her after a visit with him.

[9] On the basis of the email sent by the Applicant to the Court, I conclude that she is not in Ontario. The Respondent’s stated reason to her for not returning the children is so that she could not take them to New Brunswick. I have no information as to why the trip to New Brunswick was necessary or urgent. Therefore, such a trip would not appear to be justified. I have reached that conclusion having regard to the directives of public health authorities in Ontario.

[10] If and when the Applicant returns to Ontario, and the Respondent continues to refuse to return the children to her, I would be prepared to reconsider this matter as the triage judge.

[11] Thus, I find that the matter is not an “urgent and emergency” matter within the meaning of the *Notice to the Profession*, justifying that it be heard during the suspension of the court’s regular operations.



Justice Scott K. Campbell
Local Administrative Justice – St. Thomas

Release Date: April 16, 2020