
CANADA / JUDGMENT

Golonka v. Golonka

2015 BCSC 497

COURT

Supreme Court of British Columbia

DECIDED

31 March 2015

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2015 BCSC 497 Golonka v. Golonka

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Golonka v. Golonka,

2015 BCSC 497

Date: 20150331

Docket: 13-1789

Registry: Victoria

Between:

Naomi Ryoko Golonka

Claimant

And:

Glenn Robert Golonka

Respondent

Before: The Honourable Madam Justice Dorgan

Reasons for Judgment

(In Chambers)

Counsel for the Claimant:

G.M. Lidstone

Counsel for the Respondent:

J.A.C. Stewart

Counsel for Dr. Peter Meuser:

R.S. Gill

Place and Date of Hearing:

Victoria, B.C.

February 17, 2015

Place and Date of Judgment:

Victoria, B.C.

March 31, 2015

- [1] In this family law proceeding the parenting arrangements for the parties' five children, who range in age from 6 to 14 years, is a significant and highly conflicted issue. The trial date in the action is set to commence April 20, 2015, for ten days.
- [2] On July 16, 2013, two months after the notice of family claim was filed, a consent order made by Master Bouck provided, inter alia, as follows:
1. There will be a Report prepared to assess the needs of the Children, the ability and willingness of the Claimant and Respondent to satisfy the needs of the Children, and the views of each child, to be taken at the discretion of the psychologist, with said Report to be prepared by a psychologist as agreed to between the Claimant and Respondent. The costs of the Report shall be equally shared by the Claimant and Respondent with liberty for each party to apply for repayment upon completion of the Report.
- [3] On September 11, 2013, a joint letter of engagement signed by counsel for each party was sent to Dr. Meuser, a registered psychologist, asking him to undertake the preparation of the above noted s. 211 report. The first paragraph of the engagement letter reads:

I write further to our recent telephone conversations in this matter. As discussed, I am counsel for Glenn Golonka. Gordon Lidstone is counsel for Naomi Golonka. Mr. and Dr. Golonka are the parents of 5 daughters and Mr. Lidstone and I wish to engage your services for the purposes of preparing a Section 211 Report for this family. We have obtained a Consent Order for a s. 211 Report (copy enclosed).

Paragraph 10 of the engagement letter provided as follows:

10. The assessment account is to be paid equally by the parties, with each party to be at liberty to apply for repayment from the other upon completion of the report.
- [4] Dr. Meuser undertook the assessment and completed his 143 page report, which is dated April 9, 2014. It was delivered to the parties' counsel.

- [5] The respondent, Mr. Golonka, paid one-half of Dr. Meuser's fee for the completed report. The claimant, Dr. Golonka, did not. Dr. Golonka and Dr. Meuser had discussions. Dr. Meuser adjusted Dr. Golonka's share of the account and agreed to accept a lesser amount from her. Still, Dr. Golonka's share of Dr. Meuser's account was not paid by either Dr. Golonka or her counsel despite repeated requests.
- [6] On February 10, 2015, Dr. Meuser filed an application in this family law proceeding. That application is before this court. Dr. Meuser seeks orders pursuant to paragraphs 3 and 6 of the Notice of Application as follows:
3. An order that the Claimant, Dr. Naomi Golonka and her solicitors, Pearlman Lindholm, jointly and severally, pay to Dr. Peter Meuser the balance owing on the revised statement of account dated May 27, 2014, in the sum of \$7,030.02;
 6. An order that Dr. Peter Meuser recover his costs of this application, and of his response to the amended notice of application of the Claimant filed January 20, 2015, jointly and severally against the Claimant, Dr. Naomi Golonka and her solicitors Pearlman Lindholm, as special costs, to be assessed and paid forthwith.
- [7] During submissions, Mr. Lidstone advised the court that he had instructions that his client, Dr. Golonka, would pay her share of the account within two days of the hearing. Accordingly, on February 17, 2015, I made an order that:
2. The Claimant, Naomi Ryoko Golonka, shall pay to Dr. Peter Meuser the sum of \$7,246.00 by 4:00 p.m. on Thursday, February 19, 2015, in satisfaction of Dr. Meuser's revised statement of account dated May 27, 2014 and interest under the Interest Act, R.S.C. 1985, c. I-15;

And further:

4. Judgment is reserved on the application by Dr. Peter Meuser for an order that the Claimant's solicitors, Pearlman Lindholm, be jointly and severally liable with her in respect of the account of Dr. Peter Meuser;
 5. Judgment is reserved on the application by Dr. Peter Meuser for special costs to be paid jointly and severally by the Claimant and Pearlman Lindholm.
- [8] At a trial management conference in the action held March 3, 2015, over which I presided, Mr. Lidstone advised the court that his client's share of Dr. Meuser's account had been paid in accordance with my February 17, 2015, order.
- [9] Accordingly, Dr. Meuser's application for an order for payment is moot and I decline to make an order in spite of counsel's submission that I should. However, I wish to make the following observations:
1. I am not persuaded that a non-party, Dr. Meuser, has standing to seek orders against a party and/or her solicitors in this action.

The July 16, 2013, order of Master Bouck provided that a report would be prepared and that payment for the costs of the report would be equally shared by the claimant and the respondent with liberty to each party to apply. The payment provision of the order is only enforceable between the parties.

I am not persuaded, as was contended, that Dr. Meuser, as the author of a s. 211 report, is "an officer of the court" who by that designation is somehow able to seek relief in this action. The case cited in support of that argument, *L.E.G. v. A.G.*, 2001 BCSC 649, is not authority for the proposition that the author of a s. 211 Report becomes an officer of the court in that role.

In *L.E.G.*, Hood J. discussed the nature of a s. 15 (now s. 211) report, distinguishing it from one ordered under Rule 40(a) (Evidence of Experts) of the then Supreme Court Rules. He observed that an appointment of an expert to perform an assessment in a custody case has the same objective as the appointment of an *amicus curiae*. However, Justice Hood did not find such an expert to be an *amicus curiae* in fact. In the case at bar, Dr. Meuser is not a court appointed *amicus curiae* and in any event, the *L.E.G.* case does not deal with the matter of payment of the fees of the author of an expert report.

Furthermore, if, as is argued, Dr. Meuser as an officer of the court is thereby entitled to insert himself in the parties' matrimonial litigation, s. 14(2) of the Legal Professions Act, S.B.C. 1998, c. 9, does not support that contention. While that provision is not a complete answer to Dr. Meuser's argument in this regard, I must consider the obvious; Dr. Meuser, a pivotal witness, one accorded significant stature in the context of a parenting dispute, is a compellable witness subject to cross-examination. An officer of the court is not a witness but a person from whom the court accepts statements without qualification.

Finally, Dr. Meuser cannot bring himself within Rule 15-4(6) or (22) of the Supreme Court Family Rules, as was argued. Nor is Dr. Meuser a jointly appointed officer pursuant to Rule 13-3, and thereby entitled to invoke the provisions of Rule 13-4(1)(g) as was contended.

2. Assuming without deciding that the joint letter of engagement gives rise to a contract, Dr. Meuser's remedies for a breach arise from that contractual relationship in the usual course.

Assuming without deciding that the joint letter of engagement gives rise to the giving of a solicitor's undertaking implied or express, an alleged breach of that undertaking, may be dealt with through the mechanisms of the legal profession.

[10] Whether as an alleged breach of contract or an alleged breach of undertaking, Dr. Meuser is not without remedies. However, his potential remedies do not, in my view, lie in the Golonka family law action.

[11] In the result, since Dr. Meuser is without standing, I cannot make the order he seeks and since the relief claimed is moot, I should not.

[12] In the result, I dismiss Dr. Meuser's application without costs.

"J.L. Dorgan, J."

The Honourable Madam Justice Dorgan

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Prepared on 29 October 2026 · Esheria