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Matter of S.V. v A.J.
2020 NY Slip Op 20103
Decided on May 7, 2020
Family Court, Bronx County
Chesler, J.
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Family Court, Bronx County

**In the Matter of a Proceeding under Article 6 of the Family Court Act
S.V., Petitioner, A.J., , Respondent.**

File No. 224633

Ariel D. Chesler, J.

This matter was referred to this Court for determination of this motion by the father to enforce in-person visitation, to determine make-up visitation, and for other related relief. The father's motion was properly filed pursuant to the special procedures in place during this period of the coronavirus health crisis, and the Court issued a scheduling order upon submission of the motion. The court has received and reviewed the following submissions: 1) The father's Order to Show Cause and accompanying exhibits; 2) the mother's Affirmation in Opposition with accompanying exhibits; 3) Affirmation from the attorney for the children; 4) Counsel for the father's reply affirmation.

The court also takes judicial notice of the following: 1) The November 20, 2019 report relating to the court ordered investigation conducted in these proceedings; and 2) the various Executive and Administrative Orders impacting New York Courts, in particular the March 23, 2020 Administrative Order issued by the Honorable Jeanette Ruiz, Administrative Judge of the New York City Family Court, and the April 8, 2020 and May 1, 2020 Administrative Orders issued by the Honorable Lawrence Marks, Chief Administrative Judge of the Courts.

BACKGROUND AND POSITIONS OF THE PARTIES

The parties have two children: J.J. who will turn 4 years old in a few days, and L.J. who is two and one-half years old. The parties have filed numerous petitions in Family Court and, most significantly, have filed cross-custody petitions. There is no final or even a temporary order of custody that has been issued in this case, and neither parent has a greater right to custody of the children (see DRL 240).

There have been various temporary orders issued relating to the father's visitation. The latest and controlling order, dated January 16, 2020, directs that commencing January 17, 2020, the father have alternate weekend visitation from Friday at 8 PM until Sunday at 6 PM. Pursuant to the order, the children are to be exchanged at the 44th Precinct in the Bronx.

There is a final order of protection from Bronx Criminal Court dated December 19, 2019, which directs the father to stay away from the mother, refrain from communicating with her, and refrain from committing any offenses against her until December 19, 2021. This order of protection is subject to subsequent orders of Family Court which may direct contact, communication or access in a custody or other proceeding.

Visits took place pursuant to the order between January 2020 and March 2020. It appears undisputed, however, that the mother did not produce the children for weekend visitation on the weekends of March 27, 2020, April 10, 2020 and April 24, 2020. Instead, the parties arranged through their attorneys for daily video conference visits to take place between the father and children.

Following efforts to resolve this issue without seeking court intervention, the father now seeks enforcement of the temporary order of visitation, a schedule of make-up visits, time with the child J.J. on his birthday, May 10th, and an order directing daily video conferences with the children.

With regard to in-person visits, the father notes that the mother has not allowed him to see the children. He states his understanding of the COVID-19 crisis, and that he would never place the children in harm. The father advises that he lives in New Jersey in a 2-story home with a backyard, which would greatly benefit the children in these times as it would enable them to spread out and play in a private yard. The father has been practicing social distancing measures and has not tested positive for COVID-19. The father has his own automobile and promises he would transport the children in it and not via public transportation, that he would be available to pick up the children

from the mother's residence, that he would drive the children directly to his home and not take them out of his home during the visits, and that the only other person he would allow in his home is his mother, who resides in the home.

The father also claims that the mother points the camera at the ceiling during his video visits with the children thus frustrating his visits and his time with the children. Finally, he asks for time with J.J. on the child's birthday which is May 10th.

The mother's position is essentially that visits were suspended once New York and New Jersey issued "stay at home" orders in March 2020, and that she has accommodated the father by arranging the video visits. She describes the video visits as the children briefly conversing with their father and then playing while the father watches; the children sometimes leave the room or move the device. The mother does not oppose daily video visits for the father. Similarly, she does not oppose additional video conference time on May 10, 2020 for the child J.J.'s birthday.

However, the mother opposes any in-person visits between the father and children during the pandemic, noting the risk of spreading the virus. The mother takes it further, arguing that it is "irresponsible" to make parents comply with court-ordered in-person visitation because it might [*2] impact their safety, and that during this pandemic another type of visitation may be appropriate. Relatedly, the mother maintains that the exchange of the children must be at a precinct given the history between the parents, and thus argues that such exchange further endangers the parties and the children. The mother also proposes that make-up visits be scheduled for some time in the future when the pandemic ends, and that this Court order only video visitation until such time.

The attorney for the children does not oppose in-person visits between the father and children as long as social distancing and other safety measures are followed, and supports daily video conferences between the father and children. The attorney for the children also suggests that the missed visits be made up by expanding the father's weekends to begin on Thursday evening and end on Monday evening.

In his reply, the father argues that the mother has provided no factual or legal basis to suspend the in-person visits, and that she failed to properly make a motion to suspend the visits. The father also argues that the mother's position is completely "untenable," and that the existence of COVID-19 does not limit the rights of parents to have meaningful relationships with their children.

LEGAL ANALYSIS AND DISCUSSION

Initially, the Court notes that while earlier Administrative Orders (A.O.) limited work in the courts to essential matters, the more recent A.O.'s referenced above have expanded our work to include, inter alia, conferencing pending matters and accepting motions on all pending matters (both essential and non-essential). It is the unfortunate reality that none of us know the duration of the pandemic and we may not be able to return to Court or to business as usual for an extremely long amount of time. In the meantime, we will conference matters, decide motions, and encourage litigants, including in this case, to work together for the sake of their children and to craft resolutions to their conflicts, and a global settlement of this matter.

We are now in a time of disruption, fear, uncertainty, and uncharted territory, and the Court appreciates how this stressful time may impact families, particularly those in conflict. However, to the greatest extent possible, we must ensure stability and comfort for children. While public health crises such as the one we face may impact children's lives, and all of our lives, in many ways and for an unknown period of time, there is a presumption that continued connection and time with both parents is critical and in the best interest of children. The March 23, 2020 A.O., referenced above, in fact, extends all temporary orders issued by the Family Court, including orders of visitation, until such time as the matter is re-calendared or changed by a jurist.

While the best interests of a child obviously include health and safety issues, an analysis of children's best interest must incorporate the impact of altering terms of parental contact on children's mental and emotional health. It is well established that it is in a child's best interest to have regular and meaningful contact with both of his or her parents. ([*see Zwillman v. Kull*, 90 AD3d 774, 775 \[2d Dept 2011\]](#) ["The best interests of the child lie in being nurtured and guided by both parents. In order for the noncustodial parent to develop a meaningful, nurturing relationship with the child, visitation must be frequent and regular"]).

Here, there is no indication that the children's alternate weekend visits with their father were anything other than enjoyable and beneficial and in their best interest. The court ordered investigation found no safety concerns with the father's residence and noted that the home contains a playroom and a backyard, which, more than ever, would be greatly enjoyed by the children. The attorney for the children also supports in-person visits as long as social-distancing [*3] and other safety measures are followed.

To address any current health concerns, the father has proposed reasonable limitations to the visits, including avoiding public transportation and not taking the children out of his home during visits. He also advises he has followed social-distancing measures and has not tested positive for COVID-19.

The mother has failed to articulate, submit evidence, or even allege any particularized health concern such that the Court would consider suspension of in-person visits. A generalized fear of the coronavirus crisis we all face is insufficient to severely limit and perhaps harm a child's relationship with a parent. This pandemic is not to be used to limit access by a parent or to flout valid orders of the court. Rather, valid orders of the court must be followed during this crisis unless a parent can articulate a specific health or safety risk, and can demonstrate to the Court that suspension of visits is warranted, which may be a heavy burden. In any event, in such a case a parent must then affirmatively move the court for emergency relief in order suspend any visitation order and may not resort to self help by failing to produce children for visits.

Lest it be unclear, and to settle any confusion, it is the opinion of this Court that while our movements and lives may be severely constrained during this time period, it is just as important for the children to see their father as it is for them to see their mother. They have two homes and should spend time in both places. In other words, in times of crisis children need regular contact with both parents more than ever to provide love, comfort, stability and guidance, something that video and virtual connections cannot fully accomplish. Our lives may be "on hold" in many respects, but vital family relationships cannot be placed on hold indefinitely without serious risk of harm. It is also expected that parents make additional efforts in these times to work together for the benefit of their children, and time with the other parent should be viewed as essential for the children and a permissible and important reason to leave the home.

The court also notes that no order of custody has been issued in this case and should the mother plan to be the primary physical custodian of the children she must fulfill her obligation to ensure the children have a meaningful relationship with their father. In fact, "[o]ne of the primary responsibilities of a custodial parent is to assure meaningful contact between the children and the other parent" (*Matter of Raybin v Raybin*, 205 AD2d 918, 921 [3d Dept 1994]). Therefore, if the mother does not comply with the visitation order, the Court may be forced to consider whether the mother should be the primary custodian, even during the pendency of this case.

In sum, the father's in-person visitation must recommence *immediately* starting with this weekend. The parties are therefore directed to follow the schedule set forth at end of this order, which also provides for make-up visitation for the father and an expanded schedule for the time being. Notably, rather than have the children remain with the father for more than two weeks as the father proposes, the make-up time will be added by expanding the father's weekends, as suggested by the attorney for the children.

The court commends the parties for working together to arrange video visits, and such visits should continue daily at 7 PM or at times mutually arranged by the parties. Of course, the expectation for the quality of such visits should be low given the age of the children and their limited attention span, as well as the fact that the parties' relationship makes it difficult for the mother to participate in the calls. The mother should ensure that the children have uninterrupted video visits with their father, and the father should ensure the mother has such access when the children are with him.

The court takes seriously the mother's concerns regarding the order of protection and the need for an exchange at a Police Precinct. In other circumstances, it would be reasonable and prudent for the exchange to take place outside the mother's residence. But, given these concerns the Court will not modify the location of the exchange.

The father's request for time during J.J.'s birthday on May 10th is granted to the extent of including some time in the early part of that day with the father, and the remainder of the day, which is also Mother's Day, shall be with the mother.

Accordingly, it is

1) ORDERED that the father's motion is granted; and it is further

2) ORDERED that the father's in-person visitation shall recommence immediately as follows:

a. The father shall have visitation from May 8, 2020 at 12:00 PM until May 10, 2020 at 2:00 PM. Pickup and dropoff shall be at the 44th precinct.

b. The father shall have visitation from May 14, 2020 at 6:00 PM until May 18, 2020 at 6:00 PM. Pickup and dropoff shall be at the 44th precinct.

c. Commencing May 28, 2020 the father will have alternate weekend visitation from Thursdays at 6:00 PM until Mondays at 6:00 PM. Pickup and dropoff shall be at the 44th precinct. This alternate weekend schedule will continue until such time as either the children's school or the parties' work begins again, at which time the father will have alternate weekend visitation from Friday at 6:00 PM until Sunday at 6:00 PM; and it is further

3) ORDERED that when the children are with the mother, the father will have daily video conference visits with the children at 7:00 PM or at time mutually arranged by the parties. When the children are with the father the mother shall have daily video conference visits with the children at 7:00 PM or at times mutually arranged by the parties; and it is further

4) ORDERED that both parents are directed to follow all social distancing rules, to wear masks in public, and shall make every effort to adhere to the laws, guidelines, and other directives set forth by the City, State, and Federal Government to ensure their safety and the safety of their children; and it is further

5) ORDERED that email copies of this order to counsel for the parties shall be deemed appropriate service.

This constitutes the decision and order of the court.

Dated: May 7, 2020

Bronx, NY

ENTERED:

ARIEL D. CHESLER, J.F.C.

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