

CANADA / JUDGMENT

## A.B. v. C.D.

2024 BCSC 646

COURT

Supreme Court of British Columbia

DECIDED

20 March 2024

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2024 BCSC 646 A.B. v. C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B. v. C.D.,

2024 BCSC 646

Date: 20240320

Docket: E232132

Registry: Victoria

Between:

A.B.

Claimant

And

C.D.

Respondent

Corrected Judgment: The judgment was further anonymized  
throughout on February 19, 2026

Before: Associate Judge Harper

Oral Reasons for Judgment

In Chambers

The Claimant:

R. Faber, appearing as agent

(March 19, 2024)

Counsel for the Respondent:

R. Faber

Counsel for the Attendee, Dr. Lorelei Johnson:

N. Dauvergne

Place and Date of Hearing:

Victoria, B.C.

March 19, 2024

Place and Date of Judgment:

Victoria, B.C.

### March 20, 2024

- [1] THE COURT: This is an application brought by the respondent father, with the support of the claimant mother, for production of a family doctor's clinical notes and records concerning the children involved in this family law case who are now age seven and almost 13.
- [2] Dr. Lorelei Johnson became the children's family doctor in 2021. The parties separated in June 2023. The parents both agree that the doctor's clinical notes and records be produced in their entirety. Counsel for the father appeared on the application as agent for counsel for the mother for that purpose.
- [3] Dr. Johnson opposes production of her records. She says she cannot consent to disclosure even if the parents of the children agree. She takes the view that disclosure is not in the children's best interests. I point out here that that is for the Court to determine what is in the children's best interests. Dr. Johnson has a medical perspective, but from my review of her affidavit, she does not take a medical-legal perspective, which is the perspective of the Court.
- [4] Dr. Johnson says that she has an ethical obligation to oppose the application. She says disclosure may harm the children.
- [5] For the reasons that follow, I have determined that the records should be produced and I make the order sought in paragraph 16 of the father's notice of application filed February 2, 2024, which reads:
16. Lorelei Johnson and Full Circle Family Practice shall deliver to counsel for the Respondent a certified copy of all medical records in his/her/their possession or control pertaining to [Y], born [redacted], and [Z], born [redacted], within 30 days of delivery of this order, which records are to be in their entirety.

- [6] This is a complex family law case. The father's notice of application was filed before a s. 211 report was prepared, but the report has now been prepared and the application proceeded on the basis that I should consider the s. 211 report.
- [7] With respect to the timing of the notice of application and the preparation of the s. 211 report, Dr. Johnson had access to the report before preparing her affidavit, and yet she says nothing about the s. 211 report.
- [8] The s. 211 report raises serious red flags about the mother. The report writer states that there are serious concerns in regard to the mother's credibility. She says, "The mother appears to have significant mental health issues". These issues are central to the s. 211 assessment.
- [9] In my view, these issues are also central to the ultimate determination of guardianship, parental responsibilities, parenting time, and corollary relief that may include counselling (including, possibly a reintegration program), but these legal issues are for determination down the road. For present purposes, I will focus on the utility of the production of Dr. Johnson's clinical notes and records.
- [10] I return to the s. 211 report. The report writer says that the examples provided by the mother do not support the mother's contention that she was in an abusive relationship. I will refer to some quotes from the s. 211 report.

[11] From page 103:

Of most concern is that her son [Y] is notably mentally unwell and refuses to spend time with his father, and [Z] appears to be increasing in his anxiety and expressing he does not want to spend time with his father. These boys appear to be very much under their mother's influence and they do not appear to be thriving - to be discussed in the following Formulation section.

[12] This example raises, in my view, a red flag for Dr. Johnson. I am sure that she will read the s. 211 report carefully. She may not agree with it and, ultimately, the report writer's opinions and observations may not be accepted by the trial judge but, for now, the s. 211 report indicates very strongly that the mother's conduct may be part of the problem in terms of these children's serious mental health issues.

[13] From page 113 of the s. 211 report:

[Y] and [Z] appear to have been diagnosed based on the assumption that they have suffered "trauma"; in response to the history that [A.B.] provided, that of living with an abusive, explosive husband. If that history is not credible then [Y] and [Z] could well be misdiagnosed, due to the skewed nature of their history provided to medical professionals. If they are misdiagnosed then they may not have an effective treatment plan in place and they may be receiving inappropriate medications.

[14] At page 114 with respect to the medications that the children are on:

These medications are powerful drugs that should only be used as indicated, particularly with a patient as young as [Y]. It is of grave concern to the Assessor that [Y's] medical history is replete with language indicating he has experienced "trauma", when in fact, according to this Assessment Report, [A.B.'s] assessed credibility has not been established. That being the case, it is not unreasonable to postulate that [Y], and [Z], were not exposed to a significant degree of "domestic violence" in the family home.

It is no minor matter to suggest [A.B.] misrepresented [Y's] and [Z's] history, particularly when considering the attendant consequences, i.e., [Y's] psychological decompensation culminating in psychiatric hospitalization and current greatly diminished mental health - he does not attend school nor undertake education at home. There is no way to definitively know what the cascade of influences were that led to [Y's] ongoing mental health crisis; however, there were some potential indicators that emerged during this s. 211 Assessment that must be mentioned.

[15] So I pause here to make an obvious point that there is a possibility, although I make no definitive findings in this regard, that the mother has misrepresented the children's experiences to Dr. Johnson.

[16] At page 117 of the report, the assessor says as follows:

The Assessor proposes that [A.B.] may be practicing a form of parental alienation, either consciously or unconsciously. According to the Encyclopedia of Family Studies, parent-child alienation occurs when a parent persuades their child(ren) to reject or distance themselves from the other parent. [Citation omitted]. First introduced as a syndrome, scholars interested in parental alienation have shifted diagnostic focus from children's symptoms towards parents' alienating behaviours. This phenomenon is of importance particularly to members of the justice system who must make informed decisions about parenting time arrangements.

[17] At page 131:

There is no doubt this is a highly complex family law matter. [A.B.] appears to not be credible in her allegations regarding [C.D.'s] "anger and control issues". This lack of credibility starkly calls into question her premise that her sons (particularly [Y]) were exposed to "family violence" and therefore are struggling with significant "trauma" issues.

It is the Assessor's professional opinion that [A.B.] has intentionally (consciously or unconsciously) alienated her sons from their father. The resultant psychological burden for [Y] appears to be more than he can bear. Currently [Y] is not psychologically well enough to attend school, or partake in home-schooling, he is reluctant to leave his home, he cannot endure attending therapy, he appears to be very unwell psychologically speaking. [Z's] mental health also appears to be worsening, he was recently put on Fluoxetine, an antidepressant; at only seven years of age this is an alarming situation. Both [Y] and [Z] deserve to be living lives free of this level of anxiety and turmoil.

- [18] As I said earlier, Dr. Johnson says nothing in her affidavit about the s. 211 report. I have no hesitation in concluding that her clinical notes and records are relevant and pass the test under Rule 9-1(15) of the Supreme Court Family Rules. The medical care, including the mental health care of the children, is relevant, and further, I have no doubt that Dr. Johnson's medical records would include statements made by the mother. The mother, of course, is the one who takes the children to their medical appointments.
- [19] Dr. Johnson relies on the decision in *Merth v. Merth*, [1993] B.C.W.L.D. 1021 (S.C.). In that case, the children were getting counselling care from a psychiatrist. I agree with counsel for the father that this case is distinguishable on its facts. Counsel for the father agrees that the Wigmore test applies to this situation. The Wigmore test was applied in *Merth* but the decision fell on the side of nondisclosure of the psychiatrist's records. The Wigmore factors are set out in para. 12 of the *Merth* decision:
- (1) The communications must originate in a confidence that they will not be disclosed.
  - (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
  - (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
  - (4) The injury that would inure the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.
- [20] Counsel for the father concedes that factors (1), (2), and (3) weigh in favour of nondisclosure but says that factor (4) tips the balance in favour of disclosure. I agree.
- [21] In *Merth*, there was no issue as to any allegations for prima facie determination of parental alienation or the mental health of the parent or the communications between the parent and the medical healthcare provider.
- [22] In the present case, there is a relevant train of inquiry as to whether the interaction between the mother and Dr. Johnson may, in and of itself, be part of the mental health issues experienced by the children. To put it simply, the court needs to determine what is going on in this family. The fourth Wigmore factor tips the balance in favour of disclosure.
- [23] Dr. Johnson says nothing in her affidavit about having reviewed the s. 211 report, nor that she has any concerns about what the mother has been telling her. The prescription of strong psychiatric medication for these young children raises concerns about the basis on which she is exercising her medical judgment. I agree with counsel for the father the s. 211 report leaves open big questions.
- [24] The s. 211 report was prepared without the benefit of Dr. Johnson's clinical notes and records and without even a conversation between the report writer and Dr. Johnson. Counsel for the father properly conceded that if Dr. Johnson had had a conversation with the report writer and discussed, in general terms, the content of her clinical notes and

records, any specific sensitive matters in Dr. Johnson's clinical notes and records might have been excluded from communication to the report writer. In my experience, having reviewed many s. 211 reports over the years, sometimes sensitive matters can be gotten around in the conversation between the two professionals, in this case, between the report writer and Dr. Johnson. However, that conversation never occurred. The s. 211 report was completed but it is not as complete as it would have been had Dr. Johnson's clinical notes and records been disclosed or at least discussed with the report writer.

- [25] Dr. Johnson says she has assessed the older child as a mature minor but does not set out how she came to that expert opinion. It is apparent from the evidence and, in particular, the s. 211 report that the older child has serious mental health issues, and the court must ask whether the serious compromise of Y's mental health might have an impact on whether he can be considered within the expert definition of "mature minor". Dr. Johnson does not opine on whether the child's vulnerabilities affect her assessment of him being a mature minor. But this point is not determinative of my decision. I make these comments rather more in passing.
- [26] Counsel for Dr. Johnson points to the harm that could result if the children come to learn that the clinical notes and records have been produced contrary to their wishes, here, the wishes mostly expressed by the older child. Dr. Johnson will have to exercise her own professional judgment in deciding whether or not to tell the children that the notes have been produced.
- [27] Although it is tragic to have to say this, "the horse has left the barn" in terms of harm to the children, and the court can only hope that the clarity that hopefully will come from the disclosure of Dr. Johnson's clinical notes and records and the analysis that will ensue will in fact assist in an improvement in the overall health and functioning of this entire family.
- [28] I am not going to make an order with respect to what Dr. Johnson can and cannot do. The court, in my view, does not have the authority to control her conduct. She is a medical professional and she will exercise her own best judgment.
- [29] I will make an order that neither parent will discuss with the children any of the information contained in Dr. Johnson's clinical notes and records.
- [30] So those are the two orders I am making in this matter. That concludes my reasons for judgment. Are there submissions on costs?
- [31] CNSL R. FABER: Yes, Your Honour. This is costly litigation for my client. I would submit that he is entitled to his costs against Dr. Johnson.
- [32] THE COURT: Ms. Dauvergne?
- [33] CNSL N. DAUVERGNE: As explained yesterday, we were here on the basis that Dr. Johnson felt it was her ethical obligation to oppose the application. So I would submit that costs should not be ordered for this application.

[34] THE COURT: So it is a rare situation that costs are ordered against a non-party, and I would not be comfortable considering an application without further case authority, which I do not think is proportional to the issues. In my view, Dr. Johnson was acting in good faith. The court has taken a different view from her but I do not think there is a reason to order costs against Dr. Johnson.

[35] I will make an order that each of the parties and Dr. Johnson bear their own costs of the application.

"Associate Judge Harper"

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