

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARIE-SOLEIL LACOURSIERE

Applicant

-and-

MARCO PENK

Respondent

MEMORANDUM OF JUDGMENT

[1] Ms. Lacoursiere and Mr. Penk are the parents of two children, E., born December 17, 2007, now 7 years old, and F., born March 1, 2012, now 3 years old. The children have always lived with Ms. Lacoursiere in Yellowknife. Mr. Penk lives in Germany.

[2] The issues to be decided are custody, access, child support, change of surname and costs.

[3] The trial took place over six days in the fall of 2014 and another five days in January 2015. Ms. Lacoursiere is represented by counsel. Mr. Penk has represented himself throughout these proceedings, including the trial. The children were represented by counsel from the Office of the Children's Lawyer pursuant to an appointment made by order dated July 18, 2013.

Background

[4] Ms. Lacoursiere and Mr. Penk met in the fall of 2006, when both were working in Montreal. They began to live together at Mr. Penk's apartment. Ms. Lacoursiere testified that the relationship was intense and that she wanted to have a

family with Mr. Penk so they decided to start a family. Mr. Penk testified that there were issues in the relationship from early on because of the amount of travel she did in her job.

[5] The relationship broke down not long after Ms. Lacoursiere became pregnant. In May of 2007, Mr. Penk told her to leave his apartment. Ms. Lacoursiere testified that after she left, she made many efforts to contact Mr. Penk but received no response whatsoever. Mr. Penk testified that he did not receive communications from her and it would have been easy for her to contact him; he admits, however, that he filtered his work email so that he would not receive messages from her. He says that he was not certain that he was the father of the child as he believed that she had been unfaithful. Although he knew that it was possible he was the child's father, he says he expected Ms. Lacoursiere to let him know whether he was and he made no attempt for several years to contact Ms. Lacoursiere.

[6] Mr. Penk returned to Germany before E.'s birth in December 2007. In 2010 Ms. Lacoursiere, who by then had given birth to a second child, A., with a new partner, moved to Yellowknife.

[7] In early 2011, Mr. Penk reestablished communication with Ms. Lacoursiere by email. After his initial email to her, she sent him a photograph of E. and he immediately recognized from the look of the child that he must be the father. He and Ms. Lacoursiere decided that he would visit her in Yellowknife. He visited her for a week. E. was not there at the time; he was outside Yellowknife with A. and A.'s father. At that time, E. knew nothing of Mr. Penk and Ms. Lacoursiere let Mr. Penk know in advance that he would not meet E. until she felt comfortable with Mr. Penk and could trust him. The result of Mr. Penk's visit was that he and Ms. Lacoursiere decided to give their relationship a second chance. He returned to Germany, quit his job, and moved to Yellowknife in March of 2011.

[8] There was a certain amount of tension in the household and unhappiness on the part of Mr. Penk, who arrived at Ms. Lacoursiere's home before she had told A.'s father that she was resuming her relationship with Mr. Penk. At some point thereafter, A.'s father left Ms. Lacoursiere's home.

[9] Mr. Penk and Ms. Lacoursiere lived together with E. and A. and a teenager whom Ms. Lacoursiere was fostering. Ms. Lacoursiere worked outside the home

and Mr. Penk stayed in the home looking after the children. Their relationship broke down again and in October 2011 Ms. Lacoursiere told Mr. Penk to leave. By then, she was pregnant with their second child. Mr. Penk returned to Germany. However in December of 2011 he came back to Canada at Ms. Lacoursiere's request and her expense, to spend Christmas with her and her family in Quebec. Although Ms. Lacoursiere's hope was that they might re-establish their relationship again, Mr. Penk was interested only in seeing his son, E. It is clear from the evidence of both Ms. Lacoursiere and Mr. Penk that the visit did not go well, although it ended on a somewhat positive note when they spent the last day together with E.

[10] After Mr. Penk returned to Germany, he skyped with E. from time to time and he and Ms. Lacoursiere stayed in touch by email. Their second son was born in March 2012. Mr. Penk did not come to Canada for the birth because Ms. Lacoursiere refused to pay his travel expenses. Mr. Penk found her uncooperative, particularly with regard to skype arrangements, which he described as a "nightmare", and she found him very critical of her and her family.

[11] In 2012, Ms. Lacoursiere began a relationship with Mr. Collins, who has lived with her and the children since sometime in early 2013. She applied for and was granted an *ex parte* order dated November 1, 2012, granting her interim sole custody of the children, providing that Mr. Penk have reasonable access as determined by Ms. Lacoursiere and providing that Mr. Penk not remove the children from the Northwest Territories without the written consent of Ms. Lacoursiere or an order of this Court.

[12] Mr. Penk came to Yellowknife to visit the children and address the court proceedings in November 2012 and has returned several times since then. Access and the relationship between him and Ms. Lacoursiere, and him and Mr. Collins, have been fraught with problems and the Court has been asked many times, by each Mr. Penk and Ms. Lacoursiere, to make orders as to the nature, duration, location and conditions of access. At least 12 such orders have been made, as well as orders dealing with other aspects of this case. The access exercised by Mr. Penk has included the children being in his care for a week at a time, with access over December 2014 and January 2015 amounting to a total of about three weeks.

[13] The evidence at trial was very detailed as to events that have occurred and communications between the parties. I will not refer to all the evidence, rather will focus on the evidence that I believe is most significant for the issues in this case.

Positions of the parties

[14] Ms. Lacoursiere seeks sole custody of E. and F., child support (both ongoing and retroactive), contribution to childcare expenses and costs. Although at the beginning of the trial her position was that Mr. Penk should have six weeks access per year on various conditions, by the end of the trial, for reasons that I will describe further on, that position had changed to no access.

[15] Mr. Penk seeks joint custody of E. and F. so long as he remains resident in Germany, with the children to reside with Ms. Lacoursiere and he to have generous access. He asks the Court to order that the children reside in Yellowknife and that he may take them to Germany for access visits. Should he take up residence in Canada, he seeks shared custody, with the children to rotate between Ms. Lacoursiere's home and his on an equal basis. On the issue of child support, he says that his means are limited and the cost of travel between Germany and Canada should be taken into account. He opposes the request that costs be ordered against him.

[16] The lawyer for the children stated in her submissions that because of the children's age, she has not taken instructions from them, but has tried to help the parents resolve their differences and decrease the conflict. She takes the position that Ms. Lacoursiere should have sole custody of the children. Because of evidence at the trial about things said by E., to which I will refer, the lawyer for the children does not support joint or shared custody or generous access.

Best interests of the children to govern

[17] The law when it comes to custody and access is very clear: the governing principle is the best interests of the children. Where that conflicts with what the parents want or think is fair, the children's best interests are always paramount. Because Mr. Penk and Ms. Lacoursiere are not married, custody, access and child support are governed by the *Children's Law Act*, S.N.W.T. 1997, c. 14, as amended. Section 17 of that *Act* sets out a number of factors that are to be

recognized and considered in the determination of what is in the best interests of children in respect of custody and access. I will refer to these as applicable.

The parties

[18] Ms. Lacoursiere is in her early thirties. She grew up in Quebec in a large and close-knit family. She is well educated, well traveled, and has a job with a mining company. Her job carries with it responsibility and a good income. Along with her three sons, she has two foster children, siblings, in her care. It is clear that she loves children and is very family oriented.

[19] For the most part, I found Ms. Lacoursiere to be a candid and straightforward witness. I did note that her demeanour changed when she was cross-examined by Mr. Penk; she was sometimes sarcastic in answering his questions. I also found her somewhat evasive when she was questioned about court proceedings involving A.'s father and whether he had sought custody of E. and refused to return him to her care. She claimed not to recall whether he had sought custody of E., which I do not find credible. In my view, it is likely that she downplayed the conflict that existed between her and A.'s father, as well as his family, although it appears that in more recent years they have been able to reach a workable agreement as to custody and access for A.

[20] Although Ms. Lacoursiere has expressed serious concerns about Mr. Penk, I found that she tried to be fair in acknowledging some positive aspects of his relationship with the children.

[21] Mr. Penk is 40 years old and is a citizen and resident of Germany. He is proficient in English, although it is not his first language. He is also well educated and well traveled. He initially trained as a pilot with the German air force and later worked in the field of renewable energy. He has not been consistently employed and was fired from his last three jobs. He has not been employed at all since August of 2014. He has lived mostly in Berlin, but is currently receiving welfare, or the German equivalent, in the City of Dusseldorf, where he had moved for his last job. He has, however, been physically present in Yellowknife since early December 2014.

[22] Mr. Penk is not at present legally entitled to remain in Canada; he is on a 6 month visitor's visa, which he says may be extended. He does not have a work permit.

[23] Mr. Penk presents as a very stubborn person who believes that anyone who does not agree with him when it comes to his children is seeking to harm him and the children; evidence about this will be referred to later in these reasons. During the trial, it was clear that Mr. Penk was unwilling to accept orders or directions that were not to his liking. For example, during the second week of the trial, he was granted access to the children at their school, over the opposition of Ms. Lacoursiere, however he then wanted to argue about the way that counsel for Ms. Lacoursiere and counsel for the children had interpreted a prior order of the case management judge. On the last day of the trial, after I ordered that there be no in-person or skype access pending the trial judgment, Mr. Penk immediately asked for access at the school. Mr. Penk has demonstrated that he is simply not willing to take no for an answer. I found he was often argumentative in cross-examination rather than answering questions with facts.

[24] Having observed Mr. Penk over the course of the 11 day trial, approximately 5 and a half days of which were spent on his testimony, I have come to the conclusion that he is generally not a reliable witness. His focus on minute and often insignificant detail, his failure to see the big picture, and to look at things from a mature and realistic perspective, all lead me to conclude that his perception of events and other people is simply not reliable. I will refer to the evidence that leads me to this conclusion during the course of these reasons.

[25] Ms. Lacoursiere questions Mr. Penk's judgment and his mental health because of some of his actions and communications. I will examine the evidence that is relevant to that, however I will exercise caution when doing so because there is no expert evidence before me as to Mr. Penk's mental health.

[26] Ms. Lacoursiere does acknowledge that Mr. Penk has a very strong bond with E. and is a very important figure in E.'s life. Because F. is still very young, it is more difficult to assess his bond with Mr. Penk.

The Evidence

[27] It is clear from the evidence that Mr. Penk and Ms. Lacoursiere had a difficult relationship during the time they lived together in 2011. Each had complaints about the other that I do not find it necessary to deal with for purposes of this decision.

[28] The trip to Quebec at Christmas 2011 that I have already described was not a success. Part of the problem was that the parties had different objectives for the trip. Ms. Lacoursiere hoped to revive the relationship, while Mr. Penk wanted to see E. Mr. Penk did not get along with Ms. Lacoursiere's father, whom he views as a violent man. He criticized her father to her in the presence of E. An interesting aspect of his evidence was that although he was concerned and felt that he had to protect E., he left the home and went to New York, which took him away from E. for about three days.

[29] A significant amount of trial time was spent on email communications between the parties. Because Mr. Penk resides in Germany, email has been the primary means of communication between him and Ms. Lacoursiere. I have reviewed the email messages that were referred to at trial, many of which have to do with arrangements for Mr. Penk to skype with the children. On some occasions the communications have been polite and to the point, with both parties trying to compromise, for example, on a suitable time for skype, which has not been particularly easy given the time difference between Germany and Canada. A few of the email communications from Ms. Lacoursiere have been terse or blunt, for example, when she has stated that she will disconnect the skype connection if Mr. Penk says anything critical about her to the children. By and large, however, I find that her communications show that she has made a genuine effort to ensure that the children have time with Mr. Penk via skype and to give Mr. Penk positive feedback when skype sessions have been enjoyable for the children.

[30] On the other hand, Mr. Penk's communications by email are frequently critical of Ms. Lacoursiere, not just in relation to the skype arrangements, but also other matters. His complaints about E. wandering off during skype or the camera not being held at a good angle reveal an expectation that Ms. Lacoursiere control the movements of E. and F., without regard to whether that is reasonable, especially at their age. Sometimes his communications reveal a focus on what he wants rather than on the children. For example, in an email of March 29, 2012, he complains that Ms. Lacoursiere did not send good photographs of the children and says he will only skype with them that day if he gets some decent pictures of them. He also demands that she arrange a flight for him to come to Yellowknife and allow him to stay in her home so that he can visit the children.

[31] Mr. Penk's many complaints about Ms. Lacoursiere include that she does not always answer his emails promptly and does not always provide enough information about the children's activities. A review of the emails in evidence

reveals that there have been occasions where Ms. Lacoursiere has not been prompt in responding. However, I find that over the years, Mr. Penk has inundated Ms. Lacoursiere with emails and questions about the children, along with accusations about all sorts of things but particularly what he sees as her wish to prevent him and the children from having a relationship. The tone of many of his emails is very demanding. Mr. Penk has had many periods of time without employment and has no doubt had a great deal of time to send emails about each and every issue of concern to him. Ms. Lacoursiere, on the other hand, has raised the two children, and A., and foster children, and worked full-time, with no financial assistance from Mr. Penk. It is not surprising that she does not always respond to emails quickly. Given the activities the children are involved in and the time difference between Germany and Canada, it is not surprising that arranging skype is a challenge, particularly from her end. I have no doubt that on some occasions she could have made a greater effort to accommodate Mr. Penk, however, I also have no doubt that Mr. Penk would not be satisfied even if she did accommodate him.

[32] There has always been a level of distrust between the parties. Mr. Penk testified that he did not trust Ms. Lacoursiere because she traveled a lot and he thought that she was seeing another man during the time they lived together in 2006 - 2007. Ms. Lacoursiere testified that when she did not hear from him after the relationship ended in 2007 and he did not respond to her emails about the baby, she needed time to be comfortable and establish trust in him when he suddenly reappeared in her life in early 2011. The fact that A.'s father was still at the home when Mr. Penk arrived to stay increased his distrust of her, as was evident from his testimony. Ms. Lacoursiere testified that when he arrived at her home unannounced to find A.'s father there, he told her that if she did not take him back, he would leave and she would never see him again, thus causing her concern about his commitment to her and E. When their renewed relationship ended rather abruptly in October 2011, the continuing problems with skype exacerbated the situation.

[33] In 2012, not long after F.'s birth, another incident occurred that contributed to the distrust. Ms. Lacoursiere wanted to take the children with her to Colombia for a friend's wedding. Mr. Penk was concerned that she might also travel to Mexico, where she has an ex-husband. He was afraid that there might be an attempt by the husband to claim paternity of the children; at the time, there was no official declaration of his paternity of E. He was also concerned about safety in Colombia. Although he indicated at one point that he would provide consent for the children to travel to Colombia, Mr. Penk later withdrew that consent,

documented his non-consent in writing and advised Ms. Lacoursiere that if she took the children to Colombia he would report that she had kidnapped them. This led to Ms. Lacoursiere canceling the trip and losing money.

[34] Also in March of 2012, Mr. Penk threatened by email to report Ms. Lacoursiere to the police when he learned that she was in Quebec with the children. In May of that year he sent an email to various friends and work colleagues of hers complaining about his relationship with Ms. Lacoursiere (including blaming her for insisting he come to Canada in 2011) and her attitude toward him generally, and asking the recipients to get involved to help him.

[35] It is ironic that Mr. Penk sought to involve Ms. Lacoursiere's work associates in their relationship issues. He testified that he blocked emails from her at his employment email address in 2007 because he did not want her contacting him about personal matters at that address. He claimed not to have contact information for Ms. Lacoursiere and testified that he did not approach Ms. Lacoursiere's employer for her address because he did not want to involve the employer in their private life. These were obviously excuses for why he did not contact Ms. Lacoursiere to find out about the baby. When Mr. Penk is unhappy with Ms. Lacoursiere, he has been very willing to contact her work colleagues about personal matters. He also attempted to complain about the problems between him and Mr. Collins to Mr. Collins' military colleagues by attending at Mr. Collins' workplace.

[36] I will deal now with a series of events that have had a significant and enduring effect on the relationship between the parties and in particular, I find, Mr. Penk's attitude toward Ms. Lacoursiere and her care of the children. Some background is necessary to put the events in perspective.

[37] After F.'s birth in March 2012, Mr. Penk sent Ms. Lacoursiere many emails from Germany about his plans to come to Yellowknife later that year to see the children. The plans he described to her show a lack of sensitivity to the fact that the children, particularly F., were very young and that F., only a few months old, had not even met him yet. Ms. Lacoursiere testified that he talked about taking the children to Germany, or to Australia where he had a new partner, or to the Rocky Mountains. In an email dated October 5, 2012, he wrote that he will come to pick up the children in November so that they can spend a month with him in Germany. By October 14, he was talking about them spending a few months with him in

Yellowknife; in his trial testimony he said that this was a mistake and that he meant a few weeks.

[38] The constant changes in where Mr. Penk said he would take the children and his demands in that regard demonstrate that Mr. Penk was being unrealistic and heedless of whether such plans would be good for the children and acceptable to their mother.

[39] On November 1, 2012, Ms. Lacoursiere was granted the *ex parte* order that I have already described. Although documentation produced at trial shows that Mr. Penk booked a flight to Canada in early November and had arrangements to arrive in Yellowknife on November 22, 2012, on November 19 he was emailing Ms. Lacoursiere saying that he wanted skype access to the children on November 25, and asking her to take the time difference into account in setting the time. He testified at trial that he could not remember if he had told Ms. Lacoursiere the exact date when he would be in Yellowknife and he was unable to explain why he sent that email. Mr. Penk also testified that he told someone at the police detachment in Yellowknife about the order and asked whether he could go to Ms. Lacoursiere's home. The individual he spoke to was not able to give him advice, so he assumed that he could go. These circumstances suggest to me that Mr. Penk knew that Ms. Lacoursiere was not expecting him to show up at the house when he did because he had not told her when he was arriving.

[40] With this as background, Mr. Penk arrived unannounced at Ms. Lacoursiere's home at approximately 8:00 on the morning of November 23, 2012. When Mr. Penk did not receive an answer to his knocking at the door, he knocked on and peered into the windows. I find from the evidence that he was angry and upset about the court order, but particularly angry and upset to find Mr. Collins there. Although they said hello to each other, Mr. Collins made it clear that he would not let Mr. Penk into the house, which led Mr. Penk to believe that Mr. Collins was preventing him from seeing his children. I find also from the evidence, including Ms. Lacoursiere's testimony, that E. was excited to see Mr. Penk, but Ms. Lacoursiere would not let him go to his father, which upset both E. and Mr. Penk, who had not had in person contact since the Quebec visit in 2011. At some point during this incident, Ms. Lacoursiere called the police, who attended at the house and left with Mr. Penk.

[41] Mr. Penk and Ms. Lacoursiere were, however, able to communicate later in the day and arrange for a visit by Mr. Penk with the children at a local recreation

facility. Mr. Collins also attended. Mr. Penk was not happy about Mr. Collins' presence and felt it was forced on him, however the visit occurred without incident.

[42] A second visit was arranged for the following day at a local museum. This visit did not go well. Mr. Collins was present again, but sat behind a wall, separate from where the others were. Mr. Penk and Ms. Lacoursiere have different versions of exactly what happened, but it is clear on both versions that there was some pulling or pushing as Mr. Penk went to take F. in his arms and Ms. Lacoursiere resisted, believing that F. did not want to go to him. Ms. Lacoursiere testified that she "freaked out and screamed 'stop'". Mr. Collins testified that he heard her say, "No, Marco" twice and then scream; she sounded "frantic". He and a security guard went to where she and Mr. Penk were.

[43] Without stopping to find out what had happened, Mr. Collins pushed Mr. Penk in the chest away from Ms. Lacoursiere with such force that Mr. Penk fell to the ground. When Mr. Penk got up and came toward Mr. Collins, Mr. Collins raised his fist and told him to get away. Mr. Penk left the museum. This unhappy event occurred in the presence of the children.

[44] Ms. Lacoursiere gave no explanation for her extreme reaction to Mr. Penk wanting to take F. in his arms, other than F. not wanting to go to him. They were in a public place, Mr. Collins was nearby, she must have anticipated that Mr. Penk would want to hold F. There is no evidence that the child was upset or afraid. Even if she was not anticipating that Mr. Penk would arrive in Yellowknife when he did, she was aware that he planned to come to visit the children in that general time frame. There is no evidence at all that Ms. Lacoursiere believed that Mr. Penk would hurt either her or the children.

[45] Not surprisingly, this event has caused Mr. Penk to view Mr. Collins not just as a man who wants to keep him from his children, but also as a violent man. It has also led him to suspect that there is domestic violence in Ms. Lacoursiere's household. He has referred to Mr. Collins as a violent man in front of E. There is no evidence that Mr. Collins is or has been violent in the home, but this has remained a concern for Mr. Penk.

[46] The incident at the museum has resulted in court orders with conditions that Mr. Collins not be present during Mr. Penk's exercise of access (Order of December 6, 2012), that Mr. Collins not be present at certain school functions when Mr. Penk has the children in his care (Order of November 26, 2013) and that

Mr. Penk and Mr. Collins not communicate with each other (Orders of August 29 and December 10, 2013).

[47] A number of subsequent events can be traced back to what happened at the museum. For example, there was an incident at a local public swimming pool. Mr. Penk was there with E. and F. and a friend's children. Ms. Lacoursiere came into the pool area with Mr. Collins and A. Mr. Penk, concerned by what had happened at the museum, asked the lifeguards if they could keep Mr. Collins away from him; when they said they could not, he asked them to call the police, which they did. The police came but since nothing had happened, did not take any action.

[48] On the other hand, there have been instances where Mr. Collins has accompanied Ms. Lacoursiere to see the children when they have been in the care of Mr. Penk, which demonstrates a lack of recognition on the part of both her and Mr. Collins that Mr. Collins' behaviour at the museum has affected Mr. Penk's view of things. For example, while the children were staying with Mr. Penk in September 2014, just prior to the trial, Ms. Lacoursiere made arrangements with the teacher to visit E. at school. Mr. Collins drove her to the school. He testified that he was reluctant to go inside and was going to wait in the vehicle, however she persuaded him to come into the school with her. Mr. Penk, who wanted to take E. out for lunch, came upon them there and words were exchanged. While Mr. Penk and Ms. Lacoursiere in their testimony made the interaction sound as if it was very loud and upsetting, Ms. Levesque, the teacher who was nearby, testified that she did not notice anything of concern. However, the incident in my view does demonstrate a lack of sensitivity on the part of Ms. Lacoursiere to Mr. Penk's perceptions. It is not helpful to involve Mr. Collins with E. when he is in the care of Mr. Penk, knowing what has happened in the past and how Mr. Penk views Mr. Collins.

[49] There have been other incidents, for example, at a soccer field when Mr. Collins attended in military uniform, Mr. Penk objected to him being there, and Mr. Collins audiorecorded their interaction. And similarly, Mr. Penk videorecorded Mr. Collins one day when Mr. Penk dropped off the children at Ms. Lacoursiere's home. There was another incident at a soccer field when Mr. Collins attended a game one of the children was involved in and instead of simply ignoring him, Mr. Penk caused a scene in front of other parents and children.

[50] Ms. Lacoursiere and Mr. Penk also testified about a school Christmas concert in 2014. Ms. Lacoursiere testified that Mr. Penk was following too close

behind her and Mr. Collins and asking them questions. Mr. Collins told Mr. Penk to stop pushing. Ms. Lacoursiere did not hear everything Mr. Collins said. Mr. Penk denied pushing and following too closely but testified that Mr. Collins swore at him and called him a Nazi. Mr. Collins was not called to testify about the incident. I accept that Mr. Penk was following too closely and that Mr. Collins probably did refer to Mr. Penk as a Nazi. This type of behavior and the behavior previously described on the part of both men can only increase the tension and conflict between the parents of E. and F.

[51] I accept that Mr. Penk loves his children and loves spending time with them. The witnesses he called at trial substantiate this.

[52] Irene Golchert, who appeared to me to be a candid witness, rented accommodation in her Yellowknife home to Mr. Penk when he had the children staying with him in August 2013; she also occasionally assisted with pick up and drop off of the children. She described Mr. Penk as a kind, loving and patient father who spends endless time with the children doing crafts and outdoor activities.

[53] Ms. Golchert's brother, Jim Golchert, also testified. I found him to be very down to earth and candid. He provided accommodation for Mr. Penk and the children on three occasions in 2014. He also described Mr. Penk as very engaged with the children, particularly in making crafts with them and with Mr. Golchert's own children.

[54] E.'s grade 2 teacher, Ms. Levesque, was also called by Mr. Penk as a witness. She testified that both Mr. Penk and Ms. Lacoursiere are involved with and participate in E.'s education. She testified that E. is always in a good mood no matter which parent he is with.

[55] Mr. Penk placed considerable emphasis on the evidence of the Golcherts and Ms. Levesque as being independent evidence showing him to be a good father. As I have said, I found the Golcherts to be very candid and credible witnesses. It is clear from both their and Mr. Penk's testimony that they have been very generous to Mr. Penk and very accommodating. There is no evidence that they have ever had a disagreement with him. I find from the evidence that when Mr. Penk is content with the way things are going, he is pleasant with others. I also accept that when he has the children with him he is happy and this affects his view of the world around him. For reasons that I will address, however, I find the evidence

shows that when things are not going the way Mr. Penk wants them to, he is critical and lashes out.

[56] In his testimony, Mr. Penk went into great detail about the crafts and artwork he encourages the children to do. He is understandably proud of his children, however at times I found the amount of detail unusual, even excessive, for example when Mr. Penk showed and described to the Court pictures drawn by E. and photographs taken when he demonstrated a model airplane at E.'s school.

[57] I have no doubt that Mr. Penk can be a creative and entertaining companion for the children. However, as counsel for the children pointed out, being a parent involves much more than that. Some of the evidence does raise concerns as to Mr. Penk's judgment and his level of maturity.

[58] A significant area of concern has to do with Mr. Tecszy, a friend of Mr. Penk. In the summer of 2013, Mr. Penk proposed that he and the children would stay in Mr. Tecszy's home. He and Ms. Lacoursiere were made aware of Mr. Tecszy's criminal record for sexual assault and assault on a child and since early 2014 there have been orders made by the Court on an interim basis that the children not have contact with Mr. Tecszy and his children. Before those orders were made, Mr. Penk initially accepted that there should be no contact, and represented to the Court that there would be no contact, however at trial he admitted that he and the children spent time with Mr. Tecszy during the fall of 2013.

[59] Although the Court has made it very clear to Mr. Penk that the children are not to have contact with Mr. Tecszy and that the Court is of the view that the best interests of the children require that condition, Mr. Penk has continued to insist that because he has made inquiries and does not view Mr. Tecszy as a danger, there should be no restriction on contact. At trial, Mr. Penk made it very clear that he regards the restriction as unreasonable. He went so far as to state that the Court's orders have prevented Mr. Tecszy's children from having a "meaningful relationship" with their former foster mother, Ms. Golchert, because during the periods of time when Mr. Penk and his children stayed in her home, Mr. Tecszy's children could not visit her.

[60] The unreasonableness of Mr. Penk's position concerning Mr. Tecszy is even more pronounced when one considers that one of his ongoing and very strong objections to Ms. Lacoursiere's family is his belief that one of her relatives is a child molester. Ms. Lacoursiere says that is not true, that Mr. Penk has

misinterpreted something she told him about an aunt and uncle who had sex together as teenagers. There is no evidence that the children have ever been in the presence of the individual or individuals in question. Whether the allegation that there is a child molester in the family is true or not, the point is that the position taken by Mr. Penk is contradictory and demonstrates a troubling attitude on his part. One has to question the judgment of a parent who feels he is being inconvenienced or hard done by because the Court has ordered that his children are not to be exposed to someone convicted of crimes against a child.

[61] Another area of concern is an email account that Mr. Penk set up with a view to storing communications between himself and Ms. Lacoursiere. Mr. Penk stated in his evidence at the trial that he did not set up or maintain the account with the intention of showing it to the children later, but only to keep track of things. This is completely contradicted by emails he sent to Ms. Lacoursiere, for example, in an email dated July 8, 2012, he refers to the account and says of the children, “They will want to read what happened to them, when they were too young to defend themselves from their mother’s ideas”. In his testimony at trial, Mr. Penk said he thought that this message to Ms. Lacoursiere would urge her to look at good parenting, rather than trying to limit the relationship between him and the children, which is how he viewed her actions. In an email dated October 15, 2012, he states, “This account will help them to track back the events of their terrible childhood that you create for them”. At trial, Mr. Penk denied that he would ever show the contents of the account to the children, however I found that he was vague about whether he is still able to access the account. He did admit that it is still active.

[62] In a more recent email, Mr. Penk has demonstrated clearly how he views anyone who does not support his wishes. In December 2014, between the two stages of the trial, he sent counsel for Ms. Lacoursiere and counsel for the children an email which referred to them and others as “destructionists” of his family. The email included photographs of counsel and Shaner, J., the judge who was case managing this file prior to the trial, along with Adolph Hitler, another individual described by Mr. Penk as a Nazi executioner, and various political figures whom Mr. Penk views as having been responsible for historical or political events that have harmed his relatives. It also included a photograph of the Prime Minister of Canada, whom Mr. Penk holds responsible for his inability to obtain status as a resident of Canada.

[63] At a subsequent court appearance, Mr. Penk apologized for having sent the email and the photographs. At trial, when asked about the email, he referred to his apology and said that he is disappointed in himself. He made it clear that he feels that is the end of the matter. In his submissions at the end of the trial, he voiced the concern that both Ms. Lacoursiere and her counsel have used the words “bizarre and alarming” to describe the email. He also expressed the concern that Ms. Lacoursiere’s lawyer showed her the email even though it was addressed to the lawyer, and not to Ms. Lacoursiere herself. These concerns show that Mr. Penk has completely missed the point as to what the real problem with the email is.

[64] The email and photographs, and Mr. Penk’s description of the persons depicted in the photographs, and his response to being questioned about it speak volumes about Mr. Penk. He offered no explanation as to why he would send an email of that nature to counsel. Nor can there be any rational explanation. Sending the email was an illogical and immature act. It confirms that Mr. Penk considers anyone who does not agree with everything he wants to be his enemy. I conclude that Mr. Penk simply decided to lash out in anger and sending the email with the photographs was the way he went about doing it.

[65] Mr. Penk could not have been under any misapprehension about what he is signaling when he compares lawyers and a judge to Adolph Hitler. He is showing disrespect for them and for the legal system.

[66] Mr. Penk testified about how concerned and shocked he was about a haircut that E. got one day when in Mr. Collins’ care (what in Canada would probably be referred to as a “Mohawk” cut). Mr. Penk regarded it as a haircut that a neo-Nazi would have. He was concerned to the extent that, he testified, he consulted German authorities about whether it is appropriate for children to have such haircuts. He was concerned that someone would think he had allowed E. to have the haircut. Considering his reaction to something as unimportant as a haircut, he cannot possibly have been under any misapprehension as to the likely effect of his email or the message it would send. The words “bizarre and alarming” accurately describe his actions in this regard.

[67] Ms. Lacoursiere submits that this particular email is indicative of Mr. Penk having mental health issues. The term “mental health issues” is in fairly common use in society today and can mean any number of things. There is no expert evidence before me as to Mr. Penk’s mental health, and so I prefer to stay away from that term. However, the Hitler email, when seen in the context of Mr. Penk’s

other actions and reactions to situations does raise serious concerns about Mr. Penk's failure or inability to control his anger and emotions, to make logical connections, and to think through the consequences of his actions. These are clear signs of immaturity, lack of self-control and lack of respect for others. They cast doubt on Mr. Penk's ability to be a good role model for his children.

[68] Another instance of Mr. Penk lashing out in anger when he does not get what he wants comes from the testimony of Delilah Doak, a daycare provider who has cared for the children and who was called as a witness by counsel for the children. She testified that both Ms. Lacoursiere and Mr. Penk have used her services for the children. She testified that she has no concerns about the care given to the children by either of the parents and no concerns about the clothing the children wear.

[69] Ms. Doak testified that in May of 2014 Mr. Penk contacted her by telephone and asked her to sign a document which she understood was to be used by him in the dispute between him and Ms. Lacoursiere. Ms. Doak refused to sign the document, telling Mr. Penk that she did not want to get involved in the parties' problems. She testified that Mr. Penk told her she had to sign the document or he would "call the judge or Social Services". She stated that although Mr. Penk was nice when he first asked her about this, he became loud and forceful when she refused to do what he asked, causing her to be afraid for herself, the children and her job. She felt threatened by him.

[70] Mr. Penk's version of the conversation with Ms. Doak was that it was positive but that she became upset when he asked her to be a witness and said she would call the R.C.M.P. Mr. Penk denied threatening to call Social Services. I found it interesting that when he was first questioned about Ms. Doak, Mr. Penk said that on an occasion when he had picked up F. from Ms. Doak's daycare, he had certain concerns, but would not say at trial what they were. I find this was an attempt to cast Ms. Doak in a bad light.

[71] I found Ms. Doak to be a credible witness. English is not her first language, nor is it Mr. Penk's. I have some reservations about Ms. Doak's understanding of what Mr. Penk may have said about calling a judge simply because it is clear she is unfamiliar with legal terminology. I note that although she denied being under subpoena when cross-examined, she acknowledged in re-examination having been served with a Notice to Attend. She was, however, clear that he said he would call

Social Services. I accept her evidence about that and that she felt threatened by him.

[72] The evidence also reveals several instances where Mr. Penk has sought to involve the police and Social Services in the issues between him and Ms. Lacoursiere. One example will suffice. Mr. Penk testified that one day when the children came to him, F. had a swollen face with a blue mark on it. Mr. Penk is well aware that children fall and get bruises; he testified about E. having fallen when in his care and getting bruised. In his testimony at trial, Mr. Penk said that when he saw the mark on F., he believed that F. had been punched or kicked. He implied that this must have happened in Ms. Lacoursiere's home. On December 26, 2014, Mr. Penk threatened in an email to Ms. Lacoursiere that he would complain to Social Services, however the only concern he raised at that time with her was what he described as "inappropriate clothing" that she had sent with the children. At trial, Mr. Penk said that he did not report F.'s injury until January 2015 because he felt intimidated by the court proceedings, which I find not to be a reasonable explanation, considering that the court proceedings were about to recommence in January after he says he reported the injury. In her own testimony, although Ms. Lacoursiere said that Social Services had spoken with her, she also said that they did not ask her about an injury to F.

[73] I find that whether F. actually had an injury serious enough to be concerned about is doubtful. If he did have an injury, I find that Mr. Penk did not truly consider it to be significant because he did not report it right away. On his own description of what he did, Mr. Penk's version of events shows only that he wished to make problems for Ms. Lacoursiere and that, being dissatisfied with the clothing she provided, he was willing to create a more serious complaint when he did call Social Services.

[74] The children's clothing was another subject area that Mr. Penk spent a great deal of time testifying about and went into considerable detail about. I take note that Mr. Golchert did testify that the children did not seem to have a lot of winter clothing when they stayed at his home, and that he lent them some. I also take note that E.'s teacher expressed no concern about his clothing. I find that the state or amount of the children's clothing is not a significant issue in relation to their welfare. The problem seems to be that Mr. Penk is much more focused on how the children look than is Ms. Lacoursiere and he uses his opinion of their clothing as a means of constant criticism of her.

[75] Mr. Penk's focus as I have said seems to be on having fun with the children, playing and doing crafts with them. He does put emphasis on their education, which is to his credit. However his answers to some questions revealed a lack of sensitivity to or awareness of the importance of other people in the children's lives. For example, when asked how E. interacts or engages with other people, Mr. Penk's answer was that he could not say because he has not introduced him to other people, which is an odd response considering that the children have spent time with Mr. Penk in Mr. Golchert's home, in Ms. Golchert's home and out in the community, for example at sports activities. Mr. Penk must have seen E. interact with other people.

[76] Mr. Penk also testified that Ms. Lacoursiere's mother was very warm toward him, yet when asked about E.'s relationship with his grandmother, Mr. Penk said that he could not recall how strong it was.

[77] Mr. Penk also demonstrated a lack of insight into the impact of the court proceedings on the children. When asked about that, Mr. Penk responded that he could not say what the impact is because he has limited time with the children. His view is that any impact would likely be the result of the children having to go to their lawyer's office.

[78] He also testified that he has talked to E. about where they will go when E. visits Germany. He has shown E. a video of a toy shop that has trains, which have become a particular interest of E.'s. Yet at the same time Mr. Penk claims that he does not know how excited E. is about going to Germany. This is contradicted by Ms. Lacoursiere's testimony that E. has been talking about going to Germany since 2012. She testified that is also when she heard Mr. Penk telling E. on skype that he wants E. to come to Germany but that Ms. Lacoursiere will not allow it. She has asked Mr. Penk many times not to create expectations about Germany. In his emails in 2012 Mr. Penk made it clear that he intended to take both children to Germany. Having the children visit him in Germany has been an ongoing aspect of his applications to the Court.

[79] I have no doubt that visiting Germany with Mr. Penk has been a continuing topic of conversation when he is with the children and that he has created an expectation in E. that they will take a trip to Germany and that if they do not, it is because Ms. Lacoursiere is standing in the way of it.

[80] I note as another example of Mr. Penk lacking insight in his communications with the children that although it is by no means certain that he will succeed in his application to become a resident of Canada, he stated in his testimony that he has told E. that he intends to come back to Yellowknife and have a house so that E. can stay both with him and with Ms. Lacoursiere.

[81] Although, as I have said, E.'s teacher testified that E. is always in a good mood, there was evidence from both Ms. Lacoursiere and Mr. Penk that indicates that all is not well with the child. I have approached evidence of things said by E. from the perspective that if the things said, whether true or not, indicate E.'s emotional state, or reflect things that may have been said to him by others, I will take it into account. The evidence of things said by E. is hearsay. Such evidence is often admitted on a necessity and reliability analysis. In this case, the children are young enough that they would not normally be called as witnesses. Where I have concerns with the reliability of anything said, I will indicate that.

[82] Ms. Lacoursiere testified that in 2013, after spending access time with Mr. Penk, E. would be aggressive toward her; he would accuse her of being mean and not letting Mr. Penk stay in Yellowknife; he would say that he does not want to be part of her family. She testified that prior to the trial, in 2014, E. began to ask why she would not let him go to Germany. She also testified that after skype access with Mr. Penk in December 2014, she found E. to be more aggressive and abrupt with her, and after in-person access that month, distant. She described E. as pushing her away when she would try to show him affection, and acting in a similar fashion with her mother and with Mr. Collins. He also had tantrums about not wanting to go to hockey and soccer.

[83] Ms. Lacoursiere also described E. as demanding that she "prove it" when she says she loves him and is glad to see him, after he has been with Mr. Penk. He has said to her that Mr. Penk says that if she loves him she must prove it. He has stated that when he is 12 years old he will go to Germany and never come back. He has talked about not wanting to be a Lacoursiere and wanting instead to be a Penk. He has asked her several times in a serious manner why she and Mr. Collins lied to the Court so that he cannot go to Germany.

[84] Ms. Lacoursiere also testified that E. has been more aggressive with her other son A., and with a younger male foster child. Although E. has always been kind to the baby girl whom Ms. Lacoursiere is fostering, E. related to Ms. Lacoursiere one day not long before the trial resumed in January, that the baby had

been crying and because he could not stand the sound, he put his foot on her stomach and pushed it there. It was obvious during her testimony that Ms. Lacoursiere was very upset by this; she also stated that she was attempting to arrange an appointment for E. to see a psychologist.

[85] I am satisfied based on Ms. Lacoursiere's testimony and the level of concern that she expressed that E. did say the things she related in her testimony. I am also satisfied based on the evidence that some of the behaviour exhibited and things said by E. can be linked to attitudes or wishes expressed by Mr. Penk, for example, Mr. Penk's wish to take the children to Germany, his lack of enthusiasm for sports where parents watch the children play instead of participating with the children, his extreme dislike of Mr. Collins. In relation to the sports, although Mr. Penk now professes to support hockey and soccer, activities that Ms. Lacoursiere has involved E. in, it is telling that in commenting on a remark he made in an affidavit about E. being "forced" to participate in sports, Mr. Penk testified that such activities did not accommodate his (Mr. Penk's) specific needs during access. I have no doubt that he has made his preference that E. not play hockey or soccer known to E.

[86] The fact that E. has spoken of his mother having to "prove" that she loves him suggests, in my view, that because of things said by Mr. Penk, E. feels torn between his mother and father. As counsel for the children pointed out, that E. would make that remark to his mother suggests that he is questioning her love for him. What would lead E. to question that at the age of seven? The likely answer, in the context of the evidence of Mr. Penk's view of Ms. Lacoursiere, is that Mr. Penk is encouraging him to question it. If so, there is a risk of harm to E.'s well-being.

[87] In this regard, I note that in his closing submissions at the trial, Mr. Penk submitted that E. has chosen Mr. Penk as his father and that Ms. Lacoursiere does not understand and does not accept her son's preferences. He questioned how Ms. Lacoursiere will respond to the changing preferences of her son in the future. Mr. Penk's position in this regard suggests that he sees the situation as a choice to be made by E. between his parents.

[88] I also have no doubt that Mr. Penk criticizes Ms. Lacoursiere when speaking to E. and F., given the extremely critical tone of his emails to her. In his testimony at trial, he was also extremely critical, talking about her drinking and driving (although he gave no evidence of having observed this himself), going dancing in

the bars when they lived together, having a violent partner and father, having too many men in her life, letting her teenage foster child go off to a crack house with a drug lord. He regularly referred to Ms. Lacoursiere as having prevented him from having a relationship with E., when it is clear that he has had substantial skype access and also in-person access and that E. and he have a close relationship.

[89] If E. did put his foot on the baby, that is of obviously of concern, however merely the fact that he claimed to have done it, suggests that something is troubling him. However, I cannot go so far as to attribute that particular incident to anything that may have been said to E. by Mr. Penk, or to influence by Mr. Penk, as there is no evidence before me that Mr. Penk has discussed the foster children with E. However, it does fit in with the general increase in aggression described by Ms. Lacoursiere.

[90] Mr. Penk also testified about things E. has said. He testified that E. told him that Mr. Collins said he had to prevent Nazis from attacking Newfoundland.

[91] Mr. Penk testified that he observed E. to be more violent to F. during access in the latter part of 2014. He testified that E. called him “a penis”. E. may have learned the language in the schoolyard, but the claim about violence could also indicate that something is troubling E.

[92] However, Mr. Penk also made the extraordinary claim in cross-examination by the children’s lawyer that 7 year old E. showed him how to access pornographic websites one day when they were using the computer. Mr. Penk said that he had discussed this with Social Services. Apart from that, he expressed little concern about it, in contrast, for example, to the considerable time he spent in his evidence talking about clothing that Ms. Lacoursiere sent with the children and which Mr. Penk views as damaged or unsuitable. I do not believe Mr. Penk’s testimony about E. showing him how to access the websites. It defies belief that a child that age would know how to do that and I had the very strong impression from Mr. Penk’s demeanour when he testified about it, and the way he gave no detail about it, that he had made it up. The only reason to make up something like that would be to cast suspicion on the other parent.

[93] I find as a whole that the conflict between Mr. Penk and Ms. Lacoursiere is likely having a significant effect on E. and that this is manifested mainly in a change in his relationship with Ms. Lacoursiere and what may appear to him to be a requirement that he choose between his parents. There are indications that E. has

become unhappy with life in his mother's household and is expressing views also expressed by Mr. Penk, for example, that he wants to go to Germany and that his mother is preventing him from doing so because she is mean, that she and Mr. Collins have lied in court to prevent him from going to Germany, that he wants to be a Penk and not a Lacoursiere. Common sense leads to the conclusion that there is potential for harm to E.'s emotional well-being if this continues. The evidence also persuades me that it is Mr. Penk who is responsible for this state of affairs.

[94] Mr. Penk's often contradictory attitude, and his lack of insight and lack of sense of reality is reflected in the fact that although he testified that the parties need court orders to govern the custody and access regime, otherwise there will be "chaos", he also stated in his submissions to the Court that there is no evidence of conflict in this case, only "perceived conflict". There can be no doubt that there is a great deal of conflict in this family's situation. The difficult question is how the Court can fashion a custody and access regime that will not increase the conflict, and is designed instead to keep the conflict from negatively affecting the children's lives, so far as that is possible.

What is in the best interests of the children?

[95] In coming to a decision in this matter, I have reviewed the evidence, along with the submissions of the parties. I have also reviewed the trial briefs, including the parenting plan that Mr. Penk asks be implemented.

[96] I have also considered whether and how Mr. Penk's status in Canada should play a role in the custody decision. Although he expressed hope during the trial that he will obtain the necessary authorizations to reside and work in Canada, when that might happen, if ever, is uncertain. Even if he obtains employment in Canada, his ability to maintain employment is uncertain, given that he has been fired from his last three jobs. So there are a number of factors that make his status uncertain for the foreseeable future.

A. Custody

[97] The evidence indicates that although there have been some occasions when Mr. Penk and Ms. Lacoursiere have been able to agree on things like a time for skype, the majority of their communications are marked by criticism and complaining by Mr. Penk. It would be hard enough to make joint custody work when one parent lives as far away as Mr. Penk does, however with cooperation it

might work. I am not, however, satisfied that these parties can cooperate and the reason for that lies with Mr. Penk. I say this knowing that there have been occasions when the parties have been able to agree on access. However, they have no history of working together and Mr. Penk's approach since 2011, when he accepted that he is E.'s father has been to overwhelm Ms. Lacoursiere with demands rather than trying to work with her. Mr. Penk's constant criticism of Ms. Lacoursiere, his insistence that his wishes and views prevail and his unrealistic expectations and attitudes persuade me that joint custody will simply result in more friction between the parties and more tension in Ms. Lacoursiere's household, which will inevitably affect the children. In my view the best interests of the children require that they have a parent who is able to make sound and realistic decisions for them and about them, and who will try to keep the conflict out of their lives as much as possible. I am not confident that Mr. Penk is willing or able to play that role.

[98] Although Mr. Penk has been able to care for the children when they have stayed with him, and there is no evidence that their physical needs are not met, his ability to exercise sound judgment and maturity is very much in question. His insistence on trying to involve Mr. Tecsny and his reaction to the Court ordering that he not do so is very troubling. The evidence that suggests he is causing E. to question his place in Ms. Lacoursiere's home is very troubling. The Hitler email is another example of poor judgment and lack of respect on his part. For the reasons I have already noted, I find that although Mr. Penk has certain qualities that he brings to his relationship with the children, he lacks other qualities that are vital to being a good parent, such as maturity, restraint, patience, good judgment, insight, respect and common sense.

[99] To grant joint custody would only guarantee that the conflict continues. I see no hope that it would be successful, whether Mr. Penk resides in Canada, Germany or elsewhere.

[100] It follows that I am of the view that shared custody will not work either. I want to make it clear that it is not only the parties' inability to work together that is of concern, it is Mr. Penk's lack of judgment, insight and maturity that causes me to conclude that neither joint nor shared custody will work.

[101] I have therefore come to the conclusion that the best interests of the children will be served by Ms. Lacoursiere having sole custody. In my view, she is the parent most able and willing to provide the children with guidance, one of the

factors for consideration pursuant to s. 17(2)(d) of the *Children's Law Act*. She is also the one most able to act as a parent in terms of maturity and sound judgment, a factor pursuant to s. 17(2)(e). Pursuant to s. 17(2)(f), she has been primarily responsible for the care of the children since their birth, including E. during the early years when Mr. Penk did not take any responsibility, despite knowing that he might be the father of her child.

[102] I am also satisfied that even though Ms. Lacoursiere's position is that there should be no access, she is willing to facilitate a relationship between Mr. Penk and the children, so long as it is a healthy relationship. On the other hand, I am concerned that Mr. Penk is not willing to facilitate a relationship between the children and their mother. I am greatly concerned that under his influence their relationship with their mother will suffer damage.

[103] Section 17(1) of the *Children's Law Act* says that different cultural values and practices must be respected in the determination of best interests. Mr. Penk wishes the children to know and appreciate their German heritage. Although Ms. Lacoursiere does not put a lot of emphasis on that, she has lived in Germany and speaks German and I am satisfied that she is sensitive to their heritage.

[104] Ms. Lacoursiere will have permanent sole custody of the children.

B. Residence

[105] As Ms. Lacoursiere will have sole custody of the children, it follows that they will reside with her. Mr. Penk asked that a condition be imposed that the children reside in Yellowknife. The reason he gave is that this is where they have always lived. I am not going to attach that condition as I do not consider it necessary. I cannot think of any valid reason for the condition. Travel from Europe to Canada is more expensive when the final destination is Yellowknife so it may actually be to Mr. Penk's benefit if she were to reside in a more accessible area. Mr. Penk does not have significant ties to Yellowknife and acknowledged in his evidence that he cannot continue staying at the Golcherts' homes on a cost free basis.

[106] Mr. Penk did express a concern that Ms. Lacoursiere might leave the Northwest Territories with the children without letting him know, although the only reason he gave for that is an incident when she was upset during a custody case in Quebec with her former partner, the father of A., and headed to the airport

with the children. He also expressed concern that she is moving to a new house, but that is within the City of Yellowknife. His concerns can be addressed by a requirement that if Ms. Lacoursiere plans to move from Yellowknife and take up residence elsewhere with the children, she give Mr. Penk 60 days notice in writing of her intention and the full address where the children will be residing, along with an email address. That will be a term of the order.

C. Access

[107] Ms. Lacoursiere's position is that Mr. Penk should not have access to the children. She submits that the Court should put the onus on him to come forward with a mental health assessment before he can request access in the future. She is very concerned that he is a role model to E. and has significant influence on him, and that as long as Mr. Penk has access, the children will always be exposed to conflict and his animosity toward her.

[108] Mr. Penk says that because he already has a loving relationship with the children, his contact with them should continue. He sees Ms. Lacoursiere's position as a continuation of her denial of that loving relationship.

[109] To deny access completely is a drastic measure; it has been called a "remedy of last resort": *V.S.J. v. L.J.G.*, [2004] O.J. No. 2238 (Ont. S.C.J.) at paragraph 128. Access is to be determined by what is in the best interests of the child. Generally, it is thought that it is in a child's best interests to have a relationship with both of his/her parents and to have the maximum contact possible with each, so long as there is no risk of harm to the child from the relationship or contact.

[110] In *V.S.J. v. L.J.G.*, at paragraph 135, the trial judge reviewed cases where consideration was given to terminating access and the factors that have led to termination of access, which can be summarized as follows: long term harassment and harmful behaviours towards the custodial parent which cause that parent and the child stress or fear; history of violence; unpredictable, uncontrollable behaviour, alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well-being; extreme parental alienation; ongoing severe denigration of the other parent; lack of a relationship or attachment between the noncustodial parent and child; neglect or abuse of a child during access visits; in the case of an older child, wishes and preferences to terminate access.

[111] Obviously several of the above considerations are not applicable in this case. Mr. Penk has a relationship with the children, there is no allegation or evidence of neglect or abuse during their visits to him, there is no evidence of a history of violence or alcohol or drug abuse. It is too soon to characterize F.'s relationship with Mr. Penk, however E. is clearly very attached to him.

[112] There is no expert evidence of parental alienation, let alone extreme parental alienation, although some of E.'s recent behaviour does raise concerns that his relationship with his mother is at risk of being harmed by things Mr. Penk has said to him. Mr. Penk's propensity to criticize Ms. Lacoursiere, including in the presence of the children, is of concern. Mr. Penk needs to realize that if he continues to criticize her, whether to her, the children or other people, that behaviour may result in the Court denying him access completely.

[113] There are ways in which access with Mr. Penk is a benefit to the children. Mr. Penk is very dedicated to the children. He is willing to spend a lot of time with them and he engages them in creative pursuits.

[114] Ms. Lacoursiere testified that it is mainly the email to counsel with photographs of Adolph Hitler and others that led her to have concerns about Mr. Penk's mental health. There is no doubt that the email and photographs represent an unwise, unreasonable and illogical lashing out by Mr. Penk, and that they demonstrate disrespect. However, I would want some expert evidence before drawing the conclusion that Mr. Penk has serious mental health issues, and I would want to know what those issues are.

[115] Having observed and listened to Mr. Penk during the 11 day trial and having read the various emails that are in evidence and considered the evidence generally, I do find that Mr. Penk presents as an unusual and difficult personality, for all the reasons I have already outlined. He seems to have little or no understanding of the effect his words and actions have on others, he does not see beyond his own wishes. His focus is on having fun with the children, not on their emotional well-being or their social adjustment. I find he also views issues of custody and access as a contest of sorts between himself and Ms. Lacoursiere. He complains that because orders of the Court have restricted his exercise of access to Yellowknife, he is denied quality time with the children. He does not seem to understand that taking the children on trips will not be quality time for them if he is imparting to them negative views of their mother, other family members and their childhood.

[116] On balance, however, I do not believe that access should be terminated. Nor do I believe that there is a need for access to be supervised. Another consideration is that this Court has no resources for supervision of access and the only supervision facility that I am aware of in Yellowknife would mean visits in a room at the Center for Northern Families, which in my view would be overly restrictive. No other options for supervised access were presented to the Court.

[117] Because of concerns around Mr. Penk's negative influence on the children in regards to Ms. Lacoursiere and her family, I have decided that access should be very specific and limited in time. The goal of access will be to maintain the children's relationship with Mr. Penk, while restricting it in an attempt to lessen and control the influence he has on the children. The details will be set out after I address some additional matters.

[118] The first issue is whether Mr. Penk should be permitted to take the children to Germany for access visits. Getting to know their German relatives and heritage may well be of benefit to the children. The issues of concern are, however, the insufficiency of information as to Mr. Penk's circumstances in Germany and how he would care for the children and whether allowing the children to be taken to a foreign jurisdiction is likely to bring with it a risk of more conflict and uncertainty for the children.

[119] When he testified at the first part of the trial, in 2014, Mr. Penk was living in Dusseldorf, having moved there from Berlin in order to take a job. However he lost the job after 4 months. He indicated at the first part of the trial that he had a job interview in Berlin and if successful, the children would stay with him there in a large apartment a neighbour was willing to let him use. By the time the trial continued in January 2015, however, Mr. Penk was still living in Dusseldorf, having been unsuccessful in obtaining the Berlin job. He was on welfare. He testified that he would not have the children stay with him in Dusseldorf, but hoped to move back to Berlin. As I understood his evidence, under the welfare regime, in order to live in Berlin, he must either obtain employment in that city, or obtain permission to leave Dusseldorf and re-apply for welfare in Berlin.

[120] Mr. Penk proposed that if he moved to Berlin and was working, the children would be cared for during the day by his brother's wife. In January of 2015, she had just had a child of her own. He described her as an artist who works at home. There is no evidence confirming her willingness to look after two more children. Mr. Penk was reluctant to provide contact information for his brother, although he

did provide an address. However, he refused to provide his brother's telephone number, saying that there is no reason for Ms. Lacoursiere to have it. It is natural, of course, for Ms. Lacoursiere, who has never met his family, to want information about the brother and his wife if the children are to spend their time there in the wife's care. Mr. Penk is not willing to accommodate that, from which I infer that he may not in fact have suitable or any arrangements in place for the care of the children.

[121] I also have a significant concern that if Mr. Penk is permitted to take the children to Germany, there will be more litigation in this case, possibly on an international level. I say this because of the amount of distrust between the parties and Mr. Penk's unwillingness to accept court orders and his quick resort to the Court when he does not get his way (9 of the 15 notices of motion in this matter have been filed by him). Mr. Penk is quick to involve or threaten to involve authorities such as Social Services and the police when he is not happy with what Ms. Lacoursiere is doing. I do not have any confidence that he would not similarly try to involve German authorities if he is allowed to take the children to that country, making the children's situation more complicated and stressful.

[122] In addition, the children are still young and I am not at all confident that Mr. Penk would be sensitive to, and handle well, the emotional effect on them by reason of the separation from their mother. They have ready access to her in Yellowknife, where she is able to visit their school and attend their recreation activities. In Yellowknife the children also have access to people they know, such as hockey and soccer teammates, coaches, daycare providers and teachers. In Germany, they have no supports and know no one except for Mr. Penk. Nor is it likely that skype access would work well; I have no doubt that Mr. Penk would view management of skype access from Germany as a way to "pay back" Ms. Lacoursiere by making it a very difficult experience.

[123] For these reasons, as well as the general concerns about Mr. Penk that I have expressed, I have decided that access will not be exercised in Germany. And for similar reasons, I am not confident that allowing Mr. Penk to travel anywhere with the children will be to their benefit. Access will be exercised within a 120 kilometer radius of the City of Yellowknife.

[124] Mr. Penk has been ordered to deposit his passport with the R.C.M.P. while exercising access. He has complained that that condition leaves him without proper identification. However, as Mr. Penk referred in his evidence to driving

with the children, I assume that he has a driver's licence he can use for identification. I do not see the deposit of his passport as a burden to him and the condition will remain in place. The condition reflects the lack of confidence I have in Mr. Penk based on the evidence at trial.

[125] It is impossible to foresee every circumstance that might arise. Both Mr. Penk and Ms. Lacoursiere have to realize that they must comply with the terms imposed and that should unforeseen circumstances arise, they need to use common sense and not an emotional reaction. They need to put the children first, rather than their own needs and wishes.

[126] Mr. Penk will have access to E. and F. as follows and on the following conditions. These terms and conditions will apply whether he resides in Yellowknife or elsewhere:

1. Mr. Penk will have access from July 15 to 31 each year commencing with July 2015. Access will commence at 9:00 a.m. on July 15 and end at 5:00 p.m. on July 31.
2. Mr. Penk will have access for the school Christmas break every second year, commencing with Christmas 2016 and continuing in each even-numbered year thereafter. Access will commence at 9:00 a.m. on the first day of the access period and end at 5:00 p.m. on the last day of the access period.
3. Mr. Penk will have access for the school spring break every second year, commencing with school spring break 2016 and continuing in each even-numbered year thereafter. Access will commence at 9:00 a.m. on the first day of the access period and end at 5:00 p.m. on the last day of the access period.
4. In exercising his access, Mr. Penk shall stay with the children at the home of Irene Golchert or Jim Golchert if they make their homes available to him, and so long as they reside within a 120 kilometer radius of Yellowknife; he will advise Ms. Lacoursiere which of those locations he is staying at with the children. If neither of the Golcherts make their home available to Mr. Penk, he will give Ms. Lacoursiere 40 days notice of where he intends to stay with the children, along with the complete address, landlord's or owner's name and contact information.

5. If Mr. Penk remains in or becomes a resident of Yellowknife, he will have access to the children on the third Sunday of each month from 9:00 a.m. to 4:00 p.m. commencing May 17, 2015, except in the months of July, August and December and the month in which the school spring break falls, and except if the Sunday is Mother's Day in Canada.
6. Mr. Penk will exercise all access within a 120 kilometer radius of the City of Yellowknife and will not remove the children from within the same area.
7. Mr. Penk is not to permit any contact at any time between the children and Ronald Tecszy, nor is he to allow the children to be in the presence of Mr. Tecszy or allow them to be on property owned or rented by Mr. Tecszy.

I have not included a condition as to Mr. Tecszy's children as there was no evidence presented at trial about them.

8. Ms. Lacoursiere will drop off the children at the beginning of access, and pick them up at its end, at the home where Mr. Penk is staying, unless otherwise agreed to by the parties. Ms. Lacoursiere will not be accompanied by Mr. Collins on these occasions.
9. Prior to the commencement of each access period referred to above, Mr. Penk will deposit his passport with the R.C.M.P. in Yellowknife and will not retrieve it until the access period is over.
10. During the access exercised by Mr. Penk, he will decide whether to take the children to any extra-curricular activities that have been scheduled for them by Ms. Lacoursiere.
11. During the access exercised by Mr. Penk, Ms. Lacoursiere may attend extra-curricular activities of the children, but is not to be accompanied by Mr. Collins.
12. In the event of chance encounters between Mr. Penk and the children outside of an access period, he is to be permitted to greet them and speak to them, however he is not to delay or interfere in what they are

doing at the time and he is not to give them candy or gifts. If Mr. Collins is with the children, Mr. Penk will not approach them or attempt to engage them in conversation, and may only greet them.

13. Neither parent is to criticize the other in the presence or within hearing distance of the children.
14. Mr. Penk is not to attend at the children's schools or daycares. Ms. Lacoursiere will provide authorization to the children's schools to provide Mr. Penk with copies of school reports.
15. Mr. Penk will not communicate with Ms. Lacoursiere directly or indirectly except as required by the terms of this order relating to child support and except to advise where he will stay with the children as required by this order, to make any necessary adjustments to drop off and pick up times, and to advise of illness or injury of either of the children. At pick up and drop off times he may communicate with her only as necessary to accomplish the pickup and drop off.
16. Skype communication between Mr. Penk and the children will be solely at the discretion of Ms. Lacoursiere. Mr. Penk shall not make requests to Ms. Lacoursiere or to the children or anyone else to communicate by skype with the children. If Ms. Lacoursiere contacts Mr. Penk to arrange skype, she is to propose a reasonable time when it can take place, taking into account any time difference and the hour of the day, and ensuring that Mr. Collins will not be present during it.
17. Mr. Penk may communicate with the children in writing and by video, however Ms. Lacoursiere shall be entitled to review all such communications before giving them to the children. If she is not satisfied of their suitability, she may decline to give them to the children and in that case, shall return them to Mr. Penk. The same conditions shall apply to any gifts that Mr. Penk sends to the children. Ms. Lacoursiere will have discretion to determine how and whether the children will respond to Mr. Penk in relation to any such communications and gifts.
18. Mr. Penk will not communicate at all with members of Ms. Lacoursiere's family, including Mr. Collins. He will not communicate

with Ms. Lacoursiere's friends or work colleagues regarding Ms. Lacoursiere, Mr. Collins or the children.

19. Neither party is to file any further application, notice of motion or affidavit in this action for a period of two years from the date of this judgment, except with leave of the Court. This paragraph shall not, however, apply to counsel for the children, who may apply to the Court as she may deem necessary.

[127] Although it will not be part of the order, I would urge counsel for the children to consider arranging a professional assessment of them, or at least E., if he continues to behave and express himself as described by Ms. Lacoursiere at trial.

Child support

[128] Parents have an obligation to provide financial support for their children. The support is the right of the child.

[129] Mr. Penk says that he recognizes that he has an obligation to support his children, however he pleads hardship in light of his unemployment. It is clear that he has difficulty obtaining and maintaining employment.

[130] When Mr. Penk decided not to pursue a career as pilot, he became involved in the field of renewable energy. He has had employment in that field, however has not worked continuously. From his evidence, it appears that since returning to Germany when his relationship with Ms. Lacoursiere initially broke down in 2007, he has worked as follows: 2008 - 12 months; 2009 - 6 months; 2010 - 3 months; 2011 - 2 to 3 months (before he returned to Canada to live with Ms. Lacoursiere); 2012 and 2013 - 9 months total plus 2 weeks; 2014 - 4 months.

[131] Mr. Penk was fired from his last three jobs. Based on his employment history, the prospect of him obtaining and maintaining employment in the future is by no means certain.

[132] Mr. Penk did not pay any child support prior to moving to Yellowknife in 2011. Nor did he pay any after his return to Germany in the fall of 2011, nor has he paid any to date. He has frequently sent gifts to the children, mainly toys and candy. He has bought some clothing for them. It is not clear from the evidence

how he is able to afford the several trips he has made to Canada over the past three years and his testimony that he has done so from savings from his past employment seems doubtful, considering how little he has been employed and that he described the welfare payments he receives in Germany as being very low and just enough to survive on.

[133] In May 2014, Justice Shaner dealt with an application for interim child support. At that time, Mr. Penk had recently started a new job in Germany and was found by Justice Shaner to be earning the equivalent of \$61,660.00 per year, resulting in a Child Support Guidelines monthly payment of \$940.00. The formal order dated May 7, 2014 and filed June 3, 2014 required that he pay that amount and the amount of \$111.52 as his proportionate share of child care expenses monthly, commencing April 1, 2014.

[134] Mr. Penk's obligation to pay the support ordered was suspended by order dated August 19, 2014. He had been notified in July that his employment would be terminated in August. He did not pay any of the child support ordered before the obligation was suspended.

[135] Mr. Penk acknowledges that the market for renewable energy has decreased to the point where it basically no longer exists. He has looked for other employment and his employment in 2014 was in a different field, with a well-known elevator manufacturer, a job that he thought had good prospects for advancement. As I have noted, however, he lost that job after only four months. The reason he was fired is not entirely clear. Counsel for Ms. Lacoursiere asks that I find that because of the timing, Mr. Penk was likely fired because he wanted time off to travel to Canada during his six month probationary period of employment, however Mr. Penk denied that and said that he lacked the skills for the job. I am unable to conclude exactly why he was fired, although I do question his commitment to that job in that he did seek time off during the probationary period when, one would think, he would have been anxious to please the company since he had had so little luck with employment in the past and it took him 12 months to find the job.

[136] Mr. Penk has testified about and documented extensive efforts to find work, however he is restricting his job search in a way that is unreasonable. He testified that in 2013 he worked at a fast food restaurant for a couple of weeks, but was not suited to the job and was fired. He has not sought out other such jobs because in his view that would prevent a serious job search, which he estimates involves four

hours of work for each job application because of the research, writing and discussions necessary to apply for the type of work he prefers to focus on. He says this despite acknowledging that jobs in his preferred area of renewable energy and at his preferred level of pay and responsibility are few and far between. I noted the contrast between his approach to searching for a job in Germany and his approach to searching for a job in Canada. Although he has searched for jobs in his desired field in Canada, he testified that he would take any position in Yellowknife that would facilitate his return to this country, even making sandwiches. If this is true, it means he is willing to take an unskilled job in order to live where his children do, but is not willing to take that kind of job in Germany so as to provide financial support for them.

[137] Because Mr. Penk has chosen to focus his efforts on only certain types of jobs, I find that he is intentionally unemployed. Therefore, income should be imputed to him.

[138] Ms. Lacoursiere concedes that Mr. Penk has a lower household standard of living than she does. He has had significant access costs because of travel from Germany to Canada and back, although as I have noted, it is not clear how he funds that travel. His wish to spend time with the children is understandable, however he still has an obligation to support them and doing so by having them in his care for a week or two here and there while he has been in Yellowknife is not an acceptable substitute for ongoing financial support.

[139] I want to pause here to note that another illustration of Mr. Penk's propensity to criticize illogically arose in submissions, when he criticized Ms. Lacoursiere for spending money on legal fees which he described as "withdrawing" money from the children. Ms. Lacoursiere has been financially supporting the children on her own for years, with no contribution from Mr. Penk; the rare time he has contributed to specific expenses do not count as support, nor do candy and presents. There is no evidence that the children have gone without in her home. The criticism is completely unjustified.

[140] Ms. Lacoursiere seeks both retroactive and ongoing child support. She provided a number of calculations, most of which I accept. I have also considered the test for retroactive support and the factors set out in *D.B.S. v. S.R.G.*; *L.J.W. v. T.A.R.*; *Henry v. Henry*; *Hiemstra v. Hiemstra*, [2006] SCC 37.

[141] I have decided not to make support retroactive to 2011. Although there are circumstances that would justify support being paid for that year, I take into account that the disruption in Mr. Penk's employment appears to have been because of a joint decision that he should come to Canada and that he spent much of his time during the year looking after the children.

[142] The calculations provided by Ms. Lacoursiere's counsel average Mr. Penk's income for 2012, 2013 and 2014 as \$35,658.00 yearly based on his earnings in Germany, converted to the Canadian dollar. Although some of the jobs Mr. Penk had were for substantially more income than that, I take into account that he never worked for a full year and I accept that \$35,658.00 is a fair figure and will impute that amount of income to him.

[143] For January and February of 2012, for one child, the Child Support Guidelines amount based on that income is \$644.00 (2 x \$322.00); for the remainder of 2012, the amount payable for two children is \$552.00, therefore \$5520.00 total.

[144] For the year 2013, the total amount of support for the two children is \$6624.00. For 2014, the same figure applies. On an ongoing basis, therefore, support will be ordered in the amount of \$552.00 per month commencing January 1, 2015, subject to adjustment if Mr. Penk's income increases.

[145] On the issue of hardship, I take into account Mr. Penk's arguments. I accept that his costs of exercising access are high. For each of the years 2012, 2013 and 2014, I will apply a credit of \$1200.00 to the retroactive child support, representing the cost of one return trip from Germany to Yellowknife, as shown by the invoice in evidence.

[146] On an ongoing basis, the same amount will be deducted from the support owing each year so long as Mr. Penk actually makes the return trip.

[147] I see no basis upon which to order that Ms. Lacoursiere contribute to Mr. Penk's costs of exercising access.

[148] Ms. Lacoursiere also asks that Mr. Penk pay his proportionate share of childcare expenses. She asks for his share to be set at 32% rather than the 24% it would be on a straight calculation. I have considered that, but in my view the straight calculation is more appropriate. The child care expenses owing are,

therefore, \$1569.00 for 2012 based on expenses of \$6539.00; \$1574.00 for 2013, based on expenses of \$6560.00 and \$648.00, based on expenses of \$2700.00 to April 30, 2014.

[149] From September 1, 2014 onward, until F. begins school in the public school system, Mr. Penk will also pay his proportionate share of expenses for the Montessori program based on an anticipated gross annual expense of \$8950.00. Mr. Penk's monthly amount will be \$179.00 based on his 24% share and on an ongoing basis, it will be payable on the 15th day of each month.

[150] The retroactive amounts owing by Mr. Penk are therefore as follows:

$$2012 - \$644.00 + \$5520.00 + \$1569.00 = \$7733.00 \text{ less } \$1200.00 \\ = \$6533.00$$

$$2013 - \$6624.00 + \$1574.00 = \$8198.00 \text{ less } \$1200.00 = \$6998.00$$

$$2014 - \$6624.00 + \$648.00 \text{ (January to April)} + \$716.00 \text{ (September to December)} \\ \text{less } \$1200.00 = \$6788.00$$

Total for 2012 to 2014 inclusive: \$20,319.00

[151] These figures are all in Canadian dollars. Should Mr. Penk in the future earn income in Germany, it will be appropriate to apply the preceding two years' average exchange rate to that income to account for fluctuating exchange rates and adjust child support: *Saunders v. Saunders*, 2011 NSCA 81.

[152] Mr. Penk indicated that the parties had not agreed on a method for payment of child support when that was raised while he was in Germany. I direct that Ms. Lacoursiere provide him with details as to how he should make the payments to her if that is still an issue.

[153] I also order that Mr. Penk provide Ms. Lacoursiere with a copy of his income tax return and any notices of assessment, or the German equivalent of same, by June 1 in each year for the preceding taxation year, commencing June 1, 2016.

Change of Name

[154] Mr. Penk wishes to have the children's last name changed to a hyphenated name, either Penk-Lacoursiere or Lacoursiere-Penk. He expressed no preference as to which it should be. He is of the view that it is important that the children carry his name for identification purposes and as a link to his family.

[155] He asks that the Court compel Ms. Lacoursiere to have the children's names changed. As I understand it, she opposes the change and she also raises the fact of Mr. Penk's German residence as an obstacle.

[156] I am not persuaded that I can compel Ms. Lacoursiere to apply under the *Change of Name Act*, S.N.W.T. 2007, c. 12 ("the Act"), to amend the children's last name. Mr. Penk did not provide any authority for the proposition that I can do so, although he did argue that the Court can dispense with Ms. Lacoursiere's consent to a change of name.

[157] Section 7(2) of the Act provides that a person who meets the requirements of subsection 6(1) may apply to the Registrar General for a change of name for a child in his or her lawful custody. The children are not in Mr. Penk's lawful custody, so that precludes him from applying. Nor does he meet the requirements as to residence in the Northwest Territories and status in Canada, and the Registrar can only waive the Northwest Territories part of those requirements.

[158] Even if I have jurisdiction to change the name of the children as incidental to the custody and access proceedings, which was not argued before me, and which I am not convinced is correct, it could only be done if it was found to be in the best interests of the children. At their young ages, I am not persuaded that there is any reason why changing their names would serve their best interests. It may not in fact be in E.'s best interests to have his name changed given the conflict he appears to be experiencing about his relationship with his mother. To change the last names of the children may also give rise to issues if they travel and for all the reasons already expressed in this judgment, I am not confident that any such issues would be efficiently resolved or resolved without conflict between the parties. Therefore, I will not order that the names be changed or that Ms. Lacoursiere apply for a change or that her consent to a change be dispensed with.

Costs

[159] Ms. Lacoursiere seeks costs on a solicitor client basis. She says that although she initiated the court proceedings in 2012, the proceedings have been prolonged and complicated by Mr. Penk's conduct and the way he has used the proceedings.

[160] The general rule in litigation, including family cases, is that the successful party receives some contribution to their legal costs from the other party.

[161] The first question is whether Ms. Lacoursiere can be characterized as the successful party. She was obviously successful on the issue of custody. She was not successful in obtaining an order terminating access, although access has been restricted considerably as opposed to what Mr. Penk was asking. Custody and access were the two main issues in this case and took up the majority of trial time, with the focus being on whether a joint or shared custody regime should be in place. In my view, Ms. Lacoursiere was in large part the successful party and should receive some contribution to her costs.

[162] Solicitor client costs are generally awarded only in rare and exceptional instances to mark the court's disapproval of the conduct of a party: *Williams v. Steinwand*, 2015 NWTSC 3. I take into account in this case that Mr. Penk is not legally trained and is basically unfamiliar with the Canadian legal system, although during the course of these proceedings he has shown that he is aggressive about using the system and is not at all timid or reluctant to do so.

[163] I also take into account that Mr. Penk was sometimes disrespectful of both Ms. Lacoursiere's lawyer and the children's lawyer, despite both of them having been as cooperative as they reasonably could be with him, given their duties to their clients. The main example of this is the Hitler email. He has sent many emails to counsel for Ms. Lacoursiere, some copied to the children's lawyer; while some of them are straightforward, others are demanding and lecturing and go far beyond what he needs to communicate to counsel. His focus on minute and, in the larger scheme of things, unimportant detail (such as the children's drawings, their clothing, Ms. Lacoursiere's relationship with A.'s father) did prolong the trial beyond what should have been sufficient for a case of this nature.

[164] I am not, however, persuaded that this is a case for solicitor client costs, although the usual tariff is not adequate in the circumstances of this case.

Although no documentation of Ms. Lacoursiere's legal fees was provided, her counsel's estimate is that they exceed \$60,000.00, which is certainly not an excessive amount for an 11 day trial along with numerous case management conferences and applications.

[165] To avoid having costs taxed, I will order a lump sum amount. All considered, I order that Mr. Penk pay Ms. Lacoursiere costs in the sum of \$25,000.00.

Summary of orders

[166] The orders I make are as follows:

1. Ms. Lacoursiere will have permanent sole custody of the children and they will reside with her;
2. Mr. Penk will have access to the children as follows and on the following conditions. These terms and conditions will apply whether he resides in Yellowknife or elsewhere:
 - a) Mr. Penk will have access from July 15 to 31 each year commencing with July 2015. Access will commence at 9:00 a.m. on July 15 and end at 5:00 p.m. on July 31.
 - b) Mr. Penk will have access for the school Christmas break every second year, commencing with Christmas 2016 and continuing in each even-numbered year thereafter. Access will commence at 9:00 a.m. on the first day of the access period and end at 5:00 p.m. on the last day of the access period.
 - c) Mr. Penk will have access for the school spring break every second year, commencing with school spring break 2016 and continuing in each even-numbered year thereafter. Access will commence at 9:00 a.m. on the first day of the access period and end at 5:00 p.m. on the last day of the access period.
 - d) In exercising his access, Mr. Penk shall stay with the children at the home of Irene Golchert or Jim Golchert if they make their homes available to him, and so long as they reside within a 120 kilometer

radius of Yellowknife; he will advise Ms. Lacoursiere which of those locations he is staying at with the children. If neither of the Golcherts make their home available to Mr. Penk, he will give Ms. Lacoursiere 40 days notice of where he intends to stay with the children, along with the complete address, landlord's or owner's name and contact information.

e) If Mr. Penk remains in or becomes a resident of Yellowknife, he will have access to the children on the third Sunday of each month from 9:00 a.m. to 4:00 p.m. commencing May 17, 2015, except in the months of July, August and December and the month in which the school spring break falls, and except if the Sunday is Mother's Day in Canada.

f) Mr. Penk will exercise all access within a 120 kilometer radius of the City of Yellowknife and will not remove the children from within the same area.

g) Mr. Penk is not to permit any contact at any time between the children and Ronald Tecsny, nor is he to allow the children to be in the presence of Mr. Tecsny or allow them to be on property owned or rented by Mr. Tecsny.

h) Ms. Lacoursiere will drop off the children at the beginning of access, and pick them up at its end, at the home where Mr. Penk is staying unless otherwise agreed to by the parties. Ms. Lacoursiere will not be accompanied by Mr. Collins on these occasions.

i) Prior to the commencement of each access period referred to in paragraphs a), b), c) and e) above, Mr. Penk will deposit his passport with the R.C.M.P. in Yellowknife and will not retrieve it until the access period is over.

j) During the access exercised by Mr. Penk, he will decide whether to take the children to any extra-curricular activities that have been scheduled for them by Ms. Lacoursiere.

k) During the access exercised by Mr. Penk, Ms. Lacoursiere may attend extra-curricular activities of the children, but is not to be accompanied by Mr. Collins.

l) In the event of chance encounters between Mr. Penk and the children outside of an access period, he is to be permitted to greet them and speak to them, however he is not to delay or interfere in what they are doing at the time and he is not to give them candy or gifts. If, however, Mr. Collins is with the children, Mr. Penk will not approach them or attempt to engage them in conversation, and may only greet them.

m) Neither parent is to criticize the other in the presence or within hearing distance of the children.

n) Mr. Penk is not to attend at the children's schools or daycares. Ms. Lacoursiere will provide authorization to the children's schools to provide Mr. Penk with copies of school reports.

o) Mr. Penk will not communicate with Ms. Lacoursiere directly or indirectly except as required by the terms of this order relating to child support and except to advise where he will stay with the children as required by this order, to make any necessary adjustments to drop off and pick up times, and to advise of illness or injury of either of the children. At pick up and drop off times he may communicate with her only as necessary to accomplish the pick up and drop off.

p) Skype communication between Mr. Penk and the children will be solely at the discretion of Ms. Lacoursiere. Mr. Penk shall not make requests to Ms. Lacoursiere or to the children or anyone else to communicate by skype with the children. If Ms. Lacoursiere contacts Mr. Penk to arrange skype, she is to propose a reasonable time when it can take place, taking into account any time difference and the hour of the day, and ensuring that Mr. Collins will not be present during it.

q) Mr. Penk may communicate with the children in writing and by video, however Ms. Lacoursiere shall be entitled to review all such communications before giving them to the children. If she is not satisfied of their suitability, she may decline to give them to the

children and in that case, shall return them to Mr. Penk. The same conditions shall apply to any gifts that Mr. Penk sends to the children. Ms. Lacoursiere will have discretion to determine how and whether the children will respond to Mr. Penk in relation to any such communications and gifts.

r) Mr. Penk will not communicate at all with members of Ms. Lacoursiere's family, including Mr. Collins. He will not communicate with Ms. Lacoursiere's friends or work colleagues regarding Ms. Lacoursiere, Mr. Collins or the children.

s) Neither party is to file any further application, notice of motion or affidavit in this action for a period of two years from the date of this judgment, except with leave of the Court. This paragraph shall not, however, apply to counsel for the children, who may apply to the Court as she may deem necessary.

t) If Ms. Lacoursiere plans to move from Yellowknife and take up residence elsewhere with the children, she will give Mr. Penk 60 days notice in writing of her intention and the full address where the children will be residing, along with an email address.

u) Mr. Penk shall not take the children to Germany.

3. Mr. Penk will pay retroactive child support and contribution to childcare expenses for the years 2012, 2013 and 2014 as follows:

2012 - \$644.00 + \$5520.00 + \$1569.00 = \$7733.00 less \$1200.00
= \$6533.00

2013 - \$6624.00 + \$1574.00 = \$8198.00 less \$1200.00 = \$6998.00

2014 - \$6624.00 + \$648.00 (January to April) + \$716.00 (September to December) less \$1200.00 = \$6788.00

Total for 2012 to 2014 inclusive: \$20,319.00

4. Mr. Penk will pay ongoing child support in the amount of \$552.00 per month on the first day of each month commencing January 1, 2015,

subject to adjustment if Mr. Penk's income increases. Each year, he may deduct from the yearly amount the sum of \$1200.00 provided that he has taken a trip Germany to Yellowknife return for the purpose of exercising access.

5. Mr. Penk's monthly contribution to childcare expenses commencing January 1, 2015 until F. is in the public school system will be \$179.00 payable on the 15th day of each month.
6. Ms. Lacoursiere will provide Mr. Penk with details as to how he can make child support payments to her.
7. Mr. Penk will provide Ms. Lacoursiere with a copy of his income tax return and any notices of assessment, or the German equivalent of same, by June 1 in each year for the preceding taxation year, commencing June 1, 2016.
8. Mr. Penk will pay Ms. Lacoursiere her costs in the lump sum of \$25,000.00.
9. Mr. Penk's application to compel Ms. Lacoursiere to apply to change the last name of the children is dismissed, as is his application to dispense with her consent to the change of name, and the children's last name shall not be changed.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT, this
30th day of April, 2015.

Counsel for the Applicant: Margo L. Nightingale

Counsel for the Children: Karen Wilford

Marco Penk, self represented

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

MARIE-SOLEIL LACOURSIERE

Applicant

-and-

MARCO PENK

Respondent

MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE V.A. SCHULER
