

**CITATION:** Banner v. Chicoski, 2020 ONSC 2457  
**COURT FILE NO.:** 75/14  
**DATE:** 2020/04/21

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Kaleigh Banner, Applicant and James Edward Chicoski, Respondent

**BEFORE:** Justice T. Maddalena

**COUNSEL:** Self-represented Respondent

**ENDORSEMENT -- COVID 19 PROTOCOL**

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

[2] This matter has been referred to me as triage judge to determine the issue of urgency.

[3] Electronic materials were filed through the Courthouse email address Welland.Superior.Court@ontario.ca

[4] The following materials were filed by the respondent father:

Form 31 Notice of Contempt motion  
Affidavit of respondent, sworn April 17, 2020  
14B Motion form, dated April 21, 2020  
Copy of court order dated October 6, 2014

[5] According to the Notice to Profession dated March 15, 2020 urgency relates to the safety of a child or parent. Thus, the list of matters that qualify as urgent is narrow.

[6] Further, in the Notice to Profession dated April 7, 2020, contempt motions are specifically excluded as those matters that may be heard by the court during the suspension of normal operations.

[7] For the reasons which follow, I am not deeming this matter as urgent.

[8] In the instant case there is a court order in effect dated October 6, 2014. This order specifically provides that the applicant and respondent have joint custody of the child, Khloe, born June 9, 2012.

[9] It also provides that the respondent shall have liberal and generous access to include Thursday @11:00 am to Saturday @11:00 am.

[10] The respondent deposes in his affidavit that he has been denied access for the last 4 weeks citing "the coronavirus". He has called police, but without an enforcement clause, they could not act.

[11] The respondent also deposes that he is following the COVID-19 protocols in his home and there is no reason for the applicant mother's denial of access.

[12] During these difficult and unprecedented times, the court asks all parents to act reasonably, to cooperate and to follow all court orders.

[13] A parent is not permitted to unilaterally amend terms of a court order. Therefore, the current order which is still in effect must be followed by all parties. Parents who choose to unilaterally not follow court orders are warned that they will face severe consequences once the court resumes normal operations.

[14] The child is safe at this time. This contempt motion is not proceeding as an urgent matter, however I am ordering that this contempt motion be adjourned to June 10, 2020 at 10:00 am at the Welland Courthouse to be spoken to at that time.

[15] In the interim I am ordering that the respondent must serve the applicant with all the documents filed today. Further, the respondent shall file all documents filed today, as well as the affidavit of service upon the applicant mother, in the physical file at the Welland courthouse once operations return to normal.

“Justice T. Maddalena”

**DATE:** April 21, 2020