

CITATION: Tantardini v. Tantardini, 2022 ONSC 6946
COURT FILE NO.: FS-21-164
MOTION HEARD: 20210824

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Kristopher John Tantardini, Applicant

AND:

Tiffany Janita Tantardini, Respondent

BEFORE: MILLER J.

COUNSEL: G. Sun, for the Applicant

J. Eensild, for the Respondent

MOTION HEARD: August 24, 2021

COSTS ENDORSEMENT

- [1] This interim motion and cross-motion were heard on the issue of parenting time with the parties' child. The issues argued were whether the child should remain in the primary care of the Respondent Mother due to safety issues in relation to excessive use of alcohol by the Applicant Father and whether it is appropriate that the Respondent Father be required to use an alcohol monitoring device prior to operating a vehicle in which the child is a passenger, and in the morning and evening on any day in which the child is in his sole care, for the purpose of providing confirmation that he is sober.
- [2] The Respondent was granted abridgement of time for service and filing of her Notice of Cross Motion dated August 18, 2021.
- [3] The Applicant Father proposed that the parties shall have shared and equal parenting time with the child on alternate weekly basis from Sunday to Sunday with the exchange of the child at 5:00p.m. or a time mutually agreed to by both parties. He proposes that both parties be prohibited from consuming alcohol 12 hours prior to and during the period of time when the party is responsible for the care of the child.
- [4] The Respondent Mother sought an order that that the child shall reside primarily with the her and that the Applicant Father shall have parenting time with the child as follows:
 - a. Every other weekend from Friday afternoon until Monday morning, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m and ending at either drop off at the child's school on Monday morning, or 9:00 a.m. on days when the child is not in school due to a holiday or professional development day;

b. Every Wednesday, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m., and ending at 6:30 p.m.;

c. Such other times upon which the parties can agree upon in advance and in writing.

The Respondent Mother proposes that the child's transitions between the parties shall occur at school, or, in the event that a transition is to occur on a date that the child is not in school, the exchange shall take place at the Tim Hortons located at 28 Wellington St. East in Guelph, Ontario.

[5] The Respondent Mother further sought an order that the Applicant Father shall not consume any alcohol or drugs within 12 hours prior to or during his parenting time and further that the Applicant Father shall purchase a SoberLink Breathalyzer device and maintain a SoberLink Level 1 Plus Plan for not less than 6 months. The Respondent Mother proposes to reimburse the Applicant for 50% of the cost of the device and the subscription plan.

[6] The Respondent Mother sought an order that the Applicant Father shall maintain the Respondent Mother as a contact with SoberLink to receive email test results in real time and shall complete an alcohol test with the SoberLink Level 1 breathalyzer device as follows:

a. Immediately prior to operating any vehicle (cars, boats, ATVs, other recreational vehicles) in which the child is a passenger;

b. A test at some point between 7:00 a.m. and 8:00 a.m., on any day that the child is in the care of the Applicant Father between the hours of 7:00 a.m. and 8:00 a.m.; and,

c. A test at some point between 9:00 p.m. and 10:00 p.m., on any day that the child is in the care of the Applicant Father between the hours of 9:00 p.m. and 10:00 p.m.

[7] The Respondent Mother sought an order that in the event that any of the breathalyzer tests detect any level of alcohol, the breathalyzer detects any tamper attempt or mistaken identity, or in the event that the Applicant Father fails to take any required test, all unsupervised parenting time shall be suspended immediately and the Applicant Father shall only have parenting time with the child as can be agreed upon between the parties or as otherwise determined by this Honourable Court.

[8] The Applicant Father indicated he did not have an alcohol problem and that the police incidents are out of character. He suggested both parties not consume alcohol within 12 hours of the child being in their care.

[9] The parties agreed that child support would be payable, flowing from the parenting schedule as decided by this Court, based on the Applicant Father's annual income of \$15,000 and the Respondent Mother's annual income of \$119,227.34. The parties agreed that if there was to be equal parenting time child support would be payable on a set-off basis.

[10] After hearing the motions I ordered that the Applicant Father shall not consume any alcohol or non-prescribed drugs within 12 hours prior to or during his parenting time with the child, and that:

The Applicant Father shall purchase a SoberLink Breathalyzer device and maintain a SoberLink Level 1 Plus Plan. The Applicant Father shall maintain the plan for not less than 6 months. The Respondent Mother shall reimburse the Applicant for 50% of the cost of the device and the subscription plan. The Applicant Father shall maintain the Respondent Mother as a contact with SoberLink to receive e-mail test results in real time.

The Soberlink device and plan shall be in place before the Applicant exercises any unsupervised parenting time with the child.

The Applicant Father, shall complete an alcohol test with the SoberLink Level 1 breathalyzer device as follows:

- a. Immediately prior to operating any vehicle (cars, boats, ATVs, other recreational vehicles) in which the child is a passenger;
- b. A test at some point between 7:00 a.m. and 8:00 a.m., on any day that the child is in the care of the Applicant Father between the hours of 7:00 a.m. and 8:00 a.m.; and,
- c. A test at some point between 9:00 p.m. and 10:00 p.m., on any day that the child is in the care of the Applicant Father between the hours of 9:00 p.m. and 10:00 p.m.

[11] And further that:

In the event that any of the breathalyzer tests detect any level of alcohol, the breathalyzer detects any tamper attempt or mistaken identity, or in the event that the Applicant Father, fails to take any required test, all unsupervised parenting time shall be suspended immediately and the Applicant Father shall have such parenting time as can be agreed upon between the parties or as otherwise determined by this Honourable Court.

[12] It was ordered that in the event that the Applicant complies with all the requirements for 6 months and no alcohol or tamper attempts are detected in any of the results, the requirement for the Applicant to maintain a SoberLink level 1 Plus Plan shall terminate and the parties forthwith evaluate the potential for an increase to the Applicant's parenting time.

Parenting Time

[13] The Respondent proposed that on a temporary, without prejudice basis, she should have sole decision-making authority and that communication between the parties be limited to email. The Respondent further proposed that the child remain in her primary care and that the Applicant's parenting time be limited to:

- a. Every other weekend from Friday afternoon until Monday morning, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m and ending at either drop off at the child's school on Monday morning, or 9:00 a.m. on days when the child is not in school due to a holiday or professional development day;

b. Every Wednesday, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m., and ending at 6:30 p.m.;

c. Such other times upon which the parties can agree upon in advance and in writing.

[14] The Respondent proposed that the decision-making and the parenting may be re-evaluated after the six months during which the Applicant must comply with alcohol monitoring time with the child.

[15] The Applicant sought to have joint-decision-making and equal parenting time on a week about basis.

[16] I found that it was in the child's best interests that the parenting schedule remain one wherein the child's primary residence will be with his mother. After the six months during which the Applicant's parenting time will be accompanied by alcohol monitoring, the circumstances and the amount of parenting time can be subject to further review. I found that it was appropriate that communication between the parties be by email.

[17] I ordered, on a temporary, without prejudice basis, that:

The Respondent Mother shall have sole decision-making authority for the child.

Communication between the parties shall be limited to email and shall be restricted to communications about the child's needs.

The child shall remain in the Respondent Mother's primary care.

The Applicant's parenting time shall be:

a. Every other weekend from Friday afternoon until Monday morning, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m. and ending at either drop off at the child's school on Monday morning, or 9:00 a.m. on days when the child is not in school due to a holiday or professional development day;

b. Every Wednesday, commencing at either pickup at the child's school or, on days when the child is not in school due to a holiday or professional development day, 4:00 p.m., and ending at 6:30 p.m.;

c. Such other times upon which the parties can agree upon in advance and in writing.

[18] It was further ordered that decision-making and the parenting time may be re-evaluated after the six months during which the Applicant must comply with alcohol monitoring time with the child.

[19] It was ordered that the child's transitions between the parties shall occur at school, as per the above paragraphs. In the event that a transition is to occur on a date that the child is

not in school, the exchange shall take place at the Tim Hortons located at 28 Wellington St. East in Guelph, Ontario.

[20] It was ordered that the Respondent Mother shall keep the child's health card within her possession, and provide the Applicant Father with a notarized copy forthwith.

[21] It was ordered that the Applicant Father shall pay the table amount of child support in the amount of \$79.00 to the Respondent Mother based on his annual income of \$15,000 pursuant to Section 9 of the Federal Child Support Guidelines commencing September 1, 2021 and on the first of each month thereafter.

Costs

[22] The parties subsequent to the hearing, provided to the Court their respective Offers to Settle and written submissions as to costs.

[23] The Respondent seeks her full indemnity costs of \$6,533.25 inclusive of disbursements and HST.

[24] The Respondent served an offer to settle on August 18, 2021. She obtained an Order at the motion that was equivalent to what was offered. Counsel for the Respondent notes that had the offers to settle been accepted when they were made, the requirement for the Applicant to breathalyze would be coming to an end shortly and unsupervised parenting time between the child and the Applicant would have commenced in June of 2021. These are relevant factors in determine the quantum of costs, as per subrule 18(14) of the Rules.

[25] Counsel for the Respondent submits that she is thus presumptively entitled to her costs on a full indemnity basis.

[26] The Applicant's position is that there should be no costs awarded and that costs be reserved to the trial Judge in the matter.

[27] In the alternative, counsel for the Applicant cites *Cole v. Barrett*, 2020 ONSC 3656 at paras 29 and 30 in support of the position that costs should be on a partial recovery basis due to the Applicant's limited financial ability to pay costs as it will impose hardship to him and to the child.

[28] In accordance with Rule 24 (1) of the *Family Law Rules* there is a presumption that the successful party is entitled to costs. Rule 24 (11) provides:

A person setting the amount of costs shall consider,

(a) the importance, complexity or difficulty of the issues;

(b) the reasonableness or unreasonableness of each party's behaviour in the case;

(c) the lawyer's rates;

(d) the time properly spent on the case, including conversations between the lawyer and the party or witnesses, drafting documents and correspondence, attempts to settle, preparation, hearing, argument, and preparation and signature of the order;

(e) expenses properly paid or payable; and

(f) any other relevant matter.

[29] Rule 18 (14) provides that:

A party who makes an offer is, unless the court orders otherwise, entitled to costs to the date the offer was served and full recovery of costs from that date, if the following conditions are met:

1. If the offer relates to a motion, it is made at least one day before the motion date.

2. If the offer relates to a trial or the hearing of a step other than a motion, it is made at least seven days before the trial or hearing date.

3. The offer does not expire and is not withdrawn before the hearing starts.

4. The offer is not accepted.

5. The party who made the offer obtains an order that is as favourable as or more favourable than the offer.


[30] Further, Rule 24 (5) of the *Family Law Rules* provides that in deciding whether a party has behaved reasonably or unreasonably, the court shall examine:

(a) the party's behaviour in relation to the issues from the time they arose, including whether the party made an offer to settle;

(b) the reasonableness of any offer the party made; and

(c) any offer the party withdrew or failed to accept.

[31] I find that the Respondent is entitled to her full indemnity costs of \$6,533.25 inclusive of disbursements and HST. In recognition of the current financial circumstances of the Applicant and the potential impact of the costs award on the child, I order that the Applicant may pay these costs out of his share of the proceeds of the matrimonial home whenever they are distributed.



MILLER J.

Date: April 7, 2022