

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARIE-SOLEIL LACOURSIÈRE

Applicant

-and-

MARCO PENK

Respondent

MEMORANDUM OF JUDGMENT

[1] Ms. Lacoursière applies for interim child support and extraordinary expenses. Mr. Penk applies for an order allowing him to have interim access to the children in Germany in August of 2014, rather than exercising access in Canada. A hearing to determine custody, access and support is scheduled for September 29, 2014.

ACCESS

[2] The parties have already been before the Court on custody and access issues on a number of occasions and many orders have been made.

[3] The children are aged six and two. They live with Ms. Lacoursière in Yellowknife. Mr. Penk lives in Germany and to date he has exercised access in Canada, primarily in Yellowknife.

[4] The access exercised to date has been fraught with a very high degree of conflict with the result that the Court has been called upon to make orders allowing it to be managed very closely.

[5] Mr. Penk has recently obtained employment in Germany. He has not accumulated sufficient vacation leave to allow him to travel to Canada and exercise access here this summer. He also points out that he will have to come to Canada for the hearing in the fall of 2014.

[6] Mr. Penk proposes that he would pick the children up in Canada and take them to Germany for a period of thirty days in July and/or August of 2014. His work schedule is such that he would have two three-day weekends with the children during that time. While he is at work, the youngest child would participate in a structured day program in Düsseldorf offering art classes, sports and visits to museums, castles and radio and television stations. The older child would be registered in a bilingual (English and German) kindergarten.

[7] Mr. Penk submits that there will be many benefits for the children in being permitted to spend a month with him in Germany. They will have an opportunity to see him in day-to-day life and in his professional environment. It will expose them directly to German language and culture. They will be able to connect with extended family and learn more about their own heritage.

[8] Ms. Lacoursière opposes the motion. She argues there is too much uncertainty respecting the proposed arrangements, in particular, the details respecting child care. She is concerned about the effects on the children of being in such an unfamiliar environment for such a long period of time. She knows almost nothing about Mr. Penk's family in Germany and she knows nothing about Mr. Penk's accommodations. Finally, Ms. Lacoursière submits that access arrangements should permit her to have in-person contact with the youngest child after approximately five days.

[9] Ms. Wilford, representing the children through the Office of the Children's Lawyer, made submissions as well. She indicated that while there is a benefit in the children being able to spend time with Mr. Penk over the summer, the plan he has proposed carries with it serious issues that cannot be addressed on an interim basis. Some of these are the same as those identified by Ms. Lacoursière. Ms. Wilford also argues that the general lack of trust between Mr. Penk and Ms. Lacoursière exacerbates the seriousness of these issues.

[10] The test this Court must apply in determining this matter is whether it is in the best interests of these two children for access to occur in Germany as proposed by Mr. Penk.

[11] Mr. Penk finds himself in challenging circumstances. He lives in Germany and his children live here. He has a new job, which he needs, and but with that

come certain restrictions on his time and his ability to travel to Canada. The relationship he has with his children is important to him and he loves them very much. Based on the affidavit material, it appears the children enjoy spending time with Mr. Penk as well.

[12] The relationship Mr. Penk has with his children is, however, relatively new. This is not because of anything Mr. Penk has done deliberately. Rather, it is a product of all of the circumstances of the relationship between Mr. Penk and Ms. Lacoursière, including the significant geographic separation between them and, consequently, between Mr. Penk and the children. The children are also very young. The result is that Mr. Penk's relationship with his children is not as established as it might otherwise be.

[13] The arrangements Mr. Penk has made will accommodate him and his work schedule and they will allow the children to see him. However, what is proposed will also result in the children's routines being disrupted, which will be made more stressful by reason of being thrust into an environment that is wholly unfamiliar, culturally, linguistically and geographically, for an entire month. The only familiar thing that will be in the immediate vicinity is Mr. Penk and, as I noted, that relationship is relatively new.

[14] For these reasons I conclude that it would not be in the children's best interests to go to Germany this summer for interim access and therefore, Mr. Penk's application is dismissed.

CHILD SUPPORT

[15] Mr. Penk has not paid child support, nor contributed financially to expenses, since these proceedings began in 2012. In part, this was because he was unemployed; however, he has recently started a new job.

[16] Ms. Lacoursière seeks interim child support, starting on April 1, 2014 and a proportional share of special and extraordinary expenses. Mr. Penk opposes this, arguing that it will cause him undue hardship and restrict his ability to exercise access.

[17] The law in Canada requires parents to support their children financially. In determining the level of financial support, the Court is required by s. 59(4) of the *Children's Law Act*, SNWT 1997, c. 14 to follow the *Child Support Guidelines* enacted thereunder.

[18] Mr. Penk currently earns the equivalent of \$61,660.00 per annum. Based on this, he should be paying a *Guideline* amount of \$940.00 for the two children in basic support.

[19] There are certain exceptions to the requirement that the Court determine support according to the *Child Support Guidelines* including “undue hardship”. Where that is established, the Court may exercise its discretion to award child support in an amount different than what is in the *Child Support Guidelines*.

[20] A specific application is required for the Court to determine if undue hardship exists. The requirements are set out in s. 12 of the *Child Support Guidelines*. There are two steps. First, the paying parent must prove specific facts that establish undue hardship. A list of things that may constitute undue hardship is found at s. 12(2). These include unusually high access costs.

[21] The second step of the test requires the paying parent to prove that his or her household will have a lower standard of living than the custodial parent’s household unless the amount of support ordered is less than what is set out in *Guidelines*.

[22] While I am satisfied that Mr. Penk’s access costs are unusually high, given the parties’ geographic circumstances, he has not shown that his household will have a lower standard of living than Ms. Lacoursière’s, should he be required to pay the *Guideline* amount. Accordingly, Mr. Penk will be required to pay interim child support in the amount of \$940.00 per month. This will be effective April 1, 2014.

[23] A non-custodial parent may also be required to share in the special and extraordinary expenses for the children. These are set out in s. 9(1) of the *Child Support Guidelines* and include child care expenses and extraordinary expenses for extracurricular activities. Ms. Lacoursière has net yearly child care costs of \$3,936.00 and net yearly extracurricular expenses for swimming, hockey, soccer and squash in the amount of \$2,077.00.

[24] The amount of special or extraordinary expenses that each parent is required to pay is based on their proportionate share of their combined incomes. Ms. Lacoursière earns \$118,825.00 a year and, as indicated above, Mr. Penk earns the equivalent of \$61,660.00. Thus, his proportion of the parties’ combined income is slightly under 34%.

[25] It is reasonable to expect Mr. Penk to contribute to the net yearly child care costs and accordingly, he will be required to contribute to these in the amount of \$111.52 per month.

[26] Based on the information before me I do not find it appropriate to order Mr. Penk to pay a proportionate share of the other expenses proposed by Ms. Lacoursière.

[27] Many of the expenses itemized by Ms. Lacoursière, such as swimming lessons, squash, soccer and house league hockey, are normal recreational activities. The two hockey camps listed as costing approximately \$550.00 might be extraordinary *vis-à-vis* the other activities, but there is no evidence to explain why this is so.

[28] Finally, I note that Ms. Lacoursière's income is nearly double that of Mr. Penk and in light of what her actual income is, I cannot conclude these are "extraordinary" expenses within the meaning of that term in s. 9 of the *Child Support Guidelines*.

CONCLUSION

[29] Mr. Penk's application to exercise interim access in Germany is dismissed.

[30] Ms. Lacoursière's application for interim child support commencing April 1, 2014 in the amount of \$940.00 per month is granted. Her application to require Mr. Penk to pay a proportionate share of special expenses, namely child care, is granted and he will be required to pay \$111.52 per month, also commencing April 1, 2014, for these costs.

[31] Ms. Lacoursière's application for Mr. Penk to pay a proportionate share of the costs of extracurricular activities is dismissed.

K. Shaner
J.S.C.

Dated in Yellowknife, NT this
30th day of May, 2014

Counsel for Ms. Lacoursière:	Margo Nightingale
Counsel for the Children:	Karen Wilford
Marco Penk:	Self-Represented

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