

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

T. (K.M.)

Petitioner

-and-

P. (J.M.P.)

Respondent

MEMORANDUM OF JUDGMENT

[1] This is an application by the Respondent father for an order granting him more access to the parties' two children and removing the condition that access be supervised.

I. BACKGROUND AND EVIDENCE

[2] This case has been marked by significant conflict. There have been numerous Court appearances. Between them the parties have submitted over thirty affidavits. Several orders have been made respecting parenting time, property and support. This was the first hearing where oral testimony was presented. Oral testimony was required because the conflicts in the affidavit evidence are significant, making it impossible to draw reliable conclusions without the benefit of hearing the evidence and having it tested through cross-examination.

[3] Evidence was provided by the Respondent, the Petitioner, the Respondent's former partner, R.P., the Petitioner's father and two former access supervisors, J.H. and G.R. For the most part, the evidence is straightforward. There are certain points where the evidence of the Petitioner and the Respondent is in conflict, however, and I have had to make credibility and reliability findings to resolve the conflicts and determine the facts.

[4] The parties began cohabiting in 2009 and married in 2014. They have been separated since the end of March of 2016. They are both in new relationships. The Petitioner is now engaged and her fiancé lives in British Columbia. The Respondent's new partner, M.P., has recently moved in with him.

[5] The parties have two daughters, E., who is seven and L., aged two. The children have been in the Petitioner's day-to-day care since separation. The Respondent has had supervised, in-person access to both children at specified times, as well as telephone access with E. The access times and places have been modified by the various Court orders from time to time since the proceedings began, but the supervision condition has remained throughout.

[6] The Respondent also has a son, M., from a relationship with R.P. Until relatively recently, he shared day-to-day care of that child with his former partner in two-week blocks. His access with M. is now subject to a supervision requirement.

[7] During the early part of their relationship and before L. was born, both the Petitioner and the Respondent worked shiftwork in Yellowknife. The Petitioner worked as a nurse and the Respondent worked for an expediting company. Sometimes the Petitioner's shifts fell on nights and weekends and during those times the Respondent looked after the children on his own.

[8] The Petitioner does not deny that the children were left in the Respondent's care from time to time while she worked, but she says she was the primary caregiver. I accept the Petitioner's evidence on this. I hasten to add this appears to be a result of the role each of the parties fell into during their relationship and not because of an unwillingness on the Respondent's part to participate in parental responsibilities.

[9] The Respondent started working at a mine at some point. This took him out of Yellowknife to the mining camp for two weeks at a time. The parties communicated by telephone and text message while he was away.

A. Violence During the Relationship

[10] The parties' relationship became particularly troubled in the months leading up to their separation. The Respondent had taken a vacation to Las Vegas and engaged in sexual activity with a woman he met there. This resulted in significant stress in the marriage and played a prominent role in arguments.

[11] The Petitioner gave evidence about a number of verbal altercations which escalated into physically violent confrontations with the Respondent as the aggressor. The Respondent testified that the Petitioner was violent with him throughout their time together and that she was often the instigator of altercations. He said that among other things, the Petitioner has hit him with objects such as a kitchen spatula. He stated that he only ever exerted physical force to restrain her so that she did not hurt him, but never to the point where it was harmful to her.

[12] Evidence about specific incidents is set out in more detail below and for convenience, the incidents are identified by time period.

August 2015

[13] The Petitioner and Respondent travelled to Newfoundland with E., L. and M. for a family holiday in August of 2015. While there, the Petitioner and Respondent attended a wedding on Bell Island. The children stayed overnight with the Petitioner's parents.

[14] The Petitioner testified that the Respondent became angry with her because she was dancing "provocatively" at the wedding with a group of friends. They began arguing about this when they returned to the bed and breakfast where they were staying the night. The Petitioner said she got up to leave. She was talking to her sister on her cell phone and she says the Respondent "went haywire". He was suddenly on top of her, restraining her and he then blocked the door so she could not exit the room. He pushed her to the floor and she kicked his shin. He slapped her leg and she hit him with her telephone, cutting his lip. She managed to get to the washroom and lock herself in there. She said the Respondent eventually calmed down and they both went to bed.

[15] In his testimony the Respondent said the Petitioner initiated the violence. Specifically, he said the two had been arguing and that he told the Petitioner he was going to bed. While his back was turned, the Petitioner suddenly crawled on top of him and smashed her cell phone into his lip.

October 2015

[16] On this occasion, the Petitioner said she had been out with friends. She accepted an offer of a ride home from a male friend, T. Once they arrived on her

street they remained in the vehicle, parked outside the parties' home, talking. The Petitioner said she had opened the door of the vehicle and the interior light was on. [17] The Petitioner testified that she then saw the Respondent coming down to the street through the front yard. She described him as approaching "with a force" and "coming right at" them. The Petitioner's friend opened his door to get out of the vehicle. The Respondent started to wrestle with him, accusing him of "fucking my wife". The Respondent then left momentarily. T. started to get back into the vehicle. Suddenly, the Respondent reappeared, this time carrying a piece of 2 x 4 wood. He used this to repeatedly hit and damage the vehicle. He then attacked T. with it.

[18] The Respondent finally went back into the house. The Petitioner said she was worried about E. and L., who were in the house sleeping, so she did not leave with T. following the Respondent's attack. She left the truck and tried to get into the house but the Respondent had locked the door. The Respondent then came outside and started screaming at her.

[19] Someone called the RCMP, who arrived at the home. The Petitioner said she had the impression that they thought initially she was the instigator. She testified that she "covered" for the Respondent and finally convinced them that all was fine. Nevertheless, the police ordered the Respondent to leave, which he did, and they stayed with the Petitioner until a friend came over.

[20] Once the police left, however, the Respondent returned. He remained parked outside of the house in his truck and he began relentlessly texting aggressively-worded messages to the Petitioner. He sent over 75 text messages to her in the course of approximately an hour. He accused her of engaging in sexual activity with T. He called her names. He swore at her. He told her that M. would be "heartbroken" and that M. was no longer her son. The Petitioner responded intermittently, sending back 4 text messages. Mostly, she asked the Respondent to stop. The text messages are reproduced in an affidavit the Petitioner swore in these proceedings on April 1, 2016.

[21] The Petitioner said the Respondent returned to the home the next morning. Unfortunately, the events continued where they left off. E. and L. were now awake. The Petitioner was in the shower in the parties' *en suite* bathroom. The Respondent came into the bathroom and started apologizing. He then asked her what had happened the previous night. Things escalated again. The Respondent demanded the Petitioner "unlock" her cell phone. When she refused, he grabbed her arm while she was still inside the shower and he tried to use her hand to

“swipe” the phone open. The Petitioner said that the Respondent became more physically aggressive and she wound up on the floor of the tub. The Respondent then shoved her face into the water which had begun to pool in the tub. She hit her nose and it started to bleed. She said the Respondent then suddenly stopped, put his hands in the air, uttered an expletive and left the room.

[22] The Petitioner said that E. was in the parties’ bedroom when she came out of the shower and based on comments E. has made to the Petitioner since that time, she believes E. heard the entire incident. The comments include E. telling the Petitioner to ensure she locks the door to the bathroom when she takes a shower.

[23] The Respondent recounted this incident during his testimony as well as in an affidavit he swore on April 14, 2016. He says he saw the Petitioner and T. pull up in front of the house. He says he saw them sitting in close proximity and that they had their arms around each other. At paragraph 65 of that affidavit he stated “I know what I saw and I was upset. I did hit [T.] as they were carrying on right outside our home”.

[24] On cross-examination the Respondent confirmed he had confronted the Petitioner’s friend. When asked if he remembered hitting the friend with a piece of wood he replied “I remember defending myself after he was coming after me”. He did not explain why he omitted from his affidavit the suggestion that he was defending himself. The Respondent also said that he paid for the damage to the vehicle.

[25] The Respondent testified that following the altercation with the Petitioner’s friend, he was on the telephone with a counselling service available on an emergency basis when the Petitioner came up behind him, ripped his shirt and attacked him. He said it was the counsellor who called the RCMP and that when they arrived the Petitioner told them everything was fine and they left.

[26] The Respondent offered no evidence about what happened the following morning.

November 2015

[27] The Respondent stated the Petitioner came home one night when he was in bed. He said she wanted to discuss his infidelity in Las Vegas. He said she proceeded to jump on him, pin his arms down and hit him in the face. He said he was left with visible scratches which bled. He said L., who was then under a year,

was on the bed with him when this occurred. He managed to free himself. He placed L. in the middle of the bed with pillows around her. He left the house and went first to a friend's and then to his parents' home for the night.

[28] The Respondent also described this event at paragraph 54 of his affidavit of April 16, 2016, but makes no mention of L. being on the bed in that version.

[29] The Petitioner's recollection of this event is very different. She said she had been at a friend's house (the house the Respondent says he went to after the altercation) and she walked home. The Respondent was in bed when she got home and she got into bed with him. The Respondent indicated he wanted to have sex. She told him "no". Nevertheless, he tried to take off the shorts she was wearing. She says she panicked and got out of the bed. The Respondent then threw her down on the bed parallel to the headboard. She says she was clawing and scratching at him to try and get away and she says she scratched him on the face. The Respondent then got up and left. The Petitioner did not indicate that L. was in the bed during this altercation.

December 2015

[30] The Petitioner testified that on this occasion she was in the parties' bedroom, sitting on the floor with her back against the bed. The family had just finished supper. M. was downstairs playing with a friend. E. was in bed. The Petitioner said the Respondent suddenly appeared in the doorway with L. in his arms. He had been angry all day. The Respondent told her he wanted to "talk" but she did not want to. He became angry.

[31] The Petitioner told the Respondent to put L. down and he put her on the bed. The Respondent then knelt down with a knee on either side of the Petitioner and pinned her arms down. She said he was screaming at her about breaking up their family. She managed to free one of her hands and she jabbed him between the legs. She said he "lost his mind" as soon as she did that. She said he then pinned her again and started "head butting" her on her head, chest and stomach. She managed to get out from under him and she climbed onto the bed. The Respondent threw a laundry basket at her.

[32] The Respondent then opened a bottle of the Petitioner's prescription sleeping/depression medication and he took three of the pills. He asked her how many it would take to kill him. He then poured a bunch of the pills out into his hand and went into the kitchen. The Petitioner followed him and observed the Respondent pour a glass of water. She asked him to give her the pills. At first he refused. The Petitioner told him she would have to call an ambulance. He then

took the pills out of his pocket and handed them over to her. She put them back into the bottle and hid them under the mattress in the bedroom.

[33] Things continued to escalate. The Respondent followed the Petitioner into the bedroom. He told her she would never see the children again, that she was “breaking up” the family and other things.

[34] The Petitioner was afraid. She says she called out to M. from the bedroom because she knew he had a telephone and the Respondent had taken hers. She said she regretted it instantly because it served to draw M. into the argument. The Petitioner said the Respondent made a number of inappropriate statements to M., including telling him the Petitioner did not love him, that he was not her son and that she did not want him. The Respondent told M. they had to “go” and when M. refused to leave with the Respondent, the Respondent accused the Petitioner of turning the children against him. At one point he grabbed M.’s arm. M. was crying.

[35] The Petitioner says the respondent also made lewd comments to her about his infidelity and then started making a thrusting motion against a pole. He told the Petitioner he would kill her.

[36] Eventually, the Respondent calmed down and fell asleep on the couch until the next morning. The Petitioner later learned from him that he had taken other medication in addition to what she had seen him ingest.

[37] The Petitioner was asked if she told M.’s mother, R.P., about what had happened. She responded she did not because was afraid she would not be able to see M. again if she said anything.

[38] The Respondent recounted this event at paragraph 66 of his April 16, 2016 affidavit:

66. There was an incident in December. [M.] did see and hear us and for that I am truly sorry. The incident again arose as a result of the Petitioner’s anger at me with her punching and kicking at me with me trying to prevent her from hurting me by grabbing her arms.

[39] The Respondent did not offer additional evidence during his examination-in-chief, but on cross-examination he denied that he had been physically aggressive with the Petitioner on this occasion.

March 2016

[40] The catalyst that ultimately led the Court to impose supervised access can be traced to events that occurred immediately before separation.

[41] Shortly before they finally separated, the Petitioner and the Respondent had some hostile telephone conversations while he was away at the mine. The Petitioner testified that when she told him over the telephone she was filing for a divorce the Respondent threatened her. Among other things, he told the Petitioner he would kill her if she took the children; that he would take the children; and she would not see the children again. The Petitioner applied for and obtained an Emergency Protection Order (“EPO”) against the Respondent.

[42] The Respondent was asked about these communications during the hearing. He said he had some telephone conversations with the Petitioner while he was in camp that April but that he did not threaten her in any way.

[43] The Respondent was served with the EPO as well as documents relating to the divorce proceedings immediately upon his return to Yellowknife from the mine. He reacted immediately and poorly. He sent the Petitioner a number of threatening text messages, one of which said “I’m getting those kids back and your (*sic*) never seeing them again bitch”. Another stated “One of us will die before I fucking let you get away with this. Your (*sic*) not taking my money.” These are appended to the affidavit the Petitioner swore on April 8, 2016. Criminal charges were laid and ultimately, the Respondent pled guilty to uttering threats. In January of 2017 he received a probationary sentence of one year.

[44] When asked about the text messages at the hearing, the Respondent admitted they were harmful and he said he regretted sending them.

[45] It is convenient at this point to note that in an April 1, 2016 affidavit the Petitioner swore in support of an application for supervised access and other relief she stated the Respondent had on occasion “punched” her. On cross-examination it was put to her that the Respondent had not actually punched her at any time. She agreed, stating he had never “closed fist” punched her. Her explanation for deposing to this was that she “was trying to escape” from the Respondent and she was not paying attention to the word “punch” in the affidavit.

Incidents following Separation

[46] There is evidence that the relationship between the parties remains difficult.

[47] On one occasion the Respondent accused the Petitioner of swerving to his side of the road while the two were driving toward one another on Borden Drive. He contacted the RCMP about it. The RCMP, in turn, contacted the Petitioner. The Petitioner recalled this incident, but said she did not swerve over to the Respondent's side of the road. She stated she had L. in the vehicle with her when she encountered the Respondent and she would not have endangered her. No charges were brought against the Petitioner.

[48] The terms of the Respondent's probation order included a restriction on contacting the Petitioner or attending at her residence and so the children were usually picked up for visits by a supervisor. There was a period of time, however, when the parties were using a supervisor who did not have access to a vehicle. In the circumstances, the Petitioner agreed that the Respondent could drive the supervisor to her home. It was a condition of this agreement that the Respondent would remain in the vehicle while the supervisor collected E. and L. and he would not engage with the Petitioner in any way. These arrangements were made through the parties' lawyers.

[49] During one such pickup in May of 2017, the Respondent and the supervisor arrived twenty minutes early. Not surprisingly, the children were not ready. The Petitioner asked through the supervisor that she and the Respondent leave and return at the appointed time but the Respondent and supervisor remained. The Respondent stayed in his truck and the supervisor stood outside. The Petitioner observed them through her window. The Petitioner said the Respondent appeared to be recording images of her with his cell phone. He also made gestures for her to "hurry up" and he gave her "the finger". The Petitioner took a picture of the Respondent doing this and the image is appended to an affidavit she swore on July 10, 2017.

[50] The Petitioner indicated she withdrew her agreement to allow the Respondent to accompany the supervisor to pick up the children following this incident and so the Respondent's partner, M.P., started to drive to the Petitioner's residence with the supervisor to pick up the children. On one occasion, the Petitioner observed the Respondent hiding in the back of the vehicle M.P. was driving during a pick up. The Respondent does not deny this, nor was any explanation offered.

[51] The Respondent's new partner, M.P., created a Facebook account under the name "Brittany Spence". She swore an affidavit in which she indicated she used the Facebook account to contact the Petitioner's daycare provider, posing as a

parent seeking daycare. She also contacted the Petitioner using the account. M.P. used the Facebook account to obtain information about the daycare provider's rates, among other things. The Petitioner's need for full-time daycare has been a point of contention between the parties. The Respondent testified that he knew about the Facebook account but that he did not know who had created it, nor that M.P. had used it to contact the Petitioner, until later. He said it was M.P.'s idea. His testimony suggests he feels this was an appropriate action for M.P. to take.

[52] The Respondent was asked about steps he has taken to address his own "anger" issues in the time since the parties have separated. The Respondent testified he has participated in two anger management courses. One was conducted over the telephone. The other was an in-person program in Edmonton. He says he found them helpful, although he also feels he did not then, nor does he now, require help in managing anger. He said took the courses because he was under the impression he would not be able to see his daughters unless he did so.

B. Evidence Respecting the Respondent's Interaction with the Children

[53] The Petitioner testified there were a number of occasions when the Respondent engaged in inappropriate conduct with both E. and his son, M. Specifically, she testified that: (1) the Respondent pushed E. down a hallway in an overly aggressive manner; (2) on another occasion he "threw" an iPad at her; (3) he yanked her out of her car seat by the arms; (4) he applied hydrogen peroxide to E.'s gums while she had a tooth infection; (5) he slapped M. in the back of his head at the dinner table because he was not eating fast enough; (6) he has belittled M. and called him demeaning names in reference to a bowel condition M. has; (7) he has made inappropriate comments to M. and to E. about matters related to custody and access or he allows others to do so; and (8) he forcefully dragged M. out of a play structure and carried him into the Petitioner's parents' house by the back of his neck while the parties were vacationing in Newfoundland.

[54] The Respondent denied ever being violent with any of the children.

[55] With respect to the pushing incident with E., the Respondent says he was trying to get her to change her clothes, which she was resisting. He says he put his hands in front of his legs and made a pushing or shoving motion in a manner meant to encourage her to move forward, but that he did not push her in a violent manner. The Petitioner indicated her concern with this event was not that the Respondent intended to, or did in fact, hurt E. Rather, she was concerned that he did not care if his actions wound up hurting E.

[56] With respect to the incident with the iPad, his evidence was that he was playing a game on it with E. when the Petitioner tried to involve him in a conversation with guests in the room. He did not want to be involved in the conversation and wanted to leave the room, so he placed the iPad on E.'s lap. He denies that he threw it at her. During cross-examination the Petitioner conceded that the Respondent may have thrust the iPad at E. rather than actually *throwing* it at her.

[57] The Respondent denied he ever removed E. from her car seat in a manner that was violent, rough or otherwise inappropriate.

[58] With respect to the dental issue, the Respondent says that he discovered during a visit with E. that she had a number of her teeth removed. During a subsequent visit he noticed her gums were swollen and they appeared to be infected. The Respondent and his partner conducted an internet search and determined the best course of action would be to cleanse the infected areas with a cotton swab dipped in hydrogen peroxide. He then applied a topical numbing ointment to her gums.

[59] The Respondent denied calling M. names but stated "I've said he's being a little wimp or something . . ." It was put to him on cross-examination that he called M. by a derogatory term as a result of a health issue related to M.'s bowels. He denied this.

[60] One of the key concerns expressed by the Petitioner is that the Respondent will say inappropriate things to E. about the Court proceedings. The Petitioner feels this will cause psychological harm to both children, particularly E. because she is older.

[61] The Respondent testified that he does not bring up matters about his relationship with the Petitioner or the Court proceedings with E., nor does he discuss them in her presence. From time to time he says E. herself raises issues that touch on these proceedings and that he responds appropriately, telling her it is something her parents can address and that she should not be concerned about it. He admits that he feels the urge to respond and give her his version of events, but he does not. He recalled that during a visit over the summer, E. said words to the effect that she was required to tell the Petitioner everything that is said during the visits. The Respondent says he was afraid of mishandling the situation, so he did

not get into anything with E. about it, other than to say it was not something she should worry about.

[62] The evidence respecting inappropriate comments that the Respondent has made to M. or made in his presence has been summarized already and need not be repeated here.

[63] The incident where the Respondent removed M. from the play structure was described by the Petitioner. She said they were at her parents' home in Newfoundland. Her parents had rented a "bouncy castle" play structure and M. and E. were playing in it. At some point M. started kicking at E. inside the structure. The Respondent saw this and entered the play structure. The Petitioner said the Respondent dragged M. out and took him into the house while holding him by the back of his neck and his arm up against his back. She said the Respondent was screaming and swearing at M. The Petitioner intervened when the Respondent and M. entered the house. She stated that the Respondent left marks on the back of M.'s neck.

[64] The Respondent described the event differently. He said he had removed M. from the play structure in an appropriate manner and that he then gave him a "stern talking to" because he had been very rough with E.

[65] The Petitioner's version of this event was corroborated by her father's evidence.

C. Evidence Respecting Supervision

[66] The supervision requirement has been challenging. The parties have had at least seven supervisors. All but one, who was deemed unsuitable and removed by the Court, have quit for various reasons.

[67] The Petitioner's aunt was the first supervisor. A number of subsequent visits were arranged but the Petitioner's aunt indicated she did not wish to supervise any further visits. The Respondent then had access with the children at the Centre for Northern Families, which provided supervision on its premises. This continued until they were able to retain another supervisor.

[68] J.H. is a friend of the Respondent's family who was one of the first supervisors the parties used. The Petitioner objected to her continuing as a

supervisor, however, as she questioned J.H.'s understanding of her role and her objectivity.

[69] J.H. gave evidence at the hearing. Until quite recently, she had also supervised the Respondent's visits with M. and so she has had a number of opportunities to observe the Respondent with the two girls when their visits coincided with M.'s. She said she noticed nothing outside the realm of ordinary parenting. She described the Respondent interacting with all of the children in various activities in a positive and appropriate manner. She said she has not witnessed the Respondent having inappropriate conversations with the children. She also indicated that she observed both the Respondent's mother and his new partner interacting with the children and that she had no concerns with their conduct.

[70] The parties were able to retain two more supervisors over the summer and early fall of 2017. In one case, the supervisor had to quit because of other employment commitments. In the other, the supervisor quit following an access visit over the Labour Day weekend. The supervisor had noted in her report that the Respondent's mother and his partner M.P. made statements to E. that she had to "hurry up" or else the Petitioner would not allow her to have further visits. The Respondent contacted the supervisor and challenged her on whether the comments were made. It was following this that she tendered her resignation.

[71] G.R. is another former supervisor who gave evidence at the hearing. She is a friend of the Petitioner's aunt. She supervised only two visits and quit because the Respondent would not comply with her rule (and not a court-imposed rule) that there would be no other adults present when she supervised the Respondent and the children. G.R. testified that during the brief time she observed the Respondent with E. and L. he engaged in appropriate activities with them and she did not observe any conduct that caused her to be concerned.

II. LEGAL FRAMEWORK

[72] The overriding principle in deciding any issue related to custody and access is the best interests of the children. Supervised access is an exceptional condition for a court to impose. It should be imposed sparingly, only where the Court is satisfied it is necessary for the child's physical or emotional well-being. It is self-evident that the presence of a third party, even if it is a close family friend or relative, necessarily limits the privacy and intimacy traditionally associated with parenting. The parent cannot focus solely on the child and the child may be

distracted by the supervisor. Requiring a supervisor be present adds another burden to both parents who must find and sometimes pay for a suitable and trustworthy supervisor whose schedule lines up with their own.

[73] In *DS v RTS*, 2017 NSSC 155, 2017 Carswell NS 408, Justice Theresa Forgeron summarized the legal principles to be applied in determining whether supervision should be imposed. They provide a useful framework for the analysis I must conduct in this case. They are reproduced below:

- The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown.
- Proof of harm is but one factor to consider in the best interests test.
- The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.
- The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of maximizing contact between the child and each parent, provided such contact is in the child's best interests.
- The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.
- An order for supervised access is seldom seen as an indefinite or long term solution.
- Access is the right of the child; it is not the right of a parent.
- There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.

DS v RTS, supra, para 29

[74] An order for supervised access may be imposed in a variety of circumstances, including where children require protection from physical, sexual or emotional abuse; where a parent is being reintegrated into the child's life following a long absence; where there are substance abuse issues; and where there are clinical issues involving the access parent. Supervised access should not be imposed only to provide comfort for the other parent. *DS v RTS, supra*, para 30.

III. ANALYSIS

[75] As a starting point, it is necessary to resolve the conflicts in the evidence of the Petitioner and the Respondent. Neither one's evidence is perfect, but there is nothing unusual in that. Each party comes at this from their unique perspective. For the same reason, accepting one party's evidence over the other's does not necessarily mean that one of them is being untruthful.

[76] In this case, I have assessed the parties' evidence using a common sense approach, asking: Which version of these events is most reasonable and most probable in all of the circumstances? I have considered the internal and external consistency of each party's evidence, including explanations for previous inconsistent statements. For example, I considered the Petitioner's explanation for stating in a previous affidavit that she was "punched" by the Respondent. I accept her explanation that this was an oversight on her part at a time of great stress. I have also considered whether the Petitioner may have exaggerated the incidents of violence that she recounted. I find she has not.

[77] With respect to the incidents of violence and threats that occurred between August of 2015 and March of 2016, I accept the Petitioner's evidence. I reach this conclusion first, because the Petitioner's version of each incident is consistent and makes sense and second, because the Respondent's evidence did not contradict the Petitioner's version of the events or, where it did contradict the Petitioner's evidence, what the Respondent said happened did not have enough of an air of reality to it to lead me to reject the Petitioner's version. The Respondent's evidence suggests he purposely downplayed his role in the incidents, sometimes to the point of blaming it all on the Petitioner. Alternatively, it suggests he does not appreciate or understand the gravity of what happened or the harm his actions caused.

[78] The Respondent described what happened on Bell Island and the incident in November of 2015 as essentially unprovoked and unexplained physical attacks upon him by the Petitioner. He offered very little in the way of context for either incident. In each case, it is very unlikely that the Petitioner would, unexpectedly and without provocation, physically attack the Respondent. This is especially so with respect to the November 2015 incident which the Respondent said occurred while their newborn was on the same bed. It is also highly improbable that, having just suffered such an attack, the Respondent would have left the Petitioner alone in the house to care for their newborn and toddler.

[79] The Respondent admitted that he attacked the Petitioner's male friend, T. in October of 2015. I reject his evidence that he was acting in self-defence, particularly in light of the statement in his affidavit that he hit T. because he "was

carrying on” with the Petitioner. Based on the whole of the evidence, it is likely the Respondent observed the Petitioner in the truck with T., became enraged and attacked T. He did so without apparent regard for the fact that his children lay sleeping inside the house or that his actions would cause physical harm to T. and damage to T.’s vehicle.

[80] The Respondent did not offer a reasonable alternative explanation of what happened in December of 2015. He simply said there was an “incident” and that he had involved M., which he regretted. He either downplayed the seriousness of the event on purpose or he failed to appreciate the gravity of the event, which occurred in the presence of all three children.

[81] Turning to the Petitioner’s evidence about the way the Respondent has interacted with E. and M., some of the interactions cause more concern than others. With respect to the suggestion that the Respondent inappropriately pushed E. in the hallway, I accept his explanation that he was “pushing” her in a manner that was designed to encourage her to focus on the task he had asked of her. I am also not concerned that he may have thrust an iPad at E. in a moment of frustration.

[82] Although I accept the Petitioner’s evidence that the Respondent has made inappropriate comments to and about M., including comments relating to the legal matter between the Petitioner and himself, there is no evidence that Respondent has intentionally involved E. in such conversations. Parents must do their best to avoid drawing children into their legal affairs. That said, they should bear in mind that children are bound to ask some questions or make comments about access and custody arrangements. It may be that E. has overheard discussions between adults or that she has drawn conclusions on her own. Her knowledge of the issues between her parents may have come to her through no fault of either parent. It is a reality that her parents are separated; that she sees her father in accordance with a schedule; and that there is animosity between her parents.

[83] The Respondent denied that he referred to M. in derogatory terms but admitted he has called him “a little wimp”. That he would do so and that he seemed to see nothing wrong with this is concerning. It leads me to conclude that the Respondent is unwilling or unable to stop and think about the effect of his comments on M.’s feelings and psyche. It also leaves doubts about whether he would see the harm that could come from making similarly derogatory comments to E. or L.

[84] With respect to the play structure incident, I accept the Petitioner’s version of what happened. She had a clear view of the event. She was able to observe the

Respondent's interactions with M. throughout. Her story withstood cross-examination. The description of the Respondent's conduct is consistent with descriptions of his quick temper and rapid escalation to physical violence on other occasions.

[85] As noted, the Petitioner's version of this was corroborated by her father. From his testimony I gathered that the Petitioner's father does not hold the Respondent in high regard. I also expect that he is squarely in the Petitioner's corner. I have taken both of these things into account in assessing his credibility and I nevertheless find that his evidence on point is reliable. Like the Petitioner, he had a clear view of what occurred and he was unshaken in cross-examination. I therefore accept his evidence.

[86] I now turn to the central questions of whether it is in E.'s and L.'s best interest that access continue to be supervised. I have concluded that it is.

[87] The supervision condition was initially imposed in the midst of a separation that followed several months of volatile behavior on the Respondent's part. It culminated in the Respondent making serious threats to the Petitioner, including a statement that she would never see the children again.

[88] The order for supervised access was imposed nearly two years ago and, as noted, supervised access is not typically considered a long-term solution. It is clear from the evidence, however, that little has changed between when the order was first imposed and now. Despite the abundant evidence that the Respondent has a volatile temper which has led him to engage in irrational, harmful and violent acts, he continues to deny that he has a problem managing anger. This is so even though he was convicted of a criminal offence after threatening the Petitioner.

[89] I recognize there is no evidence that the Respondent has been directly violent with either E. or L. In my view, however, that does not remove the need for supervision. The Respondent has used inappropriate physical force with M. Moreover, he was violent with the Petitioner in the presence of the children on a number of occasions. The altercation in December of 2015 began with him holding L. in his arms, E. in bed and M. downstairs playing with a friend. The incident in October of 2015, when the Respondent attacked T., occurred with them asleep in the house and continued the following day with E. awake and in the next room. This demonstrates that the Respondent is unable or unwilling to stop and consider the impact of his words and actions on the children's well-being, their peace of mind and their safety.

[90] It is also very concerning that the Respondent has continued to engage in behaviors that demonstrate significant immaturity, lack of judgment and disrespect for the law. These include making an obscene gesture to the Petitioner when he accompanied the supervisor to pick the children up and arrived early; hiding in the back of a vehicle when M.P. accompanied the supervisor to pick up the children, despite being under court-ordered restrictions not to attend at the Petitioner's residence; and endorsing M.P.'s creation of a false Facebook account and eliciting personal information about the Petitioner from her daycare provider under false pretenses. These things cause the Court to be concerned about the Respondent's willingness to obey orders and to exercise appropriate parental judgment.

[91] The Respondent lacks insight into his problems and he is unwilling to make a serious and concerted effort to address them. Unless and until he gains that insight, and takes appropriate therapy to learn how to regulate his temper, it is not in the children's best interest for access to be unsupervised. Responsible supervision is the only way to ensure that the children remain emotionally and physically safe in the event that the Respondent is triggered by some event and acts out inappropriately.

[92] The Respondent also asked for additional access to be granted as part of this application. I did not, however, hear from the parties on the specifics of increased access time. Accordingly, I invite the parties, through their counsel, to provide me with their positions on this at the next case management conference.

IV. CONCLUSION

[93] The application to remove the supervision condition is dismissed.

[94] The parties may speak to costs.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT, this
7th day of March, 2018

Counsel for the Petitioner: Ms. Chantal Carvallo
Counsel for the Respondent: Mr. Jeremy Lewsaw

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

T. (K.M.)

Petitioner

-and-

P. (J.M.P.)

Respondent

**MEMORANDUM OF JUDGMENT
THE HONOURABLE JUSTICE K.M. SHANER**
