

CITATION: Elsaesser v. Rammeloo, 2020 ONSC 2025
COURT FILE NO.: FC-18-FS-000582-0001
DATE: 2020-04-02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Thomas Elsaesser, Applicant
Melissa Rammeloo, Respondent

BEFORE: Madam Justice L. Madsen

COUNSEL: Ray Wrubel, Counsel for the Applicant
Tracy Miller, Counsel for the Respondent

HEARD: In Chambers

ENDORSEMENT – COVID-19 PROTOCOL

[1] **AS A RESULT OF COVID-19**, the regular operations of the Superior Court of Justice are suspended at this time, as set out in the Notice to the Profession dated March 15, 2020 available at <https://www.ontariocourts.ca/scj/covid-19-suspension-fam/> .

[2] In accordance with the Regional Notice to the Profession dated March 24, 2020, electronic materials were filed by the Respondent mother, Ms. Rammeloo. She asks that the Court make an order on an urgent basis for the return of the parties’ two children to her care.

[3] This matter was referred to me as Triage Judge for a determination of urgency and of how this matter should proceed.

[4] Determinations of urgency are summary in nature, and wholly without prejudice to both parties on the hearing of the motion itself. A determination of urgency is not intended to be a motion unto itself and is intended to be simple and expeditious.

[5] For the reasons set out below, I find that this matter is urgent at this time, and I set out the next steps for the hearing of the motion.

[6] Ms. Rammeloo filed the following materials by email to the Superior Court of Justice in Kitchener, Ontario:

- a. Notice of Motion dated March 31, 2020; and
- b. Affidavit of Ms. Rammeloo sworn March 31, 2020, with exhibits.

[7] It appears that the materials may have been served on the father's counsel but there was no affidavit of service in the materials.

[8] Ms. Rammeloo asserts the following in her affidavit:

- a. Ms. Rammeloo and Mr. Elsaesser separated on July 1, 2013. They are the parents of two children, W., who is 7 years old and O. who is 6 years old. Ms. Rammeloo states that she has been the primary caregiver for the children since the parties' separation.
- b. The parties entered a separation agreement on October 1, 2018, a copy of which is attached to her affidavit as an exhibit. Pursuant to that agreement, the children are to be with their father on alternate weekends from Friday at 5:00 p.m. until Sunday at 7:00 p.m., and every Wednesday overnight to Thursday.
- c. Ms. Rammeloo states that she recently proposed a week-about schedule while the children are not attending school. Mr. Elsaesser did not agree. She says that instead, he told her he would keep the children in his care.
- d. Ms. Rammeloo states that Mr. Elsaesser refused to return the children to her on March 23, 2020, on the basis that she is a healthcare worker.
- e. Ms. Rammeloo states that while she is a registered practical nurse at the Grand River Hospital in Kitchener, she is a perioperative nurse and not a front-line worker, and therefore less likely to come into contact with COVID-19. She also set out precautions taken by her to ensure that she is not exposed to contamination.
- f. Ms. Rammeloo seeks the return of the children to her care and a resumption of the schedule set out in the parties' separation agreement, or in the alternative, a week-about schedule while the children are not in school.

[9] The Notice to the Profession issued by the Chief Justice provides that urgent matters may include matters related to the safety of a parent or a child, or urgent issues related to the wellbeing of a child.

[10] In *Ribeiro v. Wright*, ONSC 1829, released March 24, 2020, Pazaratz J. set out principles to aid in the determination of urgency with respect to parenting issues in this difficult time. Those principles are as follows:

- a. In most situations, there is a presumption that existing parenting arrangements and schedules should continue, subject to modifications to ensure that COVID-19 precautions are adhered to, including social distancing.
- b. In some cases, a parent may have to forego scheduled time with a child, for example if a parent is under personal restrictions such as self-isolation for 14 days, due to travel or exposure to the illness.
- c. In some cases, personal risk factor through employment or associations may require controls on direct contact on a child.
- d. Further, lifestyle or parental behavior in the face of COVID-19 may necessitate restrictions on parenting time. There would be zero tolerance for a parent who recklessly exposes a child to any COVID-19 risk.

[11] I would add that there may be risk factors related to the health or other circumstances of a child or other members of a household that may necessitate adjustments.

[12] Pazaratz J. stressed that no matter how difficult the challenge, or what modifications or restrictions may be appropriate, we must find ways to maintain important parental relationships, above all in a safe way.

[13] See also *Chrisjohn v. Hillier*, London Court File No. F1098/18 in which Mitrow J. held that parents must act responsibly in the face of the COVID-19 pandemic to ensure that children's safety is protected, but that this should not result in a "widespread suspension of in-person parenting time" between a child and a parent. Further, see *Skuce v. Skuce*, 2020 ONSC 1881 in which Doyle J., in the context of a COVID-19 access case, found the question of withholding parenting time in contravention of a court order to be an urgent issue within the meaning of the Notice to the Profession. See paragraph 37.

[14] In my view, applying the Notice to the Profession and the developing caselaw on this issue, and having regard to the separation agreement in evidence at this time, the motion brought by Ms. Rammeloo is urgent. I direct the following next steps in this matter:

- a. The motion materials shall be served on Mr. Elsaesser's counsel forthwith by email if that has not already been done; An Affidavit of service shall be filed with the Court;
- b. Mr. Elsaesser shall have until Tuesday **April 7, 2020 at 5:00 p.m.** to serve and file responding materials;
- c. Ms. Rammeloo shall have until Thursday **April 9, 2020 at 2:00 p.m.** to file brief reply materials if any.

- d. All materials shall be filed at Kitchener.Superior.Court@ontario.ca with the style of cause and file number in the subject line of the email.
- e. This motion will be heard by teleconference on **Tuesday April 14, 2020 at 11:00 a.m.** The Trial Coordinator will advise counsel of the call-in information for the motion.

[15] Court staff are requested to serve both counsel with a copy of this endorsement by email.

[16] Notwithstanding rule 25 of the *Family Law Rules*, this endorsement is effective from the date it was made and enforceable as an order of the court without the need for an order to be prepared or approved by the parties and then issued by the court. No formal order is necessary unless an appeal or a motion for leave is brought, or alternatively unless one is necessary for enforcement by a third party. A party who wishes to prepare a formal order for approval and issuance may do so, but only orders relating to matters of urgency will be formally issued until the court returns to regular operations.

L. Madsen, J

DATE: April 2, 2020