

Case Name:

I. v. J.

**RE: G.I., and
S.J.J.**

[2007] O.J. No. 5263

Court File No. FS-07-059717-00

Ontario Superior Court of Justice

F.E. Van Melle J.

Heard: June 28, 2007.

Judgment: June 29, 2007.

(19 paras.)

Counsel:

Mr. S.M. Fehrle, for the Applicant.

Mr. S. Benmor, for the Respondent.

ENDORSEMENT

1 F.E. VAN MELLE J.:-- The Applicant, G.I. moves for temporary custody or temporary joint custody of the children G.J born (DOB) and L. born (DOB).

2 The background briefly is as follows. The parties married on May 24, 1998 and separated on December 13, 2006. Both continued to reside in the matrimonial home. On April 5, 2007 the respondent S.J. moved out of the matrimonial home with the children, into another home that she had purchased in Brampton.

3 G.I. argues that S.J.J. unilaterally moved the children out of the matrimonial home, with his consent and without a Court Order. She changed the children's school bus route and their registered addresses at school, all without G.I.'s permission.

4 G.I. commenced this proceeding and served S.J.J. with emergency motion materials on April 18, 2007. On April 26, 2007 the parties attended at Court and S.J.J. sought an

adjournment. Justice van Rensberg granted the adjournment and made an order that G.I. have specified access.

5 On May 10, 2007 Justice Fragomeni requested the involvement of the Office of the Children's Lawyer, adjourned the motion to a date following the Case Conference set for June 19, 2007 and granted G.I. specified access to the children.

6 On June 19, 2007 Justice Murray made another request for the involvement of the Office of the Children's Lawyer, Justice Fragomeni's Order having expired because S.J.J. did not get her information form to the Office of the Children's Lawyer within its time requirements.

7 Mr. Justice Murray also made an Order on Consent which provided that G.I. would pay child support; that G.I. would have specified access; and that the matrimonial home would be listed for sale.

8 S.J.J. argues that she had to move out of the matrimonial home with the children because the conditions in the matrimonial home were unbearable. She says in her affidavit that by the Spring of 2005 there was a lot of conflict in the marriage. She cites an argument that occurred in May of 2005 and says that when she barricaded herself and L. in the bedroom G.I. broke the door in two.

9 She says that on December 13, 2006 when she told G.I. that she wanted a divorce they argued and fought. She says that he followed her into the master en suite, grabbed hold of her and would not let her go.

10 She says that on February 19, 2007 G.I. lost his temper, shoved her bedroom door, broke the door jamb and punched a hole in the wall of G.J. bedroom. As a result of the events on February 19, 2007 she called the police. According to S.J.J., the police arrived, defused the situation and directed G.I. to stay away from her.

11 S.J.J. further states as follows:

From December 13, 2006 until I vacated the home on April 5, 2007, the Applicant slept in our son's bedroom. The atmosphere in the home was extremely tense. The children felt it and it was causing them anxiety and confusion. I knew that it was necessary to move out, but I was extremely fearful of the Applicant and what he might do.

I was feeling very worried and felt that I had little options. I contacted various women's shelters in the community, but did not want to cause added anxiety to the children.

12 For the record, G.I. denies S.J.J.'s allegations. He says that the allegations of abuse by him are false.

13 In March 2007 the agreement that S.J.J. entered into for the purchase of her new property was finalized. The mortgage agreement was entered into on March 20, 2007. S.J.J. says that she did not disclose the purchase of this home on her financial statement because she prepared it on March 21, 2007. The Financial Statement was signed on April

10 by which time the purchase had been finalized. The Statement did not disclose her interest in her new property.

14 S.J.J.'s conduct in moving the children to her new house without G.I.'s consent and without court order in these circumstances cannot be sanctioned by the Court. It is striking that the incidences of violence cited by her in support of her move include an incident that occurred two years ago. As well when the police were called in February of 2007 it seems that they did not feel it necessary to remove G.I. from the house or to lay any charges against G.I. for the altercation on that occasion.

15 S.J.J. was represented by counsel from the early part of 2007. She had other options available. The preferred course would have been to seek G.I.'s consent to the move and to put into a place a parenting schedule prior to the move. If she really felt that he would become violent she could have sought an Order without notice. Failing that she could have instituted legal proceedings and gone to stay with her family or at a shelter, until an Order had been secured. She comes to court now relying on a status quo that she has improperly created.

16 S.J.J. says in her affidavit that she never attempted to conceal her purchase of the house and yet that is exactly what she has done.

17 Therefore, there will be an order that the parties have interim joint custody of the children. A shared parenting regime will be put into place. The children will be with each parent for alternating weeks, with the transfer to take place Sunday evenings at 7:00 p.m. This regime will commence on Sunday July 8, 2007 when G.I. drops the children off at S.J.J.'s house, pursuant to Justice Fragomeni's Order. S.J.J. will have the children for that week and G.I. will have the children for the week commencing July 15, 2007 and so on. G.I. will be responsible for dropping the children off and picking them up from S.J.J.'s residence unless the parties agree otherwise.

18 As a result of my Order there may have to be a variation of the child support arrangements. Either party may bring a motion to the Court for a determination of the appropriate child support arrangements given the parenting schedule. I would suggest however, that the parties attempt first to resolve the issue of child support between themselves with the assistance of their counsel.

19 If the parties cannot resolve the issue of costs, I will entertain brief written submissions. Any costs will be on a partial indemnity basis unless there exist written Offers to Settle equal to or better than this Order. All cost submissions are to be received by me on or before July 30, 2007.

F.E. VAN MELLE J.