

**CITATION:** Johnston v. Rioux, 2020 ONSC 2521

**COURT FILE NO.:** F1487/17

**DATE:** April 24, 2020

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

**RE:** Reginald (Kevin) Johnston and Debora Lynn Johnston, applicants

**AND:**

Kayla Marie Lavaun Rioux (formerly Larocque) and Matthew John Michael Blancher, respondents

**BEFORE:** KORPAN J.

**COUNSEL:** Erin L. Reid for the applicant, Reginald (Kevin) Johnston (with Mr. Johnston on separate line)

Stephanie Ouellette for the respondent, Kayla Marie Lavaun Rioux (formerly Larocque) (with Ms. Rioux on separate line)

**HEARD:** April 22, 2020 by teleconference

**ENDORSEMENT**

- [1] As a result of COVID-19, regular operations of the Superior Court of Justice have been suspended since March 15, 2020 until further notice as set out in the Notice to the Profession of the Chief Justice of Ontario dated March 18, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/>.
- [2] This is a motion brought by the respondent, Reginald (Kevin) Johnston, to enforce the shared care terms of minutes of settlement. This case was deemed presumptively urgent by Henderson J.
- [3] I received the following documents:
- a) Mr. Johnston's notice of motion dated April 16, 2020;
  - b) Mr. Johnston's affidavit sworn on April 16, 2020;

- c) mother's undated 16-page affidavit (affirmed during teleconference); and
- d) Mr. Johnston's affidavit sworn on April 20, 2020.

- [4] The parties, except for the respondent, Matthew John Michael Blancher, who was noted in default, finalized minutes of settlement on October 3, 2019 that provided, among other things, that the now eight-year-old child, who is the subject of this motion, shall be in the joint custody of the applicant, Debora Lynn Johnston, and the respondent, Kayla Marie Lavaun Rioux, and in the shared care of the applicants and the respondent, Rioux, on a week about schedule from Friday at 5 p.m. until the next Friday at 5 p.m., with an overnight each Wednesday from after school until Thursday morning with the party in whose care she was not during that week.
- [5] The respondent, Rioux, is the child's mother. The respondent, Blancher, is the child's father and a former foster child of the applicants. He has not been involved in the child's life for years. He was noted in default and his whereabouts are unknown.
- [6] The applicants cohabited until March 31, 2020 when the applicant, Debora Lynn Johnston, unexpectedly passed away from a heart attack.
- [7] In February 2012, when the child was just two months old, the mother and the child began living with the applicants and continued to live with them from time to time until 2015. At various times, only the child lived with the applicants while the mother lived elsewhere.
- [8] When the mother refused to allow the child to spend regular time with the applicants at the end of October 2017, they applied to court. On the applicants' motion on December 6, 2017, Hebner J. ordered that the child be in the temporary without prejudice shared care of the applicants and the mother on a 50-50 schedule. Her endorsement included the following:

The Applicants have been Belle's caregivers and have provided her with stability throughout her life. The mother has an unstable lifestyle including multiple partners and residences. For much of Belle's life, in fact the majority of it, she has been with the Applicants, sometimes with her mother and sometimes without. The Applicants have become her caregivers and the Applicants' home has become her home. Several times over the years the mother has tried to care for

Belle but cannot maintain stability and Belle has returned to the Applicants.

- [9] In its report dated August 21, 2018, the Office of the Children's Lawyer recommended joint custody and shared parenting to the applicants and the mother in accordance with the week about schedule that had been in place since Hebner J.'s December 6, 2017 order, with the mother's time with the child to occur at the home of, and in the presence of, her mother until the mother can demonstrate to either the Children's Aid Society of London and Middlesex or to the court her understanding and knowledge of domestic violence or intimate partner violence.
- [10] The applicants and the mother attended for mediation on August 2, 2019 and reached a settlement on all issues on a final basis, including joint custody and shared parenting.
- [11] They finalized the minutes of settlement on October 3, 2019 that provide, among other things, that the child shall be in the joint custody of Ms. Johnston and the mother and in the shared care of the applicants and the mother on a week about schedule from Friday at 5 p.m. until the next Friday at 5 p.m., with an overnight each Wednesday from after school until Thursday morning with the party in whose care she was not during that week.
- [12] The draft final order was approved by counsel on October 15, 2019. The order was submitted for signing but has not yet been issued because of procedural issues such as the correct form of criminal record checks.
- [13] On March 29, 2020 the mother advised the applicants that she would not be returning the child to their care and would no longer be following the parenting schedule in the minutes of the settlement because of COVID-19.
- [14] On March 31, 2020 the applicants' counsel wrote to the mother requesting that she comply with the minutes and advised that if she did not, an urgent motion would be filed.
- [15] Ms. Johnston died unexpectedly from a heart attack that day.
- [16] On April 2, 2020 Mr. Johnston received the coroner's report, which confirmed that Ms. Johnston tested negative for COVID-19.

- [17] The mother agreed that Mr. Johnston could have the child on April 2, 2020. When he attended at the mother's home to pick up the child, he advised that his sister and his niece, who had been practising strict social distancing, were at his house. The mother at first had no issue with that but about an hour later, she arrived at Mr. Johnston's home with her stepfather and asked for the child, saying that she was concerned about his sister and niece being there.
- [18] The mother agreed that Mr. Johnston would have the child overnight on April 4, 2020 but asked that he return her the next day, which he did.
- [19] The mother agreed that Mr. Johnston would have the child overnight on April 6, 2020 and that the child would return to his care pursuant to the regular shared parenting schedule in the minutes of settlement on Friday, April 10, 2020.
- [20] On April 6, 2020 the mother asked Mr. Johnston to pick the child up on April 7, 2020 instead because the child had witnessed a neighbour almost run over a child and the police wanted to obtain a statement from her.
- [21] On April 6, 2020 Mr. Johnston's counsel wrote to the mother's counsel asking whether the mother intended to abide by the minutes and advised that an urgent motion would be filed if not. On April 6, 2020 the mother stopped responding to Mr. Johnston's phone calls and text messages.
- [22] On April 7, 2020 Mr. Johnston attended at the mother's home to pick up the child. Although the mother was home, no one answered the door. The mother's stepfather sent a text message to Mr. Johnston advising that it would be best for the lawyers to handle everything going forward.
- [23] The mother has withheld the child from Mr. Johnston since April 6, 2020 and has not permitted any contact between them.
- [24] Since Ms. Johnston's death, Mr. Johnston continues to live in the home that he shared with her and with the child, the home that the child has known since birth. Mr. Johnston lives alone, is off work because of the COVID-19 crisis and is available to devote all of his time to the child.
- [25] Both households are aware of and following COVID-19 protocol.

- [26] The status quo is that the child has been in the equal care of the Johnstons and the mother since at least December 6, 2017. Since August 2, 2019 the equal care has been on consent.
- [27] The only issue on this motion is whether Ms. Johnston's sudden passing would change the long-term status quo. The sole concern of the court is the child's best interests.
- [28] The mother deposes that she no longer feels that a shared parenting schedule is appropriate because Mr. Johnston was never a primary caregiver to the child and, although he and the child have a bond, he should be taking on a traditional role of a grandfather, not of a parent. Mr. Johnston denies that he has not been and is not a primary caregiver to the child.
- [29] The mother sets out reasons why, in her view, the shared parenting schedule should not continue. Some of her allegations are irrelevant, some are speculative and others are denied by Mr. Johnston. None is convincing.
- [30] This is no doubt a sad and difficult time for this family. The child has lost one of her caregivers and Mr. Johnston has lost his spouse. Both are grieving and will require support and understanding.
- [31] What the child needs now is the stability, love, guidance and emotional support of her caregivers, one of whom is Mr. Johnston. Mr. Johnston is well able to care for and meet the child's needs. It is in the child's best interests that the shared care terms of the minutes of settlement continue.
- [32] It is trite to say that the child needs her caregivers to work together to ensure that she will derive the benefit of their love, nurturance and guidance at this difficult time.
- [33] For these reasons, a temporary order shall issue:
- 1) The child shall be in the shared care of the applicant, Reginald (Kevin) Johnston, and the respondent, Kayla Marie Lavaun Rioux (formerly Larocque), as follows:
    - (a) Week 1: in the care of the applicant from Friday at 5 p.m. to Friday at 5 p.m., with the exception that she will be in the care of the respondent on Wednesday after school to Thursday before school; and

(b) Week 2: in the care of the respondent from Friday at 4 p.m. to Friday at 4 p.m., with the exception that she will be in the care of the applicant on Wednesday after school to Thursday before school.



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Justice D.M. Korpan

**Date:** April 24, 2020