

CANADA / JUDGMENT

Sandhu v. Bhullar

2016 BCSC 2020

COURT

Supreme Court of British Columbia

DECIDED

2 November 2016

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2016 BCSC 2020 Sandhu v. Bhullar IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sandhu v. Bhullar, 2016 BCSC 2020 Date: 20161102 Docket: E152259 Registry: Vancouver Between: Davinder Kaur Sandhu Claimant And Ruby Singh Bhullar, Surinder Kaur Bhullar and Baljinder Singh Bhullar Respondents Before: The Honourable Mr. Justice A. Saunders Reasons for Judgment on Voir Dire No. 1 re Admissibility of Section 211 "Commentary" Report Counsel for the Claimant: M.T. Ostrow Counsel for the Respondent, R.S. Bhullar: B. Easton Place and Dates of Trial: New Westminster, B.C. October 11-13, 17-20 and 24-27, 2016 Place and Date of Judgment: Vancouver, B.C. November 2, 2016

- [1] A report authored by Mr. Robert Colby pursuant to s. 211(4) of the Family Law Act, S.B.C. 2011, c. 25 is in evidence in these proceedings. The report is 99 pages long. Mr. Colby has been cross-examined by counsel for the claimant, Dr. Sandhu, with some brief follow-up questioning by the counsel for the respondent, Dr. Bhullar.
- [2] The claimant sought a ruling as to admissibility in evidence of a five-page letter report of clinical psychologist Dr. Michael Elterman, dated October 5, 2016 entitled, "Review of Mr. Colby's Section 211 Assessment Report on the Sandhu/Bhullar Family". Were Dr. Elterman's report to be admitted, the claimant intended to call Dr. Elterman to the stand to admit the report, after which he would undergo cross-examination by counsel for the respondent.
- [3] Following submissions by counsel for the claimant, I ruled Dr. Elterman's letter report inadmissible, with reasons to follow. These are those reasons.
- [4] Dr. Elterman's letter report begins by noting that he was asked to provide comments on Mr. Colby's report. He continues: As I have not directly assessed the parties, I can only comment on the assessment procedure used by Mr. Colby and whether his conclusions are logically consistent with the information available. I cannot provide "a second opinion" about either parent or make any recommendations regarding their case. I have been provided with a copy of Mr. Colby's report, his psychological testing on the mother, and the mother's affidavit dated September 6, 2016. I have not reviewed any other documents related to this case. I am providing these comments for the purposes of cross-examination of Mr. Colby and they are not intended as a substitute for the Section 211 report.

- [5] Dr. Elterman goes on to describe six issues concerning Mr. Colby's report, identifying information Mr. Colby could have included or lines of inquiry he could have pursued in preparing the report. For instance, Dr. Elterman notes that Mr. Colby did not interview the parties' parents (with whom they each live); that he failed to provide details regarding the respondent's participation in various parenting courses; and that he gathered or presented little information from professional references such as a counselor and a therapist. Dr. Elterman also notes that Mr. Colby conducted parent-child observation sessions in his office rather than in a more "naturalistic environment". Dr. Elterman concludes: I hope these comments will be of assistance. I want to reiterate that in providing these comments, they are for the purposes of cross-examination rather than offering an opinion about the conclusions and recommendations made by Mr. Colby.
- [6] The claimant relies on a comment made by Mr. Justice Kent in *Dimitrijevic v. Pavlovich*, 2016 BCSC 1529 [Dimitrijevic], where, in considering the relevance of s. 211 "critique" reports (a form of expert opinion evidence in which the contents or methodology of a s. 211 report are critiqued), he stated:
- [35] The purpose of [cross-examination on the subject matters commonly raised in critique reports] is to call into question any conclusions and recommendations posited by the assessor. If such a line of questioning is considered sufficiently relevant for the purposes of cross-examination, one might rightly ask why it becomes irrelevant in the context of admitting expert evidence on the same subject matter.
- [7] The type of evidence Kent J. was considering in *Dimitrijevic* - expert opinion evidence in the form of a s. 211 critique report - is different from the type of evidence the claimant seeks to tender in this case. Dr. Elterman is clear that his comments do not amount to an opinion about Mr. Colby's conclusions and recommendations; nor is Dr. Elterman able to provide a second opinion about the parties or make any recommendations about their case. As stated in the letter report, Dr. Elterman's comments are simply meant to assist counsel. Counsel for the claimant concedes in argument that what is being offered by Dr. Elterman is, at most, an expression by Dr. Elterman of areas that might prove fertile ground for cross-examination.
- [8] In fact, the subjects raised in Dr. Elterman's letter report were put to Mr. Colby in cross-examination. The court has Dr. Colby's answers. The question of whether Mr. Colby's answers revealed any logical inconsistencies or raised any other concerns regarding the weight his recommendations should carry, is one for argument in closing submissions.
- [9] As noted by Kent J. at para. 37 of *Dimitrijevic*, even full s. 211 critique reports that are shown to meet the threshold requirements of admissibility will usually founder when the court exercises its discretionary gatekeeping role in deciding whether the evidence is sufficiently beneficial to the trial process to warrant its admission despite potential harm or prejudice. Kent J. listed several reasons why this is so. The most pertinent, with respect to Dr. Elterman's letter report, is that "properly prepared and informed cross-examination of the s. 211 author is the usual and preferred process for testing the opinions and conclusions

expressed in the report".

- [10] I find this to be true of Dr. Elterman's letter report in its entirety. None of the comments he makes about the information included in Mr. Colby's report, or the procedure by which he gathered that information, requires the assistance of an expert. These are all matters for counsel to deal with in submissions, having already canvassed them in cross-examination.
- [11] The claimant submits it is proper for Dr. Elterman's letter report to be admitted because the court directed that Mr. Colby receive a copy in advance of his being cross-examined. In this respect, counsel asks that I admit Mr. Elterman's letter and let any concerns with its contents go to its weight, as Madam Justice Loo did with a s. 211critique report in J.C.W. v. J.K.R.W., 2014 BCSC 488, at para. 59. I note, however, that the critique report admitted by Loo J. in that case was a substantive critique which included, for example, the substantive opinion that the children were at risk. That decision is clearly distinguishable.
- [12] In conclusion, Dr. Elterman's letter report was written for the express, narrow purpose of assisting counsel in cross-examining Mr. Colby. As it has already served that purpose, I do not see any benefit to be gained by its admission into evidence in these proceedings.
- [13] Dr. Elterman's letter report has therefore been ruled inadmissible. "A. Saunders J."
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