SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Green v Green,* 2022 NSSC 120

Date: 20220502
Docket: SFH No. 1201-071597
Registry: Halifax

Between:

Kelsey Green

Applicant

v.

Heidi Green

Respondent

Judge:	The Honourable Justice Theresa Forgeron
Heard:	April 20, 2022
Decision:	May 2, 2022
Counsel:	Godfred Chongatera for the Applicant, Kelsey Green Heidi Green, Respondent, self-represented

By the Court:

Introduction

[1] Kelsey Green and Heidi Green are divorced spouses and the parents of three children. Despite the 2021 divorce decision, the parenting issues continue to be litigated. A contested hearing is scheduled for May 30, 31, and June 2, 2022.

[2] In this decision, I will determine preliminary evidentiary issues in advance of the hearing. The evidentiary issues concern the admissibility of two reports and whether certain parenting, property, and costs issues can be relitigated.

[3] For his part, Mr. Green seeks to admit two reports as expert evidence during the upcoming hearing. Dr. Steven Miller authored the first report. Dr. Miller states that parental alienation is the cause of the poor relationship between the children and Mr. Green. In reaching his opinion, Dr. Miller critiqued my 2021 divorce decision, the parental capacity assessment, and psychological reports considered during the divorce hearing[i], as well as other materials given to him by Mr. Green. The second report is written by Dr. Jennifer Harman who discusses concepts surrounding parental alienation, but without reference to either party or their children.

[4] In addition, Mr. Green wants to set aside my divorce decision as it relates to my findings, conclusions, and rulings on alienation, property division, and costs. Mr. Green states that my findings, conclusions, and rulings were wrongly decided and thus must vacated.

[5] In contrast, Ms. Green objects to the admission of the proposed expert reports for two reasons:

- The court already ruled on the issues that these reports purport to address.
- Neither Dr. Miller, nor Dr. Harman ever communicated with or interviewed Ms. Green and the children.

[6] Further, Ms. Green states that the divorce and costs decisions already decided issues surrounding alienation, property, and costs. She opposes the relitigation of these issues.

Issues

[7] The following issues will be determined in this decision:

- Should the reports of Dr. Miller and Dr. Harman be admitted during the contested parenting hearing scheduled for May 30, 31 and June 2, 2022?

- Do I have jurisdiction to set aside my previous findings and conclusions on the parenting, property, and costs issues?

Background

[8] The parties were involved in an acrimonious divorce trial which was held on October 26, 27, 28, 29; November 3 and 6; and December 17, 2020. Contested parenting issues consumed most of the trial.

[9] Given the complexity of the issues, a parental capacity assessment was undertaken by psychologist, Shelia Bower-Jacquard. Ms. Bower-Jacquard testified during the divorce trial. In addition, I heard evidence from the parties; a psychiatrist from the mood disorder clinic who treated Mr. Green; a counsellor; a coach; the paternal grandfather; three police officers; the mother's sister; and a psychologist who treated the children. Further, other evidence was entered by consent, including business records and a brief agreed statement of facts about Dr. McAfee's involvement. Dr. McAfee was a psychologist who was involved with the family. She was unable to testify at trial because of difficult personal circumstances. At the time of trial, Dr. McAfee was no longer practicing.

[10] After reviewing the written and oral submissions of the parties, both of whom were represented by capable legal counsel, I delivered my decision, as reported at ***KG v HG,*** 2021 NSSC 43. One of the central issues at trial was the cause of Mr. Green's strained relationship with the children. I gave the following explanation for why this thorny issue could not be avoided:

> [32] The father states that the mother alienated the children against him. For her part, the mother states that the strained relationship is caused by the father's long standing negative behaviours. She denies alienating the children.
>
> [33] The court appointed assessor, Ms. Bower-Jacquard, felt that it was not necessary to identify the root cause behind the failing relationship. She said that although the parties may never agree, it was nonetheless possible and indeed worthwhile, to move forward with therapy.
>
> [34] Although tempting, I find Ms. Bower-Jacquard's approach not workable for three reasons. First, the father specifically asked the court to address this issue. Indeed, his theory of the case is wrapped entirely around this very point. The father does not veer from his fixed belief. The father is not likely to change paths voluntarily. Therefore, I must answer the question.

> [35] Second, the type of therapeutic interventions to be assigned is dependent on the outcome of this issue. Estrangement and alienation are distinct concepts that must be addressed in different ways. If the mother alienated the children, there will be a radically different outcome than if the father's behaviours are largely responsible. The court must know the cause to successfully plot the course for the future.
>
> [36] Third, it is in the children's best interests to resolve the parenting conflict that has raged on and consumed this family for more than two years. Sidestepping the central issue will not make the problem disappear.

[11] After reviewing the position of the parties and the law, I made extensive findings of fact. I specifically rejected Mr. Green's claim of parental alienation: for example, paras 55 to 64 and 84 to 87 of the divorce decision.

[12] Further, the divorce decision directed that the parties and the children participate in therapy, with defined and specified goals, as outlined in paras 104 to 114 of my decision. Following the successful completion of the detailed therapy, the court would review the parenting plan. If the therapeutic goals were achieved, then a more typical parenting arrangement would be ordered.

[13] After the CRO issued, Mr. Green sought an extension of time to appeal my divorce decision. The Court of Appeal denied his motion for an extension: ***Green v Green,*** 2021 NSCA 61.

[14] On April 29, 2021, I issued my cost decision, which is reported at ***KG v HG,*** 2021 NSSC 142.

[15] On September 27, 2021, the review contemplated at paras 112 to 114 of the divorce decision was scheduled. It did not proceed. The hearing was rescheduled to December 6, 2021. That hearing also had to be rescheduled because Mr. Green filed a recusal motion. December 6th was reassigned for the contested recusal motion. The review hearing was rescheduled to January 31, 2022.

[16] The December 6th recusal motion did not proceed as hoped. After hearing from his first witness, Mr. Green asked to adjourn because his second witness was unavailable to testify, and she had not been properly served. The adjournment was granted. The recusal motion was rescheduled and concluded on January 19, 2022. My decision on the recusal motion, dated February 1, 2022, is reported as ***Green v Green***, 2022 NSSC 30.

[17] The January 31st review hearing was rescheduled until after I decided the recusal motion and a motion for state-funded counsel, also filed by Mr. Green. The

motion for state-funded counsel was scheduled for February 24, 2022. Mr. Green was directed to file financial information prior to the hearing.

[18] Mr. Green did not file the financial information as directed and he requested an adjournment during the February 24th appearance. An adjournment was granted. The motion was rescheduled to March 31, 2022. Mr. Green asked to adjourn a second time. His request was denied, as reported at ***Green v Green***, 2022 NSSC 105. Mr. Green did not appear for the motion. The hearing proceeded in his absence. I denied Mr. Green's motion for state-funded counsel, as reported at ***Green v Green***, 2022 NSSC 106.

[19] The review contemplated in my divorce decision is now scheduled for May 30, 31, and June 2, 2022. In addition to the review, both parties seek to vary the provisions of the CRO. Their variation applications will be heard in conjunction with the review hearing.

[20] On March 21, 2022, in anticipation of the upcoming hearing, I sent a letter to the parties via email and regular post. Included in this letter was a Notice to Appear for the pretrial conference scheduled for April 20, 2022. The letter further provided directions about materials and a memo that had to be filed before the pretrial conference. I provided the following directions concerning the reports of Dr. Miller and Dr. Harman, and Mr. Green's plans to relitigate certain issues:

> The first Notice to Appear is for a pretrial conference scheduled for ***April 20, 2022, from 10:30 to 11:30 am***. This conference will be in-person. Before this conference, you must file a memo addressing the following:
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> …
>
> - Whether either party has the ***right to relitigate the decisions made on the parenting, property division, and costs issues*** as determined in the divorce decision and CROs. ***You must file a memo confirming your position on or before April 13, 2022. Your memo should contain any law upon which you rely to support your position.***
>
> - Whether the ***proposed evidence of Dr. Steven Miller dated September 10, 2021, and Dr. Jennifer Harman dated September 30, 2021, should be admitted*** into evidence during the hearing. You must file a memo setting out your position on the admissibility of these reports - whether I should receive and consider the reports as part of the evidence during the May hearing. One of the points that you should address is whether the reports of Dr. Miller and Dr. Harman are about facts or opinion, or both, that are already ruled upon in the divorce decision of February 2021. ***You must file a memo confirming your position on or before April 13, 2022. Your memo should contain any law upon which you rely to support your position.***

[21] On April 13, 2022, Ms. Green filed a memo setting out her position as required. Mr. Green did not file a memo. Mr. Green did not seek an extension of time to file his memo.

[22] On Wednesday, April 20, 2022, just before court began, Mr. Green advised the court reporter that he was now represented by Mr. Chongatera. Mr. Chongatera was not present in court. No prior notice was provided about Mr. Chongatera's representation. Mr. Chongatera was reportedly in another court room in the building. It was determined that Mr. Chongatera was in front of Justice Moreau, who kindly recessed the other hearing so that Mr. Chongatera could appear for the Green pretrial.

[23] During the pretrial, Mr. Chongatera was unable to articulate Mr. Green's position on the admissibility or relitigation issues. He asked for more time. I initially directed that his written submissions could be filed on Thursday. More time was requested. Yet again, I extended Mr. Green's filing deadline to 4 pm on Friday, April 22, 2022.

[24] In his submissions filed on April 22, 2022, Mr. Chongatera provided some general comments about the issues but wanted more time to argue the points at a further pretrial or at the time of trial. I will not provide any further extensions given that written submissions were originally due on April 13, and Mr. Green was given the benefit of one extension already.

Analysis

[25] **Should the reports of Dr. Miller and Dr. Harman be admitted during the upcoming contested parenting hearing?**

Position of Mr. Green

[26] Mr. Green wants the reports entered because he believes that my divorce decision is wrong. He believes that Ms. Green alienated the children against him, and that the two reports confirm his position. Mr. Green believes these reports should be admitted because they were not available at the time of the divorce trial. Mr. Green wants to vacate the parenting provisions of the divorce decision.

Position of Ms. Green

[27] Ms. Green disagrees. She states that the parenting issues were already decided. She further notes that neither Dr. Miller nor Dr. Harman had any contact with her or the children, rendering their reports meaningless.

Decision

[28] I will *not* admit the reports of either Dr. Miller or Dr. Harman for two reasons. First, the reports of Dr. Miller and Dr. Harman are being put forth by Mr. Green as a means to relitigate matters previously resolved. The reports are nothing more than an attack against the finality of my divorce judgement. Second, the reports of Dr. Miller and Dr. Harman have little probative value. I will now expand on each of my two reasons.

Ground I - Finality of Divorce Decision

[29] In ***Van de Perre v Edwards,*** 2001 SCC 60, the Supreme Court of Canada commented on the importance of finality, especially in custody matters:

> 13 As I have stated, the Court of Appeal was incorrect to imply that Hickey, supra, and the narrow scope of appellate review it advocates are not applicable to custodial determinations where the best interests of the child come into play. Its reasoning cannot be accepted. **First, finality is not merely a social interest; rather, it is particularly important for the parties and children involved in custodial disputes. A child should not be unsure of his or her home for four years, as in this case. Finality is a significant consideration in child custody cases, maybe more so than in support cases, and reinforces deference to the trial judge's decision**… [Emphasis added.]

[30] In ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC52, Abella, J summarized the broad principle of finality arising from the doctrines of *res judicata*, collateral attack, and abuse of process. She noted that these principles exist to prevent unfairness and abuse of the decision-making process while avoiding inconsistent results, duplicative proceedings, and unnecessary expenditures of resources:

> 34 At their heart, the foregoing doctrines exist to prevent unfairness by preventing "abuse of the decision-making process" (*Danyluk*, at para. 20; see also Garland, at para. 72, and *Toronto (City)*, at para. 37). Their common underlying principles can be summarized as follows:
>
> > *It is in the interests of the public and the parties that **the finality of a decision can be relied on** (*Danyluk*, at para. 18; Boucher, at para. 35).
> >
> > *Respect for the finality of a judicial or administrative decision **increases fairness and the integrity of the courts**, administrative tribunals and the administration of justice; on the other hand, **relitigation** of issues that have been previously decided in an appropriate forum **may undermine confidence in this fairness and integrity by creating inconsistent results and unnecessarily duplicative proceedings (***Toronto (City)*, at paras. 38 and 51).

> *The **method of challenging** the validity or correctness of a judicial or administrative decision **should be through the appeal** or judicial review mechanisms that are intended by the legislature (*Boucher*, at para. 35; *Danyluk*, at para. 74).
>
> *Parties should not circumvent the appropriate review mechanism by using other forums to challenge a judicial or administrative decision (*TeleZone*, at para. 61; *Boucher*, at para. 35; *Garland*, at para. 72).
>
> *Avoiding **unnecessary relitigation avoids an unnecessary expenditure of resources** (*Toronto (City)*, at paras. 37 and 51). [Emphasis added]

[31] In ***Figliola,*** Abella, J also provided the following overview of the finality doctrines of *res judicata*, collateral attack, and abuse of process:

> 27 The **three preconditions of issue estoppel are whether the same question has been decided; whether the earlier decision was final; and whether the parties, or their privies, were the same in both proceedings** (*Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, at p. 254). These concepts were most recently examined by this Court in *Danyluk*, where Binnie J. emphasized the importance of finality in litigation: **"A litigant ... is only entitled to one bite at the cherry... . Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided**" (para. 18). Parties should be able to rely particularly on the conclusive nature of administrative decisions, he noted, since administrative regimes are designed to facilitate the expeditious resolution of disputes (para. 50). All of this is guided by the theory that "**estoppel is a doctrine of public policy that is designed to advance the interests of justice"** (para. 19).
>
> 28 The **rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route**…
>
> ….
>
> 30 In other words, the harm to the justice system lies not in challenging the correctness or fairness of a judicial or administrative decision in the proper forums, it comes from inappropriately circumventing them (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 46).
>
> …
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> 33 Even where *res judicata* is not strictly available, Arbour J. concluded**, the doctrine of abuse of process can be triggered where allowing the litigation to proceed would violate principles such as "judicial economy, consistency, finality**

> **and the integrity of the administration of justice"** (para. 37). She stressed the goals of avoiding inconsistency and wasting judicial and private resources:
>
> > [Even] if the same result is reached in the subsequent proceeding, the relitigation will prove to have been a waste of judicial resources as well as an unnecessary expense for the parties and possibly an additional hardship for some witnesses. Finally, if the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality. [para. 51]… [Emphasis added]

[32] In addition, the scope of the doctrine of collateral attack was recently restated in ***Piers v Proudman,*** 2021 ABQB 253. The court held that a "collateral attack is a litigation step or proceeding that challenges, directly or indirectly, a prior court decision or result": para 21**.** The court confirmed that "[c]ollateral attacks are generally prohibited and an abuse of process" and such applications "should be terminated, immediately": para 21. The following examples were provided:

> 22 Examples of prohibited collateral attacks include:
>
> > 1.bringing proceedings to determine an issue that has already been determined by a Court of competent jurisdiction;
> >
> > 2.using previously raised grounds and issues improperly in a subsequent proceeding;
> >
> > 3.conducting a proceeding to circumvent the effect of a Court Order; and
> >
> > 4.conducting multiple proceedings with the same litigation objective.

(a) Res judicata

[33] I find that the three preconditions of *res judicata* are met. First, the same issues addressed in the reports of Dr. Millar and Dr. Harman were already decided in my divorce decision. In that decision, I conclusively found that Ms. Green did not alienate the children, but rather, there was justifiable estrangement:

> [55] There are multiple reasons for the strained relationship between the father and the children. I find, however, that the primary cause is connected to the father's behaviour and lack of insight. The second cause is related to the mother's behaviour. The third cause is related to the children's temperaments.
>
> [56] **In addition, I unequivocally find that the strained relationship is not in any way connected to the alienation claim put forth by the father. The father's theory was**

> **not proved. Quite the opposite, the evidence shows that the mother did not alienate the children from the father. The relationship between the father and children is estranged, not alienated, and primarily for causes within the father's control**.
> [Emphasis added]

[34] Further, after I comprehensively reviewed my findings surrounding Mr. Green's behaviours and lack of insight, Ms. Green's behaviours, and the children's temperaments, I once again categorically dismissed Mr. Green's claim of parental alienation:

> [84] **I categorically dismiss the father's alienation claim because it lacks both a legal and evidentiary foundation.** I have no expert evidence that the mother alienated the children. All I have is the lay inadmissible belief of the father.
>
> [85] Expert evidence must be introduced according to the procedure established in Rule 55. The father did not adhere to this process. Instead, the father put forth his lay opinion based on social science literature and expert opinion that was accepted by other courts in other cases. Neither of these attempts meet with success for the following three reasons:
>
> - The father is not an expert in alienation theory. He is not a psychiatrist. He is not a psychologist. He is not a social worker. He is a lay person with no special training or experience. He does not become an expert because he reads literature on alienation theory.
>
> - The father is not an independent witness. The father is neither objective nor unbiased. He is a parent who is estranged from his children and is embroiled in a high conflict parenting dynamic. He is a litigant with a firm and entrenched position.
>
> - The Nova Scotia Court of Appeal confirmed that judges should not rely on extrinsic social science literature because such literature was not capable of judicial notice; could not substitute for expert opinion; or was not meaningfully considered by all parties: ***Nova Scotia (Minister of Community Services) v BF***, 2003 NSCA 119; ***Children's Aid Society of Cape Breton-Victoria v GL***, 2003 NSCA 112; ***Children's Aid Society and Family Services of Colchester County v EZ***, 2007 NSCA 99; ***Gallant v Gallant***, 2009 NSCA 56; ***and Nova Scotia (Minister of Community Services) v CKZ***, 2016 NSCA 61.
>
> [86] Conversely, if I ought to have considered social science literature or the expert opinion accepted in other cases, my conclusion would not change. The father simply did not prove the following from the so-called four factor model that he espouses:
>
> - *A prior positive relationship with the children*: Although they love their father, the children were afraid of him. The relationship between the father and children was tainted well before separation.

- *A lack of serious deficiencies in the father's parenting:* To the contrary, the evidence confirms significant deficits in the father's parenting as reviewed throughout much of this decision.

- *The mother engaged in all the types of alienating behaviours:* Although the mother did draw the children into the parenting conflict, she did not alienate them.

- *Exhibition of eight behavioural manifestations of alienation*: They were not exhibited. For example, all three children said they want to have a relationship with the father provided he is not angry. All three said they enjoy spending time with the father, especially when participating in outdoor activities, provided the father is not angry. The children do not reject the father's family. In fact, they enjoy an excellent relationship with the paternal grandfather, paternal step grandmother, and paternal cousins. The children, especially T and A, remain hopeful that they will enjoy a positive relationship with the father in the future.

> [87] **The father must let go of his alienation claims. Perseverating on the alienation theory prevents him from gaining insight, from appreciating the children's perspective, or from making the necessary changes required to improve his relationship with the children. It is time for the father to move on.** [Emphasis added]

[35] Second, the divorce decision was final. It was not an interlocutory decision. The contemplated review was solely focused on the court ordered therapy:

> [112] It is essential that the parties make good faith efforts when engaging in therapy. The parties, especially the father, have much to accomplish. If the father is not willing to make the necessary changes, there is little likelihood that his relationship with the children will improve. The outcome is within the father's control.
>
> [113] The parenting conflict has raged on for more than two years. **Although therapeutic interventions are both necessary and appropriate, it is not in the children's best interests to be engaged in therapy indefinitely. Therefore, the parties will have seven months to conclude the therapeutic goals. If they are successful, then a more typical parenting arrangement will follow.** The father should note, however, that a typical parenting arrangement does not necessarily mean shared parenting. A typical parenting arrangement often means less than 40% of the children's time. The father should focus on the quality and not the quantity of his parenting time. [Emphasis added]
>
> [114] The scheduling office will arrange a thirty minute conference in about seven months. The father and the mother will file, with the court and each other, a report from their therapist, two weeks in advance of the conference outlining the status of the party's progress. The mother will file a similar report from the children's therapist. If the parties complete the therapeutic goals earlier than seven months, then an application can be filed to secure an earlier conference date.

[36] Finally, as to the last *res judicata* precondition, the parties are indeed the same parties in both proceedings.

(b) Collateral Attack

[37] I find that Mr. Green's attempt to introduce the reports as expert evidence is a collateral attack against the finality of my findings in the divorce decision. The alienation issue was already raised, litigated, and decided in the divorce decision. The same issue between the same parties is not to be the subject of multiple proceedings. Mr. Green disagrees with the outcome of my divorce decision. Any alleged errors, however, were appropriately addressed through the appeal process – not through a relitigation of the issues in the Family Division. Mr. Green's collateral attack cannot be sustained.

(c) Abuse of Process

[38] In addition, the admission of the proposed expert reports would result in an abuse of process. I find that the admission of the two reports would "violate principles such as "judicial economy, consistency, finality and the integrity of the administration of justice": ***Figliola***, para 33.

Ground II - Lack of Probative Value

[39] A further ground to exclude the reports is lack of probative value. The reports of Dr. Miller and Dr. Harman lack probative value for two reasons. First, the reports are about issues already litigated and decided. These issues will not be relitigated or decided anew. As a result, the reports contain opinions that are not relevant.

[40] Second, Dr. Miller and Dr. Harman never met, interviewed, or communicated with either Ms. Green or the children. They never met with the collaterals who were interviewed by the court appointed assessor, Ms. Bower-Jacquard. They neither received, nor reviewed a transcript of the trial evidence, nor all of the extensive exhibits entered at trial. Dr. Miller's report is a critique report. Dr. Harman's report is an academic discussion of alienation.

[41] In ***M v F***, 2015 ONCA 277, the Ontario Court of Appeal held that critique reports are rarely appropriate evidence. Benotto, JA, reviewed the development of the law as follows:

> 30 Several trial judges have admitted critique evidence and then discounted its weight. However, other courts have determined that it is not admissible because it does not meet the criteria set out in *R. v. Mohan*, [1994] 2 S.C.R. 9 (S.C.C.). In

Mayfield v. Mayfield (2001), 18 R.F.L. (5th) 328 (Ont. S.C.J.), Justice Wein ruled that evidence critiquing an assessment report was not admissible. After considering the threshold of "helpfulness" often applied in family law cases, she said:

> Prior to the decision in *Mohan*, the general standard for admissibility of expert evidence was the relatively low threshold of "helpfulness."... [S]ubsequent to *Mohan*, the Court in effect had been asked to function as a "gatekeeper,"....[T]he standard of helpfulness was explicitly rejected as being too low....(para. 34)

31 She went on to find that critique evidence will "rarely" be admissible. She said that:

> [I]n most cases, it is simply not necessary or appropriate to have the parties bring forward the evidence of a collateral critique...it will rarely, if ever, be "necessary" to introduce the critique as original evidence or to call the critique as a witness. (para. 44)

32 Her words were cited with approval by this court in *Sordi v. Sordi*, 2011 ONCA 665 (Ont. C.A.). This was an appeal from a custody order. The trial judge had refused to admit critique evidence. Epstein J.A. "strongly supported" the view set out in *Mayfield* and said:

> I find no fault with the trial judge's refusal to admit the [critique] on the basis of (1) its frailties, and (2) the fact that its value — to impeach the report of the court-appointed expert — remained available to the appellant through cross-examination and, ultimately, argument. (para.14)

33 When these considerations are applied to Dr. Jaffe's report, it is evident why the trial judge gave it little weight. Dr. Jaffe's self-described task was to "raise concerns" about the court-appointed assessment. It would be difficult to find that such evidence meets the criteria of *Mohan*.

> **34 I too support the view that critique evidence is rarely appropriate. It generally — as here - has little probative value, adds expense and risks elevating the animosity between the parties.** [Emphasis added]

[42] In summary, I find that the proposed reports of Dr. Miller and Dr. Harman are also inadmissible due to a lack probative value.

[43] Do I have jurisdiction to set aside my previous findings and conclusions on the parenting, property, and costs issues?

[44] Ms. Green opposes Mr. Green’s request to relitigate the parenting, property, and costs issues. I agree with Ms. Green’s argument.

[45] My findings on the parenting, property, and costs matters cannot be relitigated. They are final determinations. If Mr. Green disagreed with the results of the divorce and costs decisions and orders, he should have sought relief through the appeal process. I am now *functus* on the facts and conclusions previously decided. I have no jurisdiction to set them aside.

Conclusion

[46] I will not admit either the evidence of Dr. Miller or Dr. Harman. To do otherwise would result in an abuse of process. Mr. Green cannot relitigate issues that are *res judicata*. Mr. Green cannot engage in a collateral attack of my divorce decision. The finality of my divorce decision must not be compromised in such a manner.

[47] In addition, the reports of Dr. Miller and Dr. Harman have limited probative value because they contain opinion evidence about matters already litigated and decided. Further, Dr. Miller's report is a critique report, while Dr. Harman's report is an academic summary. Neither proposed expert met, interviewed, or tested either party or the children. Further, neither expert had the wealth of evidence before them that was available to me as the trial judge.

[48] Finally, I have no jurisdiction to set aside my previous findings, rulings, or conclusions on the parenting, property, and costs issues.

[49] The court will draft the order on this admissibility decision.

[50] Ms. Green may provide written costs submissions by May 20, 2022; Mr. Green can provide response submissions by June 24, 2022.

Forgeron, J

[ii] Dr. Miller also reviewed and critiqued the psychological reports prepared by Dr. McAfee which the parties elected *not* to enter as exhibits during the divorce trial because Dr. McAfee was not available to testify.