

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MATTHEW BROST

Applicant

-and-

PATRICIA BULLIS

Respondent

RULING ON SPECIFIED ACCESS

[1] In *Brost v Bullis*, 2019 NWTSC 30.cor1, I decided that Mr. Brost ("the Father") would have custody of K. and Ms. Bullis ("the Mother") would have custody of G., Ar. and An. I also decided that each parent would have reasonable and generous access to the child or children not in her/his custody, but left it open to counsel to file written submissions on specified access if they wished to do so. I have received and reviewed those submissions, being the Applicant's Submissions filed September 6, 2019, the Respondent's Submissions filed September 9, 2019 and the Respondent's Supplemental Submissions filed September 12, 2019.

[2] Access is governed by the best interests of the children. So long as it is in the child's best interests, a child has the right to have a relationship with both parents. It is not in a child's best interests to have the relationship with a parent marked by acrimony and disagreement between the parents. A child should be able to look forward to spending time with each parent without feeling that in doing so, he or she is somehow making the other parent unhappy.

[3] This is one of those cases where the parents have been unable to work out access without the intervention of the Court and so the Court will set a schedule for them. However, the parents have to be prepared to exercise some flexibility and common sense, because no matter what schedule the Court sets, events are bound to intervene and adjustments will have to be made. It is not helpful to anyone, particularly the children, if the parents do not make every effort in good faith to compromise when adjustments have to be made.

[4] Although flexibility will be required from time to time, the children are also entitled to stability and certainty. If the schedule is too complicated or involves too many changes for the children, that can give rise to more disagreements and more room for error. Both parties in this case have proposed access that would require a great deal of back and forth between the Mother's and the Father's homes. I have tried to reduce some of that, while still giving the children reasonable and generous time with the Father.

[5] The Father's submissions indicate that he will continue to reside in Yellowknife and I have decided specified access on that basis.

[6] There may be changes in the Father's housing and he is expected to obtain employment. Any changes may require some adjustment of the schedule, for example, if the Father's employment means that he cannot take the children at 4:00 p.m. on days when his access is to begin at that time. The parents need to cooperate to make reasonable changes when required.

[7] I have considered the parties' submissions on access in the context of the evidence heard at trial.

[8] The Father sought yearly access on several specified statutory holidays, however I do not find that is reasonable because it restricts activities the Mother may want to do with the children on those days, especially since she has agreed to be the one responsible for dropping off and picking up the children. I also find merit in the Mother's position that she and the children should be able to celebrate Aboriginal Day together as that day has significance to her because she is Aboriginal. The Mother should also have some weekend time with the children, contrary to the Father's submission that the children should spend every weekend with him.

[9] The Father sought access for 3 weeks in the summer, with the Mother submitting that access should consist of two separate 2 week periods. In my view 3 weeks is appropriate; it is also likely to work better than two separate 2 week periods when the Father obtains employment.

[10] Having considered the parties' submissions, I have tried to structure access in such a way that both the parents and the children can understand the schedule and manage their expectations. Where I refer to the "children", I mean G., Ar. and An. and I will specify where access is to be different in relation to G. because he is older than Ar. and An. The Mother's access to K. will be dealt with separately at the end of this decision.

[11] I therefore order that the Father will have access to G., Ar. and An. as follows:

- (i) on Wednesday each week for supper, from 4:00 p.m. to 6:30 p.m.;
- (ii) every other weekend from Friday at 4:00 p.m. to Sunday at 4:00 p.m. If the children have extracurricular activities scheduled during the Father's weekend access, the Father will take them to those activities and the Mother will meet them at the activity location with any gear or clothing required for the activity;
- (iii) the first week of the two week school spring break each year;
- (iv) from 10:00 a.m. to 6:30 p.m. on the Victoria Day statutory holiday every other year, commencing in 2021;
- (v) three weeks in July each year, beginning on the Friday following the day school closes for the summer. During this access period, the Father will be entitled to travel with the children at his expense outside the Northwest Territories, within Canada, so long as he provides the Mother with details of their travel dates, itineraries, where they will be staying and a contact telephone number. That information is to be provided in writing at least 21 days in advance of their travel;
- (vi) from 10:00 a.m. to 6:30 p.m. on the Labour Day statutory holiday every other year, commencing in 2020;

- (vii) every Thanksgiving Day statutory holiday from 11:00 a.m. to 4:00 p.m.;
- (viii) on Hallowe'en from 4:00 p.m. to 6:30 p.m. every other year commencing in 2020;
- (ix) commencing in 2019, and thereafter in each odd-numbered year, the Father will have access to the children for the second full week of the children's school Christmas (winter) break, along with a visit of not less than 4 hours with the children on Christmas Day. Commencing in 2020, and thereafter in each even-numbered year, the Father will have access to the children for the first full week of the children's school Christmas (winter) break, subject to the Mother having a visit of not less than 4 hours with the children on Christmas Day. The parties' respective Christmas Day visits will begin at 1:00 p.m. on that day;
- (x) on Father's Day each year, if the Father does not otherwise have access by the terms of this Order: from 4:00 p.m. to 6:30 p.m. if Father's Day falls on a weekday, and from 11:00 am to 2:00 p.m. if it falls on a weekend day. The Mother will be entitled to spend the same time with the children on any Mother's Day that falls on a day when the children are on an access visit with the Father;
- (xi) on the Father's birthday, December 8, each year for not less than 2.5 hours if December 8 is not a day when the Father otherwise has access by the terms of this Order. If any child is not in Yellowknife on the date of the Father's birthday, the Mother will offer an alternative date for the Father to celebrate his birthday with the children;
- (xii) subject to any arrangements the Father may make directly with G. for G.'s birthday, access to the children on their birthdays each year for not less than 2.5 hours if their birthday is not a day when the Father otherwise has access by the terms of this Order. If any child is not in Yellowknife on the date of his/her birthday, the Mother will offer an alternative date for the Father to celebrate the birthday with the child;

- (xiii) access to Ar. and An. on March 2 (the anniversary of An.'s heart transplant) each year, for not less than 2.5 hours if March 2 is not a day when the Father otherwise has access by the terms of this Order. Similarly, the Mother will be entitled to spend not less than 2.5 hours with the children on March 2 in any year when March 2 is a day when the children would otherwise be with the Father all day by the terms of this Order;
- (xiv) the Mother will make the children available for a telephone call from the Father between 4:30 p.m. and 6:30 p.m. every Tuesday and Thursday. In addition, the Father may have telephone and electronic access with the children as he may arrange, and the children shall be permitted to contact him as they wish;
- (xv) the Mother may have telephone and electronic access to the children as she may arrange while the children are on access visits with the Father, and the children shall be permitted to contact her as they wish;
- (xvi) if the Mother is required to travel with any of the children for medical purposes, and is not taking the other children with her, she will offer the Father the opportunity to have those other children in his care while she is away. If the Father accepts the offer to care for the other children, he will ensure that they attend school regularly and on time and that they attend any extracurricular activities in which they are registered;
- (xvii) the Mother will be responsible for dropping off and picking up the children before and after access visits;
- (xviii) subject to the requirements relating to the Father's travel with the children during July access, should the Father wish to take the children outside the Yellowknife city limits during any access visit, he will first notify the Mother of the location where the children will be;
- (xix) the Father will not consume alcohol or non-prescription drugs while the children are with him and for a period of 12 hours immediately prior to any access visit;

- (xx) the Father will give the Mother at least 5 days prior written notice of any change in his residence, the full address of the new residence and the number of bedrooms and beds it contains;
- (xxi) the Father may attend at the children's school activities and events and extracurricular activities, including when they do not take place during his access time;
- (xxii) the Father will be entitled to visit any of the children in hospital in the event that such child requires hospitalization;
- (xxiii) all clothing and other items that the children bring to any access visit with the Father are to be returned with them to the Mother at the end of the access visit and in particular, all medical supplies, equipment and medications for An.'s condition are to be returned to the Mother in good and clean condition;
- (xxiv) both the Mother and the Father will use their best efforts to notify the other at least 48 hours in advance of any need or request for a change in the hours or dates of access and to propose a reasonable alternate access visit.

[12] The Mother submitted that because K. is almost 16, he can arrange his own visits with her. Although she sought an order that K. is to spend Christmas Eve overnight wherever the younger children are spending that night, I would leave that for the Mother and K. to arrange as well. Accordingly, I order that (i) the Mother will have such access to K. as she may arrange directly with K. and (ii) the Mother is entitled to attend any school and extracurricular activities and events that K. participates in.

[13] I decline to include a clause permitting the R.C.M.P. to assist with enforcing access terms as required. That clause was requested by the Mother, however in my view, involving the police in custody/access disputes is not always appropriate. Instead, if there is a failure to abide by the terms of access, and the matter cannot be resolved by agreement, the party alleging such failure should first make use of the procedures set out in the *Children's Law Act*. I also decline to order an annual review of the access terms by the Court, as requested by the Father. The Court always has jurisdiction over access, but I would encourage the parties to try to resolve their issues together or seek mediation rather than continue to bring this matter back before the Court.

[14] The Mother and the Father are free to agree on additional or other access; absent any agreement, however, the access I have ordered will apply.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT
this 18th day of September, 2019.

Counsel for the Children for purposes of the
Judicial Interview:
Counsel for the Applicant:
Counsel for the Respondent:

Margo Nightingale
Paul Parker
Candace Seddon

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