

SUPERIOR COURT OF JUSTICE – ONTARIO – FAMILY COURT

RE: Amanda Cossu, Applicant

AND:

Miriam Simkins, Respondent

BEFORE: The Honourable Justice H. McGee

COUNSEL: J. Syrtash, Counsel for the Applicant

L. Johnson, Counsel for the Respondent

HEARD: April 28, 2020

RULING ON MOTION

14B Motion by Applicant for an Urgent Case Conference

[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 Notices to the Profession dated March 15, 2020 and April 2, 2020.

Background

- [2] On February 26, 2019 a two-year long child protection proceeding was resolved with a final consent Order that placed Ms. Cossu’s two children ages five and seven with her maternal aunt, Ms. Simkins. The Order deems custody to Ms. Simkins and provides that Ms. Cossu’s access is wholly in her aunt’s discretion and is subject to Ms. Simkins’ or her designate’ s supervision.
- [3] Ms. Cossu took no steps to see the children or to communicate with them until September of 2019 when her then counsel made inquiries regarding methods of supervision. Discussions concerning access broke down, and nothing further was heard from Ms. Cossu until March 23, 2020.
- [4] Since the end of March there has been a further exchange of proposals, but no resolution. For example, Ms. Simkins advises in her materials that she proposed Zoom access, but that Ms. Cossu rejected the proposal unless she was able to record it.

- [5] Ms. Cossu has now issued a Motion to Change the final consent Order. The First Appearance date is July 28, 2020. This is her urgent motion for a Case Conference prior to July 28, 2020.

14B Motion for an Urgent Case Conference Denied

- [6] Ms. Cossu seeks leave for an urgent Case Conference to canvas an Order for scheduled access to be supervised by a member of her choosing without her aunt's approval, or by a "Toronto area registered Ontario Psychotherapist or Psychologist, or an Ontario registered Social Worker, not subject to Ms. Simkins' approval." Ms. Cossu seeks permission to have the supervised visits videotaped so that she can gather evidence that she is a capable parent.
- [7] Ms. Cossu also seeks an Order for a section 30 CLRA assessment to be completed subject to the assessor's consent, with costs to be borne equally, but there is no evidence from the Ms. Cossu as to whether her proposed assessor is accepting new files during the pandemic.
- [8] Ms. Simkins opposes an urgent conference and sets out a pattern of harassment from Ms. Cossu that she believes is consistent with a lack of child focus. She is strongly opposed to access being videotaped. She has no idea whether Ms. Cossu is compliant with COVID- 19 precautions.
- [9] The test to obtain an urgent Case Conference is the same as the test to obtain an urgent motion. The March 15, 2020 Notice to the Profession, as amended on April 2, 2020 sets out a threshold requirement that the evidence must disclose risks raising concerns of, or akin to, the "safety" or "well-being" of a child.
- [10] Ms. Cossu asserts that because she has not had access, the children have been wrongfully removed and retained from her, one of the considerations within the "well-being" of a child. She states the matter is urgent because she believes that Ms. Simkins is "abusing her authority to the detriment of the children's interests by refusing to let them be visited by me, even by video, unless I agree to terms that are very prejudicial to the children's rights to see me." She believes that their great aunt is now using COVID- 19 as a further excuse for the children not to see her.
- [11] When I review the whole of the materials before me, including Ms. Cossu's extensive reply affidavit sworn May 1, 2020, (which in fairness to Ms. Simkins goes well beyond a right of reply), I can see that Ms. Cossu misses her children terribly and feels exceedingly victimized. But I cannot share her view that COVID- 19 is being used as an excuse. She has had no contact with the children for well over a year. The clear source of the current impasse is her longstanding rejection of Ms. Simkins' discretion as to supervision. Ms. Cossu is adamant that neither Ms. Simkins nor her designate are acceptable supervisors.
- [12] In *Thomas v. Wohleber*, 2020 ONSC 1965, at paragraph 38, Justice Kurz provided guidance on what constitutes urgency at the present time:

1. The concern must be immediate; that is one that cannot await resolution at a later date;
2. The concern must be serious in the sense that it significantly affects the health or safety or economic well-being of parties and/or their children;
3. The concern must be a definite and material rather than a speculative one. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than theoretical;
4. It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.

- [13] In her reply affidavit, Ms. Cossu justifies why she did not send birthday greetings or Christmas cards to the children over this past year. Although she may be satisfied as to her reasons, it remains a significant absence in the children's lives. They have had no contact whatsoever with their mother in over 14 months. It is difficult to assess an immediate concern in the face of such a lengthy period.
- [14] A lack of parent-child contact for 14 months will always be serious, definite and material. But in this case, it is the period of estrangement that invites caution. A supervisor will need to have therapeutic skills to repair and bridge back the relationships. A plan will need to be developed over and above a COVID- 19 safety protocol. There may need to be a number of preliminary steps before in-person contact is appropriate.
- [15] Determinations of urgency are summary in nature and are 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, see: para.6, *Tomkins v. Che*, 2020 ONSC 2424.
- [16] The narrow issue before me is whether to permit a Case Conference that is aggressively framed as a mere stepping stone to a motion on issues that in my view are not urgent as defined in the Notice to the Profession and are not clearly particularized. Although Ms. Cossu names certain people and agencies, she does not file an affidavit or even a letter that he/she/they are open and willing to act as a supervisor. I have not been made aware of any supervised access centres or agencies in York Region that are currently providing service on new files.
- [17] There is no utility in urgently conferencing supervision when there are no services known to be presently available; or, for conferencing a section 30 assessment when there is no evidence of an assessor willing to provide service. When the proposed action cannot practically proceed, the matter ought not be dealt with as urgent, as was the case in

Onuoha v. Onuaha 2020 ONSC 1815 when a father sought leave to travel with his children during a period of travel ban.

[18] I decline to grant leave for an urgent Case Conference.

Next Steps

[19] Ms. Simkins is to file her Response to the Motion to Change and the first attendance shall remain July 28, 2020.

[20] I encourage counsels to speak, and to try harder to find a resolution. If Ms. Cossu's counsel can locate a service provider who is willing to assist at this time, perhaps a c.v. could be forwarded to Ms. Simkins' counsel and a three-way call arranged.

[21] I encourage counsels to make every effort to move these issues forward prior to July 28, 2020. I will offer a gentle reminder that a Motion to Change is not an appeal of the February 26, 2019 consent Order. The requested CAS records prior to that date will not likely be relevant. Should Ms. Cossu wish to vary the term for supervised access, she must demonstrate a material change in circumstances that have affected the children since February 26, 2019, see: *Gordon v. Goertz* [1996] 2 S.C.R. 27.

Costs

[22] If the parties cannot agree on costs, the respondent counsel may file costs submissions to my attention by email to NewmarketSCJadmin@Ontario.ca by May 15, 2020. Response by May 25, 2020. No reply. Submissions are limited to two pages, exclusive of a Bill of Costs or Offer to Settle.



Date: May 5, 2020