

**CITATION:** Clouthier v Thompson., 2020 ONSC 2141  
**COURT FILE NO.:** FS-20-14  
**DATE:** 20200327

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Andrew Charles Clouthier, Applicant

**AND:**

Jennifer Pearl Thompson, Respondent

**BEFORE:** Justice J.R. Sproat

**COUNSEL:** Ethan Winterburn, for the Applicant – Moving Party

Ram Shankar, for the Respondent – Responding Party

**HEARD:** March 27 and April 3, 2020

**ENDORSEMENT**

**I. INTRODUCTION**

[1] This motion was brought as an urgent motion to determine who should have care of Tucker, who is three years old.

**II. SERVICE**

[2] Ms. Thompson was personally served with the original notice of motion and two supporting affidavits on March 17, 2020. The motion was originally returnable March 20, 2020 in court.

[3] The Court suspended regular operations and, therefore, Mr. Clouthier requested that the motion be heard as an urgent motion, by teleconference which was scheduled for March 27, 2020.

[4] Ms. Thompson did not file materials but retained Mr. Shankar who requested an adjournment. The motion was, therefore, adjourned to April 3, 2020 to be heard by teleconference. Pending the adjournment, I ordered that Tucker remain in the care of Mr. Clouthier which reflected the status quo.

### **III. PRIOR COURT ORDERS**

[5] A Final Order was made, on consent, on November 19, 2018, at a time when both parties were represented by counsel. The order provided that Ms. Thompson would have Tucker in her care for approximately 9 days, and Mr. Clouthier would have Tucker in his care for approximately five days, in every two-week period.

### **IV. EVIDENCE ON THE MOTION**

#### **Mr. Clouthier**

[6] Mr. Clouthier's affidavit indicates that on December 4, 2019 a CAS worker, Bruce Fleming, attended with him at Ms. Thompson's residence when he planned to drop off Tucker. Mr. Clouthier indicates that Mr. Fleming went inside Ms. Thompson's residence and subsequently advised him that the place was unfit for a child. Mr. Clouthier indicates that Tucker has been in his care fulltime since December 4, 2019 and that the CAS has expressed satisfaction with his parenting plan and his care for the child.

[7] Mr. Clouthier indicated that Mr. Fleming told him that Ms. Thompson had admitted that "she has poured hot sauce down Tucker's throat", as a form of punishment.

[8] Mr. Clouthier's affidavit contains various complaints concerning Ms. Thompson dating back to 2017 when they separated. A February 26, 2020 letter from the CAS indicates that it has looked into concerns expressed regarding Ms.

Thompson's parenting and concluded that there are no verified child protection concerns that require ongoing service. As such I place no weight on these historical concerns.

[9] Mr. Clouthier indicates that in February Ms. Thompson asked to visit with Tucker and arrangements were made for her to have lunch with Tucker at Boston Pizza on February 22, 2020. Mr. Clouthier indicates that Ms. Thompson and her father entered and when Tucker ran to Ms. Thompson, she grabbed him and ran out the front door. This led to a physical altercation with the police being called.

[10] According to Mr. Clouthier the police spoke with the CAS and allowed Tucker to remain in his care. Mr. Clouthier attached to his affidavit text messages exchanged with Mr. Fleming in which Mr. Fleming indicated that the position of the CAS was that Ms. Thompson should have access to Tucker. Mr. Fleming further indicates, "we are satisfied that Tucker is doing well in your care, has daycare and lots of family support". Mr. Clouthier then referenced the incident at Boston Pizza and Mr. Fleming agreed "maybe supervised visits for a while is best until everyone feels the situation has stabilized".

### **Mr. Fleming**

[11] Mr. Fleming participated in the teleconference on March 27, 2020 and, as I wanted to obtain some clarification of the position of the CAS, I affirmed him to give evidence on the motion.

[12] Mr. Fleming indicated that while the condition of Ms. Thompson's home on December 6, 2019 was messy, she made it clean and organized with a bedroom appropriate for Tucker. He said that he did not know how Ms. Thompson administered the hot sauce to Tucker. He said that he did not agree that the supervision needed to be at a supervised access centre – it could be by a trusted

third party. He suggested that the access be supervised for first few visits to provide for a transition and then Ms. Thompson could exercise access without supervision.

### **Ms. Thompson**

[13] Ms. Thompson's affidavit acknowledges that her accommodation was unusually messy on December 6, 2019. She explains that she had intended to return to her home the day prior but her transportation fell through. Ms. Thompson, however, advises that there was a further visit by CAS on December 9, 2019 at which time there were no issues with the state of her home.

[14] While she was speaking to Mr. Fleming on December 6, 2019 Tucker went out the door to see his father and Mr. Clouthier put him in the truck, locked the doors and drove away.

[15] Ms. Thompson indicates that she sent texts and made numerous calls to Mr. Clouthier asking for Tucker's return.

[16] Ms. Thompson indicated that on one occasion she put a drop of hot sauce on her finger and touched it to Tucker's lip.

[17] Ms. Thompson indicates that on or about December 13, 2019 Mr. Clouthier said that she should expect to receive court papers. She believed that she would be receiving a motion because this is what Mr. Clouthier did when he took Tucker in July 2018.

[18] Ms. Thompson indicates that when she realized that Mr. Clouthier did not intend to serve her with a motion she sought advice and prepared a Notice of Contempt Motion dated January 3, 2020. She intended to make it returnable on January 15, 2020.

[19] She travelled to Kincardine to attempt service on January 8 and January 11, 2020 but was unsuccessful. As she could not effect service, she was not able to get the motion on the court docket in London.

[20] Ms. Thompson met with duty counsel on February 4, 2020 and was given paperwork to apply for Legal Aid. Her application was approved. She indicates that the advice she received was that Mr. Clouthier was wrong to not be following the existing court order.

[21] Ms. Thompson indicates that she was finally able to get Mr. Clouthier to agree to a physical access visit on February 22, 2020. Ms. Thompson acknowledges that Tucker ran to her and she in turn left the restaurant which led to a physical altercation, the police being called and permitting Mr. Clouthier to leave with the child.

## V. ANALYSIS

[22] The starting point is that on December 19, 2018 a Final Order respecting Tucker's care was made on consent. Both parties were represented by counsel. This order provided in simplified terms, that:

- a) Tucker's "primary residence" was in London, Ontario;
- b) Tucker would be in the care of Ms. Thompson except that Mr. Clouthier would have Tucker in his care from Wednesday at 6:00 p.m. to Monday at 9:00 a.m. What I will call Week One, and in the following Week Two from Wednesday at 6:00 p.m. to Friday at 9:00 a.m. There was also equal sharing of holiday time.

[23] Section 29 of the *Children's Law Reform Act* provides that:

A court shall not make an order under this Part that varies an order in respect of custody or access made by a court in Ontario unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.

[24] Ms. Thompson's accommodation was not in a fit state on December 6, 2019 and that led to Mr. Clouthier not leaving Tucker with Ms. Thompson that day. Mr. Fleming, however, acknowledged that Ms. Thompson rectified that situation, so the fitness of the accommodation is really a non-issue now.

[25] While the parties have somewhat different versions of events, I think it fairly clear that in the period December–February Ms. Thompson wanted to have Tucker in her care and that Mr. Clouthier resisted this. Otherwise it makes no sense that Ms. Thompson would be attending the courthouse in London, speaking to legal aid counsel and preparing motion materials herself.

[26] At some point Mr. Clouthier became aware that Ms. Thompson had a relationship with a man, who I will refer to as "G", who according to press reports in July 2019 was facing multiple criminal charges. Mr. Clouthier also disclosed that Tucker was "very frightened" of G. On the evidence before me that appears to be the chief concern that Mr. Clouthier had, and that concern is understandable. Ms. Thompson has, however, ended the relationship with G. As of Mr. Fleming's letter of February 6, 2020 the CAS had no verified child protection concerns and was closing its file.

[27] While the Boston Pizza incident was regrettable it was an isolated incident and the parties had divergent understandings of the situation. To Ms. Thompson it was an opportunity to remedy Mr. Clouthier's wrongful disregard of the court order. To Mr. Clouthier it was Ms. Thompson breaching an agreement that she would only see Tucker inside the restaurant. There was fault on both sides and third parties involved. It does not justify a restraining order.

[28] I agree that this motion is urgent given that Ms. Thompson has not had Tucker in her care for four months.

[29] On the material filed it is, however, difficult to see that there has been a material change in circumstances relevant to Tucker's residence and care. The CAS has no child protection concerns. Tucker is no longer exposed to G. As such there is no reason to depart from the Final Order that the parties consented to.

[30] I am now deciding the motion for a temporary order. Mr. Clouthier can, if so advised, proceed with his Motion to Change.

[31] It is, however, clear to me that Tucker ordinarily resides in London, Ontario. That is effectively provided for in the Final Order and was the status quo from November 2018 – December 2019. As such, any further proceedings shall be brought in London, Ontario.

## **VI. ORDER**

[32] While at least at the stage of this motion for interim relief I see no material change, the fact is that Mr. Clouthier now resides in Kincardine. As such the alternate week Wednesday at 6:00 p.m. to Friday at 9:00 a.m. (39 hours) with Tucker in his care may be difficult or impossible.

[33] While maintaining the integrity of the Final Order, at the option of Mr. Clouthier the mid week access can be deleted, and the alternate weekend access can be extended by up to 39 hours. Mr. Clouthier shall transport Tucker to and from the pick up and drop off points. I leave it to counsel to work out the new pick up and drop off times if Mr. Clouthier elects to delete the midweek access. Failing agreement each counsel shall provide me with a 1 – 2 page letter setting out his

position and I will decide. Otherwise the parties shall abide by the terms of the November 19, 2018 Final Order.

[34] Mr. Fleming had suggested a brief period of supervised access to facilitate the transition to Tucker returning to the care of Ms. Thompson. Supervised access centers are, however, now closed. Neither party suggested a third-party who might be able to supervise a few visits. The harm from delaying Ms. Thompson's resumption of contact with Tucker outweighs any transitional difficulty. As such, Mr. Clouthier shall return Tucker to Ms. Thompson by 9 AM on Monday, April 13, 2020, which shall be considered the end of his Week One time with Tucker in his care.

[35] I will repeat what I said during the hearing of the motion. The parties must focus on the best interests of Tucker. Mr. Clouthier must do everything he can to encourage and support Tucker resuming contact with Ms. Thompson.

[36] If the parties focus on Tucker, this will not necessary, however, the court order should contain the usual provisions providing for police assistance with enforcement, if required.

[37] The motion by Mr. Clouthier is otherwise dismissed.

[38] Rule 59.01 of the *Rules of Civil Procedure* and *Family Law Rules* 15(18) provide that this Order is effect from the date it is made, that date being the date such order is made by the judge whether such Order is contained in a signed endorsement, order or judgment.

**VII. COSTS**

[39] If costs are sought, and cannot be agreed upon, Mr. Shankar shall email costs submissions not to exceed 10 pages to the Court and within 10 days, and Mr. Winterburn shall respond within 10 days with up to 10 pages.

“Signed original in court file”  

---

**Date:** April 7, 2020