

Current Pandemic No Reason Not To Honour Parenting Schedules

Parents who believe the COVID-19 lockdown provides a legitimate reason to deny an ex-partner visitation rights should think again, as two recent rulings show that parenting schedules in court orders or separation agreements must be honoured unless there is proof children would otherwise be endangered.

The first [decision](#) came from a triage judge, tasked with deciding if a case is urgent enough to be dealt with immediately now that regular family law courts are closed. In late March, Justice Alex Pazaratz received submissions from a woman who wanted to deny her ex-husband access to their son because she believed he would not practise social distancing during his visitation periods. In turning down this request, Justice Pazaratz came up with some very sensible guidelines worth repeating here.

“Judges won’t need convincing that COVID-19 is extremely serious, and that meaningful precautions are required to protect children and families,” he stated. “We know there’s a problem. What we’re looking for is realistic solutions. 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.” Wise words. He also added these thoughts about how important it is to children to see both parents on a regular basis.

“Children’s lives — and vitally important family relationships — cannot be placed ‘on hold’ indefinitely without risking serious emotional harm and upset,” he wrote. “In troubling and disorienting times, children need the love, guidance and emotional support of both parents, now more than ever ... I would urge both parents in this case to renew their efforts to address vitally important health and safety issues for their child in a more conciliatory and productive manner.” I can certainly understand that some parents are legitimately concerned their former partner will not follow safety protocols about distancing and hygiene, but this decision shows that unless you can prove the other parent is disregarding COVID-19 guidelines, the separation agreement or court order remains in place.

The second [case](#) I want to highlight involves a couple who separated in 2019, with the three children living with their mother other than supervised visits with the father, a recovering addict who spends his nights in a group home.

In March 2020, the parents signed a Minutes of Settlement that provided for increased access for the father, as long as it was supervised either by the children’s mother or the father’s mother or stepfather. The father sought to revise that arrangement so that all supervision would be with his parents. The mother responded by cutting off the visits altogether, saying any contact he has with

the children should be by videoconference, to protect the youngsters from COVID-19, since the father was living in a communal situation.

In denying this request, Justice Adriana Doyle started off by noting, “These are exceptional and unusual times for everyone ... our world, as we know it, has changed dramatically ... it is an understatement to say that people are experiencing anxiety and scrambling to understand how to navigate this new reality.”

With some minor variances to the settlement agreement, she said the children should continue to see their father in person in supervised settings.

“It is vital for the children of separated families who have parenting times with caregivers be provided with some certainty,” the judgment reads. “Children will benefit from being nurtured and comforted by both parents who have been part of their lives. This routine should only be disrupted if evidence has been established that the children’s health and safety are at risk.”

Justice Doyle notes that the Minutes of Settlement – signed after the onset of COVID-19 – was in place when the mother made a unilateral decision to impose a different arrangement.

“The Court cannot be seen to condone this type of behaviour. Without citizens obeying existing court orders, the whole justice system would be turned over on its head,” she wrote.

As these two rulings show, parents need to provide specific evidence that their children’s health is in danger in order to use COVID-19 as the reason to deviate from a parenting schedule. That is an elevated standard to meet, but it needs to be high, as I’ve personally seen cases where parents try to use coronavirus fears as an excuse to deny access.

As the courts have also emphasized, it is in the child’s best interest to have *both* parents involved in their lives. Since parenting schedules build a structure to allow for this mutual access, everyone is well-advised to work within existing parenting agreements, even in times of pandemic.

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