CITATION: A.T. v. V.S., 2020 ONSC 4198
COURT FILE NO.: FS-20-16669
DATE: 20200707

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: A.T.

AND:

V.S.

BEFORE: J.T. Akbarali J.

COUNSEL: *Jennifer L. Wilson*, for the Applicant

V.S., In Person

HEARD: July 3, 2020

PUBLICATION BAN

A non-publication order in this proceeding has been issued pursuant to the common law powers of a judge by the Superior Court of Justice and the considerations outlined by the Supreme Court of Canada in *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835, prohibiting the publication of:

a. the identity of the parties
b. the identity of the child
c. the identity of any relatives of the child
d. any information that has the effect of identifying the parties, the child, or the relatives of the child.

ENDORSEMENT

[1] The parties to this family litigation are the parents of a four-year-old child, I.S.. The applicant mother brings this urgent motion seeking interim custody, parenting orders, restraining orders, and corollary orders, including a publication ban.

[2] The catalyst for the dispute between the parties is the father's rejection of the seriousness of the COVID-19 pandemic, and his active and willful disobedience of public health guidelines, including by organizing and hosting protests in Toronto against the public health measures taken by government and public health officials in Ontario. The mother withheld the child from the respondent father as a result, and sought urgent relief from this court by way of *ex parte* motion for, among other things, temporary sole custody.

[3] Hood J., as triage judge, delivered an endorsement on June 2, 2020, in which he made orders initializing the proceeding, initializing the name of the child in any materials filed with the court, ordering that any person who has gained access to the family court file shall be prohibited from communicating to any other person the identity of the parties, the child, or the child's relatives, an order that the respondent be served with an initialized version of the application and motion materials, and an order reserving costs to the return of the motion.

[4] Hood J. then referred the matter to me to hear at a motion on notice. On June 10, 2020, I granted the respondent an adjournment to allow him time to prepare a response with assistance from counsel, and ordered terms of the adjournment. On consent, I ordered that the respondent not contact the applicant directly nor attend at her home, that he not make any new postings on social media about the applicant, the child, or the issues in the litigation, that he not create a new GoFundMe page, and that he not share, or otherwise draw attention to, the existing GoFundMe page that he had created in the past, and which remains on line.

[5] I also ordered, not on consent, that the respondent's in-person parenting time be suspended on a temporary, without prejudice basis, and ordered video access three times weekly between the child and the respondent, to be facilitated by the child's nanny. I also ordered the respondent to remove two Facebook livestreams from his account. I reserved costs to the return of this motion.

[6] The motion returned before me on July 3, 2020. The issues that I must decide are as follows:

a. What, if any, residency or parenting time orders should be made in respect of I.S.?

b. What, if any, decision-making or custody orders should be made in respect of I.S.?

c. Should the father continue to be restrained from:

    i. contacting the mother directly or attending at her home?

    ii. making any postings on social media about the mother, the child, or this litigation?

    iii. creating or maintaining a GoFundMe page?

d. Should the respondent be required to remove all social media postings regarding the applicant, I.S., or this litigation, including his existing GoFundMe page?

e. Should the proceeding and the child's name continue to be initialized, and subject to the publication ban? The respondent consents to this relief.

f. What, if any, costs should be ordered?

[7] I turn now to the analysis of these issues.

Parenting Time/Residency

[8] As I have noted, the parties are parents to V.S., who is four years old. The applicant became pregnant with I.S. shortly after meeting V.S. The parties lived together briefly, but separated within three months of I.S.'s birth.

[9] In the past, the parties have attempted, unsuccessfully, to reach a parenting plan. Despite not having a parenting plan in place, the parties cooperated to establish a parenting schedule which gradually grew to the point where the respondent parented I.S. six nights out of fourteen.

[10] The applicant refused to allow the respondent in-person parenting time with I.S. beginning on May 8, 2020, after she learned that the respondent was gathering in large crowds to challenge government and public health measures taken around the COVID-19 pandemic. She was concerned that the respondent's behavior would expose I.S., and through him, her and her contacts, including her elderly parents, and other immuno-compromised family members, to COVID-19.

[11] The record establishes that respondent refers to the pandemic as a "scamdemic". He has organized and participated in public protests against the government's handling of the COVID-19 pandemic. On social media, he encourages his followers to "reject the new normal", and criticizes the World Health Organization as "corrupt", alleging it must be held accountable for genocide against humanity. He has been interviewed by local media sources who have identified him as a protest organizer. He claims that deaths from the flu shot are greater than deaths from COVID-19. He admits to hugging strangers, and wears a shirt that says "hugs over masks".

[12] In his materials, the respondent attempts to downplay the risks of his behaviour during the pandemic. He admits to believing that the government has "over-reacted" to the virus, and agrees that his views could be called "unconventional". However, he states that it is not his views that matter, but his actions. The respondent argues that there is no criticism about his parenting skills, and that he is healthy and perfectly capable of parenting I.S. He also argues, in reliance on a recent report from the Hospital for Sick Children about children and COVID-19, that I.S. is at low risk from the coronavirus, and that both he and I.S. are healthy. He wants in-person parenting time to be restored.

[13] The applicant does not dispute that the respondent is a loving father. She has some concerns about some of the parenting choices the respondent has made, but does not seriously dispute that the respondent can appropriately provide care for I.S. However, she is concerned that the respondent is acting irresponsibly during the pandemic, and as a result, is putting himself, I.S., her, and her contacts at risk of the virus.

[14] The applicant supports the restoration of in-person parenting time between I.S. and the respondent after the respondent self-isolates for a period of 14 days and commits to following public health guidance with respect to COVID-19.

[15] However, the respondent is unwilling to follow public health guidance with respect to COVID-19. At the hearing of the motion, he insisted that, as a health and wellness coach, he takes all necessary steps to keep himself healthy, and he assured me of his overall good health. When

asked at the hearing of the motion whether it was his intention to abide by the then-anticipated Toronto by-law that requires masking in indoor, public spaces, he advised that there was an exemption to the by-law for those whose health conditions do not allow them to wear masks. When questioned as to how he could both, be in such good health so as not to be concerned about COVID-19, and also have a health condition preventing him from wearing a mask, he told me he had pre-existing conditions, but that his lifestyle allowed him to maintain overall good health. There is no evidence of his pre-existing conditions in the record. In my view, he intends to rely on a fictional health condition to avoid wearing a mask because he believes that the pandemic is a "scamdemic".

[16] In *Ribeiro v. Wright*, 2020 ONSC 1829, Pazaratz J. provided guidance for parties and courts dealing with parenting issues that may arise during the COVID-19 pandemic. He wrote, at paras. 10-14:

> None of us know how long this crisis is going to last. In many respects we are going to have to put our lives "on hold" until COVID-19 is resolved. But children's lives – and vitally important family relationships – cannot be placed "on hold" indefinitely without risking serious emotional harm and upset. A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of *both* parents, now more than ever.
>
> In most situations there should be a presumption that existing parenting arrangements and schedules continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing.
>
> In some cases, custodial or access parents may have to forego their times with a child, if the parent is subject to some specific personal restriction (for example, under self-isolation for a 14 day period as a result of recent travel, personal illness, or exposure to illness.)
>
> In some cases, a parent's personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child.
>
> And sadly, in some cases a parent's lifestyle or behavior in the face of COVID-19 (for example, failing to comply with social distancing; or failing to take reasonable health precautions) may raise sufficient concerns about parental judgment that direct parent-child contact will have to be reconsidered. There will be zero tolerance for any parent who recklessly exposes a child (or members of the child's household) to any COVID-19 risk.

[17] Pazaratz J. noted that the onus is on the parent seeking to temporarily restrict or suspend access to establish a "failure, inability, or refusal" by the other parent to follow COVID-19 protocols in the future.

[18] Pazaratz J. went on to note, at para. 23, that "[j]udges won't need convincing that COVID-19 is extremely serious, and that meaningful precautions are required to protect children and families. …We will be looking to see if parents have made good faith efforts to communicate; to show mutual respect; and to come up with creative and realistic proposals which demonstrate both parental insight and COVID-19 awareness".

[19] Since the release of *Ribeiro*, other courts have consistently held that parties must follow COVID-19 protocols, including handwashing, physical distancing, and limiting exposure to others: *Skuce v. Skuce*, 2020 ONSC 1881, at para. 85.

[20] I find that the respondent is not prepared to follow COVID-19 protocols in the future. The applicant has established that the respondent's behaviour is of the sort contemplated by Pazaratz J. when he wrote, "in some cases a parent's lifestyle or behaviour in the face of COVID-19… may raise sufficient concerns about parental judgment that direct parent-child contact will have to be reconsidered." The respondent has demonstrated no parental insight, or COVID-19 awareness.

[21] The respondent is aware that his behaviour has led to the applicant suspending what was his significant parenting time with I.S.. Despite the government and public health messages about the risk of COVID-19, despite the applicant's clear will to act in the face of her concerns, despite the case law that suggests that courts will take COVID-19 seriously, the respondent has preferred his agenda – politicizing a virus – over his parenting time with his son.

[22] In these circumstances, given the respondent's complete failure and unwillingness to follow COVID-19 protocols, now or in the future, I order that, on a temporary basis, I.S.'s primary residence shall be with the applicant. The respondent's parenting time shall be by video only, three times weekly, on Mondays, Tuesdays and Wednesdays, at 12:45 p.m., to be facilitated by the child's nanny, or otherwise as the parties may agree.

[23] The respondent may resume in-person parenting time with I.S. with the agreement of the applicant. If she does not agree, he may apply to the court for a resumption of in-person parenting time after (i) he obtains a negative test result for COVID-19 or alternatively, self-isolates for fourteen days, and (ii) he begins following and commits to continue following government and public health protocols with respect to the coronavirus.

Decision-making for I.S.

[24] The applicant seeks temporary sole custody of I.S. She argues that the order is in the child's best interests, because she is unable to cooperate with the respondent to make decisions in I.S.'s best interests. She states that the parties can parent cooperatively only when she accedes to the respondent's demands. Up until now, she has managed to make things work, but she is concerned about the potential for disagreement over health measures related to COVID-19, and decisions that

may have to be made for I.S. with respect to school and extra-curricular activities in the face of the challenges posed by the coronavirus.

[25] The respondent argues that the parties have a history of cooperating, and they can continue to cooperate. He points to a trip they took at the same time to Florida where they shared parenting of I.S. as an example of their history of cooperation.

[26] The applicant, on the other hand, points to a number of examples where the respondent has exercised his will without regard to her views. For example, the applicant deposes that the respondent tried to interfere with her wish to have pain relief during labour and delivery, including yelling at her for requesting pain relief. She states that her mother intervened, and located a doctor to advocate for her at the hospital. The respondent does not deny that he preferred a natural birth, but states that he deferred to the applicant. The applicant's evidence makes clear that he deferred to her - about decisions affecting her own body - only after intervention.

[27] In another example, the respondent refused to consent to vaccinate I.S., contrary to the applicant's wishes, and against the advice of I.S.'s pediatrician. The applicant was eventually able to catch I.S. up on his vaccinations, but the respondent continued to refuse his consent to the flu vaccination. The applicant eventually arranged the flu vaccination for I.S. without the respondent's consent.

[28] The parties also disagreed about whether the respondent should administer "Herbalife shakes" to I.S. The applicant deposes that I.S.'s pediatrician had warned that the shakes put I.S. at risk of kidney and liver damage, but the respondent continued to give I.S. the shakes. The respondent argues that the shakes were appropriate because they were meant for children. When he was asked to address the fact that the shakes were meant for children twice I.S.'s age, he stated in argument that he administered a smaller dose than the one recommended for older children.

[29] These examples reveal that the respondent exaggerates the history of cooperation between the parties. It also reveals a disturbing pattern: a disrespect of both, the applicant's views, and of the views of experts, particularly health experts.

[30] In the current circumstances, as we navigate new and changing public health and government directives, and as schools and activities seek to re-open safely for children, I agree with the applicant there is potential for significant conflict between the parties. For example, the respondent deposes that he does not support mask-wearing for children, in school or otherwise.

[31] The respondent has also expressed concerns about the safety of vaccines. The respondent deposes he would likely oppose I.S. taking any vaccine related to the virus, because "children are at near zero risk from the virus".

[32] In support of his positions, the respondent relies on the report from the Hospital for Sick Children. However, there is no expert evidence before me. I acknowledge that the report was the subject of significant media attention, and I recognize that significant concerns and criticisms were raised publicly about the report. Without expert evidence, I cannot draw any conclusions from the report.

[33] The applicant deposes that she prefers to follow the advice of public health authorities. There is thus clear potential for conflict between the parties arising out of the decision-making for I.S. in the context of the current pandemic, and the parties' different views about the reliability and importance of public health advice.

[34] When making an order for interim custody, the court must consider the best interests of the child: *Children's Law Reform Act,* R.S.O. 1990, c. C.12, s. 24(1).

[35] Section 24(2) *CLRA* sets out factors that the court shall consider when making an order in the child's best interests. The most relevant of these are as follows:

a. Both parents clearly love and are emotionally bonded to I.S. I.S. has spent significant time with both parents, and I accept that he is bonded to both of them;

b. I.S. has had his primary residence with his mother for most of his life. The parties moved to a shared parenting arrangement under which the respondent had parenting time with I.S. six nights out of 14 in 2019;

c. The applicant is able to provide I.S. with guidance and education, and the necessaries of life. She also has an appropriate plan for the child's care and upbringing. In providing guidance to I.S. and making an appropriate plan for I.S., the applicant is willing to listen to the views of experts when making decisions for I.S.

d. The respondent is able to provide an appropriate level of care for I.S. when he is parenting him. However, I am concerned about the respondent's refusal to take seriously the advice and guidance of experts, and particularly medical experts, when making decisions for I.S.

e. The applicant and respondent are each able to provide I.S. with a permanent and stable family unit.

f. The applicant and respondent are each able to act as a parent on a day-to-day basis. However, as I have noted, I am concerned about the respondent's judgment when it comes to major decisions that involve, either directly or indirectly, areas on which expert input may be useful, and especially those relating to health concerns. I agree with the applicant that the respondent thinks he knows better than the medical experts – so much so, that he is not even willing to entertain the idea that he might have something to learn from them.

[36] The applicant seeks an order for sole custody, arguing that she is the more appropriate parent to make major decisions for I.S., and in view of the parties' inability to cooperate. She argues that joint custody requires a willingness by both parents to work together, which is not the case here. Rather, she argues that the parties fundamentally disagree on too many issues affecting the child's best interest.

[37] In my view, it is not appropriate that the parties have joint decision making over matters that benefit from consideration of the views of experts. Their views are too divergent, and the respondent has a history of both, rejecting the views of experts, and attempting to impose his will on the applicant.

[38] In my view, it is appropriate that, on a without prejudice, temporary basis, the applicant shall have sole decision-making authority for I.S. on all major decisions regarding I.S.'s health and medical care, I.S.'s schooling, and I.S.'s extra-curricular activities. During a pandemic that the respondent refuses to acknowledge is anything more than a "scamdemic", it is in I.S.'s best interests that decisions about his health, schooling, and extra-curricular activities be made by the parent who accepts the public health concerns presented by the pandemic.

[39] It is not necessary at this time, on an urgent motion, to determine whether sole decision-making authority must rest with the applicant for other major decisions, such as religion. I have no evidence that any such decisions are contemplated. If any such decisions arise, the parties can seek relief on an interim basis if needed, but otherwise, the determination of decision-making authority on a final basis should await the trial.

Restraining Orders

[40] The applicant seeks a continuation of the temporary order I made pending the return of this motion restraining the respondent from contacting her directly or attending at her home, as well as orders restraining the respondent from posting about her, their son, or the issues in this litigation on social media and from commencing a GoFundMe. She also seeks orders requiring the respondent to remove social media posts and to remove an existing GoFundMe.

[41] The applicant deposes that she fears the respondent, because he has repeatedly threatened her and enticed others to help him bully her and destroy her business. In particular, during a livestream on his Facebook account on May 20, 2020, the respondent announced the applicant's full name, telephoned her on speaker, and disclosed the name of her business. He subsequently threatened to "make sure everyone knows who you are", and stated he would be outside her home every single day "doing this" until he had his son. He then encouraged his followers to "search for this woman, you can message her and give her your two cents…ask her to end this bullshit now".

[42] The respondent again went to the applicant's home to make a livestream video on May 27, 2020. On that occasion, he promised to "continue doing this" every Wednesday until she "stops this nonsense", or "takes him to court".

[43] The respondent's videos have been viewed over 1700 times and generated over 250 comments, many of which are critical of the applicant, accusing her of being a terrible mother, and of being "psycho". One commenter stated that they "want to really go pay her a visit!!!!"

[44] In addition, the respondent continues to have an old GoFundMe page which he established during a prior disagreement between the parties involving the child, through which he seeks contributions for litigation costs to deal with parenting issues between the parties. The applicant is concerned the respondent will establish another GoFundMe, in effect using I.S., and this litigation,

as tools to advance his political, "scamdemic" agenda, or that he will revive the old GoFundMe page for that purpose. She fears consequences if I.S. is associated with the respondent's extreme views about COVID-19. She worries that I.S. may be socially isolated at school, if other parents or his teachers are concerned about them or their children spending time near I.S., if they believe that he comes from a home that is not taking reasonable measures to limit the risk of infection and transmission of the coronavirus. The applicant's concerns increase if the dispute over parenting time and decisions for I.S. gets used as a tool in the respondent's activities protesting the government response to COVID-19.

[45] The applicant deposes that the respondent's vow not to leave her alone, and to continue staging online protests outside her home, make her fear from her safety and I.S.'s safety. As noted, she is also concerned about the ramifications for I.S. if he is publicly associated with the respondent's protest efforts against the government's and public health authorities' response to the pandemic.

[46] The court can make an interim or final restraining order based on s. 46 of the *Family Law Act*, R.S.O. 1990, c. F.3, or s. 35 *CLRA.* In either case, a restraining order may contain one or more of the following:

a. An order restraining a party from directly or indirectly contacting or communicating with another party or any child in that other party's lawful custody;

b. An order restraining a party from coming within a specified distance of one or more locations.

c. An order specifying exceptions to the provisions described in a) and b) above; and

d. Any other provision that the court considers appropriate.

[47] In order to grant a restraining order, the moving party must have reasonable grounds to fear for his or her own safety or the safety of any child in his or her lawful custody. It is enough if an applicant has a legitimate fear, but the fear must not be entirely subjective. The fears can be of a personal or subjective nature, but they must be related to a respondent's actions or words: *PF. v. S.F.*, 2011 ONSC 154, 196 ACWS (3d) 746, at para. 31.

[48] Specifically, the applicant seeks an order that the respondent not contact her or come within 100 m of any place the applicant or I.S. are known to be or frequent, including, but not limited to her home and place of work, that he remove all social media postings regarding the applicant, I.S., or any issues in this litigation, and refrain from making new postings, and that he not make a new GoFundMe page and that he delete his existing GoFundMe page.

[49] With respect to the social media postings, I note that courts have ordered parents to refrain from making social media posts about the other parent or children, and to remove any existing social media posts: *E.H. v. O.K.*, 2018 ONCJ 412, at paras. 133-136. In *E.H.*, Sherr J. found such an order to be appropriate, because the father's social media posts were a breach of the child's privacy and contrary to her best interests.

[50] In my view, it is appropriate that a tailored restraining order be made with respect to the respondent's social media to protect the privacy of the child, and to assure his and the applicant's safety. While I am cognizant that the respondent himself has not threatened to physically harm the applicant, by inviting his followers to search for the applicant, the respondent has invited, at the very least, on line bullying of her. The comments on the respondent's posts include some that are upsetting and others that are threatening. I accept that the applicant's fear for her and I.S.'s safety is reasonable. I therefore order:

a. The respondent shall delete any social media posts (i) that refer to the issues in this litigation, or (ii) that denigrate the mother, or (iii) that refer to the mother, and/or the child, and the current pandemic. This includes the two Facebook livestreams from May 20 and 27, 2020, which, if still available in any form on his Facebook account, shall be deleted;

b. The respondent shall refrain from creating any new social media posts (i) that refer to the issues in this litigation, or (ii) that denigrate the mother, or (iii) that refer to the mother, and/or the child and the current pandemic.

[51] Although the applicant does not specifically seek orders relating to GoFundMe pages in her Notice of Motion, she raised the issue during the motion, including at the first attendance. Still, I am concerned because the respondent, who sought assistance from counsel to prepare his materials, does not address it in his affidavit. Although he consented to a temporary order not to make a new GoFundMe page during the initial attendance before me as a term of the adjournment, he did not consent to remove the old GoFundMe page and does not consent to any permanent order regarding the GoFundMe page. In my view, it is not appropriate to make an order with respect to the GoFundMe page, or any such future page, on this motion. I dismiss the applicant's request for this relief without prejudice to the applicant bringing it again on a proper record. To the extent that any activities the respondent undertakes on GoFundMe engage his social media, the order in para. 50 above will apply.

[52] I also have some concern with the applicant's request for an order that the respondent not contact her directly, nor attend within 100 m of her home, workplace, or places she or the child are or frequent. The respondent should not have made the livestreams in front of the applicant's home. However, since the last livestream on May 27, 2020, he has not attended at her home, although the temporary restraining order was not issued until June 10, 2020. Because of the orders I have already made, the respondent is prohibited from making on line posts about the applicant; that was the conduct on which the applicant relies to establish her legitimate fear in support of a restraining order. I am not satisfied that it is necessary to make the no contact order that the applicant seeks. Moreover, a no contact order will make it difficult to continue video access if it becomes more convenient for the applicant to facilitate it, and it will pose practical problems when in-person parenting can begin again. Accordingly, I decline to make this order. The temporary order, dated June 10, 2020, prohibiting the respondent from contacting the applicant or attending at her home is hereby set aside.

Initialization and Publication Ban

[53] The applicant seeks a continuation of the orders made by Hood J. initializing the proceeding, initializing the name of the child in the court documents, and for a publication ban. The respondent consents. Because the order was made *ex parte,* and without notice to the media, it should be reconsidered by this court.

[54] However, neither party has argued the issue of whether the incursion on the open court principle is warranted. Nor has either party given the media the requisite notice.

[55] A publication ban, and an order initializing the proceeding, is an incursion on the open courts principle. It should not be made without a full consideration of the relevant principles and an application of the *Dagenais/Mentuck* test.

[56] Accordingly, this issue must be adjourned to allow for proper argument and the opportunity for media to participate. I thus direct:

a. The applicant shall serve the media with her motion for a publication ban as required by the court's *Consolidated Provincial Practice Direction Effective June 15, 2018*, Part V, Section (F).

b. The parties may each file a factum on the issue by August 21, 2020.

c. The motion shall return to be argued before me, on September 1, 2020 for one hour.

d. Until the return of the motion, Hood J.'s orders respecting initialization of this proceeding and the publication ban shall be continued.

Costs

[57] The applicant seeks her costs of this motion in the amount of $27,800.85 inclusive of disbursements and HST. She argues that she sought to engage the respondent on the issues raised on this motion before commencing proceedings, but the respondent's behaviour was unreasonable and left her with no choice but to seek relief from the court. There were two attendances because the motion had to be adjourned originally, and the adjournment contributed to her costs.

[58] The respondent argues that his own costs to get assistance from counsel to prepare his affidavit were about $2,000. If he were successful, that is what he would seek. He states that he is on the CERB and has limited funds right now. He cannot afford the applicant's costs. He states he would have preferred to go to mediation, but the applicant was not willing.

[59] Modern family costs rules are designed to foster four fundamental purposes: to indemnify successful litigants for the cost of litigation, to encourage settlements, to discourage and sanction inappropriate behaviour by litigants, and to ensure that cases are dealt with justly: *Mattina v. Mattina*, 2018 ONCA 867, 299 A.C.W.S. (3d) 770, at para. 10. The touchstone considerations of

costs awards are proportionality and reasonableness: *Beaver v. Hill*, 2018 ONCA 840, 143 O.R. (3d) 519, at para. 12.

[60] Subject to the provisions of an *Act* or the rules of court, costs are in the discretion of the court, pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. By r. 24(10)(a) of the *Family Law Rules*, O. Reg. 114/99, the court is directed to make a decision on the costs of a step in the case promptly after dealing with the step, in a summary manner.

[61] Pursuant to r. 24 of the *Family Law Rules*, the successful party is presumptively entitled to costs, subject to the factors set out in r. 24: *Beaver*, at para. 10.

[62] The factors to consider in setting the amount of costs are listed in r. 24(12). The court must consider the reasonableness and proportionality of a number of factors as they relate to the importance and complexity of the issues. These factors include each party's behaviour, the time spent by each party, any written offers to settle, including those that do not meet the requirements of r. 18, any legal fees and any other expenses, and any other relevant matter.

[63] There is no general approach in family law of "close to full recovery costs": *Beaver*, at para. 11. Rather, full recovery is only warranted in certain circumstances, such as bad faith under r. 24(8), or beating an offer to settle under r. 18(14): *Beaver,* para. 13.

[64] In this case, the applicant is the successful party. She obtained much of the relief she was seeking. She is presumptively entitled to her costs.

[65] With respect to the appropriate quantum of costs, I note the following:

a. The costs sought by the applicant are significantly higher than the costs incurred by the respondent, even allowing for the fact that the applicant prepared three affidavits and a factum and a revised factum, in contrast to the respondent's single affidavit. The costs sought are outside the reasonable expectations of the respondent.

b. The respondent did not act unreasonably in the litigation. He attended, respected the court's timeline, prepared responding material and made his argument appropriately.

c. By failing to engage in any effort to compromise with respect to his behaviour and his political agenda to address the legitimate concerns of the applicant, the respondent left her with no choice but to bring this motion.

d. The issues in the motion were important – parenting time and decision making for a child are among the most important issues in family law proceedings.

e. The applicant's counsel spent almost 45 hours on the motion. That time is reflected in the high quality of the applicant's materials, but the time is excessive.

f. No party made any offer to settle. This is not surprising. The respondent's position was uncompromising.

[66] Having regard to these factors, I conclude that costs on a partial indemnity scale are appropriate, reduced somewhat to reflect the respondent's reasonable expectations. The respondent shall pay the applicant costs of $16,500 all inclusive, within thirty days.

Order Made

[67] In summary, I make the following orders:

a. on a temporary basis, I.S.'s primary residence shall be with the applicant. The respondent's parenting time shall be by video only, three times weekly, on Mondays, Tuesdays and Wednesdays, at 12:45 p.m., to be facilitated by the child's nanny, or otherwise as the parties may agree.

b. The respondent may apply to the court for a resumption of in-person parenting time after (i) he obtains a negative test result for COVID-19 or alternatively, self-isolates for fourteen days, and (ii) he begins following, and commits to continue following, government and public health protocols with respect to the coronavirus.

c. On a without prejudice, temporary basis, the applicant shall have sole decision-making authority for I.S. on all major decisions regarding I.S.'s health and medical care, I.S.'s schooling, and I.S.'s extra-curricular activities.

d. The respondent shall delete any social media posts (i) that refer to the issues in this litigation, or (ii) that denigrate the mother, or (iii) that refer to the mother, and/or the child, and the current pandemic. This includes the two Facebook livestreams, dated May 20 and 27, 2020, which, if still available in any form on his Facebook account, shall be deleted;

e. The respondent shall refrain from creating any new social media posts (i) that refer to the issues in this litigation, or (ii) that denigrate the mother, or (iii) that refer to the mother, and/or the child and the current pandemic.

f. The applicant's request that the respondent delete his existing GoFundMe page and not create any new GoFundMe page is dismissed, without prejudice to the applicant bringing it again on a proper record.

g. The applicant's request for a no contact order is dismissed. The temporary order dated June 10, 2020 prohibiting the respondent from contacting the applicant or attending at her home is hereby set aside.

h. The issue of the initialization of the proceeding, the initialization of the child's name in the court documents, and the publication ban, is adjourned to September 1, 2020, for one hour, before me.

i. The applicant shall serve the media with her motion for a publication ban as required by the court's *Consolidated Provincial Practice Direction Effective June 15, 2018*, Part V, Section (F).

j. The parties may each file a factum on the issue by August 21, 2020.

k. Until the return of the motion, Hood J.'s orders respecting initialization of this proceeding and the publication ban shall be continued.

l. The respondent shall pay the applicant costs of $16,500 all inclusive, within thirty days.

J.T. Akbarali J.

Date: July 7, 2020