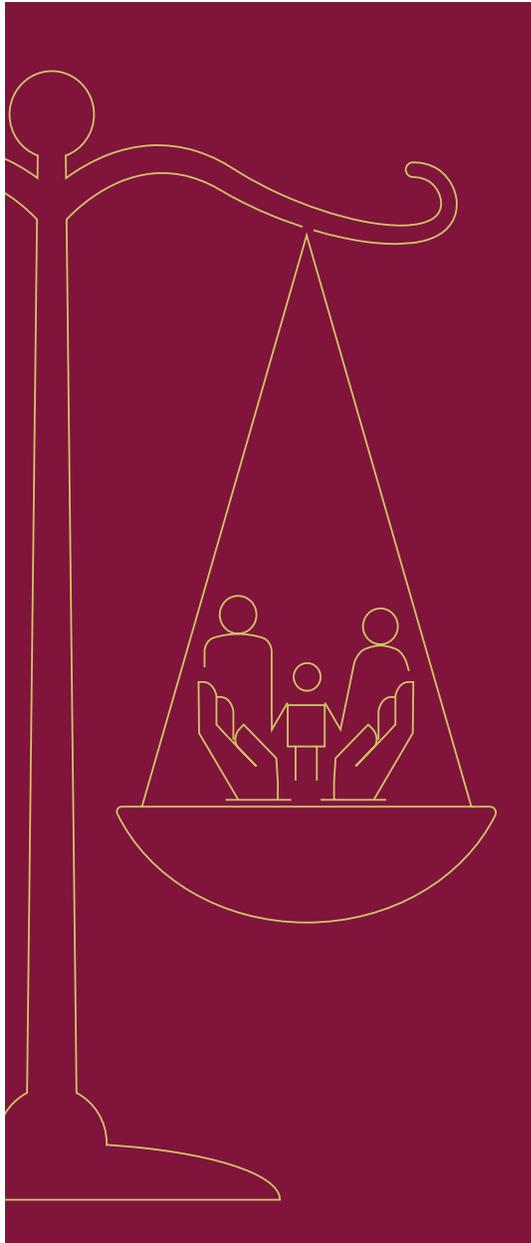

LEGAL BULLETIN

Reunification Therapy and Children's Wishes in Cases of Family Violence: *FS v MBT*, [2023 ONCJ 102](#)



Introduction

Should the Court order that a child attend reunification therapy with their violent parent, against the child's wishes? This is one of the questions posed in *FS v MBT*.¹ In this case, Justice Sherr determined that it would not be in the best interests of a 12-year-old victim of family violence to order her to attend reunification therapy with her father. The decision emphasized the father's lack of self-awareness and possible aim to use therapy to regain control over the mother and child. Accordingly, the Court denied the father's request.

Background

The father came to Canada when he was 18 years old as a refugee from Africa. He and the mother married in Kenya in 2010,² and after the child's birth in 2011, the father sponsored the mother and their child to come to Canada.³ In Canada, the father worked in waste management and the mother was a stay-at-home parent until 2018, at which time she began to work part-time at a daycare.⁴ The mother spoke limited English and was attending school to improve her English at the time of the trial.⁵ The parties and the child lived together in Toronto until they separated in August 2021.⁶

This decision was released following a focused two-day trial about the parties' parenting arrangements for their 12-year-old daughter and the mother's claim for spousal support from the father.⁷ (The issue of child support had been previously resolved on a final basis).

¹ 2023 ONCJ 102.

² *Ibid* at para 16.

³ *Ibid* at para 19.

⁴ *Ibid* at para 14-15.

⁵ *Ibid*

⁶ *Ibid* at para 21.

⁷ *Ibid* at para 1.

The mother sought primary residence and sole decision-making responsibility (“DMR”) with respect to the child. She also requested that any parenting time between the father and child should be in the child’s discretion.⁸ Additionally, the mother alleged that the father subjected both her and the child to family violence during the marriage.⁹ She indicated that she felt it was important that the child have a positive relationship with the father and tried to encourage this.

The father agreed that the child’s primary residence should be with the mother but sought joint-DMR and a parenting schedule that included alternate weekends with the child.¹⁰ In addition, the father requested that the child and mother attend reunification therapy.¹¹ He claimed that the mother fabricated the allegations of family violence and alienated the child from him.¹² Reunification therapy (also known as reintegration therapy) is a therapeutic approach that is intended to assist the family in re-establishing more positive parent-child relationships under the supervision and therapeutic guidance of a skilled therapist.¹³ It is estimated that Canadian judges have ordered reunification therapy in about one-fourth of cases where children were allegedly unjustifiably resisting or rejecting a parent.¹⁴ Anecdotally, this number may have increased since a 2019 Ontario Court of Appeal decision wherein the Court ordered a custody reversal and reunification therapy in a case

concerning a teenage boy. There is much debate on the effectiveness of this approach and ensuring it is applied to the appropriate case with the needed consent of the child.¹⁵

At trial, Justice Sherr found that the mother had been the child’s primary caregiver throughout the relationship and that the child had lived exclusively with the mother after the parties separated.¹⁶ By the time of the trial, the father had not seen the child in person since the parties separated in August 2021, but had two virtual visits in February 2022 which both parties agreed “went poorly.”¹⁷ The child refused to see the father since the parties separated.¹⁸

At a May 2022 court appearance, a different judge ordered that the Office of the Children’s Lawyer provide the Court with a Voice of the Child Report (“VOCR”).¹⁹ This type of non-evaluative, limited scope report is produced by a clinician who interviews the child to ascertain their views and preferences at a specific point in time.²⁰ The VOCR, dated June 24, 2022, documented that the child “expressed a strong view and wish to have no contact with the father.”²¹ She relayed her own experiences of physical and verbal/emotional abuse by the father, as well her observations of his poor treatment of the mother. The child refused to attend any form of reconciliation or reunification therapy, while the mother attended two sessions and the father attended six sessions with their respective counsellors.²²

The Child’s Views and Preferences

I) Overview of Views and Preferences

In making a parenting order, the Court must give primary consideration to the best interests of the child.²³ Both the federal *Divorce Act* and provincial *Children’s Law Reform Act* set out a list

of non-exhaustive factors that the Court must consider in establishing what is in a child’s best interests.²⁴ One of these factors are the views and preferences of the child.²⁵

⁸ *Ibid* at para 2.

⁹ *Ibid* at para 70-71.

¹⁰ *Ibid* at para 5.

¹¹ *Ibid* at para 6.

¹² *Ibid* at para 91.

¹³ See Jan Faust, *Reunification Family Therapy: A Treatment Manual*, 1st ed (Newburyport, MA: Hogrefe Publishing, 2016).

¹⁴ See Nicholas Bala, Suzanne Hunt, & Carolyn McCarney, “Parental Alienation: Canadian Court Cases 1989-2008” (2010) 48:1 Fam C Rev 164.

¹⁵ See Suzanne Chester, “Reunification, Alienation, or Re-traumatization? Let’s Start Listening to the Child” (2021) 19:3-4 Journal of Family Trauma,

Child Custody & Child Development 359

¹⁶ *FS v MBT*, *supra* note 1 at para 22-23.

¹⁷ *Ibid* at para 24.

¹⁸ *Ibid* at para 25.

¹⁹ *Ibid* at para 29.

²⁰ *Ibid* at para 115.

²¹ *Ibid* at para 30.

²² *Ibid* at para 32-34.

²³ *Ibid* at para 36-37.

²⁴ *Ibid*.

²⁵ *Children’s Law Reform Act*, RSO 1990, c C.12 at s 24(3)(e).

The Court is instructed to weigh a child's stated views and preferences according to their age and maturity.²⁶ It is noteworthy that "[t]he court must ascertain a child's best interests from the perspective of the child rather than that of the parents [...] Adult preferences or "rights" do not form part of the analysis except insofar as they are relevant to the determination of the best interests of the child."²⁷

In this case, Justice Sherr quoted another decision wherein Justice Mandhane stated, "[a] human rights-based approach... calls on the Courts to recognize, respect and reflect each child as an individual distinct from their parents, and to empower children to be actors in their own destiny. In practice it requires judges to probe into each child's lived experience, to meaningfully consider their views and preferences, and to craft an order that promotes that child's best interests and overall wellbeing."²⁸

In assessing the child's views and preferences, Justice Sherr relied on other cases, including from the Court of Appeal for Ontario, where the wishes of pre-teen and teenaged children were respected in creating a parenting order.²⁹

II) The Child's Exposure to Family Violence

In this case, the child's views were informed by her exposure to family violence perpetrated by the father.³⁰ At trial, the mother recounted the instances of family violence that occurred during the relationship. She asserted that some of the violence was physical and involved pushing and intimidation. She stated that the father would "shove the child, pull the child's hair and box the child's ears."³¹

The mother also recounted instances of emotional and psychological violence. She said the father was verbally abusive daily, calling her

names, making fun of her appearance, criticizing her lack of education and illiteracy, and mocking her English in front of his friends.³² He also told the child that "she is as dumb as her mother and is the devil."³³ The father also isolated the mother and child and did not allow them to have friends in the home.³⁴ The mother said she felt scared of the father and was helpless in preventing the abuse.³⁵ The child's perspective was chronicled in the VOICR prepared by the Office of the Children's Lawyer clinician.

III) The Voice of the Child Report and the Clinician's Evidence

The VOICR prepared by the clinician was filed as evidence and the clinician testified at the trial. The clinician stated that the child's views were "independent, strong and consistent" and that there was no evidence that the child had been coached or alienated by the mother.³⁶ The VOICR confirmed the mother's account of the abuse.³⁷

The child told the clinician that the father hit her if she did not answer her homework correctly and called her a "devil, rat and snake" and stupid.³⁸ The child did not like how the father had treated the mother. She said she did not think her father would change and that she did not want to have a relationship with someone that put her and her mother down.³⁹ She told the clinician that she wanted to make her own decision about if, and when, to see her father.⁴⁰ On the other hand, the child stated that her mother was kind-hearted, always there for her, and encouraged her to have a relationship with her father.⁴¹

The Court noted that while helpful, there are limitations of a Voice of the Child Report.⁴² These reports do not include a fulsome investigation into the family, nor does the clinician observe the child interacting with the parties. There is limited document review and collateral sources

²⁶ *Ibid*

²⁷ *FS v MBT*, *supra* note 1 at para 45.

²⁸ *Ibid* at para 46, citing to *SS v RS*, 2021 ONSC 2137 at paras 26-28.

²⁹ *FS v MBT*, *supra* note 1 at paras 63-65.

³⁰ *Ibid* at para 71-72; 162.

³¹ *Ibid* at para 73.

³² *Ibid* at para 74.

³³ *Ibid*

³⁴ *Ibid* at para 76.

³⁵ *Ibid* at para 73.

³⁶ *Ibid* at para 119-120.

³⁷ *Ibid* at para 121.

³⁸ *Ibid*.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ *Ibid*.

⁴² *Ibid* at para 115.

are not interviewed. Accordingly, the Court must weigh the VOCR on the whole of the evidence.⁴³ In this case, Justice Sherr found the report to be helpful and held that the clinician’s evidence was

consistent with other evidence presented and the Court’s observation of the parties.⁴⁴

Credibility, Alienation and Reunification Therapy

I) Credibility

Justice Sherr expressed some concerns with the mother’s credibility because she answered some questions tangentially and had difficulty remembering dates or specifics about incidents.⁴⁵ However, the Court identified three factors that may have contributed to this. First, the mother was communicating through a Swahili interpreter. Second, the mother had only a sixth-grade education and the court process was very stressful for her. The mother spent much of the trial in tears. Third, the mother had to face the father in the courtroom, the man who had allegedly abused her and dominated her life.⁴⁶

Notably, Justice Sherr’s judgment also acknowledged that “**inconsistent evidence is common for victims of domestic violence**” and that “[v]ictims of family violence are often the only witnesses who can attest to their abuser’s behavior and unfortunately, they are sometimes not believed because of their inability to support their allegations with objective third party evidence.”⁴⁷ He also noted that control and coercion can be subtle and only evident to the victim.⁴⁸

In assessing the father’s credibility, the Court held that “[t]he strongest evidence corroborating the mother’s version of events came from the father.”⁴⁹ Justice Sherr noticed that “[t]he father started off in his testimony as calm, measured, charming and self-effacing” but that “[t]his version of the father quickly disappeared once his evidence was challenged.”⁵⁰

Justice Sherr wrote that judges often keep notes of their impressions of a witness while they are testifying.⁵¹ He found the mother to be overwhelmed, intimidated, and submissive.⁵² He found the father was domineering, authoritative, controlling, and a bully.⁵³ He held that the father was “bombastic, aggressive and intimidating. The court could easily see why the mother is afraid of him.”⁵⁴ He was quick to anger when challenged, manipulative, and “**lacked any empathy or respect for the child’s experiences.**”⁵⁵ The Court also noted that the father “[l]ack[ed] any insight into his own conduct and why the mother and child fear him.”⁵⁶ The Court found he was not a reliable witness. The Court also found that the father used the litigation process to try to control and intimidate the mother.⁵⁷

The Court determined that the father’s refusal to pay child support since separation was an element of financial abuse and was “strong evidence of controlling and coercive behaviour”⁵⁸ that was meant to send “the message to the mother that this is the consequence when you defy him.”⁵⁹ Justice Sherr also noted that the failure to support one’s child is a factor mitigating against joint decision-making as it demonstrates poor decision-making and an inability to prioritize the child’s interests.⁶⁰

II) Alienation and Reunification Therapy

The father argued that the mother manipulated the child and caused parental alienation. Justice Sherr found there was no credible evidence

⁴³ *Ibid* at para 115-116.

⁴⁴ *Ibid* at para 117.

⁴⁵ *Ibid* at para 103.

⁴⁶ *Ibid* at para 104.

⁴⁷ *Ibid* at para 51-52.

⁴⁸ *Ibid* at para 53.

⁴⁹ *Ibid* at para 122.

⁵⁰ *Ibid* at para 125-126.

⁵¹ *Ibid* at para 127.

⁵² *Ibid*.

⁵³ *Ibid* at para 128.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*.

⁵⁶ *Ibid*.

⁵⁷ *Ibid* at para 142.

⁵⁸ *Ibid* at para 133.

⁵⁹ *Ibid* at para 131.

⁶⁰ *Ibid* at para 58.

that the mother had alienated the child from the father.⁶¹ Instead, the evidence from the mother's counsellor and the VOCR indicated that the mother had encouraged the child to see her father, even though the child did not want to see him.⁶²

Based on the father's conduct, the Court found that the child "has had a dysfunctional and unstable relationship with the father. She is not close to him, does not feel heard or respected by him and does not feel emotionally safe with him."⁶³ Justice Sherr held that the mother is the parent that "has met the child's physical, emotional, psychological and developmental needs" while "[t]he father shows no understanding about what those needs are."⁶⁴ Moreover, the Court found that the mother was justifiably afraid of the father and that he had perpetrated family violence against the mother and child.⁶⁵

The Court found that the child's wishes were clear, consistent, strong, and longstanding. **The child's "reasons for not wanting to see her father are understandable and justified. He was and continues to be abusive to her and the mother."**⁶⁶ Accordingly, it would be inappropriate for the Court to order that the child attend

Takeaways

This case provides a clear analysis of the impact of family violence on the victim parent and child, including the child observing this conduct against the victim parent. The decision provides a clear example of how an abusive parent may make allegations of alienation to divert attention from their abusive behaviour, even when there is no credible basis for these allegations. The decision also provides a thoughtful analysis of the considerations relevant to a request

reunification therapy, which, the judge noted, is only to be ordered in rare circumstances where there is evidence that it will be beneficial.⁶⁷

As with any family law order made in Ontario, the primary focus must be on the best interests of the child. Justice Sherr said that reunification therapy would not be in the child's best interests.⁶⁸ The main reason for this finding was that the child did not want to engage in the process with the father, the mother did not want to engage directly with the father and that their feelings as victims of family violence should be respected.⁶⁹

III) Effectiveness of Reunification Therapy

In rendering the decision, Justice Sherr also questioned whether reunification therapy would be effective in this case. The Court noted that the father gained little insight from his own counselling sessions.⁷⁰ As a result, there was concern that **"the father would see this process as an opportunity to try to regain the control he has lost over the mother and the child."**⁷¹ This indicates that when considering an order for reunification therapy, the court should consider whether such an order may exacerbate ongoing family violence concerns.

forreunification therapy. Although reunification therapy is an increasingly popular remedy for fractured parent-child relationships, the Court highlights the contraindications in situations of family violence, including ongoing attempts by the abuser to control the victim parent and child. Most importantly, the Court gives considerable weight to the clear, strong and long-standing views of the child, which were consistent with other evidence at trial. The decision is consistent

⁶¹ *Ibid* at para 146.

⁶² *Ibid* at para 147.

⁶³ *Ibid* at para 150.

⁶⁴ *Ibid*.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

⁶⁷ *Ibid* at para 161-162.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*.

⁷⁰ *Ibid* at para 163.

⁷¹ *Ibid*.

with the UN Convention on the Rights of the Child, which encompasses not only the child's right to express views, but to have a meaningful impact on the outcome of legal proceedings dealing with their future.

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