

**CITATION:** Shank v. Hagen, 2020 ONSC 2421  
**COURT FILE NO.:** FC 133/19  
**DATE:** 2020/04/21

**SUPERIOR COURT OF JUSTICE FAMILY– ONTARIO**

**RE:** Jennifer Shank, Applicant

**AND:**

Jason Hagen, Respondent

**BEFORE:** Campbell J.

**COUNSEL:** Applicant, acting in person

Jennifer Foster, Counsel for the Respondent

**HEARD:** Considered in chambers

**ENDORSEMENT**

[1] The Respondent applies for an order:

- a. Prohibiting the Applicant to have the children Clark, born January 22, 2014, and Blake, born November 14, 2015, in her care for a period of fourteen days upon her return to Ontario;
- b. A temporary order that the Applicant should not be permitted to take the children more than 30 kilometers outside the municipal limits of Aylmer or the city of St. Thomas without the Respondent’s approval;
- c. A temporary order that the Respondent have the children in his care every two days for 48 hours plus ancillary orders; and
- d. An order authorizing the police to locate, apprehend and deliver the children to the Respondent as necessary.

[2] On April 16, 2020 I issued an Endorsement in this proceeding rejecting the Applicant’s request for an urgent motion. Paragraphs 2 and 3 of that Endorsement are relevant to the Respondent’s request but will not be repeated here.

[3] 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.

- [4] 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.]

- [5] 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. There is a request for urgent relief relating to the safety of the children and an order placing restrictions on contact between the parties and the children;
- b. The alleged urgent issues must be determined relating to the well-being of the children including essential issues relative to the potential wrongful removal of the children from Ontario.

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

- [7] In this case, I am satisfied that the onus has been met.

- [8] Notwithstanding that I have previously dealt with this matter, my knowledge of the background between these parties is limited. It is clear that the parties were involved in litigation prior to the current health emergency. It would also appear that litigation was commenced to deal with issues involving their children.
- [9] In the Applicant's material emailed to me she stated that the children were withheld from her by the Respondent preventing her from taking the children on a planned vacation to New Brunswick. The Respondent's materials alleged that the Applicant has moved permanently to New Brunswick. It would also appear from the Respondent's materials that the mobility of the children to New Brunswick is the crux of the litigation between the parties.
- [10] There are additional issues raised by the Respondent as a result of the Applicant's leaving Ontario and travelling to New Brunswick. Both the government of Canada and the government of Ontario have implemented cautionary measures with respect to stopping the spread of the COVID-19 virus. The Respondent alleges that the Applicant will have to self-isolate for a period of 14 days upon her return to Ontario from New Brunswick. There is also significant concern raised by the Respondent that if the children come into the care of the Applicant with no court order in place that she will remove the children to New Brunswick. This he asserts is contrary to the party's separation agreement.
- [11] I find that the matter is 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.
- [12] Accordingly, I direct that this urgent matter shall be heard by Price J. on Wednesday, April 29, 2020, at 10:10 a.m. or at such other time as may be determined by the Trial Coordinator.
- [13] Further, I direct that the parties shall deliver their material for use on the hearing of the motion in accordance with the following schedule:
- a. The moving party's material shall be filed by Wednesday April 22, 2020 at 4:00 p.m. The moving party's motion material shall not exceed 10 pages including exhibits directly related to the issues;
  - b. The Applicant's responding material shall be filed by Friday April 24, 2020 at 4:00 p.m. The Responding material shall not exceed 10 pages including exhibits directly related to the issues; and
  - c. Reply material, if any, shall be filed by Tuesday April 28, 2020 at 12:00 noon. These materials shall be no more than two pages.
- [14] The issues to be determined will, subject to the discretion of the motion's judge be as set out in paragraph 1 hereof. This order is without prejudice to the Applicant to argue that the matter does not meet the requirements of urgency as set out in the *Notice to the Profession* and a determination of the motion judge accordingly.

- [15] Pursuant to rule 6(2)(e) of the *Family Law Rules*,<sup>1</sup> the court orders that service of any materials for use on the hearing of the motion may be made by e-mail. Such service by e-mail is deemed to be effective on the day the e-mail is sent but, where service is made between 4 p.m. and midnight, it is deemed to have been made the following day.
- [16] The parties shall comply with all provisions of Section B of the *Notice to the Profession* respecting “Procedure to Bring an Urgent Matter” except to the extent that this endorsement permits or directs otherwise.
- [17] All materials for use on the hearing of the motion shall be filed with the court by delivering them as attachments (in MS Word or searchable PDF format) to an e-mail sent to the Trial Coordinator (at [St.Thomas.SCJ@ontario.ca](mailto:St.Thomas.SCJ@ontario.ca)) and copied to the other parties.
- [18] References to caselaw, legislation, regulations, or other source material should be made by hyperlinks embedded in the party’s materials filed. Where hyperlinks are provided, the party shall not deliver a separate book of authorities.
- [19] The hearing of the motion shall be held by telephone conference on a telephone conference line to be determined by the Trial Coordinator. In the alternative, the parties and the presiding judge may elect to use such videoconference technology (whether Skype or MS Teams or otherwise) as may be available to all parties and acceptable to the presiding judge.
- [20] Upon such time as the court resumes regular operations, each party to this motion shall forthwith file with the court a printed copy of all materials that the party delivered electronically for use on the hearing of the motion, together with proof of service, and shall ensure that the appropriate filing fee has been paid.
- [21] All parties are hereby given notice that:
- a. The presiding judge may convene one or more case conferences for the purposes contemplated by rule 17(4) and may make such orders pursuant to rule 17(8) as the presiding judge may deem appropriate to secure the just, most expeditious, and least expensive determination of the motion.
  - b. The determination of the motion, whether delivered orally or released in typewritten or handwritten format, is an order of the court enforceable by law and, in accordance with rule 25(18), effective from the date on which it is made, regardless of whether a signed formal order is prepared, signed, and entered with the court in accordance with the provisions of Rule 25.
  - c. All provisions of this endorsement may be varied by the presiding judge on such terms as the presiding judge deems just.

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<sup>1</sup> *Family Law Rules*, O. Reg. 114/99, as am.

- d. The hearing of the motion may be recorded for the court's purposes.
- [22] The preparation, signing, and entry of a formal order in respect of this endorsement is hereby dispensed with.



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

**Release Date: April 21, 2020**

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

**JENNIFER SHANK – APPLICANT**

**JASON HAGEN – RESPONDENT**

**To the person(s) responding to this motion:**

Counsel for the Respondent in this proceeding has filed a motion/application, as the case may be, seeking relief against you and seeking to have this matter addressed on an urgent basis, as permitted by the Superior Court of Justice Practice Direction dated March 15, 2020, found at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>.

The regular operations of the Superior Court of Justice have been suspended until further notice as a result of the serious health risks posed by COVID-19. Nonetheless, the Local Administrative Judge for St. Thomas, Ontario or another designated judge, has made a determination that this matter is urgent and that the matter will be heard for not more than 60 minutes by teleconference on **April 29, 2020 at 10:10 a.m.** The call-in number is **1-866-633-1033** and the **Conference ID will be provided by the Trial Coordinator.**

A copy of the material sent electronically to the Court in support of the request for relief against you is attached. You should read and seek advice in respect of it immediately.

**You are required to immediately confirm by email that you have received this message from the Court. If you fail to do so, the matter will proceed without you.**

If you believe you have a compelling reason why you cannot participate in the teleconference that has been arranged, please advise the Court immediately, indicating the reason(s) you are unavailable and at least three alternative dates and times for the teleconference. You will be advised by e-mail whether your request for an adjournment is granted or not and if granted, any terms imposed and the new date on which the teleconference will occur.

The teleconference will be recorded. However, a transcript of the teleconference will not be available to the parties without the judge's permission

**As mentioned, the hearing will proceed in your absence and an order may be made against you if you fail to join in the teleconference at the designated time.**

**If the moving party/applicant has not already done so, they are directed by the Court to:**

1. forthwith serve by e-mail and provide the Court a copy of any prior court order or endorsement that is relevant to the relief being sought, as well as a draft copy of the order that party wishes the Court to make;
2. provide the Court with a copy of the affidavit of service of the Notice of Motion/Application, as the case may be and all supporting affidavits and the exhibits referred to therein;
3. on or before **April 28, 2020 at 2:00 p.m.**, provide hyperlinks of any court cases the moving party/applicant intends to rely upon to the responding party and to the Court.

**If you are presently self-represented and:**

- **wish to retain a lawyer**, a directory of local lawyers is available at [www.lsuc.on.ca/for-the-public](http://www.lsuc.on.ca/for-the-public)
- **or wish to retain a family lawyer for only a limited scope of service**, including just for this motion, you may seek the name of lawyers who accept such limited scope retainers at the Law Foundation of Ontario's Family Law Limited Scope retainer Project at <https://www.familylawlss.ca/>

**If you choose not to retain a lawyer or are unable to do so, information regarding court procedures is available as follows:**

**For Family Law matters:**

[ontariocourts.ca/scj/news/publications/guide-family/#Motions](http://ontariocourts.ca/scj/news/publications/guide-family/#Motions)

A link to the *Family Law Rules*, and in particular Form 14A – Affidavit, can be found at [ontariocourts.ca/scj/family/legislation-forms](http://ontariocourts.ca/scj/family/legislation-forms).

**Legal Aid Ontario:** you may call 1-866-874-9786 or 416-204-7104 for assistance, although it is likely that only limited services are available for litigants who do not qualify financially for Legal Aid Services. There may be an exception for cases that involve domestic violence.

**If you are a victim of domestic violence**, you may also contact:

- the Barbra Schlifer Commemorative Clinic at 416-323-9149 x 234, or fill out their intake form online at <http://schliferclinic.com/intake/>
- **Luke's Place at 905-728-0978 ext. 221**
- the assaulted women's hotline at 1-866-925-4419

**For Civil (Non-Family Law) Matters:**

Pro Bono Ontario has a hotline (1-855-255-7256) for self-represented litigants with civil (non-family law) matters where they may obtain summary advice and drafting assistance from dedicated lawyers at no cost. Those services are subject to change but are presently available from Monday – Friday between 9:30 -11:30 am and 1:00 - 3:30 p.m.