

SUPERIOR COURT OF JUSTICE – ONTARIO – FAMILY COURT

RE: Michael Daniel Anderson, Applicant

AND:

Alanna Penny, Respondent

BEFORE: The Honourable Mr. Justice R.E. Charney

COUNSEL: Evgeniy Osipov, Counsel for the Applicant

Mbaka Wadham, Counsel for the Respondent

HEARD: June 30, 2022

SUPPLEMENTAL ENDORSEMENT

- [1] The Applicant father brought this motion for a temporary order for a week about parenting schedule for their son, age 6. The motion was scheduled by Wildman J. at a Settlement Conference held on June 1, 2022. The Respondent was also permitted to bring a motion with respect to child support if time permitted.
- [2] I am advised that the parties were able to resolve most of the child support issues, although a couple of issues did remain that will be addressed in this decision.
- [3] At the conclusion of the parties' submissions on June 30, 2022, I gave brief oral reasons for granting the Applicant father's motion. Since the father's proposed summer schedule would begin next week, an immediate decision was necessary, and I did not have time to provide written reasons on June 30, 2022. I advised that I would provide brief written reasons and a decision on costs at end of July. These are those reasons.

Facts

- [4] The parties were in a common-law relationship from June 2015 to March 2021. They have one child, Ryder, age 6. Each party has a child from a prior relationship. The applicant father has parenting time with Ryder three weekends every month. This arrangement is not the product of a court order or an agreement between the parties.
- [5] The applicant father wants to move to a shared parenting regime, but this has been resisted by the Respondent mother.
- [6] The Applicant father's motion is for a temporary order that would establish a week about schedule for the months of July and August, 2022. The mother would have the first week of the summer (July 4, 2022 to July 10, 2022) and the parents would alternate parenting time every Sunday at 5:30 p.m.

- [7] The Applicant father has 16 days' vacation, so he would be available all day for most of the days he has parenting time. On those days where he is working – during the summer he works reduced hours from 9:30 a.m. to 5:00 p.m. – he can either leave Ryder with the Applicant's mother (Ryder's paternal grandmother) and daughter (who is now 12 years old), or he can take Ryder to the Respondent's house, whichever the Respondent prefers. The Respondent has indicated that she prefers that Ryder be taken to her house when the Applicant is at work.
- [8] At the end of August, the Applicant proposes that they revert back to the 3 weekend out of 4 parenting schedule unless the parties agree otherwise.
- [9] The Respondent mother had previously raised allegations about inappropriate behaviour by the Applicant's 12 year old daughter. These allegations were investigated by Child and Family Services (CFS) and the Barrie Police, who conducted interviews with Ryder and the Applicant's daughter. On December 21, 2021, CFS advised the parties that they had not verified the allegations and "based on the information we gathered during the investigation, it appears that there is no evidence at this time to suggest that any inappropriate and/or sexualized behaviour occurred or that the child is at risk at this time...It appears that Ryder is safely supervised in your care and his needs are being met".
- [10] The Respondent alleges that the Applicant was "verbally, emotionally and financially abusive" throughout their relationship. She states that she was a stay-at-home mother and the primary caregiver for both Ryder and the Applicant's daughter throughout their relationship. She argues that the parenting schedule has been working well.
- [11] Around January 2022, the Applicant began having mid-week parenting time with Ryder on Wednesdays from 5:30 p.m. to drop off at school on Thursday morning. The Applicant states that she suspended these overnights on March 3, 2022 because Ryder's teacher noticed that Ryder "had low energy on Thursdays and frequently complained about feeling unwell". The Respondent believes that this was "affecting Ryder's schooling", although there are no records from the school to substantiate this allegation.
- [12] The Respondent takes the position that the Applicant should continue to have three weekends per month from Friday at 5:30 p.m. to Sunday at 5:30 p.m. and two midweek visits a week (not overnight) on Tuesday and Thursday from at 5:30 p.m. to 7:30 p.m. She is also proposing that the Applicant have one week in each of July and August, but only if the Applicant is on vacation those weeks. She objects to the week about summer schedule because the Applicant will have to be at work on some of those days and Ryder will be left in "third party care", by which she means the paternal grandmother.

Analysis

- [13] The court must make this determination based on the best interests of the child, taking into account the various factors set out in s. 24 of the *Children's Law Reform Act*, R.S.O. 1990 c. C12, (CLRA).
- [14] Often in these cases, "best interest" is determined by maintaining the status quo: *Ursic v. Ursic*, 2006 CanLII 18349 (ONCA), at para. 32; *De Matos v. De Matos*, 2015 ONSC

4554, at para. 18; *Pancel v. Henri*, 2012 ONSC 546, at paras. 25 and 26; *McPhail v. McPhail*, 2018 ONSC 735, at para. 15.

- [15] The status quo is particularly important on an interim motion because the court is often not in a position to make factual findings if there are conflicting affidavits: *R.C. v. L.C.*, 2021 ONSC 1963, at para. 62.
- [16] The courts have also determined that a party cannot unilaterally alter the status quo by denying the other party parenting time without a court order or formal agreement. The status quo does not refer to a situation unreasonably created by one party after separation to create a tactical advantage in the litigation. The status quo may be established by reference to the parents' practice or the child's routine prior to separation, by any consensual arrangement made after separation, or by court order. In this case the parties separated in March 2021, and there is no court order of formal agreement. The Respondent mother has been unilaterally determining the Applicant's parenting time based on her own perception of the child's best interest. The parties have not been able to reach an agreement on parenting time, and the concept of "status quo" is of little assistance.
- [17] While there is no presumption of equal parenting time (*Bembenek v. Bembenek*, 2019 ONSC 4050, at para. 96; *J.L. v. D. L.*, 2021 ONSC 4997, at paras. 55-56), the maximum contact principle provides that a child should have as much time with each parent as is consistent with the best interests of the child. Section 24(6) of the CLRA provides:
- In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child.
- [18] Young children with attachments to both parents need sufficient contact with both parents without prolonged separations to maintain a meaningful and close relationship with both: *Wilson v. Wilson*, 2015 ONSC 479, at para. 63.
- [19] There is also an advantage to the child to have as few transitions as possible.
- [20] In the present case I am satisfied that the court should establish a shared parenting schedule on a temporary basis. A shared parenting schedule is often difficult for children (and parents) during the school year. On the other hand, relegating one parent to the status of "weekend parent" has many disadvantages for all parties.
- [21] The summer provides an opportunity when the child's routine is going to change in any event, and there is greater flexibility to provide for something close to equal parenting time.
- [22] Taking into account Ryder's age, this summer is an ideal opportunity to provide for week about parenting without interfering with Ryder's school schedule. I want to emphasize that I am not making any finding that a week about schedule during the year would interfere with Ryder's school schedule. I note only that the Respondent mother has raised this as a concern. It will be up to the judge who hears the trial to make that determination on the evidence presented at trial. I only make the obvious observation that interference

with 6 year old Ryder's school schedule is not a concern during the months of July and August.

- [23] I also note that the schedule proposed by the Applicant has fewer transitions than that proposed by the Respondent, and will give Ryder a chance to get used to living in two households with both of his families. Whether this schedule, or some other schedule, will be in his best interests after August 2022 is not a matter before me, given the temporary nature of this Order. This temporary order does, however, present an opportunity for the parties to assess an arrangement that does not relegate the Applicant to the status of weekend parent.
- [24] Nor do I think that it would be fair to penalize the Applicant because he has steady employment and will have to rely on the paternal grandmother for some child care arrangements. Working parents frequently rely on grandparents to assume some responsibility for parenting, and a child's relationship with their grandparent is often an important and valuable relationship. Parenting assistance from a grandparent is simply a reality for many working parents, separated or not. I would not, for example, limit the father's parenting time with the child simply because the child spends some, or even most, of that time with the paternal grandmother.
- [25] This position is consistent with s. 24(3)(b) of the CLRA, which includes the nature and strength of a child's relationship with his or her grandparent as a relevant factor in determining the child's best interest.
- [26] In any event, the Applicant has agreed to take Ryder to the Respondent's home when the Applicant has to be at work. I only note that had the Applicant not offered to do this, I would not have ordered it.
- [27] Finally, the Applicant requested that his child support be reduced during the months of July and August to recognize the shared parenting arrangement. His child support is usually \$618 per month, but set-off child support during July and August would be only \$434 per month. I indicated to the parties that I was not inclined to make this adjustment because this is only a temporary order, and it is not, in my view, appropriate to change the child support amount for two months out of twelve. I also note that the amount at issue – ($\$184 \times 2 = \368) - is *de minimus*. The Applicant did not press this issue.

Conclusion

- [28] This Court Orders:
- [29] That during the months of July and August, commencing July 3, 2022, the parties shall have a shared parenting regime of their child, namely Ryder Anderson, born June 10, 2016 as follows:
- (a) The parties shall have Ryder in their care every other week with the Respondent Mother having parenting time from July 4, 2022 until July 10, 2022 at which time the parties exchange at 5:30 p.m. with the party whose parenting time starts picking Ryder up from the other parent. The parties shall alternate every week on Sundays at 5:30 p.m.

- (b) The Applicant Father shall drop Ryder off at the Respondent Mother's residence at 9:00 a.m. and pick Ryder up from her residence at 5:30 p.m. during the weekdays when the Applicant Father has his week with Ryder.
- (c) If the Applicant Father takes a day off during the weekday, he shall not be obliged to drop Ryder off at the Respondent Mother's residence in the morning as per paragraph 1(b) above. He shall provide an advance written notice to the Respondent Mother at least three days in advance.

[30] The above shared parenting time schedule shall revert back to the parenting time schedule with the commencement of the new academic year in September of 2022 unless the parties agree upon otherwise.

[31] Neither party shall relocate without a proper notice pursuant to the *Children's Law Reform Act*.

[32] There will be no change to the Applicant's child support payments during the summer schedule.

Costs

[33] At the conclusion of the proceedings the parties requested to make costs submissions in writing. It is now August 18, and no costs submissions have been received from either party. The parties were asked to provide costs submissions by the beginning of August. When no submissions were received, the parties were contacted to find out if they intended to make costs submissions. The parties requested new deadlines for their costs submissions. I asked the parties to agree on a new schedule for the exchange of submissions by August 11, 2022, and advised that if they could not agree on a new schedule by that date to provide me with their proposed respective schedules and I would choose between them. I have heard nothing from either party. Accordingly, there will be no order for costs in this proceeding.



Justice R.E. Charney

Date: August 18, 2022