

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Jason Samuel Smith, Applicant

**AND:**

Amy Gillian Sieger, Respondent

**BEFORE:** The Honourable Mr. Justice R.P. Kaufman

**COUNSEL:** J. Moldaver, Counsel for the Applicant

R. Tsao, Counsel for the Respondent

**HEARD:** March 18, 2020

**RULING ON MOTION**

- [1] This urgent Motion is brought by the applicant for relief that, if granted, will provide for the immediate return of the parties son Adam (born October 28, 2003) from the United States where he is currently enrolled in an educational and therapeutic program in Utah.
- [2] Adam was placed in Utah on the mutual consent of his parents, on the day prior to his 16<sup>th</sup> birthday. They share joint custody of Adam and his two siblings pursuant to a Separation Agreement signed in 2004 and amended two years later.
- [3] The urgency of this matter is predicated upon the impact of the Covid-19 pandemic virus and the recent announcements by the Prime Minister and President Trump of the imminent closure of the border shared by Canada and the United States.
- [4] The competing affidavits raise issues that would be important in normal times. Unfortunately, these are not normal times. The nature of treatment Adam requires needs to be determined by the parents. As he is now 16 years of age, he is entitled to participate in these determinations. His future schooling needs to be determined but, under the current circumstances, the parents likely have until September to work together on that issue, together with their son.
- [5] The applicant alleges that he and the respondent worked out an arrangement last week by which she agreed to Adam returning to Canada subject to her assuming sole decision making on health and education issues. He stated at the time that his agreement to this

arrangement was “under protest and duress” and she now states that the arrangement was entered into without the benefit of independent legal advice.

- [6] Interesting arguments in normal times. Again, these are not normal times.
- [7] The situation is changing as we speak. When this Motion was served, we had open borders and they are about to be closed. Just prior to the Motion, there was an earthquake in Utah that is interfering in air traffic. No one knows what tomorrow will bring.
- [8] The issue faced by the Court, not unlike all issues pertaining to children, is to be decided in a manner consistent with Adam’s best interests. Given the current health concerns facing all of us, the imminent closure of the border between Canada and the United States and the recommendations of our health professionals and Government authorities regarding Canadian citizens out of the country, the relief requested by the applicant is granted in its entirety.
- [9] To be precise, Adam’s passport, removed from his school in Utah by his mother without notice or consent of the father, is to be immediately turned over to the applicant who shall retain it pending further Court Order.
- [10] There will be an Order granted pursuant to paragraphs 1-4 of the Notice of Motion before this Court which authorizes the hearing of the Motion on an urgent basis and which requires the parties to cooperate in providing all consents required to facilitate the removal of the child from Utah to Canada forthwith.
- [11] Upon the child’s return, he shall be self-quarantined, as recommended, for no less than 14 days subject to any further medical recommendations in the event the child tests positive for the coronavirus. During that time he shall reside with his father. Thereafter, absent any health concerns, it is expected that the parents will make satisfactory arrangements for the child’s residential schedule.
- [12] Under the circumstances, approval of this Order is dispensed. Filing Office is to expedite its entry.
- [13] Costs of this Motion shall be reserved to the Court next hearing this matter.

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Justice R.P. Kaufman