

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Beck v. Shiner et al.*,
2003 YKSC 62

Date: 20010821
Docket : S.C. 97-A0367
Registry: Whitehorse

Between:

DEBBIE HOPE BECK

Plaintiff

And:

MERL JODY SHINER and
NORCAN LEASING LTD.

Defendants

Before: Mr. Justice R.E. Hudson

Appearances:
Debra Fendrick
Richard Buchan

For the Plaintiff
For the Defendants

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] HUDSON J. (Oral): My order is as follows. Firstly, the clinical records from January 25th forward in the possession of Alberta Rooney, all notes and questions and answers will be disclosed to the defendants solicitors.

[2] However, the personal notes, if any, of Ms. Rooney, regarding her personal observations and conclusions, need not be disclosed. A psychologist should be free to make preliminary notes of such which might contradict one another and contradict later thoughts, the distillation of which lead to her report. As to her ultimate opinion and, therefore, her evidence, that is in the report.

[4] However, I say this, if a follow-up question to a previous question includes an indication or an observation or opinion of the interviewer, in this case, Ms. Rooney, then notes of such a question including expressions of observations or opinion shall be disclosed.

[5] Disclosure shall be done by delivery to the plaintiff's solicitor in 24 hours and within 18 hours thereafter by delivery to the solicitor for the defendants.

[6] As the defendant Shiner personally appears disinterested, and the defendants counsel represents both defendants, it is directed that the plaintiff's counsel not disclose the contents of the items disclosed or allow inspection of these items without further order of this court. That, of course, is excepted by the need to inform the court, if they wish to communicate the notes, the content of the notes, the clinical records, to other expert witnesses. Then they may disclose to the court *ex parte* what the notes say in order that the court may better decide whether to grant authority to communicate them to a further professional expert witness.

[7] As to costs, we can fix a date. I prefer that you go to the trial coordinator at this hour.

[8] Anything further?

[9] MS. FENDRICK: My Lord, I just wanted to clarify. You said that counsel ought not allow further inspection. I believe you said plaintiff's counsel, but is that to be defendants counsel as not to allow inspection?

[10] THE COURT: I am sorry. Yes. Thank you.

[11] Both counsel should not communicate it to anybody without further order of the court, on application, without notice to anybody but the plaintiff or the defendant.

[12] MS. FENDRICK: And if I may just add, there was the, what I understood, consented to proposition that all affidavits dealing with the Rooney matter be sealed in the public court file?

[13] THE COURT: All affidavits disclosing communications between the plaintiff and Ms. Rooney will be sealed, and if there is an affidavit that does not disclose such communication then there is no need for it to be sealed, as I see it.

[14] MR. BUCHAN: So, My Lord, just so that I understand, Ms. Rooney is to provide disclosure of the records that you specified within 24 hours to plaintiff's counsel and in turn plaintiff's counsel must provide disclosure of those documents.

[15] THE COURT: Those are outside limits. I would hope that they would as promptly be complied with as possible. I wish that Ms. Beck would understand that the results of this order are, in my humble view, respectful of her privacy in the extreme. I fully believe and I have faith in counsel to comply with her expectations.

[16] MR. BUCHAN: I will certainly convey that sentiment to Mr. Neen, as well.

[17] THE COURT: All right. Well, I am sure that he understands. Her interests, I assure her, I have on very serious consideration, and in the balancing that has taken place, I hope that she can understand that the risk of her privacy being invaded is minimized better than everyday life.

[18] Thank you.

HUDSON J.