Citation: Menard v Menard
2001 BCSC 430

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALPHONSE ANTHONY MENARD

PLAINTIFF

AND:

DEBORAH LYNN MENARD

DEFENDANT

REASONS FOR JUDGMENT OF THE HONOURABLE MADAM JUSTICE DOWNS

Counsel for the plaintiff: B.R. Vining

Counsel for the defendant: J.A. Anthony

Date and Place of Hearing: December 14, 15, 2000, January 05, 2001
Nanaimo, BC

[1] The issue before me concerns the parenting arrangements for the three children of the parties: Brendon who was born on December 26, 1987 and who is now 13 years old; Derek who was born on April 15, 1989, and who is now 11 years old; and Marisa who was born on April 16, 1991 and who is now 9 years old.

[2] This matter was argued before me in chambers on December 14 and 15, 2000. After that I read the entirety of the voluminous court file and decided that it would be important for me to hear oral evidence from Dr. Tara Lynn Ney, a registered psychologist, who has been involved in counselling the children and their father (the plaintiff) pursuant to the provisions of orders made by the court. On January 5, 2001, Dr. Ney

was questioned by the court, pursuant to Rule 52(11)(c), and then was cross-examined by counsel for both parties. I directed that a transcript of Dr. Ney's evidence be prepared for the benefit of the court and the parties particularly because the mother of the children, the defendant (who is now known by the name Knight rather than Menard), was not present when Dr. Ney testified.

[3] The plaintiff (the "father") is now 43 years of age and his former spouse is now 46. They began to live together in or about 1977 and married on December 16, 1983. The parties separated on April 29, 1998. There had been at least one prior separation for about three months in 1993 which separation followed an incident when the father physically assaulted the defendant (the "mother").

[4] From the time of the separation in April 1998 the father voluntarily began paying support. On December 3, 1998, he commenced this action and filed a notice of motion, which motion primarily raised issues concerning the parenting of the children. In the affidavit filed in support of the motion the father said this:

> My immediate concern is that my access is being shrunken. I have concerns that if we are not able to sort out access appropriately, the defendant may, over time, cause the children to have such an opinion about me that the relationship between the children and myself will be strongly affected.

[5] The father also deposed that he felt that he and the mother had been unable to sort out custody and access issues between themselves. Part of the relief sought by the plaintiff in his initial notice of motion was an application for a custody and access report pursuant to section 15 of the ***Family Relations Act,*** R.S.B.C. 1996, c. 128.

[6] Apparently in response to the father's application, the mother filed an application on December 11, 1998. She sought a restraining order, child support, spousal support, and interim custody of the children. In her affidavit the mother said, among other things:

> The main problem with access is that the plaintiff physically abused me and emotionally abused me during the marriage. He is very physical with the children and he regularly puts down all the children verbally. This has made the children afraid of him and reluctant to spend time with him. He has a serious anger problem.

The mother also said that the father during the marriage had little interest in the children, had no patience with them, and would discipline them by spanking them, swearing at them and yelling at them. In the same affidavit the mother said the father would blame her if the children did not want to go on access visits with him. She deposed that

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the children themselves would sometimes tell the father they didn't want to see him. The mother insisted, however, that she was trying to encourage access.

[7] In a replying affidavit filed on December 21, 1998, the father stated - "My concern is that the defendant is deliberately trying to alienate the children from me because she is so upset at our separation."

[8] Master Horn delivered reasons for judgment on December 21, 1998. He ordered a custody and access report and commented that he would not contemplate forcing these parents into a co-parenting arrangement until the report was received. He thought the parents of the children should be kept separated as much as possible and therefore ordered that the mother have interim custody of the children reflecting the status quo arrangement up to that point. In talking about the deterioration in access between the father and the children, Master Horn was puzzled as to the nature of the unilateral action by Ms. Knight, unless it was action taken as an effort to punish him Mr. Menard for some conduct. Master Horn ordered access between the plaintiff father and the children on alternate weekends, holidays, and also set up a schedule of mid-week access.

[9] Less than one month after Master Horn's order the father filed an application to define mid-week access and to specify a doctor to complete the custody and access report. On that same date the mother also filed an application to vary the access that had been ordered by Master Horn. She said the children, particularly Brendon and Marisa, were crying before some access visits and saying they did not want to go. The defendant mother filed as exhibits to her affidavit pages from the "diaries" of each of the children which "expressed their strong feelings about their father." How these "diaries" came to be created or the reasons why the defendant mother should have access to them for the purpose of court proceedings has not been explained. The children at the time of the writing of the "diaries" were approximately 11, 9 and 7 years of age.

[10] Also attached to Ms. Knight's January 20, 1999 affidavit was a letter from Shelly Langford, an Alberta registered psychologist, who had been seeing the children regularly since about September 1998, according to earlier materials filed on behalf of the mother. Ms. Langford outlined in the three pages of her letter what the children had said to her about their desires and their experiences visiting on various occasions with their father. The children's comments were universally negative about their father. Ms. Langford even described Brendon as sobbing as he talked about one visit with his father.

[11] Ms. Langford's letter ended with the following two paragraphs:

> It appears that these three children are under considerable stress and anxiety. They are not feeling secure and are experiencing difficulties in daily functioning.

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> My personal and professional philosophy is that children do need and benefit from involvement from both parents. I feel strongly however that their emotional health, and physical safety cannot be compromised.

Ms. Langford makes no comments or recommendations as to how she would promote the involvement of the children with both parents while alleviating their stress and anxiety.

[12] In reply to the materials filed by the mother, the father deposed that when the children were with him they seemed happy, contented and complained about having to go home at the end of the visit. He said, "My only conclusion is that the defendant is trying to program the children against me." Mr. Menard attached as an exhibit to his affidavit a letter from his mother saying that she had observed the interaction between her son and the children in the preceding months and she had not witnessed fear being expressed by the children but rather they seemed to enjoy being with their father.

[13] The two cross-applications came before Mr. Justice Lander on January 21, 1999, and he defined mid-week access as requested by the father. He was also asked to order, and did order, that the father "be at liberty to attend public activities involving the said children." That order was made because the mother had taken the position that the father was not allowed to be in any public place, including soccer games or other activities of the children that occur in public unless it was his access time.

[14] On January 22, 1999, Mr. Justice Lander directed that Dr. Robert Bingen prepare the custody and access report.

[15] On February 4, 1999, an interim consent order was pronounced with respect to both child and spousal support.

[16] On April 26, 1999, a consent order was spoken to resolving the division of the family assets.

[17] In April 1999 Dr. Bingen completed his custody and access report. It is a comprehensive report, 24 pages in length. At page 23 of his report Dr. Bingen says this:

> When one considers the eight aforementioned characteristics of "Parental Alienation Syndrome", I feel it is fair to say that the Menard children would meet some, if not many, of those criteria. I do not necessarily feel that Ms. Menard has allowed matters to unfold in this manner with malicious intent. Instead, the anger and rancor she harbours for Tony Menard has blurred her judgment and in the course, she has projected and displaced her perceptions

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> and fears of Tony Menard onto the children. By having done so, she has effectively forced a wedge between the children and their father.

Dr. Bingen then made extensive recommendations designed to allow the children to have a positive relationship with both parents. He recommended a series of access visits - a very specific schedule - with access increasing over time. The concluding two paragraphs of Dr. Bingen's report read as follows:

> I would strongly recommend that Mr. Menard and the children jointly see a counselor or psychologist so as to focus on the attitudes the children have toward their father and the boys' view that he is a disapproving figure in their lives. Finally, and importantly, I would strongly recommend that Ms. Menard see a psychologist on an ongoing basis to deal with her histrionic traits which lead to problematic and strained social relationships, and to cope with the anger she feels toward Mr. Menard and so as not to bring the children into the midst of conflict.
>
> Finally, because of the level of anger and acrimony between both parties, I would advise that the Menards' mutually find a mediator who could arbitrate any nettlesome decisions with regard to the children.

[18] On May 21, 1999, the mother applied for permanent spousal support and permanent child support (although no divorce order had been pronounced as at that date). On June 3, 1999, the mother applied to have the father found in contempt alleging that he was in breach of the court order made by consent with respect to the division of family assets. The mother also complained that the father had not paid the full amount of child support for the month of May. The next day, on June 4, 1999, the father filed a notice of motion seeking, among other things, "that the issue of temporary custody and access of the children of be marriage be varied." He asked that the question of the children's permanent custody and access arrangements be referred to the trial list. He also sought other relief including an order of divorce. In the materials exchanged by the parties with respect to these motions Mr. Menard continued to suggest that Ms. Knight is an alienating parent. Ms. Knight deposed that she had spoken with both Dr. Bingen and Ms. Langford and that "they both said that I am not identified as a alienating parent."

[19] The applications referred to in the preceding paragraph came before Mr. Justice Taylor in chambers on July 9, 1999. He delivered thorough oral reasons for judgment dealing with all the matters raised

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by the parties, including the questions of custody and access. Taylor J. said at paragraph 20:

> The father, in his submissions to me, sought assurances that this court and not the mother would define when he could see his children. These reasons are intended in part to give him such an assurance.

[20] Mr. Justice Taylor noted that the father's complaint was about access although before Mr. Justice Taylor Mr. Menard was seeking custody.

[21] Mr. Justice Taylor declined to refer the issue of custody to the trial list noting that although Dr. Bingen's report was critical of both parents "there is within it no basis, in my opinion, to remove the children from their mother who has had the task of raising them from birth whilst the father was fully engaged in the establishment and development of his business." Mr. Justice Taylor found that, in his view, the children should be left in the custody of the mother. He directed access in accordance with the schedule set out in Dr. Bingen's recommendation. He also ordered that the parents participate in the psychological counselling recommended by Dr. Bingen in the penultimate paragraph of his report quoted in paragraph 17 above. Mr. Justice Taylor also seized himself of further applications regarding the children.

[22] Mr. Menard launched an appeal of Mr. Justice Taylor's order with respect to the issues of custody and access (as well as child support and spousal support) but apparently did not proceed with that appeal. In October and November of 1999 the defendant Ms. Knight sought garnishing orders for, among other things, substantial arrears of child support and spousal support.

[23] On April 7, 2000, the father applied to reduce spousal support and child support and to cancel or reduce all of the arrears. The parties exchanged a considerable number of affidavits before the father's application came on for hearing before Mr. Justice Lander on May 23, 2000. Mr. Justice Lander ordered that the father's application to reduce or cancel arrears of child support and spousal support be dismissed but also ordered that he be at liberty to set a hearing on the issue of variation of Mr. Justice Taylor's support orders based on a change of circumstances. The mother was awarded her costs.

[24] On June 20, 2000, the father applied for summer access to the children for specified dates between late July and late August of that year. It is in fact this motion of June 20, 2000, which is formally before me following other intervening orders pronounced upon previous hearings involving that same application. The father deposed in his affidavit filed on June 20, 2000, that he had had no access to the children since September 19, 1999, saying the mother had not allowed the children to spend time with him. The father said that the mother used the excuse that the children did not want to see him. He said he tried to telephone the children but that they refused to talk to him.

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He also deposed that he had been visiting Marisa at her school but she told him she did not want him to come there anymore.

[25] Ms. Knight filed a lengthy affidavit in response to the father's June 20, 2000, application. Attached to her affidavit were numerous exhibits. To summarize very briefly, Ms. Knight complained that the father had not undertaken the counselling ordered by Mr. Justice Taylor. She also complained that Mr. Menard was in arrears of spousal and child support in excess of $30,000 even though Mr. Justice Lander had dismissed the father's application to cancel the arrears. Ms. Knight also outlined from her perspective the access arrangements leading up to the father's June 20th application. She deposed that the father had told the children they didn't have to go for an access visit in the summer. She says she wasn't present for the exchange so the fact that the children didn't go for the summer visit had nothing to do with her allowing the children to go or not. The mother also complained the father had not been showing up for access visits. She said the father did not try to arrange Christmas access until Christmas Eve. She said she had eliminated herself from access pickup hoping that would alleviate the children's distress but that had not worked. She also stated in her affidavit:

> I believe that plaintiff's access should be suspended until he has participated in joint counselling sessions as recommended by Dr. Bingen and ordered by Mr. Justice Taylor.

[26] Among the many exhibits attached to Ms. Knight's affidavit of June 28, 2000, are a number of letters from Ms. Langford and Dr. Bingen. Ms. Langford had provided some counselling to the mother and children as noted in paragraphs 10 and 11 above. Her letter dated December 10, 1999, related the fact that in June 1999 Mr. Menard had attended two joint counselling sessions with the children. Ms. Langford stated she had recommended to Mr. Menard that he have a individual session with her and more sessions but that he did not follow up on those recommendations.

[27] A letter from Dr. Bingen dated November 1, 1999 sets out the fact that he spoke with Mr. Menard concerning an access schedule. Dr. Bingen had met with Ms. Knight and Ms. Langford in late September 1999 to discuss access. Dr. Bingen's letter set out detailed recommendations for access between the father and the children which modified his earlier recommendations. Following these recommendations, Dr. Bingen said:

> It is important that such a schedule be adhered to and that it be communicated to the children that there is clear expectation that the children do spend those periods of time with their father.

[28] Dr. Bingen wrote another letter dated November 15, 1999, again setting out proposed modifications to the recommended access schedule based on discussions he had had with both of the parents. Dr. Bingen

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repeated the sentence I have quoted above from his earlier November 1st letter.

[29] Another exhibit attached to Ms. Knight's affidavit filed on June 28, 2000 was a further letter from Ms. Langford dated June 26, 2000. In that letter Ms. Langford set out her understanding that the children had not visited with their father for access visits since November 1999. She stated that she did not support enforced access with police assistance "as I feel that it would have a detrimental affect on the children." She again recommended counselling for the children and their father as well as an individual counselling session for Mr. Menard.

[30] Also exhibited to Ms. Knight's June 28, 2000 affidavit is a further letter from Dr. Bingen dated June 27, 2000. His letter contains the following two paragraphs:

> The recommendations made in the initial custody and access evaluation, and subsequent recommendations as to how access could be best implemented, were both predicated on the principle that the children would be slowly transitioned into having progressively longer visitations with their father. This would be accomplished over some length of time. Further, the recommendations were based on the prospect of the children and Mr. Menard jointly seeing a counselor as a means of bridging any differences that might exist and act as an obstacle between the children and Mr. Menard developing a positive relationship.
>
> I would fully expect that if either of those considerations are not included in the process of Mr. Menard gaining more routine visits with the children, visitations with Mr. Menard could in fact result in the children views of their father being inadvertently reinforced. The result may then be that the children would view visitations or the prospects of visitations more negatively and would be more resistant to go on even brief visits. Certainly, if visitation is forced at this point, there is a very good likelihood that the children would be highly resistant and could in fact, mark a permanent breach in their relationship with their father.

Dr. Bingen went on to recommend that Dr. Tara Ney do the proposed counselling. Dr. Bingen then concluded his report with the following paragraph:

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> I would reiterate that if all parties fully cooperate in the process, I do feel that a normalized relationship between the children and their father could be achieved. However, if the issue is forced, my fear is that the gulf between the children and their father will be too great to bridge.

It should be noted again that Dr. Bingen made similar counselling recommendations in his initial report of April 1999.

[31] Mr. Menard's motion filed June 20, 2000, (the motion which I noted is the motion before me), first came before Mr. Justice Hutchinson on July 4, 2000. He ordered that Mr. Menard meet alone with Dr. Bingen and take any counselling or any course recommended by Dr. Bingen prior to commencing access. He also ordered that the parties meet together with Dr. Bingen and thereafter with the children if so directed. Mr. Justice Hutchinson then ordered that, if approved by Dr. Bingen the father have access with the children from August 8, 2000 to August 22, 2000. Mr. Justice Hutchinson finally ordered that "if there are difficulties in working out access arrangements then this matter is adjourned to August 8, 2000."

[32] There were difficulties working out access. When the matter came before me on August 8, 2000, I ordered three specific counselling sessions for the father and the children with Dr. Tara Ney on three consecutive Mondays in August and three two hour access visits between the plaintiff and the children on three consecutive Thursdays in August. I then adjourned the matter to September 11, 2000 at which time the father was to provide the court with his submissions with respect to ongoing counselling sessions with the children and with respect to ongoing access visits.

[33] On September 11, 2000, the matter came before Mr. Justice Shabbits. He ordered five further joint counselling sessions with the father, the children and Dr. Ney on alternate Fridays, the last session to be November 10, 2000. He then adjourned the matter for further submissions to November 20, 2000.

[34] On October 2, 2000, the Director of Maintenance Enforcement filed an application asking for an order that a corporation, of which Mr. Menard was the majority shareholder, be jointly and severely liable with Mr. Menard for payment of the child support and spousal support previously ordered. In an affidavit in support of the application an enforcement officer deposed to the fact that the arrears of maintenance as at October 13, 2000, totalled $40,492.41. On October 16, 2000, a consent variation order was pronounced fixing arrears of child and spousal support in the amount of $28,000 payable forthwith and cancelling the balance of the amount outstanding under Mr. Justice Taylor's order of July 1999. The consent order also set an imputed guideline income for Mr. Menard of $116,000 annually. Child support was reduced from $2,228 to $1,800 per month and spousal support was reduced from $2,235 to $1,200 per month. Ms. Knight's only income was then and is now the support paid by Mr. Menard.

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[35] The access matter did not come back before the court on November 20, 2000 as ordered by Mr. Justice Shabbits, but rather, it came before me on December 14 and 15, 2000 after the parties had filed further affidavits. Counsel appearing on behalf of the father requested that I order the following relief:

1. A nine day access visit for the father from December 30th to January 7th, 2001;

2. Access for the father every second week, the exchange to be on Fridays at 5:00 p.m.;

3. That the matter of custody of the children be directed to the trial list;

4. That a custody and access report be prepared by Dr. Waterman;

5. That I seize myself of this matter;

6. That the children be picked up and dropped off by certain specified individuals.

[36] Counsel on behalf of the mother submitted that the father should be directed to take anger management counselling and a parenting course, and that the children only see their father "when they want to." In her affidavit Ms. Knight had suggested that the father and children continue with joint counselling and supervised access. However, Ms. Knight exhibited to her affidavit a letter from Ms. Langford dated November 29, 2000, which noted "all three of the children individually expressed their reluctance to continue joint counselling with their father." She also said "I do not feel that forced visits with their father would be beneficial to the children." Ms. Langford also made certain recommendations "should joint counselling sessions resume" including that "the children must have some say in deciding who the (sic) want to work with, and the times and duration of appointments."

[37] Ms. Knight also attached to her affidavit filed on December 1, 2000, a letter from Brendon. Brendon began by describing himself as a good student who gets along well with his teachers and others. He went on to describe his recollections of his father abusing his mother and recollections of his father losing his temper. He then described the counselling visits. His letter ends with the following three paragraphs:

> I'm fed up with having to go to these sessions and having to talk with my dad and I'm not going to do it any more.
>
> For me to have a relationship with my dad I think there would need to be a lot of things changing. The most important thing would be for him to admit what he has

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> done and not deny it. He also needs to learn nicer ways to speak to us and treat us so we don't feel scared, put down, mad, upset, or hurt. He needs to learn how to control his temper so that I'm not stressed out around him. He needs to learn how to communicate with us and solve problems when we are upset or disagree with him.
>
> If my dad worked on these things and I could see that he was changing I might be willing to try going to counselling again with him. This is also effecting my concentration and grades in school and, until I get them back up there I dont (sic) to deal with this.

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[38] Included with material filed on behalf of Mr. Menard is a letter from Dr. Ney dated November 13, 2000. She described her observations from the court ordered joint counselling sessions. Dr. Ney described Marisa as "both physically affectionate and emotionally engaging with her father." She said that "Derek continues to resist time with his father and his disapproval and disdain for his father is the most intense of the three children." Dr. Ney noted that Brendon expressed that he did not want to come for any more visits. She also noted with respect to Brendon "He demonstrates ambivalence and confusion around his relationship with his father . . .". Dr. Ney pointed out that the childrens' report to Ms. Knight of the sessions were slanted, "usually exaggerating and distorting negative interactions." This causes Ms. Knight "to take on a tone of protection rather than encouragement." Of Ms. Knight she said: "It may be possible that Ms. Menard [Knight] sincerely believes that her responses to the children are appropriate, and that she does not recognize how her attitude towards the childrens' father impacts them." Ms. Langford reported that Ms. Knight repeatedly insisted to her that "I will not be drawn into this process."

[39] In her summary Dr. Ney says this:

> The formulation described by Dr. Bingen fits with my observations of this family. This is to say, the parent's anger for one another has acted as a source of considerable anxiety and uncertainty in the children's lives. In the past, both parents have directed their anger towards one another through the children. . . . .
>
> A number of things have changed since September, 2000:
>
> i. I believe Mr. Menard is more aware of his anger and more able to redirect it away from the children.
>
> ii. The children are more defiant about visiting their father.

iii. Ms. Menard [Knight] has become increasingly adamant that she will not participate in this process.

I am concerned at this point, that if some redirection does not occur in the next few months, the children will become permanently alienated from their father. This would be unfortunate as I believe these children experience a great deal of anxiety about not having a satisfactory relationship with their father, and the current confusion, conflict and anxiety puts the children at risk for difficulties later in their adult relationships.

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[40] Dr. Ney then went on to make recommendations. She stressed the necessity of Ms. Knight's ongoing participation in counselling. Then she said, "Visitations with their father should not be forced, otherwise the children will become increasingly resistant, contributing to a permanent breach in their relationship with their father." However, after making that statement she went on to make recommendations for access. I felt it necessary to hear from Dr. Ney, in the form of oral evidence, to assist me in reaching a conclusion as to what order(s) would be appropriate in these difficult circumstances.

[41] Dr. Ney did testify on January 5, 2001. The question I was attempting to explore with her was how to reconcile her recommendation that the children not be forced to visit with their father with her opinion that it would be a positive benefit to the children to have a relationship with their father.

[42] I am satisfied from the whole of the evidence, including the evidence of Dr. Ney that the following findings reflect the present circumstances (the quotations are from Dr. Ney's oral evidence):

1. The children will suffer psychological damage in future if they continue to have no contact with their father;

2. If the children are forced to visit with their father there will be trauma, and a lot of anxiety and defiance;

3. The key to building a relationship between the children and their father is in enabling the mother "to resolve this marriage that did not work and get the anger and put it somewhere else and not in her children."

4. The mother is presently "unaware and/or ill equipped in supporting her children to reconnect with their father and it contributes to the difficulty that the children have in connecting with [him]."

5. Marisa would have little if any difficulty in reconnecting with father, but because she is so closely connected with her brothers (and her mother) if she alone had access to her father there will be stresses put on her

and she will feel guilty about having the relationship with her father the others are not having.

6. The children are "hypersensitive to the conflict [between their parents]. They know exactly what is going on and it stresses the heck out of them and preoccupies them . . . . " And, "it is not fair for the kids to be exposed to that kind of high conflict stressful situation . . . ."

[43] I am also satisfied on the whole of the evidence:

1. That the children do suffer from parental alienation syndrome;

2. That this alienation has not been consciously or maliciously intended by Ms. Knight but has resulted from a complex array of situational and psychological factors;

3. That Mr. Menard's past behaviour towards Ms. Knight and the children, including but not limited to a) the rather limited time he spent with the children prior to separation; b) his angry and aggressive behaviour; and c) his failure to provide the financial support he agreed to provide, have very significantly contributed to the array of situational and psychological factors I have mentioned.

[44] I am also satisfied that the children are otherwise doing well in their mother's care. There is no indication of difficulties in their relationships with peers, teachers, or other adults. There is no evidence they are not doing well in school. They are physically healthy and participate in suitable activities.

[45] I must make my decision based on the best interests of these children. In making a custody or access order under s.16 of the ***Divorce Act*** R.S.C. 1985, c.3 (2nd supp) it is mandatory for me to give effect to subsection 10 of that ***Act***:

(10) Maximum contact - In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[46] In this case in deciding what is in the children's best interests I am in fact attempting to decide what is least harmful to them. Forcing further visits and counselling between them and their father will result in great immediate stresses, anxiety and defiance. Even if there was an application before me to vary custody (and there is not) I would decline to order such a change. Beyond doubt there would be chaos. If there is no further contact between the children and their father they will suffer from psychological damage particularly as they grow older.

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[47] Although the father is not without fault as to the causes of this awful dilemma, clearly, the mother holds the key to the solution. She must learn to separate her own needs and fears from those of her children and work with appropriate professionals to learn how to help the children re-establish appropriate relationships with their father. Ms. Knight, you must understand that there is compelling evidence that if you do not do this you are hurting your children and the damage you are doing will become worse with time.

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[48] But, I cannot order an epiphany. Counselling only works with cooperation and commitment. What would the remedy be if I ordered Ms. Knight to participate in further counselling and she refuses to go or it is unsuccessful - imprison her or fine her for contempt or remove the children from her custody? Those "remedies" would have dramatic negative repercussions on the children.

[49] In my view, the only order I can make consistent with doing the least harm to the children is as follows:

> Mr. Menard shall have reasonable and generous access to the children or any one or more of them at any time in accordance with the wishes of the child. Provided that the child or children agree, he may have access at any time and for any duration including, but not limited to, one month in the summer and the entirety of any or all school holidays. During his access he may take the child or children anywhere in North American or to any destination outside of North America providing that any country visited with a child or children must be a signatory to the ***Hague Convention on the Civil Aspects of International Child Abduction***.
>
> Mr. Menard may attend at any public place where the children are participating in recreational or extra-curricular activities without the permission of the child or children or Ms. Knight.

[50] Each party shall bear equally the cost associated with Dr. Ney's testimony and each shall bear his or her own costs of the application before me.

"K.K. Downs, J."
The Honourable Madam Justice K.K. Downs