2016 ONSC 5356
Ontario Superior Court of Justice

Wang v. Grenier

2016 CarswellOnt 13513, 2016 ONSC 5356, [2016] W.D.F.L. 5148, 270 A.C.W.S. (3d) 339

BEI WANG (Applicant) and FREDERICK GRENIER (Respondent)

Robert N. Beaudoin J.

Heard: July 27, 2016
Judgment: August 25, 2016
Docket: FC-15-1278

Counsel: Tanya Davies, for Applicant
Jack E. Pantalone, for Respondent

Subject: Family

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Family law

IX Custody and access
IX.2 Factors to be considered in custody award
IX.2.h Reports by third parties

Headnote

Family law --- Custody and access — Factors to be considered in custody award — Reports by third parties

Parties had one child — Parties separated after two years of marriage — Mother brought application for sole custody, child support, equalization and declaration that marriage contract between parties be found to be valid — Custody and access assessor recommended, among other things, that time-sharing arrangements be immediately changed such that child would reside primarily with mother and that father would have access every second weekend and once each week — Mother brought motion for immediate implementation of recommendation arising from custody and access assessment — Father brought motion that each parent be responsible for drop off at other parent's residence — Mother's motion dismissed; father's motion granted — Counselling for parents and parenting coordinator was recommended — Mother's affidavits were concerning and many statements were completely contradicted by exhibits she filed in support of her allegations — There were serious issues of credibility and hotly contested factual record — Mother could use implementation of one recommendation for strategic purposes to favour claim for sole custody — Father identified significant problems with mother's affidavits and assessor's report — Current parenting arrangement had been in place for one year and significant changes with respect to child's care would result to one of primary residence — Assessments were generally prepared for consideration at trial where report formed part of evidence, in which case trial would afford opportunity for testing and analysis in context of overall evidence.

Table of Authorities

Cases considered by *Robert N. Beaudoin J.*:

Batsinda v. Batsinda (2013), 2013 ONSC 7869, 2013 CarswellOnt 18635 (Ont. S.C.J.) — followed

Bos v. Bos (2012), 2012 ONSC 3425, 2012 CarswellOnt 7442 (Ont. S.C.J.) — followed

Grant v. Turgeon (2000), 2000 CarswellOnt 1128, 5 R.F.L. (5th) 326 (Ont. S.C.J.) — followed

Marcy v. Belmore (2012), 2012 ONSC 4696, 2012 CarswellOnt 10105, 27 R.F.L. (7th) 412 (Ont. S.C.J.) — followed

MOTION by mother for immediate implementation of recommendation arising from custody and access assessment and MOTION by father that each parent be responsible for drop off at other parent's residence.

***Robert N. Beaudoin J.* :**

1 On July 27, 2016, I dismissed Ms. Wang's motion for immediate implementation of one of the recommendations arising from the custody and access assessment agreed to by the parties. Since that was a third appearance on that motion, I released brief written reasons and indicated that these additional reasons would follow. I recommended counselling for the parents and that they consider retaining the services of parenting coordinator to assist them with their parenting issues. Since parenting exchanges were a source of conflict, I granted Mr. Grenier's request that each parent be responsible for the drop off of the child at the other parent's residence at the conclusion of their access time.

Background

2 Ms. Wang and Mr. Grenier were married in Ottawa on May 17, 2013. They entered into a marriage contract dated May 16, 2013. There is a dispute as to the date of separation; Mr. Grenier maintains that the date of separation is May 23, 2015 whereas Ms. Wang maintains that the date of separation was January 31, 2015. They have one child of the marriage, namely Maxime Grenier ("Maxime"), born July 15, 2013. Ms. Wang and Mr. Grenier are both employed on a full-time basis. Ms. Wang has a PhD in chemical engineering and Mr. Grenier has a PhD in nuclear physics. Both are 37 years old. Neither of them has been previously married and they have no other children.

Litigation history

3 Ms. Wang commenced these proceedings seeking sole custody of Maxime, child support, equalization and a declaration that the marriage contract between the parties be found to be valid. In his Answer, Mr. Grenier seeks an order for joint custody and equal timesharing, child support, equalization of property and an order setting aside the marriage contract.

4 Mr. Grenier immediately brought a motion seeking leave to have the parenting issues resolved on an urgent basis. That motion was heard on June 15, 2015, and Master Roger (as he then was) found that the matter was indeed urgent and he made an interim, interim without prejudice order. Master Roger found that both parties had equally cared for Maxime prior to their separation, and on that basis, he ordered that the parties share time with Maxime on 2-2-3 basis. He also ordered that a custody and access assessment be conducted as soon as possible, either with a mutually agreeable assessor or an assessor designated by the Court, with the cost of the assessment to be shared equally between the parties.

5 The parties attended at a case conference before Justice Parfett on July 16, 2015. They executed Minutes of Settlement and Justice Parfett made an order varying the ongoing time-sharing arrangements from 2-2-3 schedule to week on/week off, with each of the parties being responsible for Maxime's pickup in advance of his/her parenting time. Sally Bleeker was directed to conduct a custody and access assessment as soon as possible. Ms. Bleeker ultimately conducted her assessment and provided the parties with her report seven months later on March 17, 2016.

6 Among her many recommendations, Ms. Bleeker recommended that the time-sharing arrangements be immediately changed such that Maxime would reside primarily with Ms. Wang and that Mr. Grenier would have access to Maxime every second weekend and once each week. Ms. Bleeker also recommended that this ongoing time-sharing arrangement change in July, 2017, such that one more day would be added to Mr. Grenier's time with Maxime, and then, in July, 2018, yet another day would be added to Mr. Grenier's time with Maxime, resulting in the parties, once again, having equal time with Maxime commencing in July, 2018.

7 The parties then brought urgent motions before Master MacLeod (as he then was) on April 19, 2016. Ms. Wang sought to have Ms. Bleeker's recommendations implemented as a matter of urgency. Mr. Grenier sought a release of Ms. Bleeker's file and other records and leave for questioning.

8 After argument, Master MacLeod denied Ms. Wang's request that her motion be heard as a matter of urgency and adjourned the motion to June 30, 2016. He granted Mr. Grenier's request for questioning of Ms. Bleeker.

9 In his Endorsement of April 19, 2016, Master MacLeod reviewed the contents of Ms. Bleeker's report and considered the case law with regard to the interim implementation of assessors' recommendations and he said this at para. 13:

> **13** The evidence does not persuade me that the parenting schedule which has now been in place for nine months is so intolerable for the child that it demands an accelerated motion date. In *Grant v. Turgeon* (2000) 2000 CanLII 22565 (ON SC), 5 R.F.L. (5th) 326 (S.C.J.) Justice Mackinnon was faced with a motion much like that Ms. Wang now wishes to bring. In that case also the expert assessor had a sense of urgency for the children and indeed he was recommending an immediate move to full time residence with the father. The court decided that the assessor's conclusions could not be weighed by the court until certain factual and credibility issues were determined. Hence the court refused to give effect to the conclusions of the expert at that stage of the proceeding. This is not an invariable rule of course. Such a motion may be successful if the court is persuaded that the best interests of the child require a change prior to trial. See for example *Marcey v. Belmore*, 2012 ONSC 4696 (CanLII) and *Bos v. Bos*, 2012 ONSC 3425 (CanLII) though both of these cases also recognize that interim implementation of an assessor's recommendations should not be routine.

10 Master MacLeod found that the parties had fixated on the recommendation relating to parenting time without also considering the myriad of other recommendations made by the assessor. He allowed the parties to file additional material. The motion could not proceed on June 30, 2016 since insufficient time had been set aside. The parties were given leave to file additional materials and the motion was then adjourned to July 27, 2016 for a half-day hearing.

Ms. Wang's supporting affidavits

11 In support of her motion for the immediate implementation of Ms. Bleeker's recommendation, Ms. Wang filed a number of lengthy affidavits.

12 In her first affidavit of April 4, 2016, Ms. Wang focuses on the problems with the existing parenting arrangement. She claims that the shared parenting is causing Maxime emotional distress which she believes is reflected in his physical well-being. She attaches a list of appointments she has made for Maxime to see the family physician, Dr. Lyen. There are 60 visits between July 22, 2013 (Maxime was born July 15th, 2013) and March 23, 2016. I note with interest that 31 one of these visits took place before the earliest possible date of separation and that 40 of these visits took place before any court orders for shared parenting were in place.

13 Ms. Wang claims that Dr. Lyen recommended that Maxime be seen by a child psychologist (Dr. Goldstein) even though Maxime was then less than two years of age. Dr. Lyen's consultation note is attached as an exhibit and it reads simply "Psychologist"; it does not indicate for whom these services are required. Ms. Wang alleges that the father refused to cooperate in obtaining psychological counselling for Maxime. She is also very critical of the French language daycare services in place for Maxime when he is in his father's care.

14 In a further lengthy affidavit dated June 24, 2016, Ms. Wang provides a great deal of opinion and argument about Mr. Grenier's ability to critique Ms. Bleeker's assessment. She continues to focus on Maxime's health and on the daycare. There is a further affidavit from Ms. Wang's mother, Xue Fang, which is drafted in fluent English. Ms. Fang accuses Mr. Grenier of abusive behaviour towards her daughter and Maxime. There is no indication that Ms. Fang had any assistance in drafting the affidavit. While there is evidence that Ms. Fang has acted as an English translator for the Chinese government, Ms. Bleeker had to arrange for a Mandarin speaking translator in order to interview her. Many paragraphs in the maternal grandmother's affidavits are a verbatim "cut and paste" of Ms. Wang's affidavit of the same date. As a result, I find this affidavit unreliable

and I give it no weight.

15 A further lengthy affidavit from Ms. Wang dated June 27 contains further argument and opinion with sentences that are drafted in bold or capitalized letters[1] wherein she admonishes the prospective motion judge in bold letters:

> **There is no value for the motion judge to read Mr. Grenier's affidavit or to listen to his arguments on analyzing Ms. Bleeker's assessment. Simply put, Mr. Grenier is not qualified to conduct such a review. The Court should dismiss his entire motion.**

16 For some reason, Ms. Wang attaches a letter from Ms. Bleeker dated October 2, 2015 as an exhibit to that affidavit. In that letter, Ms. Bleeker recommends that the parent who has the child drop the child off to the other parent at the conclusion of their access time. Ms. Bleeker urges the parties to try this almost universally recommended solution in order to determine if this would assist Maxime with the distress he is demonstrating. Ms. Wang does not add that she rejected this solution. Moreover, this was the very relief sought by Mr. Grenier and granted by me.

17 In yet another affidavit on July 14, 2016, Ms. Wang continues to focus at great length on Maxime's health and her complaints about the daycare. While she continues to argue that Mr. Grenier is not qualified to challenge Ms. Bleeker's report, she goes on to diagnose him with a Narcissistic Personality Disorder. She now makes allegations of abuse that were not raised in earlier affidavits. She makes legal arguments with respect to Mr. Grenier's failure to cross-examine Ms. Bleeker. She continues to allege that the child psychologist confirmed that Maxime needs behaviour counselling to deal with his anxiety and aggressive behaviour.

18 Ms. Wang now includes a lengthy affidavit from her father, Jiajun Wiang. Not surprisingly, he too is very critical of Mr. Grenier. He states that his English affidavit was translated by an unnamed neighbour. There is no affidavit from the neighbour attesting to that translation, and I find this affidavit also unreliable and I give it no weight.

19 Having not been initially successful before Master MacLeod, Ms. Wang has escalated her attacks on the father and in an attempt to paint a picture of an abusive individual; adding unreliable affidavits from her parents. She has attempted to register Maxime in counselling for children who have witnessed abuse. Ms. Wang claims she had to stay in a shelter for one evening in June, 2016, but it is not clear why she was not safe in her own home with her parents. She stayed at the shelter for one night and then flew out the next day on a business trip. She has gone to the police and then to the CAS to bolster her claims. This is in contrast to her description of Mr. Grenier to Ms. Bleeker as being "very nice" before the separation. There were no allegations of abuse in her original application to the Court.

20 I have already flagged some concerns with respect to Ms. Wang's affidavits, but I am struck by the fact that many of her statements are completely contradicted by the exhibits that she has filed in support of her allegations. The letters, reports and notes from the daycare do not suggest that Maxime is having serious problems or behaving badly. The June 2016 report (translated from French) reveals that he is meeting almost all of his milestones and concludes:

> Maxime is an independent boy. He plays well on his own. He likes to play with cars and small figurines. We have been working on his toilet training for a few weeks and his general independence. Before Maxime did not play with the other child, now he played close to the other child. Keep going with your progress.

21 As for Dr. Goldstein, the "child psychologist", Dr. Goldstein's letter of June 6, 2016 clarifies that she was to provide services to both Ms. Wang and Mr. Grenier "to help them communicate and co-operate better in the parenting process so they could parent well together and the focus on Maxime's well-being." There is no evidence that she was going to provide counselling to a two year old child. The letter from Mr. Grenier's counsel dated December 23, 2015, earlier confirmed that fact. That letter and subsequent correspondence contradicts Ms. Wang's assertions that Mr. Grenier was not co-operating with counselling. His counsel's letter of January 14, 2016 states:

> I understand from my client that, even though it had been made clear to the parties to the appointment with Dr. Goldstein was in order to provide ongoing counselling to assist the parties in co-parenting Maxime and communicating, not in regards to the parties' care of or to assess Maxime, and your client nevertheless arrived at the appointment with her parents and Maxime.
>
> Furthermore, and at the conclusion of the first session, your client refused to pay her one half share of the counselling

session, and walked out of the office without paying anything.

22 This issue is of some additional concern since Ms. Bleeker seems to accept that Dr. Goldstein was to provide services for Maxime and not the parents. She also seems to have accepted Ms. Wang's version of what took place at that first meeting.

23 Ms. Wang's list of Maxime's social activities contradicts her picture of a child who is constantly ill. The list of attendances with the family physician reveals Ms. Wang's intense pre-occupation with Maxime's health even before separation. Her affidavit of July 14, 2016 discloses that she had now taken Maxime to see Dr. Lyen a total of 67 times and that she has now decided to take Maxime to a pediatrician without any notice to the father.

24 Dr. Lyen's letters are important. Her first letter of June 9, 2016 is addressed to Maxime and it says:

> To provide you with the best healthcare, I have asked your dad and mom to reach a 30 minute appointment. Maxime you are NOT to attend. This appointment is only for your mom and dad to discuss with me a strategy to deal with both your health care needs. I need both to attend.

25 She then wrote a letter addressed to "to whom it may concern" dated June 20, 2016 which states:

> Since my last letter from June 9th, Maxime has now been seen 6th times. His most recent visit was June 17, 2016. He continues to have the typical respiratory tract infections seen in young children attending day care. In between illnesses he has been well.

26 These letters suggest that it may not necessarily be the parenting schedule, but rather the conflict between the parents and the mother's obsession with the child's health that may be at the root of any emotional distress that Maxime may be suffering from.

Ms. Bleeker's report dated March 17, 2016

27 Ms. Bleeker is a well-known mediator who also provides family custody assessments and the parenting coordination for families referred to by the lawyers or the courts and has come before the court to give testimony about the views and preferences of children.

28 Ms. Bleeker is critical of the earlier decision to go to the week on and off schedule, to accommodate both the father's panic of having to face the mother at pickup and drop-off times and, the mother's upset and, at times, angry responses. She concludes that this was not in the best interests of the child at that time.

29 She refers to the mother's insistence on professional therapy for Maxime, but notes that at the age 2, it is rarely the child who needs to be the focus of therapy, but rather the parents who need to ease the tension around the child. She adds that if a mediator/parenting coordinator believes that therapy for such a young child is indicated, then an experienced play therapist or child psychologist should be retained.

30 Ms. Wang focuses on these sentences in Ms. Bleeker's report at p. 19:

> Above all, Maxime urgently needs a process of being away from his mother's care and home for seven full nights to slow down, in order to reset his sense of security. His development and attachment process were interrupted all indications point to his need to have his primary care with his mother for an adjustment.

31 In the next sentence, Ms. Bleeker goes on to add:

> Of equal importance is his need for the huge tense wall of suspicion and distrust between his parents to be dissolved. Maxime also needs to be away from any parental or grandparental conflicts which have occurred at the point of transitions, and transition should be at Day Care or school whenever possible.

32 The report goes on to make five pages of recommendations including the immediate implementation of the access schedule now sought by Ms. Wang.

33 Notwithstanding this recommendation, Ms. Bleeker observed a number of concerns about the mother. She speaks positively about the mother, but at p. 7 she writes:

> There were two areas however, in which her considerable anxiety about the well-being of her son were evident. The first was repeated medical concerns about his frequent colds and fevers, necessitating almost weekly trips to the family doctor, and the second was about the day care centre in which the father of the child. As the assessment progressed the mother wrote more and more emails outlining the faults of the daycare dating: her concerns about the staff ratio; about the fact that it was put into an older group of children; and about the cuts and scrapes received there. The most recent is a very legitimate concern about how aggressive Maxime has been, frequently biting other children were hitting.
>
> There is a tendency to blame the father for all the distress her son is experiencing, although she says she really wants to be able to work together with him and he refuses to talk to her. She fears Maxime is being damaged and is looking for help**.** She wants help for her son but also, it seems, to mitigate her own anxieties that she is a good mother. She is looking for advice on how to help her child and it was noted that she helped Maxime with his transition at pickup time when reminded by the assessor that it is the parent's job to prepare their child for transitions. Although initially she seemed willing to reverse the order of which parent picks up, that is, that she would take Maxime to his father's, she changed this and insisted that the father come to pick him up. She is clearly finding it very hard to let go of her child and she seems to fear that her son would be upset with her making him go.

34 She concludes at page 8:

> She is also highly anxious about her child fearful of what happens when he is not in her care. When fearful, she can be intense to the point of providing overwhelming detail to support her point of view.

35 I cite these paragraphs from Ms. Bleeker's report because they are completely consistent with the detailed affidavits filed by Ms. Wang in this proceeding and the intensity of her focus on Maxime's health and the daycare and in her attacks on Mr. Grenier. Notwithstanding her concerns, Ms. Bleeker goes on to recommend changes in the parenting schedule which will involve a number of significant changes for Maxime. She does not seem to have considered a return to the 2-2-3 schedule or a change in the pick-up and drop-off arrangements that could have reduced the conflict that she herself had recommended earlier.

36 Mr. Grenier vigorously disputes Ms. Wang's allegations and has filed his own lengthy and detailed affidavits. The paternal grandparents have added their affidavits as well. Mr. Grenier accuses the mother of lying and has filed a detailed critique of Ms. Bleeker's report. While he is no expert, his review of the report and the two volumes of notes and records produced by Ms. Bleeker make it clear that her report, her methodology and conclusions will be open to serious cross-examination at trial.

37 He explains that he instructed his lawyer not to proceed with questioning Ms. Bleeker since Ms. Bleeker advised that she would not attend questioning unless an additional retainer fee of $1500 was provided to her. She had also required a payment of $800 to photocopy her file before releasing her notes and records to him. He has confirmed with the Ottawa Police Services and with the CAS that they have no concerns about his behaviour.

38 In summary, there are serious issues of credibility and a hotly contested factual record.

The law

39 The case law with regard to implementing an assessor's recommendation on interim basis was set out by Justice MacKinnon of this Court in *Grant v. Turgeon* [2000 CarswellOnt 1128 (Ont. S.C.J.)], 2000 CanLII 22565 at paras. 15 through18:

> **15** There are two principles of law at play in this case. The first is that, generally, the status quo will be maintained on an interim custody motion in the absence of compelling reasons indicative of the necessity of a change to meet the children's best interests. This is so, whether the existing arrangement is *de facto* or *de jure:* See *McEachern v.*

McEachern (1994), 1994 CanLII 7379 (ON SC), 5 R.F.L. (4th) 115 (Ont. Gen. Div.); *Papp v. Papp* (1969), 1969 CanLII 219 (ON CA), [1970] 1 O.R. 331 (Ont. C.A.).

16 The second principle is set out in *Genovesi v. Genovesi* (1992), 41 R.F.L. (3d) 27 (Ont. Gen. Div.), where Granger J. states at p. 32:

> An assessment report is usually ordered for use at a trial as opposed to being used at an interim proceeding. In rare cases the information obtained by the assessor might require immediate scrutiny by a judge to determine if there should be some variation of the existing custody arrangement.
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> **17** Granger J. goes on to say at p. 33 that the general rule that the assessor's recommendation ought not to be acted upon without a full trial should be followed except in exceptional circumstances where immediate action is mandated by the assessor's report.
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> **18** I therefore must decide whether Dr. Palframan's recommendations and the circumstances in this case fall into the category of "exceptional circumstances where immediate action is mandated". If so, then the test to change an interim *status quo* would clearly be met and nothing further would need to be said about the first principle.

40 Justice MacKinnon noted that there were serious credibility issues and although the assessor had been examined by both counsel, she concluded that Dr. Palframan's conclusions could not be weighed by the Court until certain factual issues were determined at trial. She ordered a speedy trial of the matter.

41 Assessments and s.30 reports are generally prepared for consideration at trial where the report will form part of the evidence. The trial will afford an opportunity for thorough evaluation of all aspects of the expert's report. There is no equivalent opportunity for such testing and analysis at the motion stage, nor is there any opportunity to fully assess credibility and factual disputes or to consider the weight to be given to the assessment in the context of the overall evidence which will be available at trial.

42 As noted by Master MacLeod, not all courts have accepted the test of "exceptional circumstances." In *Bos v. Bos*, 2012 ONSC 3425, 2012 CarswellOnt 7442 (Ont. S.C.J.), Mitrow J. set out general principles and specific criteria to be applied when determining whether to consider an assessment report on an interim motion. He said this at paras. 23 and 24:

> **23** I respectfully agree and adopt the principles in relation to considering an assessment report on a motion as set out in *Forte and Kerr*. In my view, the jurisprudence has evolved to the point that although the general principle enunciated in *Genovesi* continues to be well founded, it is not so rigid and inflexible as to prevent a court on a motion to give some consideration to the content of an assessment report where that assessment report provides some additional probative evidence to assist the court, particularly where the court is making an order which is not a substantive departure from an existing order or status quo. In such circumstances, the court may consider some of the evidence contained in an assessment report without having to conclude that there are "exceptional circumstances" as set out in *Genovesi*. In fact, "exceptional circumstances" findings were not made in either *Forte* or *Kerr*.
>
> **24** The court has a duty to make orders in a child's best interests and it would be counter intuitive to this principle to impose on the court an inflexible blanket prohibition against considering any aspect of an assessment report (absent exceptional circumstances) on an interim motion, especially when the only independent objective evidence before the court is from an expert assessor.

43 He went on to set out the general principles to be followed at paras. 26 and 27:

> **26** In any situation when a court is faced with a motion for interim relief in relation to custody and access issues and where an assessment has been prepared and where the court is being asked to consider the assessment without making a finding that "exceptional circumstances" exist, it will be a matter for the motions judge to weigh all appropriate factors within the context of that particular case. Without in any way being exhaustive, these factors may include:
>
> > a) How significant is the change being proposed as compared to the interim *de jure* or *de facto status quo*?
> >
> > b) What other evidence is before the court to support the change requested?

c) Is the court being asked to consider the entire report and recommendations, or is it necessary for the purpose of the motion only to consider some aspects of the report, including statements made by the children, observations made by the assessor or any analysis contained in the report which may be of assistance to the motions judge?

d) Are the portions of the recommendations which are sought to be relied on contentious and, if so, has either party requested an opportunity to cross-examine the assessor?

27 It must be cautioned that the existence of an assessment report should not make it "open season" for parties to automatically bring motions attempting to implement some aspects of the report or to tweak or otherwise change existing interim orders or an existing status quo. Clearly, the facts of each case will be critical and will guide the exercise of the court's discretion.

44 Justice Mitrow went on to conclude that the change recommended by the assessor was not substantive (one overnight every six weeks) and that the respondent in that case had not advanced any principled or child-focused reason in opposing the new schedule. The child in that case was 15 years of age and there was evidence of her wishes in support of the change.

45 This approach was adopted by Justice Pazaratz in *Marcy v. Belmore*, 2012 ONSC 4696, 27 R.F.L. (7th) 412 (Ont. S.C.J.) where he held at paras. 17 through 19:

17 The *status quo* will generally be maintained on an interim custody or access motion; particularly if it has been in place for a significant period of time; and most particularly if a temporary order is already in place. The court should generally not disrupt the status quo unless there is a compelling reason, especially if there will soon be an opportunity to more fully consider the matter at trial. *Grant v. Turgeon* (*supra*); *Dyment v. Dyment*, 1969 CarswellOnt 978 (Ont. C.A.).

18 In rare cases, an assessment may either reveal or confirm the existence of an urgent problem requiring immediate attention or correction. *Genovesi (supra).* Even in those cases, courts should act with caution, implementing only such changes as may be required to rectify the situation which cannot be allowed to continue until trial. The court must assess whether the existing arrangement is actually *or potentially* harmful to the child; whether the child's best interest *requires* an immediate change. *Samson v. Samson*, [2006] O.J. No. 5108 (S.C.J.); *Benko v. Torok*, 2012 CarswellOnt 8213 (O.C.J.) It will only be rare or exceptional cases where an assessor's recommendations should be acted upon immediately before there is a full and thorough investigation provided by a trial. *Verma v. Chander*, 2009 CarswellOnt 1859 (O.C.J.); *Winn v. Winn*, 2008 CarswellOnt 7116 (S.C.J.).

19 There can be no presumption that an assessor's recommendations will - *or should* -- inevitably prevail. The court cannot delegate decision-making authority to the assessor. *Dunnett v. Punit*, 2006 CarswellOnt 7259 (O.C.J.). Beyond concerns about disrupting the existing *status quo*, the court must consider the potential impact of creating a *new* status quo on the eve of trial. Interim implementation of an assessor's recommendations can be far from a benign stop-gap measure. It can affect the trial and its outcome.

46 He added at para. 27:

27 There is broad agreement in the cases that motions for interim implementation of assessment reports should be discouraged. Parties should not perceive the arrival of an assessment report as creating an automatic strategic opportunity to secure a more favourable status quo, heading into trial.

47 In that case, he found that there was a fundamental concern about the children's safety that had been verified by a clinical investigator from the Office of the Children's Lawyer (OCL) and the children confirmed the allegations against the other parent. There was a police investigation and the mother had been charged for leaving the children alone. As a result, he agreed to implement the changes recommended by the OCL.

48 In *Batsinda v. Batsinda*, 2013 ONSC 7869, [2013] O.J. No. 6120 (Ont. S.C.J.), Justice Chappel reviewed the case law and the principles that apply in dealing with assessment reports on an interim basis and added the following at para. 32:

32 . . . The caution that applies with respect to the weight to be given to assessment reports at the interim stage of proceedings applies primarily to the conclusions and recommendations of the assessor, rather than the evidence and

> observations set out in that report. Information such as statements made by children to the assessor, the assessor's observations respecting the parties, and their impressions regarding the parties' interactions with the children may be of considerable value to the motions judge in their attempt to reach a decision respecting the best interests of the children, provided that the evidence appears to be probative (see *Bos v. Bos*, 2012 CarswellOnt 7442 (Ont. S.C. J.)

49 In applying the factors cited in *Bos*, I conclude the following:

The significance of the change

50 At the outset, Ms. Wang's counsel suggested that the change in the parenting schedule was not a significant change since Ms. Bleeker recommended an eventual return to shared parenting in 2018. When pressed by me, she conceded that Ms. Wang is not committing herself to a full implementation of all of Ms. Bleeker's recommendations; she is only interested in the immediate change where Maxime will be primarily in her care.

51 The shared parenting arrangement has been in place for a year and that order was based on Minutes of Settlement executed by the parties. There will be significant changes with respect to Maxime's care. He will move from an equal timesharing arrangement to one of primary residence with his mother and alternate weekend access to his father, taking significant time away from his father. He will immediately change day cares, taking him away from a current, familiar daycare setting. His maternal grandparents will no longer be involved in his day-to-day care as they have in the past.

The other evidence before the Court

52 I have already identified significant problems with Ms. Wang's affidavits and I can give no weight to the affidavits provided by her parents. I am satisfied that Mr. Grenier has identified a number of issues with regards to Ms. Bleeker's report.

Is the court being asked to consider the entire report and recommendations?

53 As noted by Master MacLeod, Ms. Wang focuses on a few sentences in Ms. Bleeker's report and it is apparent that she is not prepared to accept all of Ms. Bleeker's recommendations on custody and access. Her affidavits describe Mr. Grenier as a "sick, mean person" and leave no doubt that she will never accept Mr. Grenier in an equal parenting role as ultimately recommended by Ms. Bleeker. Moreover, I share Mr. Grenier's concerns that Ms. Wang would use the implementation of this one recommendation for strategic purposes to favour her claim for sole custody.

Are the portions of the recommendations which are sought to be relied on contentious and, if so, has either party requested an opportunity to cross-examine the assessor?

54 In this case, Mr. Grenier decided not to cross-examine the assessor once he learned that he had to pay an $800 fee for the photocopying of her file and that she required a further retainer of $1500 for two hours of cross examination. Mr. Grenier had already paid the assessor's account in full and Ms. Wang was to pay her share out of the equalization payment. In this case, the assessor's recommendations, her observations and the thoroughness of her investigation are contentious and will be challenged at length at trial. In these circumstances, I do not draw a negative inference from Mr. Grenier's failure to cross-examine the assessor as I am invited to do by counsel for Ms. Wang and by Ms. Wang herself.

55 This is a high-conflict case and there are serious issues of fact that make a speedy trial essential to meet the needs of the child.

Costs

56 In the event the parties are unable to agree upon costs of the matter to date, they may make written submissions limited to a maximum of three pages, exclusive of a bill of costs. Hard copies of any case law or other authorities relied on shall be provided with the submissions. The written submissions shall be delivered by 5:00 p.m. on the tenth business day following the date on which this decision is released.

Mother's motion dismissed; father's motion granted.

Footnotes

1	The practice of capitalizing or highlighting words and phrases in an affidavit by a litigant is strongly discouraged.

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