

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARIE-SOLEIL LACOURSIÈRE

Applicant

- and -

MARCO PENK

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application for interim access.

[2] Mr. Penk lives in Germany. His children live with their mother, Ms. Lacoursière, here in Yellowknife. Mr. Penk has been coming to Yellowknife to visit his children from time to time since these proceedings began.

[3] Mr. Penk is in Yellowknife and will be here until end of January. He wants to have access to the children, E., and F., while he is here. The parties have exchanged proposals for interim access over the next six weeks, but they have been unable to agree on the terms.

[4] The trial of this matter is ongoing. It started in October, but the parties were unable to complete it and it is scheduled to resume in late January, 2015. It is being heard by Schuler, J. I heard this application on for interim access in my capacity as the Case Management Judge.

[5] Mr. Penk is proposing an access schedule that sees the children spending alternating weeks with each parent as well as two 2-week blocks of time with each, over the next few weeks. It would start with him having the children the week of

December 8 and returning to Ms. Lacoursière the following Monday. They would return to Mr. Penk December 22 and remain with him until January 5, the first day back to school. During this period, they would be with Ms. Lacoursière on Christmas Day and she would also take E. to a hockey camp in which he is enrolled on December 27. The hockey camp actually runs from December 26 until the 28th, and Mr. Penk says he would take E. to the camp on those two days as well. The children would then be with Ms. Lacoursière again until January 19, when Mr. Penk would have another period of access until January 26.

[6] Mr. Penk also proposes that during the period of January 5th to 19th, when Ms. Lacoursière has the children, the children would have a visit with him on Sunday so they can go to church with him, and that they would be permitted to visit him one weekday afternoon each of those weeks.

[7] Ms. Lacoursière proposes a schedule that amounts to almost the same amount of total time of access, but access would be for more frequent, shorter blocks of time. She feels this would accommodate both parents with their holiday traditions, accommodate the children's activities and routines, and that it would be beneficial for them to have shorter periods in the care of each parent. Mr. Penk does not agree. He wants the periods of access to be long enough to be meaningful and he does not feel that what Ms. Lacoursière proposes would achieve this.

[8] Ms. Lacoursière has a number of activities planned for the children, including a dinner for her son, A., who is E. and F.'s half-sibling, on December 19; Christmas Day with her and Mr. Collins and a visit from her mother in January. As noted, E. is registered in a hockey camp in December. Both parties' proposals for access accommodate these.

[9] There remains a high degree of conflict between these two parties as well as between Ms. Lacoursière's partner, Mr. Collins, and Mr. Penk. These are not things that I am able to resolve; however I accept that there is conflict and that it must be taken into account in determining appropriate terms for interim access. Obviously, it is in the children's best interests that they are not exposed to high levels of conflict between their parents or between their father and Mr. Collins, and so opportunities for contact between the parties and Mr. Collins should be minimized.

[10] Ms. Lacoursière's counsel argued that it is important for the Court to consider the views of the custodial parent in determining what is in the best interests of the children in terms of access. I agree with this. The custodial parent, who takes care of the day-to-day needs of the children is well-positioned to

determine how their needs are best served in light of their social, educational, recreational, health and other needs. That said, it is not the only factor for the Court to consider in determining best interests. It is also considered to be in the best interests of children that, in the absence of evidence to the contrary, they be given opportunities to have meaningful relationships with both parents, something which must be achieved by having ample time with each parent.

[11] It is also important that the custodial parent have a basis for his or her views on what kind of access is in the children's best interests. When asked about why she was proposing shorter periods of access than have occurred in the past, Ms. Lacoursière indicated through counsel that the longer periods of access were required in the past to accommodate Mr. Penk being in Yellowknife for more compressed periods of time. On this occasion, he will be here for almost two months.

[12] With respect, Ms. Lacoursière has not demonstrated that the short periods of access she is proposing would serve the interests of the children any more than longer periods, such as those access periods ordered in the past, would.

[13] What Mr. Penk proposes for access must be modified somewhat, too. He wants to have the opportunity to take the children back to school in January. While I appreciate that he is their parent, Ms. Lacoursière says the children will need some time to adjust back into the non-holiday routine in their regular home environment. This is based on her experience and I accept that this is a valid concern.

[14] Ms. Lacoursière is also concerned about E. getting to hockey camp if he is in Mr. Penk's care. She indicates that Mr. Penk failed to get the children to some of their activities over the summer. Mr. Penk indicated this morning that this happened twice and both times it was due to circumstances beyond his control. In one case a venue was changed and he was not advised in time. In another case, he was advised by Mr. Golchert that E. did not have a required piece of hockey equipment and Mr. Penk would not let E. play without it. Mr. Penk says he subsequently purchased the required piece of equipment. Ms. Lacoursière did not contradict this.

[15] Mr. Penk indicated he is prepared to take E. to the hockey camp. While I do not doubt this, I nevertheless think that it would be better for all concerned for Ms. Lacoursière to take E. to hockey camp. She has made the arrangements and she knows the schedule. If there are changes to the schedule or venue at the last minute, she can respond to them and there will be no risk that E. will miss his

camp or sessions or it. If Mr. Penk wishes to go to the camp and watch E., he may do so.

[16] Mr. Penk asks that there be no requirement that he surrender his passport to the RCMP during his visit to Canada as he has been required to do in the past. He says that he does not have passports for the children. These are held by Ms. Lacoursière and the children cannot travel outside of Canada without them. He also promises that he will not take the children more than 120 km. outside of Yellowknife. The last access visit was organized on consent and Mr. Penk did not submit his passport, nor did he attempt to leave the jurisdiction with the children.

[17] Ms. Lacoursière confirmed that she does, indeed, have the children's passports in her possession. She nevertheless asks that Mr. Penk be required to submit his passport to the RCMP while he is here. Her counsel points out that this has been a term of all past access orders and that it should continue on an interim basis. Out of an abundance of caution, I find it should remain as a term.

[18] Ms. Lacoursière seeks a number of other terms to the interim access order, including a restriction on contact with Ron Tecszy and a term requiring Mr. Penk to take the children to their respective schools and their extracurricular activities while they are in his care, unless the latter conflict with church services on a Sunday. Mr. Penk indicated his agreement with the latter two requirements. For reasons made clear to Mr. Penk in past Case Management sessions, I will impose a term that there be no contact between E. and F. and Mr. Tecszy or Mr. Tecszy's children during access periods.

[19] I am mindful that interim orders are a temporary solution meant to bridge the gap between commencement of proceedings and the ultimate resolution, whether by trial or otherwise. Although far from ideal, what has been working for the parties and the children is an access arrangement that calls for minimal interaction and which affords Mr. Penk relatively lengthy periods of time with his children.

[20] Taking all of the foregoing into account, I make the following order for interim access:

1. Mr. Penk shall have access to the children during the following periods:
 - a. from after school on December 8, 2014 until the start of school on December 15, 2014, with pick up and drop off to occur at the children's schools;

- b. from 8:00 a.m. December 22, 2014 until 9:00 a.m. December 25, 2014, with pick up and drop off to occur at 4 Rycon Drive, Yellowknife, Northwest Territories;
 - c. subject to paragraph 3., below, from 9:00 a.m. December 26, 2014 until 1:00 p.m. on January 4, 2015, with pick up and drop off to occur at 4 Rycon Drive, Yellowknife, Northwest Territories.
2. Mr. Penk shall take the children to their respective schools and extracurricular activities while they are in his care, except when extracurricular activities fall at the same time as Sunday church services;
 3. E. shall remain in the care of Ms. Lacoursière from 9:00 a.m. on December 25, 2014 until the start of the last day of hockey camp on December 28, 2014. During this time, F. will remain with Mr. Penk and Mr. Penk is at liberty to attend at E.'s hockey camp. For greater certainty, Ms. Lacoursière will drop off E. at hockey camp on December 28, 2014 and Mr. Penk will pick him up.
 4. During the period that the children are with the Respondent, he and the children shall reside at 4 Rycon Drive and shall remain at all times within a 120 km radius of Yellowknife.
 5. The Applicant and the Respondent shall have Skype and telephone access to the children three times per week during the times the children are in the care of the other parent at times and on dates as they parties will arrange.
 6. The children shall have no contact with Mr. Ronald Tecszy, nor with Mr. Tecszy's children or other family members.
 7. The Respondent will deposit his passport with the RCMP before the access period begins and he will not pick it up until the access period ends.
 8. To the extent that the information is known to her, the Applicant shall provide the Respondent with a schedule of the children's extracurricular activities no later than December 8, 2014. Should the Respondent find

the information in the schedules provided is erroneous he shall notify the Applicant's lawyer of this without delay.

9. The Applicant shall provide the Respondent with the names of the children's teachers and their coaches, to the extent this information is known to her. She shall also provide contact information for the children's coaches, to the extent it is known to her and she is permitted to do so.
10. Prior to 12:00 p.m. on December 8, 2014, the Applicant shall advise authorities at the children's schools of the dates the children will be in the care of the Respondent and that he will be dropping them off and picking them up from school. She will also provide the school authorities with email and telephone contact information for the Respondent.
11. Save and except for seasonal activities scheduled at F.'s school on December 5, 2014 and at E.'s school on December 18, 2014, neither party will attend at the children's schools during the time that the children are in the care of the other, unless there is an emergency or other matter for which they are required to attend the school at the request of school authorities.
12. The parties shall not communicate with each other except for matters pertaining to current significant health and welfare issues of the children, or to fine tune the logistics of access.

K. Shaner
J.S.C.

Dated at Yellowknife, NT, this
5th day of December, 2014

Counsel for the Applicant:
Mr. Penk appeared on his own behalf
Counsel for the Children:

Margo Nightingale

Karan Wilford

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