

DISCURSIVE PSYCHOLOGY IN FAMILY MEDIATION

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This article aims to define the role of discursive psychology in family mediation. In the theoretical elaboration on discursive psychology in family mediation, firstly the definition of the term *discursive psychology*, as well as the application background of discourse analysis in psychology, are provided. Secondly, the theoretical foundation of the family mediation institution is discussed. In terms of the practical application of discourse psychology in family mediation, the methodology of discursive psychology is described with the application of discourse analysis as a tool. The practical data come from recorded family mediation.

Keywords: *discourse analysis, discursive psychology, family mediation.*

Стаття присвячена визначенню ролі дискурсивної психології в сімейному посередництві. У теоретичній частині, по-перше, наводиться визначення поняття *дискурсивна психологія*, а також представлено середовище аналізу дискурсу в психології, а по-друге, обговорюється теоретичний фундамент інституту сімейного посередництва. З точки зору практичного застосування дискурсивної психології в сімейному посередництві описана методологія дискурсивної психології із застосуванням дискурсного аналізу як інструменту. Практичні дані походять із записаного сімейного посередництва

Ключові слова: *дискурс-аналіз, дискурсивна психологія, сімейне посередництво.*

Celem niniejszego artykułu jest określenie roli psychologii dyskursywnej w mediacji rodzinnej. W związku w przedstawionym powyżej celem omówione są w niniejszym artykule zagadnienia teoretyczne psychologii dyskursywnej oraz praktyczne zastosowania teorii psychologii dyskursywnej w procesie mediacji rodzinnej. Aby w pełni zrozumieć rolę psychologii dyskursywnej w mediacji rodzinnej, w części teoretycznej nie tylko podano definicję terminu *psychologia dyskursywna*, ale także omówiono literaturę przedmiotu i teoretyczne podstawy instytucji mediacji rodzinnej. W przeprowadzonej analizie mediacji rodzinnych zastosowano metodologię psychologii dyskursywnej oraz analizę dyskursu jako narzędzia. Dane praktyczne pochodzą z zarejestrowanych mediacji rodzinnych.

Słowa kluczowe: *analiza dyskursu, psychologia dyskursywna, mediacje rodzinne.*

Introduction

Mediation as a practical activity has been performed in different areas one of which is family mediation. Since the second half of the twentieth century, family mediation has been one of the alternative dispute resolution services provided. In the twenty-first-century, family mediation has been present in various cultures worldwide, especially in respect of family

mediation including cross-cultural dimension. Since psychological themes and concepts such as communication, emotion, and intent occur in the process of family mediation we concentrate on discursive psychology to define its role in family mediation and its importance in the process of mediation.

Discursive psychology

The application of psychological discourse analysis in the family mediation process should be preceded by the definition of the term *discursive psychology*. *APA Dictionary of Psychology* defines the term *discursive psychology* as “the study of social interactions and interpersonal relationships with a particular focus on understanding the ways in which individuals construct events via written, spoken, or symbolic communication” [APA Dictionary]. As the above definition indicates, discursive psychology is the study of interaction from the communication performance. Instead of concentrating on cognition, the inner life of the mind [Edwards, Potter 2005] and its underlying competence [Chomsky 1965: 8] discursive psychology focuses on the performance in human interaction.

The background of discursive psychology as an interdisciplinary entity has its roots in various scientific disciplines and approaches. Although it evolved out of Discourse Analysis in the discursive psychology perspective it is possible to recognise “influence of the late Wittgenstein and poststructuralism as well as of social studies of science, conversation analysis, and ethnomethodology” [Molder 2012, p. 2]. The impact of Wittgenstein upon the development of discursive psychology is noticeable in its initial stage with the references to cognition [Edwards 1997, Molder 2005], the inner and outer reality of the mind perceived as “not a private space but a phenomenon that is made publicly accountable through language” [Molder 2012, p. 2]. The influence of poststructuralism and social science is visible “in the focus of discursive psychologists on facts not as “states of affairs” but as constructions put together for particular purposes. Like poststructuralists, discursive psychologists are interested in how reality and truth are produced through text and talk, that is, how representations take on a life of their own and become solid and robust [Molder 2012: 2]. The impact of conversation analytic studies upon the development of discursive psychology is noticeable in the approach to the Speech Act Theory [Austin 1962: 11] in which the language used by the individual is not only as a source of information but also a source of actions. For conversation analysts, the importance of the speech act is in the participants' treatment of utterances through which the analyst can understand what the action is [Molder 2012].

The origins of discursive psychology are traced to the late 1980s and the formation of Discourse and Rhetoric Group (DARG) [Tileaga 2012]. In contrast to the mainstream treatment of discourse as a ‘mirror’ of human thoughts and intentions, Potter and Wetherell (1987) demonstrate that human attitudes vary according to the social situation in which they are [Potter, Wetherell 1987]. Potter and Wetherell (1987) state that discursive psychology is a paradigm in which cognition and attitudes vary according to social interaction in which they participate [Potter, Wetherell 1987]. The position of discursive psychology refers to the *Discourse Action Model* [Edwards, Potter 1992]. In this Discourse Action Model, the emphasis is put on the analysis of the recorded talk and the rhetorical features of the talk [Edwards, Potter 1992]. The core point of this model is that in discursive psychology “the focus is on action, not cognition” [Edwards, Potter 1992: 154].

Discursive psychology is focused on studies related to the naturally occurring and experimentally engineered human interaction to understand how individuals conduct actions through written, spoken, or symbolic communication. Although in both cognitive and experimental psychology talks are treated as windows into the human minds and the description of people's mental content, discursive psychology treats talks as social actions. Talks are the means of doing things in a socially meaningful world. In discursive psychology, talks are primarily perceived actions. This perception of talks as actions especially as a course of action might be of importance for the mediator, to change attitude e.g. in the process of family mediation.

Family mediation

Family mediation is an alternative dispute resolution (ADR) measure due to which the mediator assists the parties involved in a dispute to reach an agreement. Instead of going to court the Ministry of Justice of the member states of the European Union is responsible for the implementation of the policy family mediation as stated in the *EU Directive on certain aspects of mediation in civil and commercial matters* from 21 May 2008 [Directive 2008]. In Article 3 (a) of the EU Mediation Directive, the term *mediation* is defined as “...a structured process, however, named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator” [Directive 2008].

In the light of the *EU Mediation Directive* from 21 May 2008 mediation is quicker and less costly than litigation [Directive 2008]. In the Preamble to the *EU Mediation Directive* Paragraph 6 to the above-mentioned Directive, mediation ‘can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements’ [Directive 2008].

As a result of the *EU Directive on certain aspects of mediation in civil and commercial matters* from 21 May 2008, several Member States have now passed mediation law to regulate internal and cross-border family mediation [Directive 2008]. In Poland, for instance, the Act of 10 September 2015 was passed amending certain Acts in relation to the promotion of amicable dispute resolution methods (Journal of Laws of 13 October 2015) [the Act 2015]. In Ireland, the Mediation Act (the “Act”), was signed into law on 2 October 2017, to consider mediation as a means of resolving a dispute [the Mediation 2017]. In this Act, there are separate specific provisions for the involvement of children in mediation in family law dispute [the Mediation 2017]. In Germany, the Mediation Act came into force on 28 June 2012 to promote mediation and other alternative dispute resolution (ADR) procedures [the German 2012]. The above-mentioned Acts on mediation [Directive 2008, the Act 2015; the Mediation 2017; the German 2012] define the basic duties of the mediator, some limitations in the mediator's function as well as the mediation procedure to be performed outside the court.

Since family mediation is frequently exercised in the course of separation and divorce it concentrates on the regulation of such issues as parental responsibility involving arrangements for future parenting, resolution on financial spousal and child support, the compensation and distribution of assets and debts. Family mediation is also very effective in working out divorce arrangements and settling cross-border conflicts related to the exercise of access rights and child abduction.

Methodology

Although discursive psychology is widely considered to be a form of discourse analysis drawn involving psychological themes and concepts, it has evolved into a relatively new subdiscipline of psychology strongly associated with methodological innovation and the analysis of language data. Its importance consists of the theoretical elaboration of conceptualisation of psychological phenomena such as communication and cognition (e.g. emotions, attitudes) in discursive terms. Edwards proposes the adoption of “a discourse-based perspective on language and cognition” [Edwards 1997: 19]. In this discourse based perspective, emotions are considered in terms of words and categories to “perform social actions on and for the occasion of their production” [Edwards 1997: 22]. Discursive psychology has become a methodology for appropriate data and forms of data collection and the limits of interpretation [Schegloff 2010, Wetherell 1998, Wetherell 2012].

The theoretical principles of discursive psychology are embedded in the nature of discourse [Potter, Edwards 2001, Potter 2003]. Firstly, discourse is both constructed and constructive process. It is constructed as it is composed of linguistic units and structures such as words, categories, and sentences to present a particular version of the world. It is also constructive as in the presented world it is a product of talk itself. Secondly, the discourse is action-oriented not only due to the fact that talking or writing are actions in themselves but discourse is the primary medium for social action e.g. to invite, to justify, to blame, and so on. Thirdly, discourse is situated within a specific sequential environment as words form sentences and are understood according to the linear sequence of what precedes and follows them.

Discursive psychology as a methodology goes beyond the discourse of attitudes and behaviour. Potter and Wetherell (1987) present a methodological and theoretical challenge to well-established psychology, namely to cognitive psychology [Potter, Wetherell 1987]. This challenge refers mainly to the status of data talk. As indicated by Potter and Wetherell (1987), the talk should not be treated as transparent direct information to describe or report something [Potter, Wetherell 1987]. It should be analysed as a form of action or practice. Thus the application of discourse analysis has become a tool to analyse the text from the perspectives of the content, form, and context in human interaction.

In contrast to cognitivism which treats human action as a product of cognition. Edwards states that in discursive psychology cognition is a topic for investigation [Edwards 1997]. To study cognition's involvement in a participant's concern, discursive psychology treats mind, experience, emotion in terms of being constructed and oriented to an interaction.

Discussion of results

In this section, we specify the research procedure, which involves devising a research question, gaining access and consent, data collection and building a corpus, transcription, coding, and analysis involved in discursive psychology. The research question of the conducted analysis refers to the way how discursive psychology facilitates family mediation at different stages of mediation. The research data for the building the corpus for conducting the discursive psychological analysis come from the recorded mediation sessions entitled *Family Mediation in Action* [Family Mediation In Action], *Family Mediation Individual Session* [Family Mediation Individual], *An Inside Look at Family Mediation* [An Inside Look]. The transcriptions with the coding of the family mediation sessions have been analysed along the family mediation process.

The results of the recorded data analysis [Family Mediation In Action, Family Mediation Individual, An Inside Look] show that the family mediation is a confidential and structured procedure performed outside the court, the aim of which is to achieve an amicable solution to the conflict by the parties with the help of the mediator. The structure of the mediation procedure is well followed by the mediator, who undertakes the process of family mediation. In all the analysed cases [Family Mediation In Action, Family Mediation Individual, An Inside Look] the process of family mediation consists of distinctive stages to achieve the final and durable settlement of the family dispute. The structure of the family mediation procedure indicates that there are five stages of the family mediation process with a series of related tasks at each stage that turn inputs into outputs. Thus, Stage One is based on convening the Mediation. Stage Two refers to the Opening Session. Stage Three is related to communication and it leads to Stage Four i.e. the Negotiation. The final Stage Five is the closure, which should contain the solutions in the family conflict.

In the process of family mediation, the role of the mediator is of prime importance. His/her discursive psychological skills and the competence of conducting the discourse analysis of the texts produced by the conflicted parties are of prime importance as it is the mediator, who should guide the parties towards the conflict resolution. As an independent and neutral person, the mediator has no right to make decisions. The main task of the mediator is to steer the conflicted parties through the family mediation process to solve the problem. The independence and neutrality of the mediator are emphasized in all recorded data e.g. when the mediator says; *I am impartial, so I'm not taking either side I'm not representing either of you* [Family Mediation Individual]. The impartiality of the mediator means that the mediator is obliged to support the conflicted parties similarly in the process of family mediation.

The analytic approach based on discursive psychology methodology with the application of discourse analysis helps the mediator understand how the parties of family mediation communicate and enter their interaction to overcome the conflict. Although the analysed family mediations are completely different due to the underlying conflicts related to the mediation issues, it is possible to state that the heterosexual couples who intend to get separated or divorced show different inferences about their inner beliefs and judgments related to truthfulness. Their assertions that they want to do their best for children may be treated as their demonstration of competence rather than performance, which is easily noticeable in Stage Three, i.e. communication.

Stage One related to convening the Mediation is to bring the family conflicted parties to a preliminary meeting during which they should discuss the underlying issues of the family conflict and consider options for its resolution. The goal of Stage One is to pave the way for the actual conflict resolution through the process of family mediation. At this stage, the mediator's responsibility is to assess the family conflict situation, identify the areas of conflict and their underlying factors in most cases related to the communication problems, introduce options for improving the communication through the control of emotions revealed in the language used to find the solution to the family conflict.

In Stage One, the mediation is to assess the situation in the family. At this stage, the mediation should determine what the conflicted parties seek to accomplish, whether it is a case of separation or divorce or solving the problems within the marriage. Stage One involves carrying out several specific tasks to determine the specific goal of mediation, to de-escalate the conflicted situation to suggest or initiate a specific conflict resolution process through mediation or consensus building. At this stage, the mediation identifies the tasks i.e. what should be done as well as actions i.e. how it should be done to obtain the result of this convening stage i.e. the willingness of the conflicted parties to participate in family mediation.

To obtain the willingness of the conflicted parties to participate in mediation, the mediator contacts the parties separately informing them about the aim of mediation. Although different mediations are analysed the underlying aim of all those mediations is the same i.e. to obtain the conflict resolution in the form of the written agreement which both conflicted parties sign in the presence of the mediator. In practical terms, family mediation aims to help families build understanding and reach an agreement by reducing the

conflict and costs of coming to terms. Although it is a multi-layered strategy, family mediation is designed to accommodate different people and situations to obtain willingness towards participation in mediation. At this stage, the mediator informs the parties separately, i.e. *What I am always doing my mediations have separate time with each of you before we decide to go ahead to a joint session make sure making sure that mediation is the right choice for you* [An Inside Look], usually during the telephone conversation or face to face meeting, i.e. *As I explained to you in the telephone the purpose of this meeting is primarily for me to introduce myself to you to give some explanation about the mediation process* [Family Mediation Individual], about the aim of mediation to obtain the parties' willingness to participate in mediation. The presentation of the mediation aim is recorded in the transcribed texts as follows: *Family mediation is there to help parents who are separating or living apart. The Process of mediation will have been explained to each p.m. at a separate meeting. Once the PM has decided that mediation is a possible option for them* [Family Mediation In Action]. Once the willingness of both conflicted parties is obtained the mediator proceeds to the second stage.

Stage Two refers to Opening Session the aim of which is to achieve safety and hope through a series of different tasks and actions. Although the session is performed in verbal mode the mediator performs a series of verbal actions such as informing, eliciting the reaction of the parties' description is one through verbal discussion. To build up safety and achieve hope, the mediator informs the conflicted parties about the actions of getting both points of view, their concerns and hopes for mediation. In the analysed mediation data the mediator informs the conflicted parties about impartiality, namely *as a mediator I am impartial, so I'm not taking either side are not representing either of you your solicitors do that that's their role and I'm not a judge either. I'm not here to judge what you see what Roger says that's the sheriff's rule if the matter were to go to court* [Family Mediation Individual]. Confidentiality of the family mediation is likewise emphasised by the mediator, who says *You'll know from your intercession that our conversations here are confidential. They stay within family mediation* [Family Mediation In Action]. With all those statements made by the mediator, the personal integrity of the conflicted parties should be maintained and the feelings of safety and hope evoked. Once the results of safety and hope are obtained at this stage, the mediator starts the next stage of mediation i.e. communication.

The primary aim of Stage Three related to communication is the expression. The task of this stage is to allow the conflicted parties an opportunity to express their points of view in the presence of each other. The action involves a set of verbal open-ended questions followed by the

parties' active feedback for the mediator to understand what is driving the parties apart. Through a series of delicate questions, the mediator should keep the conversation moving forward so that both parties have a chance to air their viewpoints, perspective, and expectations as well as feel confident that their verbal expression of opinion has been heard.

The discourse analysis of this stage shows that the conflicted parties have problems with communicating their perspectives. Since this stage is frequently characterised by verbal fights and accusations in which negative emotions play an important function, the role of discursive psychology with discourse analysis becomes significant. The mediator skillful in discursive psychology can conduct this stage in such a way that the communication of the conflicted parties discloses their hidden values and interests [Family Mediation In Action, Family Mediation Individual, An Inside Look]. For example, when the mediator identifies a barrier to the positive communication between the conflicted parties the mediator says: *when you're fighting and you can't resolve the fighting so mediation is a way for you to try to work through the differences here in a more peaceable way* [An Inside Look].

The application of discursive psychology with the applied discourse analysis helps the mediator reconstruct the positive communication between the conflicted parties. For example, when the mediator notices that there is no communication between the parties involved, he says: *I want you both to talk about first of all to each other without me. Right children consider themselves to be half mom and half dad. And if mom is criticizing dad or dad is criticizing mum then they feel hurt themselves so one of the things in mediation is that parents can come to appreciate that the children's point of view is important to talk positively about the other parent* [Family Mediation In Action]. At this stage, the mediator reveals his knowledge of discursive psychology, techniques of communication and negotiation, as well as supervision in order to eliminate negative emotions, which usually are the barriers of communication.

The necessity to transform the negative emotions underlying the conflicted parents' conversation into a positive one is of prime importance as it is indicated in the passage in which the mediator elaborates on the importance of communication:

....communication between you two as parents is vital. You can't continue to argue because that is what exposes children to upset that it's not the fact you've split apart that hurts the children so much as the fact that you continue the warfare with each other. Now I always hold in my mind a kind of a mental picture of the children here and over them is an umbrella or like a rainbow that protects them. And that rainbow is the communication between mom and dad. And if they if your children know that you're meeting and you're talking about them they'll feel safe but it if that rainbow not here but their heads if mom and dad don't

talk to each other the children even if it's something said they feel it they feel the hostility they feel frost. [Family Mediation In Action].

The visualisation of communication as an image of the protective umbrella or rainbow provides logical arguments in a picturesque manner to change the attitude towards each other from negative into positive ones. The positive communication is the prerequisite to move on to the next stage of mediation i.e. negotiation.

Stage Four of the mediation process related to Negotiation aims at flexibility and innovation. When the conflicted parties have enough information about the perspective of the other party, and when the mediator has managed to transfer counterproductive positions and negative emotions into productive ones and positive ones then the stage of negotiation starts. The involved parties search for the available solution to avoid living in conflict. Thus, for example, the arrangement for meeting children are negotiated by the conflicted parties in the following way:

– what it's saying really is that the whole situation needs to be looked at because this is new what if I pick them up from school on a Friday and I have them for over-night – over two nights on the weekend I see them and then every other weekend you okay

– yes that's that's Saturday you've got them right next but the weekend after my weekend and we can start the routine [Family Mediation In Action].

This negotiation starts with the indirect question of *what if I pick them up..* and suggestion of the children weekend stay at their parents. When the layout of the arrangement is presented then the request for consent is addressed to the other party who agrees to it stating that this arrangement may finally become a routine. What else should be observed here is the shift from the personal pronoun *I* to *you* and finally, *we* to conclude with the action that *we can start the routine* [Family Mediation In Action].

Stage Five is Closure. If the negotiation leads to the resolution of the conflict then the agreement is prepared by the mediator to be signed by all parties of mediation. If the conflicted parties do settle they attribute to the success of mediation. This success should be emphasized by the mediator, for example as indicated below:

I think you've done a very very good job and I think your two children Rosie and Aiden must be a lot happier now that's a great result [Family Mediation In Action].

If the conflicted parties do not settle, the mediator should express maintain a positive attitude and indicate the progress which was made and highlight its importance. The mediator should likewise encourage the conflicted parties to continue talking so that their communication is free from negative emotions and leads to agreement.

Conclusion

The role of discursive psychology in family mediation is emphasized here especially concerning communication and cognition (i.e. ideas, thinking emotions, and attitude). The application of discursive psychology to family mediation helps the mediator to perceive all the stages of mediations as tasks and actions to reach specified results. Thus, Stage One results in willingness, Stage Two in Safety and Hope, Stage Three in Expression, Stage Four in Flexibility and Innovation and Stage Five in Informed Decision.

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