

CANADA / JUDGMENT

Benson v. Benson

2025 BCSC 463

COURT

Supreme Court of British Columbia

DECIDED

7 March 2025

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2025 BCSC 463 Benson v. Benson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Benson v. Benson,

2025 BCSC 463

Date: 20250307

Docket: E67078

Registry: New Westminster

Between:

Alicia Lauren Benson

Claimant

And

Darren Darrell Benson

Respondent

Before: Associate Judge Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Das

A. Bhurji, Articled Student

Counsel for the Respondent:

B. McCarthy

Place and Date of Hearing:

New Westminster, B.C.

March 7, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 7, 2025

[1] On November 30, 2023, the parties attended a JCC and allegedly reached a comprehensive settlement agreement of most of the issues in the family law proceeding. An order was filed December 23, 2023 which provides in order #4:

By consent, the parties shall obtain a s. 211 report with respect to the children, for interviews to commence no later than May 1st, 2024, with the upfront cost to be shared equally and final allocation to be determined by further order or agreement of the parties. For that purpose, the claimant will provide the respondent with four proposed authors for the respondent to choose one.

[2] While both parties agree that the preparation of a s. 211 report was agreed to at the JCC, and the parties agreed when interviews would start, the parties are at odds concerning whether the report agreed upon was to be a full s. 211 report, or a Views of the Child Report.

[3] After months of back and forth correspondence, and the dismissal of the claimant's former counsel, the respondent has brought this application for an order pursuant to Supreme Court Family Rule 7-1(19) for an order that the transcript from the JCC held on November 30, 2023 be released to the parties and their counsel to be used in their respective cross-applications which have been filed concerning the preparation of the s. 211 report.

[4] By way of background, the respondent is a 41-year-old heavy equipment operator and the claimant is employed with the Fraser Health Authority. The relationship spanned 18 years, until they separated on February 13th of 2023. They have two children, a daughter who is 16 and a son who is 14.

[5] The children have resided primarily with their mother, the claimant, since separation. While the respondent has generous parenting time with his son, he has not had the benefit of any time with his daughter. The respondent believes he is a victim of a false narrative and that the claimant has been actively alienating him from the children's lives.

- [6] In the circumstances, a full s. 211 report was essential from his point of view. It is his position that this was discussed extensively and agreed upon as part of the comprehensive settlement that resulted from the November 30, 2023 JCC.
- [7] The claimant disagrees. She takes the position that a full s. 211 report would not be in the children's best interests and she never agreed to a full s. 211 report at the JCC. What she agreed to was a Views of the Child Report and nothing more. Further, the claimant submits that the cost of a full s. 211 report is prohibitive and she simply cannot afford it.
- [8] The claimant further takes the position that the children have expressed to her that they do not want to submit to a full s. 211 report as they feel that would be too intrusive, and if a full s. 211 report was contemplated, the children would need to be represented by their own lawyer.
- [9] In the claimant's submission, the production of a JCC transcript would lead to an unnecessary escalation of the proceeding, contrary to Rule 1-3, and would not be useful in any event as the parties repeatedly caucused with their lawyers off record. Further, the claimant submits that the production of the JCC transcript is contrary to the principle that what is said at a JCC is confidential and without prejudice.
- [10] The claimant submits that the production of the JCC transcript would lead to a situation where parties would hold back in the JCC process for fear that what was said would come back to haunt them later; thus, effectively destroying the process.
- [11] I agree the JCC process is ordinarily without prejudice where discussions therein are inadmissible in any later proceeding; the policy behind it being to encourage open discussion intended to reach settlement.
- [12] There are a number of cases that stand for the proposition that when the concluded settlement agreement itself is in issue, the production of evidence that is ordinarily without prejudice may be admitted to prove the existence of a settlement, and its terms. In that regard, see *Berry v. Cypost et al* (No. 1), 2003 BCSC 1827 at para. 25 and 26; *Nguyen v. Dang*, 2017 BCSC 1409 at para. 23; and *Darby v. Maier*, 1995 BCSC CanLII 895 at para. 17.
- [13] The production of a JCC transcript within a family law proceeding has been ordered in a number of cases, including *Bartch v. Bartch*, 2017 BCCA 94 at paras. 23 and 45; *Robb v. Robb*, 2021 BCSC 792 at para. 17; *E.L.K. v. D.I.F.*, 2012 BCSC 2176; and *Morey v. Morey*, 2015 BCSC 2340 at para. 12.
- [14] In *Shuker Czerwinski v. Czerwinski*, 2014 BCSC 432, the court refused the request for production of a JCC transcript where the applicant wanted to use it to show an inconsistency in a party's evidence, and thereby attack their credibility. In my view, that is different from a situation where the very existence of a settlement is at issue.

- [15] In circumstances where the existence of a settlement, or its terms, are at issue, this is an exception to the general rule that without prejudice discussions or documents are inadmissible.
- [16] In the present circumstances, the respondent alleges settlement was reached on the basis of an agreement to obtain a full s. 211 report. The claimant states she never made such an agreement. Rather, she agreed to a Views of the Child Report. In essence, the very existence, and the basis of settlement, are at issue.
- [17] In these exceptional circumstances, I agree with the submissions of the respondent that the transcript of the JCC proceeding should be released to the parties and their counsel for use in the proceeding as it relates to matters involving a s. 211 report.
- [18] Is there anything else?
- [19] CNSL B. McCARTHY: I just wasn't sure if you wanted us -- we would just ask for costs to the defendants, if you are talking about moving on from -- from your decision.
- [20] Okay. Any submissions on that, Ms. Das?
- [21] CNSL S. DAS: I mean, the matter is not resolved. Like I said, there are applications that are still outstanding. And I don't think a cost order should be made today that -- that can be put forward into the future depending on, you know, I see what the transcript actually reveals and what the outcome of these applications that are outstanding are.
- [22] Ordinarily costs follow the event subject to exceptions. In my view, there are no exceptions here. The respondent will have their ordinary costs of the application in the cause.
- [23] We are adjourned.

"Nielsen A.J."

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Prepared on 25 October 2026 · Esheria