COPARENTING in times of COVID

"Be like the flower that gives its fragrance even to the hand that crushes it"

Imam Ali (AS)

Many parents are rightly concerned about COVID-19 and protecting their children from the COVID 'virus'.

For some parents, the COVID-19 situation is taken as an opportunity to excise the other parent from the child's life. For others, there is sincere confusion about how to respond as a responsible parent. The situation is complicated by the courts being closed to all but emergency applications, forcing many families and their lawyers to have to 'switch gears' and look for solutions to this dilemma outside of filing a court application.

On March 24th, 2020 Justice Pazaratz ruled on an 'emergency application'.

WARNING: I am summarizing my understanding of the case below. Every family's situation is different and some of the things I am saying below may or may not apply in your case. Always consult with a lawyer before relying on the legal information below. This posting is not intended to be a substitute for legal advice.

The case is ***Ribeiro v Wright***

- The parents had joint custody and that had been in effect since 2012.
- The mother was primary (residential) parent
- The father had alternate weekend parenting time
- The mother wanted the court to hear an emergency application to suspend the father's parenting time (due to the COVID-19 pandemic) because she could not be sure he would adhere to the isolation protocols.
- The Court denied her application to have this matter heard as an urgent application.

It is important to note that the court did not make a decision for or against the substance of the mother's application. It refused to let the application through the 'courthouse doors'.

What the court did, though, was define the threshold the mother would have had to meet to have the application heard. It also indirectly indicated the kind of evidence that the court would need to have seen in order to hear the application and make a finding:

- The Best Interests of Children is, and should always be, the court's foremost concern.
- Existing Parenting Plans should be followed to the extent possible, unless there are obvious or pressing reasons not to do so.
- It is the child's safety (and not the parent's beliefs or preferences) that drive the court's analysis of what is in a child's best interests.

- In these trying times, it is in a child's Best Interests to have ongoing contact with both parents unless other factors direct something different should be done.
    - Examples:
        - One parent is in quarantine / mandated isolation.
        - One parent has a lifestyle or employment situation that will, in all likelihood, expose the child to a greater than normal risk of COVID-19;
        - One parent is shown to not be abiding by reasonable precautions and is not going to change their behavior.
        - Allowing the child to have the usual parenting contact with one or both parents would subject the child to a clear risk of exposure to COVID-19.
            - I am highlighting the risk that even a child's parenting time with the Applicant parent may be found to be putting the child at risk based on the respondent parent's sworn information.
- Basing parental decisions on what another parent 'might do' rather than on what they 'are doing' is not to be allowed or facilitated by parents nor condoned by the courts.
- Parents should always be working together to promote the physical and emotional well – being of the children.

At paragraph 18 of the ***Ribeiro v Wright*** decision, the court states, "But no matter how difficult the challenge, for the sake of the child we have to find ways to maintain important parental relationships – above all , we need to find ways to safely do so" [emphasis in the original].

Exchange protocols may need to be adjusted to adhere to, and align with, the isolation protocols.

At paragraph 21, the following factors are set out (see each as a 'gate' that must be passed in order to reach the next 'gate')

- Any parent bringing an application on an urgent basis will need to "provide specific evidence or examples of behavior by the other parent which are inconsistent with COVID–19 protocols".
- The parent responding to a court application will be required to "provide specific and absolute reassurance that COVID-19 safety measures will be meticulously adhered to…"
- Both parents will be required to provide very specific and realistic time-sharing proposals which are child-focused and deal with the COVID-19 considerations.
- Given that many (if not all) public facilities that were used during parenting time are now closed, parents should consider staying at home with their child(ren) during their parenting time to minimize risk of exposure to COVID-19.

I think that the criteria set out serve as a good indication of what the applicant parent would have to prove to the court (as a threshold minimum standard in sworn form) for the application to be considered and successful.

The Courts are expecting parents to engage in good faith problem solving before asking the Court to intervene. Here, the services of mediators and neutral parenting assistance would be useful. The parents in this case are invited to "address vitally important health and safety issues for their children in a more conciliatory and productive manner".

To be successful and to have the application considered, the applicant parent needs to show "a failure, inability or refusal by the [other parent] to adhere to appropriate COVID-19 protocols in the future".

The decision then makes a comment that seems to be directed at the lawyers too. It states "Right now, families need more cooperation. And less litigation". This is an interesting comment as it can be read so as to raise the question 'are these families justified in needing more litigation after COVID-19 is under control and life settles to whatever new normal we will find ourselves to be living in'?

Parents need lawyers whose strengths and skills will help find the solution rather than highlighting the problem and expecting someone else to solve it.

So, what is the bottom line?

Ribeiro* v *Wright is an Ontario decision. It will be persuasive for our Alberta courts. However, it does not create Alberta precedent, so an Alberta Judge may see things differently.

The executive summary seems to be that unless there is a clear and documented risk to the children, the parents are expected to work things out before bringing a parenting application to the court. They are expected to make all efforts needed to find solutions (as imperfect as those solutions may be) that maximize parent- child contact while minimizing the physical and psychological risks to the child. They are expected to do this even if it means tolerating the actions of the other parent in order to promote the Best Interests of the child(ren) – and so "[being] like the flower that gives its fragrance even to the hand that crushes it".