

CITATION: Aldush v. Alani, 2021 ONSC 6410
COURT FILE NO.: FC-19-2241
DATE: 2021-09-29

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Amal Ahmed Mustafa Aldush, Applicant

AND

Mohammed Nouri Rasoul Alani, Respondent

BEFORE: The Honourable Mr. Justice Marc Smith

COUNSEL: Stephanie Smith, Counsel for the Applicant

Sherif Rizk, Counsel for the Respondent

Deborah E. Bennett, Counsel for the Office of the Children’s Lawyer

HEARD: July 27 and 28, 2021 by video conferencing

REASONS FOR DECISION

M. SMITH J

Overview

[1] This decision deals with the admissibility of expert reports.

[2] Amal Ahmed Mustafa Aldush (the “Mother”) and Mohammed Nouri Rasoul Alani (the “Father”) married in 1999, in Jordan, and moved to the United Arab Emirates (“UAE”) in 2000. There are three children of the marriage: Sara Mohammed Al-Noori, born April 13, 2003 (“Sara”), Rama Mohammed Al-Noori, born December 8, 2006 (“Rama”), and Hashim Mohammed Al-Noori, born May 8, 2011 (“Hashim”).

[3] In February 2018, the Mother fled the UAE with the children to escape violence and abuse, alleged to have been perpetrated by the Father. The Father remained in the UAE.

[4] On or about February 23, 2018, the Father filed a report with the UAE Ministry of Interior regarding the disappearance of the Mother and his children. He also issued a divorce and custody petition in the family Court of the Ajman district of the UAE.

[5] In April 2018, the Mother and children arrived in Canada. They made a claim for refugee protection. A hearing was held before the Immigration and Refugee Board (“Board”). On April 3, 2019, the Board found that the Mother and children are Convention refugees, pursuant to the *Convention Relating to the Status of Refugees*.

[6] In November 2019, the Mother brings an Application seeking, amongst other things, sole decision-making responsibility and supervised parenting time for the Father.

[7] On September 18, 2020, the Father brings a Motion, seeking, amongst other things, the following:

- a. An Order for the immediate return of the Respondent’s children to their place of habitual residence in the UAE; and
- b. An Order that the Ontario Superior Court of Justice has no jurisdiction to determine the custody and/or access issues pertaining to said children.

[8] The Father’s Motion was adjourned several times. It is now scheduled to proceed on October 21, 2021.

[9] In November 2020, the UAE Court of Appeal ruled that Sara and Rama should remain in the custody of the Father, while Hashim should remain with the Mother.

[10] On March 17, 2021, the Office of the Children’s Lawyer (“OCL”) brings a Motion for the following:

- a. An Order that the Father’s claims relating to proper jurisdiction, removal of Sara and Hashim from Ontario and returning them to the UAE, are dismissed as moot.

[11] On June 10, 2021, I delivered oral reasons and granted the relief sought in the OCL's Motion. As a result of my decision on the OCL's Motion, the Father's Motion is now limited to the child, Rama.

[12] The parties retained experts to assist the Court with the subject matter. A *Voir Dire* was heard on July 27 and 28, 2021 to determine if these experts are qualified to give opinion evidence.

[13] There are two issues to be determined:

- a. Is the Mother's expert qualified to give opinion evidence; and
- b. Is the Father's expert qualified to give opinion evidence.

[14] For reasons that follow, I find that the only qualified expert to give opinion evidence is the Mother's expert.

Procedural History

[15] The Father's Motion was originally set to be heard on October 27, 2020. On consent, it was adjourned a few times, to January 8, 2021.

[16] On January 8, 2021, the Father's Motion was adjourned. The Mother had recently filed and served her expert report prepared by Mr. Hossein Raeesi. The Father was considering hiring an expert.

[17] On February 19, 2021, a Case Conference was held. I ordered that the Father file and serve his expert report by no later than March 31, 2021. A *Voir Dire* was scheduled to proceed on June 9 and 10, 2021.

[18] On May 26, 2021, a Case Conference was held, in advance of the *Voir Dire*. A further Order was made, namely that the Father provide: (a) an original Arabic version of the expert report; (b) duly executed Form 20.2 Acknowledgment of Expert's Duty; (c) curriculum vitae of Mr. Mohammed Sabra (the Father's expert); (d) confirmation that Mr. Sabra is available to testify on June 10, 2021; and (e) the instruction letter and a list of the materials provided to the expert.

[19] The *Voir Dire* did not take place on June 10, 2021. It was rescheduled to July 27 and 28, 2021. Further timeline orders were made, pre-emptory to the Father: (a) by no later than June 17, 2021, the Father was to provide the original Arabic version of the expert report, the instruction letter and a list of the materials provided to the expert; (b) by no later than June 30, 2021, the Father was to provide the duly executed Form 20.2 Acknowledgment of Expert's Duty and the curriculum vitae of Mr. Sabra.

[20] At the commencement of the *Voir Dire*, the Court was advised that the Father's expert was no longer Mr. Sabra. Rather, it was Mr. Hussain Mirza Ahmed.

THE LEGAL PRINCIPLES

[21] Rule 20.1 of the *Family Law Rules*, O. Reg. 114/99 ("*FLA*") sets out the duty of experts. An expert is to provide opinion evidence that is fair, objective and non-partisan: r. 20.1(2)(a) of the *FLA*.

[22] Rule 20.2 of the *FLA* provides that an expert report must contain, at a minimum, the following: (1) expert's name, address and area of expertise; (2) expert's qualifications; (3) the nature of the opinion being sought; (4) the instructions provided to the expert; (5) the expert's opinion; (6) the reasons for this opinion; and (7) an acknowledgment of expert duty.

[23] The test for the admissibility of expert evidence is a two-stage approach. The first stage deals with the threshold requirements of admissibility: (1) relevance; (2) necessity in assisting the trier of fact; (3) the absence of any exclusionary rule; and (4) a properly qualified expert. The second stage pertains to the judge's gatekeeper role, in determining that the benefits of admitting evidence outweighs its potential risks, considering these factors: (1) legal relevance; (2) necessity; (3) reliability, and (4) absence of bias: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 23 and 24.

[24] A properly qualified expert must be able to provide fair, objective and non-partisan assistance to the Court. The expert's opinion must be impartial, independent, and absent of any

bias. In terms of independence, the expert's opinion must be the product of independent and uninfluenced judgment: *White Burgess Langille Inman*, 2015 SCC 23 at paras. 2 and 32.

[25] To be found as a properly qualified expert, the Court must be satisfied that the expert has “acquired special or particular knowledge through study or experience in respect of the matters on which he or she undertakes to testify”: *R. v. Mohan*, [1994] 2 S.C.R. 9 at para. 27.

[26] The words “properly qualified” does not only mean “judicially qualified” but also refers to academic and experiential credentials, as well as registration with a governing body regarding the expertise: *Children's Aid Society of Algoma v. F.M.*, 2021 ONCJ 186 at para. 14.

[27] Factors that can assist the Court in determining if the tendered witness is qualified includes the expert's formal education, professional qualifications, membership and participation in professional associations, attendance at courses or seminars in the subject matter, experience, teaching and writing in the proposed area, and previous qualification to give opinion evidence: *R. v. Pham*, 2013 ONSC 4903 at para. 31.

[28] An independent analysis is required for an expert's opinion. Adopting another expert's opinion is not acceptable because the opinion cannot be assessed by the opposing party or by the trier of fact: *West Moberly First Nations v. British Columbia*, 2018 BCSC 730.

ANALYSIS

[29] The first two criteria of the threshold requirements of admissibility are not in issue. The opinion evidence is relevant and will assist the Court in the understanding of Sharia Law and the Islamic Legal Systems. Regarding the third criteria, there is no applicable exclusionary rule.

[30] The focus of the *Voir Dire* was on the fourth criteria: whether the parties' experts are properly qualified to provide an opinion.

[31] The Mother filed an affidavit dated July 19, 2021 regarding the Father's expert and the events leading up to the *Voir Dire*. The relevant evidence is summarized in the text that follow.

- a. A copy of the instruction letter from counsel for the Father to the expert was provided to Mother's counsel. This instruction letter is addressed to Mr. Mohammed Sabra at RAALC Law Firm, dated March 23, 2021. The first paragraph of the letter reads: "I am writing to you seeking your assistance in a matter involving my client, Mr. Mohammad Nouri Rasoul Alani, who is seeking to challenge the authority of the Ontario Superior Court of Justice to hear a divorce and custody matter involving his former spouse, Ms. Amal Aldush." In the letter, counsel asks Mr. Sabra to answer several questions regarding UAE laws and critique the Mother's expert report. It is also noted that copies of the Application and Answer are attached, along with affidavits filed by both parties.
- b. On May 17, 2021, counsel for the Father sent an email to counsel for the Mother and the OCL, attaching the expert report (English version). The Mother deposes that the name of the expert was not contained in the email or on the expert report, yet the PDF attachment was entitled "Expert Report of Mr. Ahmed Hassan AlMazmi".
- c. On June 17, 2021, counsel for the Father wrote to counsel for the Mother and the OCL, advising: "Please find enclosed the respondent's expert report and accompanying documents. Please be advised that Mr. Sabra, who we had initially indicated would be testifying on the respondent's behalf, was not available for the July dates we have scheduled. As such, we have retained Mr. Hussain Mirza Ahmed, who has prepared the attached report adopting Mr. Sabra's opinion, and has agreed to be available on July 27."
- d. The Mother deposes that the English version of the expert report received on June 17, 2021 by Mr. Ahmed, dated March 29, 2021, is identical to the expert report received on May 17, 2021 and entitled "Expert Report of Mr. Ahmed Hassan AlMazmi."
- e. The Mother has not received the letter of instruction to Mr. Ahmed or the list of materials provided to him.

[32] At the conclusion of the testimony of the proposed experts, the parties filed the following Agreed Statement of Facts.

- a. Mr. Al Noori indicated his intention to hire an expert in January 2021, who would produce a report.
- b. A report has been produced with a date of March 29, 2021.
- c. On July 28, 2021, in testimony, Mr. Hussain Mirza Ahmed identified himself as the individual involved in producing the report.
- d. Specifically, on July 28, 2021, Mr. Hussain Mirza Ahmed testified that he wrote the report and that his work was checked by a legal consultant named Mr. Mohammad Ali.
- e. Mr. Hussain Mirza Ahmed testified that he does not know Mr. Mohammad Sabra or Mr. Ahmed Hassan AlMazmi.
- f. A summary Curriculum Vitae was provided to the Court for Mr. Hussain Mirza Ahmed only.
- g. One omission made in the Hussain Mirza Ahmed report is that it omits any references to the reservations made by the UAE in relation to the Convention on the Elimination of All Forms of Discrimination Against Women. The reservation holds that where Sharia Law and the Convention conflict, the Sharia Law will prevail.

ISSUE ONE: IS THE MOTHER'S EXPERT QUALIFIED TO GIVE OPINION EVIDENCE

Evidence of the Mother's expert

[33] Mr. Hossein Raeesi works as an adjunct professor at Carleton University in the Law and Legal Studies Department. He has been in this role since 2016. He teaches a course and works on various international projects, mostly this year on children rights.

[34] In 1991, he obtained a bachelor's degree in Law from Shiraz University, in Iran. He has been licensed to practice law since then, and he is a member of the Iran Bar. He practiced for 20 years in the areas of criminal law, human rights, family law and Sharia Law related issues.

[35] In 2010, he obtained his master's degree in Criminal Law and Criminology from the University of Tehran. Other professional training includes taking courses on international humanitarian law, LGBT human rights in Muslim countries, advocacy and community mobilization, and human rights allocated for youth.

[36] Mr. Raeesi's academic and legal career has focused on Sharia Law and the Islamic Legal System. He has received numerous research grants, the most recent being for a project called "Improving Juvenile Justice and Advancing the Human Rights of Adolescents." This project focuses on comparing Islamic law practices in different Muslim countries in the Middle East.

[37] Throughout his career, he has taught many courses and lectured numerous times regarding laws in Islamic states and other societies around the world, on a wide variety of topics ranging from domestic violence, to human rights, children rights, women rights, freedom of expression, and criminal law.

[38] Mr. Raeesi has previously been qualified (January 2018 and September 2019) as an expert to give opinion evidence before the Ontario Superior Court of Justice.

[39] Other notable professional experience includes working as a consultant to the Office of the United Nations High Commissioner for Human Rights on the abolition of the death penalty of minors in Muslim countries.

[40] Mr. Raeesi provided a detailed *curriculum vitae* setting out his vast experience in women and children rights in Muslim countries.

[41] In addition to his thesis on the preservation of human dignity in pre-trial investigation, he has written manuals and 30 articles on topics such as children's rights, domestic violence, the social and legal dilemmas of the legislation on protection of family rights.

[42] Mr. Raeesi was challenged on the fact that much of experience and practice pertains to Iran and that his interpretation of the law does not transfer to other jurisdictions, such as the UAE.

Discussion

[43] Mr. Raeesi is being tendered as an expert in Sharia Law and Islamic Legal Systems, including family laws in Islamic states, as well as International Human Rights.

[44] Mr. Raeesi's expert report complies with the requirements set out in r. 20.2(2) of the *FLA*.

[45] Mr. Raeesi gave his evidence in a very precise and direct manner. He did not waver under cross-examination about his experience or his opinion. Mr. Raeesi does not claim to be licensed to practice in the UAE, but he has extensive knowledge of Islamic jurisprudence that is similarly used in the UAE.

[46] The Father does not dispute that Mr. Raeesi has extensive knowledge regarding Sharia Law and Islamic Legal Systems. The Father's objection is that Mr. Raeesi is not qualified to practice in the UAE. He posits that Mr. Raeesi may possess the theoretical knowledge but it is insufficient because he lacks the practical knowledge.

[47] I disagree.

[48] Mr. Raeesi has acquired significant expertise in Sharia Law and Islamic Legal Systems through his numerous years of practical and scholarly involvement. I acknowledge that Mr. Raeesi has not practiced in the UAE, but I am not troubled by this fact. The Father's concern is one of

weight to be attributed to the expert evidence and not whether Mr. Raeesi has the necessary qualifications to render an expert opinion.

[49] Since 1991, Mr. Raeesi's professional experience has been dedicated to human rights, women's rights, and children's rights issues in Muslim countries. Through his practice as a lawyer in Iran as well as his studies, research and publications on the laws affecting women and children in Muslim countries, Mr. Raeesi has acquired special and peculiar knowledge in respect to Sharia Law and Islamic Legal systems.

[50] Mr. Raeesi's special and peculiar knowledge in the subject matter has been gained in numerous ways. The relevant factors to consider when qualifying an expert, as enumerated in *R. v. Pham*, are present: practicing lawyer for 20 years, education including a master's degree, extensive teachings and publications, ongoing funded research, and being a consultant for important world organizations.

[51] Mr. Raeesi is therefore qualified to render an opinion in Sharia Law and Islamic Legal Systems, including family laws in Islamic states, as well as International Human Rights. His expert report and evidence are admissible at the Motion.

ISSUE TWO: IS THE FATHER'S EXPERT QUALIFIED TO GIVE OPINION EVIDENCE

Evidence of the Father's expert

[52] Mr. Ahmed gave his evidence through a Court Interpreter, arranged by Father's counsel.

Professional Experience

[53] Mr. Ahmed has been a practicing lawyer in the UAE for four years. He is the owner of his law firm and he handles a wide variety of cases, including custody involving children and women, estate law, criminal law, and business law.

[54] Before becoming a lawyer, he worked for 20 years in the field of Human Resources and Human Rights. He trained workers and taught them their rights.

[55] He has taken two courses in UAE at the Justice Institute. The first is a family arbitrator course, lasting 11 months. It is a requirement before practicing family arbitration. The topics covered during this course includes child and family protection, dealing with mental, psychological, sexual, and economical abuse. The second involves everything from marriage, divorce, children, family, everyday issues, and new laws implemented in the UAE. The courses are taught by judges and professors.

[56] In terms of teaching experience, Mr. Ahmed said that he teaches a course for one week to students working at his law firm.

The Expert Report

[57] Mr. Ahmed was retained by the Father to prepare a report about marriage, women rights, children rights, and more specifically the marital disobedience and the protection of the woman. The Father did not provide him with a letter of instruction, factual background of the case, documents, or pleadings.

[58] Mr. Ahmed drafted the report and then gave it to a counsellor in his office, named Mohammed Ali, to “check it”. After Mr. Ali’s review, they discussed it and he finalized the report. Mr. Ahmed is adamant that he is the author of the report. Mr. Ali’s role was only to verify that the report was written correctly. Mr. Ali did not write or add anything in the report.

[59] During cross-examination, Mr. Ahmed first indicated that he met with the Father at the beginning of May 2021 and he delivered his report in or around mid-June 2021, approximately 1.5 months after having met the Father. Then, after being shown the date of the report (March 29, 2021), Mr. Ahmed appeared uncertain about the dates.

[60] Counsel for the Father interjected to advise the Court that the source of the confusion may be due to the translation of the name of the months. It was suggested that Mr. Ahmed should be questioned using the number of the month.

[61] Mr. Ahmed corrected his evidence. He said that he met with the Father 2-3 weeks before the written date on the report. He maintained that he provided the report 1.5 months afterwards.

[62] On the first page of the report, the following is written: “Prepared by Mr. / Lawyer before Supreme Courts in the United Arab Emirates and expert in women’s and children’s issues.” Mr. Ahmed says that, on the draft, they usually leave the name blank and fill it in later. He claims that the final report has his name inserted on the first page, with his signature on the last page.

[63] Mr. Ahmed was questioned on the contents of his report, including, amongst other things, the new domestic violence protection law that came into force in 2019, the conciliation proposal, protection orders issued by the Court. He opined that the new laws were beneficial for women and an advancement in domestic violence law. When asked to provide his training and experience that led him to this opinion, he responded that his opinion is supported by the law and he was trained on the steps of reconciliation and how to deal with the problem. Further, he relies upon his experience with cases that have successfully resolved as well as the general information that he reads regarding the new laws.

[64] Mr. Ahmed was then challenged on his knowledge regarding the convention on the elimination of all forms of discrimination against women. The UAE requested certain reservations, meaning that certain paragraphs of this convention not be applied. Mr. Ahmed was not able to recall specific sections of the convention. He admitted that he did not refer to these reservations in his report, claiming that if he did, the report would be 300-400 pages in length.

Acknowledgment of expert duty and testifying

[65] Mr. Ahmed was asked to sign an Acknowledgment of expert duty. Although the document was dated June 15, 2021, there was some confusion as to when it was signed (May or June 2021).

[66] Mr. Ahmed’s colleague in his office reads English and he explained the contents of the Acknowledgment of expert duty to him. Mr. Ahmed said that once the document was translated for him, he understood its contents.

[67] Mr. Ahmed only became aware that he was required to testify on or about July 24, 2021. He was not asked to testify in June 2021.

Discussion

[68] The events leading up to the delivery of Mr. Ahmed's expert report are extremely concerning to me. Not only were Court Orders disregarded by the Father regarding the timing and type of documents that needed to be produced to the other parties, but representations made by counsel for the Father regarding the author of the expert report were inaccurate and misleading.

[69] Even more disturbing to me is that, up to the day of the *Voir Dire*, counsel for the Mother and the OCL were led to believe that Mr. Ahmed was adopting the expert report written by Mr. Sabra, when in fact that was not the case. The factums and statement of law provided by counsel for the Mother and the OCL dealt with the inappropriateness of adopting someone else's expert report. Counsel for the Father did not file a Factum. To everyone's surprise, Mr. Ahmed testified that he was the author of the expert report and he did not know Mr. Sabra.

[70] Counsel for the Father advised the Court that he was unaware of Mr. Ahmed's position. He too was of the belief that Mr. Ahmed was adopting Mr. Sabra's expert opinion. Counsel for the Father explained that he did not intend to mislead the Court or opposing counsel regarding the authorship of the expert report. Rather, he was relaying information given to him by the Father

[71] Counsel for the Mother and the OCL urge me to make an Order of contempt and award costs personally against counsel. I am not prepared to do that at this juncture but if counsel wish to pursue the matter, additional motion materials will need to be filed along with the scheduling of argument.

[72] The events described above, along with the documentary evidence and Mr. Ahmed's testimony lead me to conclude that his expert report is inadmissible. I say so for the following three reasons: (1) Mr. Ahmed is not the author of the expert report; (2) Mr. Ahmed's expert report does not comply with the requirements of r. 20.2(2) of the *FLA*; and (3) Mr. Ahmed is not properly qualified.

Authorship of the Report

[73] Mr. Ahmed's testimony was unclear, overly broad, vague, and lacked specifics. Also, I find that there were many inconsistencies in his evidence.

[74] Mr. Ahmed was confused about the date of the report, the date of his initial meeting with the Father, the delivery of the report and the signing of the acknowledgment of expert's duty. Although the report was dated March 29, 2021, he was adamant that he met with the Father in early May 2021 and delivered the report 1.5 months afterwards (mid-June 2021). While counsel for the Father explained that Mr. Ahmed's confusion was due to the translation, Mr. Ahmed did not attribute it to that fact. He said that he was very busy with lots of work, suggesting that his confusion is related to the amount of work.

[75] Even though Mr. Ahmed corrected his evidence regarding the date of his report (March 29, 2021) and the meeting with the Father (early March 2021), he maintained that he provided his report to the Father 1.5 months after the date of the report (approximately mid-May 2021). He could not, however, explain the delay in providing the report, speculating that the Father may have been traveling.

[76] Mr. Ahmed testified that an individual in his office named Mohamad Ali assisted him with the report. He later minimized Mr. Ali's participation by suggesting that he only "checked" his report. Mr. Ahmed was not able to explain the extent of Mr. Ali's contribution or his qualifications.

[77] When Mr. Ahmed was challenged on the contents of his report, he became defensive, impatient, evasive and at times, refused to answer the questions posed to him. His responses remained vague, demonstrating that he did not have a clear understanding on the subject matter, or more particularly on the reservations that are included in the Convention on the Elimination of All Forms of Discrimination Against Women. He lacked the knowledge that one would expect from a person who claims to have drafted the expert report.

[78] Mr. Ahmed was only asked to testify at the *Voir Dire* a few days before the July 27th hearing. On February 19, 2021, the *Voir Dire* was originally scheduled to proceed on June 9 and 10, 2021. Mr. Ahmed was not asked to testify at the first scheduled hearing and he only signed his Acknowledgment of expert duty in mid-June 2021. This leads me to believe that he only became involved much later in the proceedings, and not in early March 2021, as suggested.

[79] I do not accept Mr. Ahmed's version of the events. I do not believe that Mr. Ahmed wrote the expert report. I find that Mr. Ahmed provided contradictory information on material issues. The result being is that I cannot rely on Mr. Ahmed's evidence.

[80] Counsel for the Mother and the OCL referred to the authorship of the Father's expert report as a mystery. In my opinion, the evidence on record solves the mystery. I believe that the Father initially retained Mr. Sabra to draft the expert report. Upon being told that the Father retained an expert, his counsel wrote the instruction letter. Then, for reasons unknown, another expert (Mr. Ahmed Hassan AlMazmi) was retained or asked by the Father to draft the expert report and/or assist Mr. Sabra. This report was forwarded to counsel on May 17, 2021. As of May 26, 2021, counsel for the Father advised the Court that Mr. Sabra was going to testify as the expert at the June 9 and 10, 2021 *Voir Dire*. On the day of the *Voir Dire* on June 9, 2021, counsel for the Father still believed that Mr. Sabra was the expert retained by the Father, but he was not available to testify. It is not until June 17, 2021 that counsel for the Father advised counsel for the Mother and the OCL that Mr. Ahmed had been retained and he was adopting Mr. Sabra's expert report. Counsel for the Father confirms that all information conveyed to the Court regarding Mr. Sabra, his expert report and his anticipated testimony at the *Voir Dire* was obtained from the Father.

[81] The evidence before me coupled with Mr. Ahmed's unreliable testimony, leads me to conclude that the most plausible version of the events is that Mr. Ahmed is not the author of the expert report. I find that Mr. Ahmed has adopted the expert report, as drafted by Mr. Sabra and/or Mr. AlMazmi, which is entirely improper, and it taints Mr. Ahmed's independence and partiality.

[82] In exercising my gatekeeping role in the second stage of the admissibility of expert evidence, for the reasons described above, I conclude that the expert report and Mr. Ahmed's

evidence would not be useful because it is simply too unreliable to rely upon in any circumstance. The Father's expert report is inadmissible.

Rule 20.2(2) Requirements

[83] If I am wrong and Mr. Ahmed is indeed the author of the expert report dated March 29, 2021, I find that his expert report is not admissible because he failed to comply with the requirements set out in r. 20.2 of the *FLA*.

Requirement #1: expert's name, address, and area of expertise

[84] The Arabic version of the expert report is signed and dated. The English version of the expert report is not. The author is not identified (left blank in the second sentence of the report on the first page) and it is undated.

[85] Regarding the area of expertise, the last line of the report only reads: "Lawyer and expert in women's and children's issues". In my view, this is too broad because it does not explain why Mr. Ahmed is qualified to give his opinion.

[86] Relying upon the English version of the expert report, requirement #1 is not met.

Requirement #2: expert's qualifications

[87] The report does not contain a description of Mr. Ahmed's qualifications. At a minimum, it should include a summary of his qualifications, employment, and educational experiences.

[88] Mr. Ahmed provided a one-page bullet point document purporting to be his *curriculum vitae*. This document is deficient in several ways: (1) there are no dates as to when he held the position of General Manager of the Professional Development Center, when he became a lawyer, when he obtained his Bachelor degrees or the certified legal counsel diploma; (2) there is no description regarding the courses that he took in the UAE Personal Status Law, the UAE Child Rights Law and family arbitration; (3) he does not provide a description of the "written memos and legal regulations of all kinds" that he has authored; (4) he does not explain the types of

“drafting contracts and agreements”; (5) he does not specify the experience gained in “giving training courses on federal law enforcement on the protection of children’s rights”; and (6) he does not explain which training courses he gave in the writing of family arbitration regulations.

[89] Mr. Ahmed’s *curriculum vitae* lacks significant information regarding his qualifications. It fails to provide the basic information that one would expect in an expert’s *curriculum vitae*. Without any specifics, it is impossible for the other party to determine if the proposed expert has acquired the special skill and knowledge that is required to render the opinion.

[90] Requirement #2 is not met.

Requirement #3: instructions provided to the expert

[91] A letter of instruction was not provided to Mr. Ahmed. He testified that the Father asked him to provide a report about marriage, women rights, children rights, and more specifically the marital disobedience and the protection of the woman. Yet, in his report, he does outline the instructions that he received.

[92] Requirement #3 is not met.

Requirement #4: nature of the opinion being sought and each issue in the proceeding to which the opinion relates.

[93] The expert report does not set out the nature of the opinion being sought. The introductory paragraph merely describes the UAE as one of the countries that is most concerned about women and children.

[94] The issues in these proceedings are not identified. The report sets out the various laws that purportedly protect women and children, but it does not tie it back to the nature of the opinion because such opinion is not articulated in the report.

[95] The reader is left to guess as to the opinion that was being sought by the Father or the issues that are being addressed by Mr. Ahmed.

[96] Requirement #4 is not met.

Requirement #5: the expert's opinion respecting each issue

[97] Without having identified any issues, how is Mr. Ahmed able provide an opinion? In my view, Mr. Ahmed does not provide an opinion.

[98] Mr. Ahmed's expert report is best described as a memorandum of law that purports to be a summary of the law in the UAE, with the caveat that his summary is incomplete. During his cross-examination, Mr. Ahmed admitted that he did not include the reservations set out in the Convention on the Elimination of All Forms of Discrimination Against Women.

[99] Requirement #5 is not met.

Requirement #6: the expert's reasons for the opinion, including a description of the factual assumptions, the research/test conducted by the expert and a list of every document relied upon

[100] Mr. Ahmed's expert report does not include a description of the factual assumptions. He does not set out the factual foundation that form his opinion. His report is a generic document, citing the law without dealing with the specific facts of these proceedings. It could easily be used for any other Court proceedings that require a summary of the law in the UAE, as seen from the Father's perspective.

[101] The report is silent when it comes to any research conducted by Mr. Ahmed or the documents relied upon in his reaching the opinion.

[102] Requirement #6 is not met.

Requirement #7: acknowledgment of expert's duty

[103] Although this document has been signed by Mr. Ahmed, I question his full understanding of the expert's duty. He claims that the acknowledgment of expert's duty was explained to him

by someone in his office who understands English. I am uncertain if this individual had the necessary legal background to understand and explain the essence of the duty to Mr. Ahmed.

[104] In any event, requirement #7 has been met.

[105] In sum, Mr. Ahmed's expert report does not include six out of seven requirements that are mandated by r. 20.02 of the *FLA*. In my view, Mr. Ahmed's substantial failure to comply with the *FLA* rules is fatal. The purpose of r. 20.02 of the *FLA* is meant to clarify the expert's duty and, it requires the expert to clearly set out the opinions, the reasons for the opinions and the foundational basis for such opinions. Rule 20.02 of the *FLA* is a mandatory rule. A non-compliant expert report is unfair and prejudicial to opposing parties. Here, the Mother and the OCL are left guessing about Mr. Ahmed's qualifications, his opinions, his reasons, and the basis for arriving at his opinions. Therefore, because of Mr. Ahmed's non-compliance with r. 20.02 of the *FLA*, his expert report is inadmissible.

Improperly qualified

[106] The Father submits that Mr. Ahmed's practical experience is sufficient to qualify him as an expert but, if I have any concerns on his experience, it simply goes to the issue of weight. I disagree. Mr. Ahmed's qualifications need to be scrutinized at the early stages to determine if he meets the fourth criteria of the threshold requirements of admissibility.

[107] By adopting the report of Mr. Sabra, I find that Mr. Ahmed is not impartial or independent. Mr. Ahmed has a special duty to provide fair, objective and non-partisan assistance to the Court. How can Mr. Ahmed comply with this special duty when he simply provides his stamp of approval on someone else's work? He cannot. Mr. Ahmed is not expressing his own objective assessment and views on women and children's rights in the UAE. He relies on Mr. Sabra or Mr. AlMazmi's recitation of the law in the UAE and adopts it wholeheartedly, without commentary, criticism, or his own opinion. Again, if I am wrong in my determination that Mr. Ahmed is not the author of the expert report, I find that he is nonetheless unqualified because he lacks the necessary knowledge, skill and experience to render an expert opinion.

[108] Mr. Ahmed testified that prior to becoming a lawyer, he gained 20 years of experience in the field of human resources and worker's rights. He trained workers from the beginning to the end of their service, teaching them their rights. That is the extent of his evidence regarding this experience. I assume that he gained this experience when he was the General Manager of the Professional Development Center, but I am not certain. Mr. Ahmed provides no specifics on the nature of his experience, how he acquired his knowledge and skills, or how it may relate to the proposed area of expertise. The Father urges me not to ignore his 20 years experience. However, if Mr. Ahmed's previous non-legal career is relevant in the assessment of his qualifications, as suggested by the Father, I would have expected him to lead evidence in this regard. He did not. Without any such evidence, I must conclude that Mr. Ahmed's 20 years of experience in the field of human resources and worker rights deserves little or no weight.

[109] Mr. Ahmed's experience is, in large part, limited to four years, practicing as a generalist lawyer in the UAE. While I do not doubt that Mr. Ahmed has handled some matters involving women and children's rights, I do not find that he has a specialized practice in this area. Mr. Ahmed testified that he works in "everything", including estate law, criminal law, business law and company law.

[110] Mr. Ahmed does not have any scholarly involvement with the subject matter, nor does he possess any scholarly knowledge on the topic. His teaching experience is nothing more than being a mentor for some people in his law firm. He has not taught the matter in question in any University or other institutions. He is not published. He has not been actively researching. He attended a few courses, but they are not solely related to the subject matter and not entirely relevant. He does not participate in any professional associations on the proposed area of expertise.

[111] In sum, Mr. Ahmed's experience is restricted to four years practicing as a generalist lawyer in the UAE. In my view, this level of experience is insufficient to give expert opinion evidence. He therefore does not meet the criteria of having acquired the necessary special skill and knowledge to be of any assistance to the Court. Mr. Ahmed's expert report and evidence are inadmissible at the Motion.

CONCLUSION

[112] In summary, the Mother's expert (Mr. Hossein Raeesi) is qualified to give opinion evidence, while the Father's expert (Mr. Hussain Mirza Ahmed) is not. Mr. Raeesi's expert report dated January 4, 2021 and his evidence given at the *Voir Dire* on July 27, 2021 are admissible.

A handwritten signature in black ink, appearing to read "M. Smith J", written in a cursive style.

M. Smith J

Released: September 29, 2021

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COURT FILE NO.: FC-19-2241

DATE: 2021-09-29

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Amal Ahmed Mustafa Aldush

Applicant

– and –

Mohammed Nouri Rasoul Alani

Respondent

REASONS FOR DECISION

M. Smith J

Released: September 29, 2021