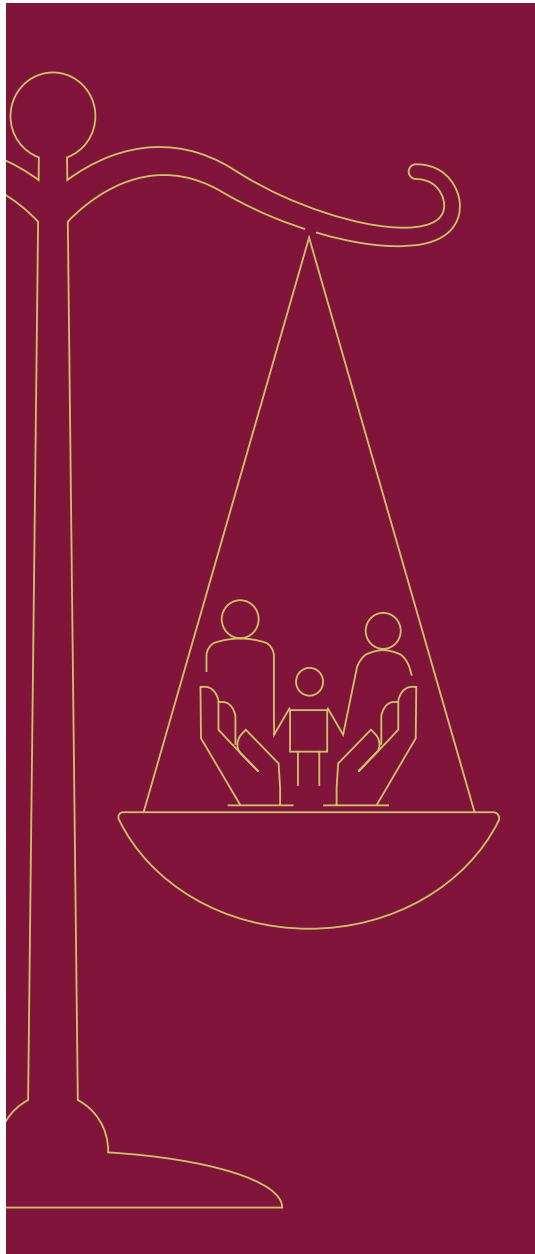

LEGAL BULLETIN

Family Violence and Parenting Arrangements: *Dayboll v Binag*, 2022 ONSC 6510.



Overview

The court is often asked to set a parenting regime between two separated parents on an interim motion or at a trial. When there is a history of family violence between the parties, the court undertakes to create a parenting plan that minimizes conflict and opportunities for continued abuse, while also protecting the best interests of the children involved. In this case, which was an interim motion, the court highlighted the importance of mutual respect and effective, child-focused communication to the ability of parents to exercise shared decision-making responsibility. Ultimately, the court awarded the mother interim sole decision-making responsibility, as the court found that the hostility and mistrust between the parties rendered shared decision-making inappropriate.

Background Facts

The parties were in an unmarried relationship from July 2017 until April 2021. In September 2018, the parties had a child, “Rachael,” who was four years old at the time of the proceedings.¹ After the relationship broke down in April 2021, the mother had primary care of Rachael. In October 2022, the mother commenced litigation after the father unilaterally removed the child from school and stated he intended to keep her permanently and homeschool her.² The father responded, and each party sought a variety of parenting-related relief, including sole decision-making responsibility (“DMR”), an order that the other parent have no parenting time or only supervised time, the mother sought a restraining order against the father.³

¹ *Dayboll v Binag*, 2022 ONSC 6510 at para 8.

² *Ibid* at para 8.

³ For a history of the prior proceedings, see paras 4-11.

In November 2022, the father brought a motion resulting in the present decision. The father sought sole DMR or joint DMR, primary residence of Rachael, an order that the mother’s parenting time would be supervised, a referral to the Office of the Children’s Lawyer, and the disclosure of Children’s Aid Society and police records.⁴ The court characterized these requests as “propos[ing] to suddenly change everything in Rachael’s life... with no awareness... for the impact of such upheaval on the child.”⁵

In response, the mother sought an order that Rachael would continue to be in her primary care, and have Rachael’s primary residence remain with her. The mother brought forward evidence of family violence, including physical assaults, stalking, and post-separation violence.⁶ This evidence included 11 outstanding criminal charges related to their relationship, although the judge noted that unproven charges do not constitute evidence of family violence.⁷ The father denied the accusations of family violence and stated his intent to defend against the criminal charges.

The court was tasked with determining the appropriate parenting arrangement for the parties. Justice Pazaratz was particularly attuned to the family violence and its effect on the ability of the parties to effectively co-parent.⁸ As with any parenting decision in Ontario, the best interests of the child was the primary concern of the court.⁹

⁴ *Ibid* at para 7.

⁵ *Ibid* at para 29.

⁶ *Ibid* at para 8.

⁷ *Ibid*.

⁸ For an overview of how the court assesses whether a joint decision-making order is appropriate, [see our previous legal bulletin here](#).

⁹ *Dayboll v Binag*, *supra* note 1 at paras 14-18.

¹⁰ *Ibid* at paras 54-55.

¹¹ *Ibid* at para 56.

¹² *Ibid* at para 56-57.

¹³ *Ibid* at para 56.

¹⁴ *Ibid* at para 58.

¹⁵ *Ibid*.

The Law

The Ontario case law and legislation both require judges to consider family violence when making a parenting order. As a brief overview, the court must be satisfied that the parties are able to communicate effectively and cooperate functionally in the areas that affect the child.¹⁰ Joint-DMR is only appropriate where there is a basic level of civility and respect between the parties.¹¹ However, if there has been family violence, this is evidence that the requisite respect is not present.¹²

Justice Pazaratz stated that “**no parent should be exposed to the bullying of a former spouse in the name of shared parenting.**”¹³ Moreover, the decision emphasized that **in the wrong situations, a joint-DMR order can exacerbate and perpetuate “hostilities, indecision, and power struggles.”**¹⁴ It is important that the court does not create a regime that exposes the child to violence. The Court stressed that children that are already exposed to family breakdown need to receive guidance, stability, and consistency and be confident that adult decisions will be made “quickly, properly, and uneventfully.”¹⁵

Justice Pazaratz pointed out that there was continued hostility and mistrust between the parties, stemming from the father’s unilateral decision-making, the family violence, and the non-contact conditions associated with

the father's criminal charges which further prevented communication between the parties.¹⁶ These factors limited the parties' abilities to communicate with one another, which supported the decision to award sole-DMR to the mother.

After awarding sole-DMR on an interim basis to the mother, the court moved on to assess how much parenting time the father should have with Rachael. The *Children's Law Reform Act* requires the judge to allocate parenting time to ensure the child "has as much time with each parent as is consistent with the best interests of the child."¹⁷ Justice Pazaratz noted that since Rachael had been thriving in her mother's care since the parties separated, the status quo should not be interrupted, and the father should not have equal parenting time.¹⁸ Instead, the father would have parenting time on alternate weekends plus one evening per week.¹⁹

The Court also noted that the father's unilateral removal of the child from school and subsequent proposal to keep the child permanently and homeschool her portrayed an "**alarming sense of entitlement, selfishness, and poor parental judgment.**"²⁰ The court stated that it did not want to reward this type of behaviour and that a party who engages in such self-help remedies "will generally raise serious questions about their own parenting skills and judgment."²¹

¹⁶ *Ibid* at para 60.

¹⁷ RSO 1990, c C.12, s 24(6); *Dayboll v Binag*, *supra* note 1 at para 64.

¹⁸ *Ibid* at para 62.

¹⁹ *Ibid* at para 70.

²⁰ *Ibid* at para 31.

²¹ *Ibid* at para 31.

²² *Ibid* at para 20.

Takeaways

In discussing the best interests of the child, Justice Pazaratz helpfully pointed out that the case was not about whether the parents love the child, but whether they have parental insight.²² It seems that part of this parental insight involves shielding the child from conflict and violence. It also seems to re-enforce that it is the best interests of the *child*, and not the best interests of the *parents*, that must be advanced by parents and their parenting arrangements.

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