

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARIE-SOLEIL LACOURSIERE

Applicant

-and-

MARCO PENK

Respondent

MEMORANDUM OF JUDGMENT

[1] This is a matter involving child custody, access and related issues. The Applicant mother of the two children lives in Yellowknife with the children. The Respondent father lives in Germany. The oldest child is 5, the youngest is 15 months old.

[2] An interim ex parte order made on November 1, 2012 provides that the mother has interim sole custody of the children and the father has reasonable access. The interim sole custody order has been continued by subsequent orders of this Court and remains in effect. Various orders were also made for specified access, the last of which is an order for access over the Christmas season in 2012.

[3] In May of this year, the mother filed the application now before me, seeking specified access, child support and other relief. The matter came before me in chambers on June 6, 2013. Summer access is the immediate issue; the father also raised concerns about access by Skype.

[4] Both parties agree that the father should have access to the children in Yellowknife this summer. I have reviewed the affidavits filed (save for the mother's affidavit sworn June 5, 2013, which the father indicated he had not

received) and have considered the arguments made by counsel for the mother, and by the father appearing on his own behalf by telephone from Germany. It appears from the affidavit material that the mother has made certain plans on the basis of her understanding that the father would be in Yellowknife for a period of two weeks from July 29 to August 10, 2013. In his affidavit, the father does not dispute that or claim that the mother's understanding was unreasonable, but says that she sent him contradictory information. He appears to be of the view that any plans she has made are for the purpose of denying him access. I cannot resolve the credibility issues arising from these assertions on the basis of affidavit evidence.

[5] The mother is employed full time so it is not unreasonable for her to want to spend some time with the children in the summer when she takes vacation, including visiting other family. At the same time, it is not unreasonable for the father to want to spend as much time as possible with the children when he travels to Yellowknife. The frequency with which he can travel to see the children is understandably affected by the distance and cost. Unfortunately, there is a level of distrust between the parties that exacerbates the difficulties inherent in a situation where the parents do not reside in the same country.

[6] In his submissions about access, the father provided the name of an individual at whose home he plans to stay while in Yellowknife. That home is also where he proposes the children will stay when with him. The name of the individual sounded familiar to me and upon further consideration, I have realized that the name is the same as or very similar to the name of an individual who was convicted in this Court in 2004 of inviting a child to touch him for a sexual purpose and common assault on that child. Whether it is the same person, I do not know; however in the interests of the children who are the subject of this case, I think it best that the mother and the father be aware of this circumstance so they can make such inquiries as they see fit. For this reason, I have not specified where the father is to exercise access while in Yellowknife, except as indicated below.

[7] Having considered the matter, I order that the father is entitled to the following summer access in 2013:

July 16: 2 (two) hours access at a mutually agreeable time. I do not believe that third party supervision is necessary given that the father had access with the children in December. However, the mother is entitled to be present at this initial access visit and may be accompanied by a third party of her choice so long as it is not Tony Collins;

July 17: access between 8:15 a.m. and noon;

July 18 and 19: access between 8:15 a.m. and 5:00 p.m.;

The access outlined above shall be adjusted in the event that the father does not arrive in Yellowknife until after July 16, in which case his first day of access shall be as set out for July 16 above, his second day as set out for July 17 above and so on, provided, however, that he will not be entitled to access on July 20 or 21 unless agreed to by the mother;

July 22 to 26: access of one hour per evening on two evenings to be arranged by mutual agreement, so long as access does not interfere with the older child's attendance at hockey camp;

July 29 to August 2: access between 8:15 a.m. and 5:00 p.m., provided however, that the father may have overnight access if the location of such access is satisfactory to the mother. The children are to be returned to the mother by 5:00 p.m. on August 2;

August 6 to 9: the same access as July 29 to August 2. The children are to be returned to the mother by 5:00 p.m. on August 9.

August 19 to 23: the same access as July 29 to August 2. The children are to be returned to the mother by 5:00 p.m. on August 23.

[8] The access schedule set out above may be varied by agreement between the parties.

[9] All access is to be exercised within the City of Yellowknife unless otherwise agreed to in writing by the mother.

[10] The access referred to above is conditional on the father providing to this Court, and to counsel for the mother, by no later than June 24, 2013, written confirmation from the landlord or owner of the accommodation he has arranged in Yellowknife for the access period, such confirmation to include the address and dates of the accommodation.

[11] In light of the fact that the father is not a resident of Canada, and there is no evidence that he has any current connections here apart from the children, and considering the age of the children, I am satisfied that it is reasonable to require

that the father deposit his passport with the R.C.M.P. in Yellowknife. The passport must be deposited with the R.C.M.P. prior to the father, Marco Penk, exercising access and it is to remain deposited until the children have been returned to the mother on August 23, 2013, provided however, that the father may apply to this Court, on notice to counsel for the mother, for the return of the passport to him on the basis of urgent need for any period of time when he is not exercising access to the children.

[12] A copy of the father's travel itinerary is to be provided to counsel for the mother by June 24, 2013 and to the R.C.M.P. in Yellowknife when his passport is deposited with them.

[13] The father is to reimburse the mother for any non-refundable fees she has already paid or incurred for programs for the children that are cancelled in order for the father to exercise the access provided under the terms of this order.

[14] For the period until the father commences his access in Yellowknife, the mother will make the children available for a visit with the father via Skype or equivalent technology for a minimum of one hour per week at a time to be mutually agreed on by the parties.

[15] All other matters in the notice of motion filed May 17, 2013 are adjourned to July 18, 2013 at 10:00 a.m., at which time any issues relating to the location at which the father's 2013 summer access may be exercised may also be spoken to.

V.A. Schuler  
J.S.C.

Dated at Yellowknife, NT this  
7<sup>th</sup> day of June, 2013

Counsel for the Applicant: Margo Nightingale  
The Respondent appeared by telephone

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