

**CITATION:** A.B. v. L.J., 2020 ONSC 5248  
**COURT FILE NO.:** FS-20-59  
**DATE:** 2020-09 02

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** A.B., Applicant

**AND:**

L.J., Respondent

**BEFORE:** Conlan J.

**COUNSEL:** Fareen Jamal, Counsel for the Applicant

Gail K. Macrae, Counsel for the Respondent

**HEARD:** September 1, 2020

**ENDORSEMENT**

**I. Introduction**

**The Background**

[1] The Applicant father, A.B., and the Respondent mother, L.J., share two young children – a girl who is currently 8 years old (nearly 9) and a boy who is 7 years old.

[2] On consent, as per Minutes of Settlement, Justice Reid made a Final Order on January 23, 2018. Among other things, that Order provided that the parties have joint custody of the children, with primary residency and final decision-making authority being with the mother.

[3] That Order was subsequently amended by Minutes of Settlement entered into by the parties (but never formally incorporated into an order) on June 27, 2019.

[4] Before the current Motions before this Court were filed, the status quo was that the children and the mother were living in the Port Perry area, while the father was living in Burlington. The children were attending a public school in Port Perry, within the Durham District School Board. The father was exercising access with the children as per the said Final Order and subsequent Minutes, including on alternate weekends.

#### The Interim Motions and the Hearing

[5] By Zoom on September 1, 2020, this Court heard two motions. The first was brought by the father seeking, in the main, to vary dramatically the consent Final Order by having the children relocate from the Durham Region to the Halton Region in order to live with the father and go to school in Burlington. The second was brought by the mother seeking, only, one item of relief – to transfer the case to Oshawa.

#### II. Analysis

[6] This was scheduled to be a short motion appearance (59 minutes or less, total). Counsel for the father's submissions, alone, however, were approximately double that time. The issues raised were important to the parties, and it was a "slow day", so I let it go. I probably should not have.

[7] In any event, for the reasons that follow, both Motions are dismissed.

#### The Mother's Motion Regarding Jurisdiction

[8] Although this Motion was filed last, it should be dealt with first.

[9] The evidence as a whole, including but not limited to the email exchanges between the parties in June 2020 (Exhibit "C" to the father's Affidavit sworn on August 21, 2020), demonstrate unequivocally that the mother breached the prior Final Order and/or subsequent Minutes in at least two respects: (i) she

and the children moved from Port Perry to nearby Little Britain, placing them more than the maximum 160 kms distance away from the father's residence (clause 4 of the Minutes), and (ii) the mother did not give at least ninety (90) days' notice of the said move, as required by clause 3 of the Minutes.

[10] I make no finding that the mother is a contemnor, but she certainly violated the Final Order and/or subsequent Minutes, regardless of whether the move to Little Britain is temporary and regardless of whether Little Britain is only a few kms outside the maximum boundary permitted.

[11] Normally, this case would be transferred to the Superior Court of Justice locale closest to the place where the children ordinarily resided before the father brought the matter to Court, and that would be Oshawa, in the Central East Region. But the children and the mother no longer reside there.

[12] The case could also be transferred to Lindsay, in the East Region, but to do that would be to effectively condone the mother's inappropriate conduct as described above.

[13] Thus, at least for now, the case will remain where it is – Milton, Halton Region, Superior Court judicial district of Central West.

#### The Father's Motion Regarding Residency and Schooling for the Children

[14] This Motion fails for a variety of reasons.

[15] First, there is no urgency to it, and it should therefore have been case conferenced in advance.

[16] Second, both sides support the involvement of the Office of the Children's Lawyer ("OCL") to give input on matters of child custody, access and residency, and yet this Court is being asked to vary a consent Final Order and

subsequent Minutes, the latter entered into just last summer, without (i) any finding of contempt against the mother, or even a request for same, unlike many of the decisions relied upon by the father including that of Price J. in *Stokes v. Stokes*, 2014 ONSC 1311, or (ii) any input at all from the OCL, or (iii) any *viva voce* evidence or even any cross-examinations on any of the affidavit evidence filed, or (iv) any reliable evidence that the move from Port Perry to Little Britain has or will adversely affect the father's access to or relationship with the children. That, with respect, is unreasonable.

[17] Third, although I am satisfied on balance that the father should have more access time with the children, and although I would encourage the parties and counsel to accomplish that with or without OCL involvement, I am not at all satisfied on the evidence filed that it would be in the children's best interests to suddenly move to and live with their father in Burlington.

[18] A major reason for the father's request is that he opposes remote (online) school learning for the children, which is what the mother has arranged for the current term. Why would this Court interfere with the final decision-making authority of the mother in that regard, as ordered expressly in Justice Reid's consent Final Order? Absent compelling evidence that the mother's decision is contrary to the best interests of the children or either of them, I would not interfere. I see no such compelling evidence here, notwithstanding the special needs of the eldest child in particular.

[19] In my humble opinion, the courts are not generally in a good position to second-guess the decisions of parents on this issue of bricks and mortar versus remote school programming, a debate in light of the whole COVID-19 situation.

[20] These children are strangers to me. I'm not about to play "big brother", professor, psychologist and scientist all rolled-up into one and start opining on

things that I know nothing about. If the father seriously wanted this Court to interfere in this regard, then he had to bring something good to the evidence pile. There's nothing here, except his own musings. He loves his children, I am certain of that; he should focus his energies on getting more time with them. I'd gladly help him there.

### **III. Conclusion**

[21] For these reasons, both Motions are dismissed.

[22] If the parties still both consent to an OCL Order, they may have their lawyers complete that and have it brought to my attention. I will sign it.

[23] I have thought more about costs since we ended the audio/video hearing. I originally thought that I would entertain submissions on that. I now think not. I order that no costs are payable by either side.

[24] The mother has been more successful than the father has, but then again the mother caused this mess largely because she moved to Little Britain without properly respecting the prior Final Order and the subsequent Minutes. Thus, she gets no costs.

[25] I wish these parents and their children the very best, and I thank the lawyers for their help.

*(“Original signed by”)*

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Conlan J.

**Date:** September 2, 2020