

CITATION: Kewakundo v. Gunn, 2012 ONSC 6716
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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Naomi Amber Kewakundo, Applicant

AND:

Kiesingar Gunn, Respondent

BEFORE: Czutrin J.

COUNSEL: *Ryan Aalto*, for the Applicant

Aida Pasha, for the Respondent

HEARD: September 25, 2012, October 4, 2012 and November 20, 2012

ENDORSEMENT

[1] The Applicant is the very young mother (20 in [...]) of Felicity (born [...], 2010) and Terrence (born [...], 2011).

[2] The Respondent is the very young father (22) of the two children.

[3] These young parents have known each other since April 2009 and the mother became pregnant soon after they first met.

[4] The parents first lived together in 2009 at the maternal grandmother's home.

[5] In March 2010 there was an altercation between the two parents where the child Felicity was present and was in the father's arm when the mother hit the father. The father was asked to leave the home by the maternal grandmother and the maternal great grandmother.

[6] Thereafter the mother decided to move in with the paternal grandmother and the father.

[7] The father began working when Felicity was approximately six months old.

[8] The parents then separated in the summer of 2010 after an argument. Felicity remained with the father and after a brief separation the parties reconciled.

[9] The parents moved again in June 2011 back to the maternal grandmother's home until September 2011 when their application for subsidized housing with the Wigwamen Housing Programme was accepted. They moved into a semi-detached 3 bedroom house where the father has continued to reside after their last separation of July 29, 2012.

[10] In November 2011, the mother was charged with assaulting the father. The mother claimed self defence and ultimately entered into a PARS programme and entered into a Peace Bond for 12 months on June 20, 2012. In spite of the Peace Bond the parties resumed cohabitation.

[11] According to the father, his mother or sister would pick up the children from their house on most Friday nights where they stayed until Sunday evening when he would pick them up.

(Paragraph 23 of father's September 21, 2012 affidavit and Paragraph 19 of the paternal grandmother's affidavit of September 21, 2012.)

[12] The mother moved out of their three bedroom home with the children at the end of July 2012 and started to ask the father to move out of the home and remove his name from the lease.

[13] There was a period of approximately one month where the father did not see the children until August 25, 2012 when he visited at the maternal grandmother's home with his mother and his two young siblings (8 and 9). There was an altercation and the father alleged that the mother's family was drinking and that the maternal grandmother was inebriated.

[14] The children are both in subsidized daycare available to them daily from 7 AM to 6 PM.

[15] While the parties have appeared before me several times, they and their counsel have managed to agree to a schedule where the father's time with the children is 4PM to 8 PM Monday, Wednesday and Friday and Saturdays 10 AM to 6 PM.

[16] The major issue between the parties at this time is the dispute over who can occupy the subsidized three-bedroom home.

[17] On September 25, 2012 I asked the material be served on the Children's Aid Society of Toronto and asked The Ontario Children's Lawyer ("OCL") to intervene.

[18] On October 4, 2012, I asked counsel to write to the Tenants Relations Officer at the Wigwamen Housing Programme to have a better understanding about who is entitled to this housing.

[19] While the lease included both parents and the children, there is little doubt that the mother's native status was what facilitated their application and acceptance. It would also appear that the father would need to have regular overnight access to be able to continue to live in the home.

[20] The OCL is conducting an investigation.

[21] The father works but not every day.

[22] The mother is in school.

[23] The children are in daycare and since the end of July 2012 live with the mother and maternal grandmother except on the days they see their father.

[24] The father submits that since he has no car to facilitate his time with the children if he is to be asked to leave the home, his continuing to live in the three-bedroom home would serve the best interests of the children. This puts the father's need ahead of the children.

[25] I find that it is the children's best interests to be able to have their own rooms and sleep in their own bedrooms. It cannot be in the children's best interests to continue to be away from the home as it may be several months before the issues are either settled or tried.

[26] By his own affidavit the father conceded that his family take the children to his mother's home every weekend when the parties lived together and that he would pick them up from his mother's home and have them come back to 12 Wildwood Crescent.

[27] I find that it is in the children's best interests to return the 12 Wildwood Crescent home with their mother as of November 30, 2012. While I suggested to counsel and the parties the possibility of the children remaining in the home with the parents moving in and out they did not view that as an option to consider. These parents have a history of inappropriate behavior towards each other and in the presence of the children. These parents have moved their residence frequently in their children's young lives and the children deserve some stability and comfort.

[28] I find that it is in the best interests of the children that they continue to have frequent contact with their father and that he shall have alternate weekends from Friday from daycare to Monday morning at daycare commencing December 7, 2012. In addition he is to have the children each Wednesday from daycare to Thursday at daycare. I want to limit the parents' opportunity to come into contact with each other, particularly in the presence of the children.

[29] My assumption is that he will be able to live with his mother and take the children there again.

[30] Communication between the parents will be restricted to the use of a communication book that is exchanged as the exchange takes place with the children at the daycare. The mother shall place the book in a pack that goes with the children to the daycare and returned by the

father. Similarly the parties through counsel to also arrange for some of the children's clothing and toys to be shared and travel with them.

[31] After November 30, 2012, by noon, the father shall vacate the 12 Wildwood home and not attend at the home or on the same street. He may take only his personal belongings.

[32] The parents have history of altercation and in front of the children. Regardless of fault, and until better evidence that hopefully will come from the OCL, they are not to have contact.

[33] The parents and anyone entrusted with the care of the children shall abstain from the use of non prescribed medication or consume alcohol six hours prior to and during anytime they are caring for the children. It is the parents' responsibility to ensure compliance.

[34] By December 28, 2012, the parties are to exchange financial statements and provide documentary proof of income from the source of the income.

[35] By November 29, 2012, the father to confirm that he will be living with his mother and that is where the children will be when in his care.

[36] By November 29, 2012, the parties to exchange any further proposals for time sharing over the Holiday periods and if agreed I will issue a further order or the parties may return.

[37] The parties, after the financial statements and proof of income are exchanged may return to address support unless the parties agree.

[38] The OCL and The Children's Aid Society of Toronto (CAST) are to be made aware of these orders and based on OCL's estimate of when their report will be ready a Settlement Conference is to be scheduled and OCL to be advised.

[39] Costs reserved to the trial judge.

Czutrin J.

Released: December 4, 2012