
CANADA / JUDGMENT

Bajwa v. Bajwa

2006 BCSC 514

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 514 Bajwa v. Bajwa

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bajwa v. Bajwa,

2006 BCSC 514

Date: 20060330

Docket: 043730

Registry: Victoria

Between:

Palwinder Bajwa

Plaintiff

And

Gurminder Singh Bajwa

Defendant

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Plaintiff:

M.S. McManus

Counsel for the Defendant:

J.S.G. Donaldson

Date and Place of Trial:

September 27-30, 2005

Victoria, B.C.

Introduction

[1] The parties' marriage began November 23, 1991, in New Delhi, India. Their relationship ended with the defendant assaulting the plaintiff on August 19, 2004. The principal issue before me is the division of family assets.

Background and Outline of Parties' Positions

[2] Mrs. Bajwa was born in the Punjab in 1963 and her family moved to Canada in 1983.

[3] She took a Nurse Aid course in 1986 and has been working as a Nurse Aid Assistant since 1987.

[4] In 1989, the family went to India, where the parties met and an engagement was announced. Mr. Bajwa joined his wife in Victoria in January 1992. The marriage has produced three children: Shannon in 1993, Erica in 1996 and Sabina in 1998.

[5] After an assault in June 2004 the parties separated.

[6] A number of orders were made at the end of trial concerning custody, guardianship and access to the children, their financial support, and restraining orders. I reserved on the issue of the reapportionment and division of family assets, as well as costs.

[7] The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and the Family Relations Act, R.S.B.C. 1996, c. 128, reflect the premise that marriage is a partnership and that family assets should be divided equally unless there is compelling reason otherwise: see s. 56 and s. 65 of the Family Relations Act.

[8] The plaintiff submits that there should be 100% reapportionment in her favour. The onus of proof lies on her to establish her entitlement in this regard.

[9] In essence, she says that it is her work alone that has built the assets now in the names of the parties. It is her work that has carried the marriage as far as it has gone, and as the custodial parent, a need for economic self-sufficiency should override any property entitlement of the defendant, whom she says has made little or no real contribution to the family assets. As well, she points to the history of abuse and broken promises throughout the marriage and the husband's frittering away of family monies on trips, gambling, beer, and now lawyers, while she has paid the bills and the family debts. Further, she argues any division of the family home would in effect remove the children from the family house whereas to give any capital sum to the defendant will see it frittered away. She alleges the defendant has assets in India that are beyond the purview of the Court.

- [10] The defendant, on the other hand, argues it has been a long marriage and that both parties have contributed to the property acquired during the marriage.
- [11] The defendant says that the contribution by the wife's parents was a gift and not a loan and is, therefore, of no concern. He further argues that an equal division of assets would afford him a better chance of obtaining economic self-sufficiency, and claims that he did contribute to the marriage both via domestic support and financially. Lastly, he submits that fault is not a factor on an application for reapportionment, and that the strong and compelling circumstances required to reapportion assets are not to be found in this case.

Evidence for the Plaintiff

- [12] The plaintiff (commonly called "Wendy") was 20 years-old when she came to Canada with her family in 1983. She finished high school in 1987 and has worked since as a hospital nursing attendant. She was a Nurse's Aid until 1998 and now has taken an Activity Assistant course through the Vancouver Island Health Authority and works as a Personal Care Attendant.
- [13] In mid-1989, she went to India with her parents. On the last day, she met the defendant for an hour or so. A marriage was arranged and on her return to Canada she began the process to sponsor his entry to Canada.
- [14] In 1990, her father gave her \$50,000 and she bought a house on Logan Avenue (the "Logan House") in Saanich for \$159,000, taking a mortgage of \$109,000. The house had three bedrooms and one-and-a-half bathrooms upstairs and two bedrooms and a bathroom and laundry downstairs. She made various improvements from her savings of \$15,000. She also bought a Dodge Colt motor vehicle. She had been able to make these savings because she was living at home. She rented out the house.
- [15] She returned to India in November 1991. The parties were married November 23, 1991. She says her husband was drunk and passed out. She returned to Canada in December and Mr. Bajwa moved to Canada in January 1992. They lived at the Logan House initially upstairs and later downstairs.
- [16] Mr. Bajwa worked at a farm and then at a plywood mill. In November 1992 Mr. and Mrs. Bajwa went to India for his brother's funeral and the parties returned in January 1993.
- [17] She said the relationship was not good in 1993 and that arguments led to one time when she was slapped in the face. Evidently, Mr. Bajwa did not get along with her family and on one occasion he drank too much and got into a fight.
- [18] During 1993, Mr. Bajwa lost his driver's licence when he was arrested for drinking and driving and he was fined \$400.
- [19] Their eldest daughter Shannon was born on April 8, 1993, and in October 1993 parents and child went to India.

- [20] In January 1994, Mrs. Bajwa and Shannon returned to Canada with her mother-in-law and sister-in-law Ginny, then 19 years old. Mr. Bajwa did not return from India until April 1994.
- [21] He continued to take English instruction and delivered a newspaper to make some money. Mrs. Bajwa said she would take her husband to his English courses and she was working 3:00 p.m. to 11:00 p.m. at Glengarry Hospital.
- [22] In October 1994, Mr. Bajwa went back to India and returned in January 1995.
- [23] Mrs. Bajwa said Mr. Bajwa had relatively little involvement with Shannon and that her day comprised taking care of the child, cleaning the house, making lunch and going to work from 3:00 p.m. to 11:00 p.m.
- [24] The lower part of the Logan House was rented out and Mrs. Bajwa said that the financial contribution from Mr. Bajwa was \$200 to \$300 a month from his newspaper route.
- [25] In 1995, Mr. Bajwa returned in January and then worked for some five to six weeks at a hospital and then took a Care Assistant's course at Camosun College for which Mrs. Bajwa paid the fees.
- [26] However, Mr. Bajwa, after drinking during one day, assaulted Mrs. Bajwa who called the police. Mr. Bajwa was arrested and a separation ensued. Mr. Bajwa's mother and sister moved out of the house and into an apartment.
- [27] In August 1995, Mr. Bajwa completed his Care Assistant's course but did not follow up getting employment, saying he did not like the work.
- [28] The parties were separated for two months and then reconciled on the basis of Mr. Bajwa saying he would change and he would take counselling, which he did.
- [29] In late 1995, Mrs. Bajwa said she found Mr. Bajwa a janitor's job at Bob's Janitor and Mr. Bajwa started working as a janitor. His sister came back into the house but Mrs. Bajwa said that Shannon generally stayed at her parents who did the babysitting.
- [30] In October 1995, the assault on Mrs. Bajwa went to court and she told the court they were reconciling and getting counselling which resulted in eight months probation and 50 hours community work as a sentence for Mr. Bajwa.
- [31] However, Mrs. Bajwa said Mr. Bajwa's promises proved to be worthless and that he continued drinking and started calling her names again, giving rise to fights which led to her leaving the house from time to time. She denied ever starting a fight, saying she was afraid she might get hit.
- [32] Mrs. Bajwa further said that Mr. Bajwa's mother was intimidated by Mr. Bajwa and that Mr. Bajwa also beat his sister Ginny on one occasion.

- [33] Mr. Bajwa continued to work at Bob's Janitor from 5:00 p.m. to 10:00 p.m. Toward the end of the year, Mr. Bajwa's sister returned to India to get married. On November 20, 1996, the Bajwa's second child, Erica, was born.
- [34] On one occasion during the year, Mrs. Bajwa said that matters deteriorated to the stage where she called the police who came to the house but no charges were laid.
- [35] She developed a "safe house" with her neighbour, Marthy Ma, whom she had met at church.
- [36] In December, Mr. Bajwa went to India and he did not return until May 1997. He got a new job.
- [37] They made an agreement that he pay one half the utilities while Mrs. Bajwa continued to pay the mortgage, taxes and house maintenance. She says he said to her, "This house is yours, I have mine in India." She said she paid all charges while Mr. Bajwa was away.
- [38] She said Mr. Bajwa continued to work at Bob's Janitor during 1997. Meanwhile, she upgraded her qualifications to the level of Activity Assistant by February 1998, which gained her a salary increase.
- [39] During 1997, she said Mr. Bajwa paid half the utilities and half the groceries.
- [40] In February 1998, their third child Sabina was born and Mrs. Bajwa took maternity leave from January to October. There was an ongoing arrangement of assistance from her parents with the children.
- [41] A further incident involving Mr. Bajwa occurred when he was found drinking and driving and given a 24-hour suspension.
- [42] Shannon began at kindergarten at the Christian Academy in 1998. Her sisters duly followed in time.
- [43] Mrs. Bajwa said Mr. Bajwa told her he was starting to drive taxi and she believed that he began doing so on weekends, in 1999.
- [44] In October 1999, Mr. Bajwa went to India. As on each such occasion, there was no contribution to household expenses while he was away. Mrs. Bajwa was helped by her family as she was then working an 8:00 a.m. to 3:00 p.m. shift. She said when Mr. Bajwa was home he was not any help as he did not get up in the morning and he told her to keep the children and the house quiet.
- [45] She said they did not share a bedroom after 1997 and that she slept with the children in the smaller bedroom.
- [46] In 1999, she said she spent \$10,000 in renovations, particularly on kitchen cabinets and appliances, namely, a stove, dishwasher and bedroom. She said she did that by working overtime and extra days; in 1999, new facilities meant extra time was available for her to work six days a week. As a consequence, she said she left the children with her parents a lot.

- [47] In March 2000, Mr. Bajwa returned home from India.
- [48] I was not informed of the circumstances of the marriage during 2001. In October 2001, Mr. Bajwa stopped working, went back to India, and returned in March 2002.
- [49] In mid-2002, a larger house was bought located at 30 Caton Place (the "Caton House"). Mrs. Bajwa said the decision was driven by the fact the girls were getting bigger and needed more room and there was a lot of upkeep in the older house. The house had been built by her uncle and she was therefore confident in the workmanship. It was located close to her work, a five minute drive away and, so she could return home at lunchtime. As well, she felt the price she was offered by her aunt was more favourable than at market.
- [50] She said she discussed the purchase with Mr. Bajwa, who said, "I'll pay half the mortgage if you put the house in joint names and I'll match the down payment".
- [51] She said she obtained the down payment by refinancing the Logan House. A mortgage against the Caton House was taken in the amount of \$273,750. Refinancing from the Logan House was used to pay the balance of the purchase price in the amount of \$97,212, and Canada Trust was paid out \$22,297 in respect of her existing line of credit.
- [52] She said Mr. Bajwa said he would go to India and get his contribution. He did sign on as a mortgage borrower on the first mortgage but he did not make any payments. In July 2002, Mr. Bajwa went to India.
- [53] In November 2002, Mrs. Bajwa sold the Logan House for \$230,000 and after paying out the mortgage, netted some \$35,000, from which she paid \$28,000 she owed to her parents.
- [54] At the end of November, Mr. Bajwa returned from India. Mrs. Bajwa's recollection was that Mr. Bajwa spent some two or three months cab driving in 2002 and upon his return was arrested and jailed on December 31, 2002, for impaired driving and given a 24-hour driving suspension.
- [55] Mrs. Bajwa said that Mr. Bajwa made no contribution to utilities, made only occasional contributions to groceries, and that as a result, she occasionally borrowed money from her parents to cover costs including private school fees for the children. She said she was working 8:00 a.m. to 3:00 p.m. and then she would be able to meet the children after school and rely less on her family and neighbours for help.
- [56] She recalled a discussion with Mr. Bajwa after he returned from India in late 2002 to the effect that he would not pay the mortgage because he knew her parents would help her. The monthly payment was \$1,620 a month.
- [57] She said Mr. Bajwa was of little help with the children at that time as his drinking problem had re-surfaced. She would sometimes stay out of the house after picking up the children and go to malls or stay at friends just to kill time. She was particularly reliant on a close friend and co-worker, Roxanne.

- [58] In early 2003, Mrs. Bajwa said she had been sleeping with Erica when Mr. Bajwa asked her to get a beer and continued to insist on her serving him. She tried to go into Shannon's bedroom and a fight ensued, resulting in Mr. Bajwa throwing a telephone at her, and her running to neighbours. She says she later returned to the house, got the car keys and she and the children left. Eventually, the police were called and they arrested Mr. Bajwa.
- [59] That led to a two-month separation.
- [60] A prolonged separation ensued. Mrs. Bajwa went to a lawyer and started divorce proceedings but then stopped.
- [61] Mr. Bajwa's brother-in-law intervened, there was a family meeting and decision made that Mr. Bajwa would get counselling, go to AA and take an anger management course. Mr. Bajwa pleaded guilty to charges and was placed on 12 months' probation. She says he promised never to "do it again" and that he would change.
- [62] With respect to Mr. Bajwa's taxi, he told her he was buying a taxi, and that he had saved \$25,000. This appeared to be a joint effort with Ginny's husband, his brother-in-law.
- [63] She said she did not see any money come from the taxi. She did help him get his taxi driver's licence after they got back together. Charges had been laid. She called the courthouse and spoke with a probation officer and she contacted the police so that Mr. Bajwa could get a monthly permit to drive the taxi.
- [64] In mid-June 2003, Mr. Bajwa was charged with impaired and dangerous driving and driving over .08.
- [65] In July, 2003, the whole family went to India for four weeks.
- [66] Mr. Bajwa paid off a joint MasterCard and then charged the airline tickets on the MasterCard in the amount of \$13,000. She says she is still paying that off. She recalled his family had earlier provided monies to help pay off the MasterCard and that some \$5,500 was paid by members of his family against the MasterCard.
- [67] It appears the monies he obtained from selling the taxi was put toward payment of the joint MasterCard bill to clear the account before they went to India in July 2003.
- [68] Mrs. Bajwa said Mr. Bajwa was facing charges in India "about a fight" and he would be helpful. She said he was on his best behaviour and was keeping the house clean.
- [69] However, in January 2004, Mr. Bajwa was found drinking while driving and given a 24-hour suspension and lost his taxi driver's licence.

- [70] She said she took a CIBC loan in January 2004 for \$13,000 which was used to pay the joint MasterCard bill of \$8,000, a Visa of \$2,000, a CIBC overdraft of \$1,200 and \$1,500 on MasterCard as well. She said she continued to pay that loan and although Mr. Bajwa co-signed, he did not pay a penny. She said there was a joint account at CIBC, it was paid off in October of 2004 and closed.
- [71] There is evidence of another incident where Mrs. Bajwa complained of her husband getting out of hand. She got out of the house and returned with her friend Roxanne and things eventually calmed down, although the girls clearly were not happy.
- [72] She says it eventually led to Mr. Bajwa and Shannon being in the house together and Mr. Bajwa striking Shannon on the back of the head, resulting in her nose striking the stove.
- [73] She was greatly concerned that he had previously hit her and now he was hitting the daughters at a time when he was on probation, and she was scared to tell the police for fear of causing him further trouble.
- [74] A further incident was related regarding the children's friends being at the house. Mr. Bajwa called the friend a cry-baby, to which Shannon replied, "You're a cry-baby." Mr. Bajwa then hit her over the head, leaving a bruise above her left ear. The school noted something was wrong with Shannon the next day and called Mrs. Bajwa and said they would have to let the Ministry of Children and Families (the "Ministry") know of their concerns. It ended up with Mr. Bajwa becoming aware of the report and getting very angry and making threatening calls, which led to Mrs. Bajwa staying at her friend Roxanne's for a week and then at her mother's through June and July of 2004. In August, she went home.
- [75] Evidently, Mr. Bajwa told Roxanne that if Mrs. Bajwa came home he promised never to hit her, never to drink, and that he would change.
- [76] She said there was an ongoing concern regarding taking money from the bank account and gambling.
- [77] In the summer of 2004, the Ministry advised her they did not want Mr. Bajwa to see the children, that he needed counselling and she should go to a transition house and get a restraining order against him.
- [78] However, on August 19, 2004, she went back to the house, leaving Erica at the Ministry. She said Mr. Bajwa was passed out downstairs at 4:00 p.m. They locked themselves within the house. At 7:00 p.m., he knocked on the door and said he wanted Mrs. Bajwa to help him. He continued to berate her until he had to go to work at 1:00 a.m. When he returned at 6:00 a.m., there was a confrontation and he accused her of having a boyfriend.

- [79] Mrs. Bajwa said she went into Shannon's room but Mr. Bajwa pulled her hair and threw her down on the ground and grabbed her. The lady tenant telephoned the police and then came upstairs and told Mr. Bajwa to let her go. The tenant and Mrs. Bajwa went outside and he locked the door on them. The police came and could not enter the house, and ended up gaining access through a second-floor window.
- [80] The parties separated. In September, Mr. Bajwa contacted her and phoned her at work. She said it was a "nightmare," and that he really didn't care about the restraining order, as evidenced by the numerous times he violated it.
- [81] On October 1, 2004, Mr. Bajwa called to her at work and he tried to get her to sit in his car but there was a co-worker at hand who was able to assist. She said Mr. Bajwa had a beer in his hand at the time. She said she took a different route home to her mother but after she was there a half-hour, Mr. Bajwa rang the doorbell. She telephoned the police and he left. She then took her mother back to her house. Mr. Bajwa came by and rang their house bell and she called the police and Mr. Bajwa was arrested and charged with breach of an undertaking.
- [82] On one occasion, he blocked her car's passage on Blanchard Street and she acquiesced to his request and got into his car and they drove to Beacon Hill Park where he let her go. She reported the matter to the police. On October 21, 2004, there was a Ministry hearing and that was the occasion when she was followed and they went to Beacon Hill Park. She said on October 28, 2004, after she had dropped off the children at school, he followed her. She also said at Halloween her sister-in-law followed her.
- [83] In December 2004, he went to India. He returned in April 2005. There have been no further incidents.
- [84] On May 31, 2005, Mr. Bajwa was convicted of assault and given a 90-day conditional sentence after pleading guilty.
- [85] Mrs. Bajwa said the children are very afraid of Mr. Bajwa coming home at any time of the day or night. She has tried to assure them they have no problems, but says that they have still required counselling.
- [86] She said there was no possible chance of reconciliation. She agreed with the children's care report by Mrs. Mahoney.
- [87] Financially, she is able to pay the basic expenses and her parents help with the children's lessons which leave little room for extras. School costs are \$510 for ten months, and piano is \$210. There are ongoing and potentially increasing orthodontic costs.
- [88] She said since September, 2004, Mr. Bajwa has not paid child support, save for two months, August and September 2005.
- [89] She said she has cashed in some mutual funds to help pay bills.

- [90] She expressed no optimism about Mr. Bajwa paying child support but she did concede he bought the children birthday presents and bought them things on the trips to India. Since the separation, she says only one card has come for Shannon on her birthday.
- [91] She wished to keep the house due to its spaciousness, proximity to her friends, the library, schools and work. Her uncle's brother lives down the street. She said she was at the limit of her mortgage borrowing power and moving is not an option. She has RRSP savings of \$29,000. Mr. Bajwa has never contributed.
- [92] Her income is generated from work and rental income of \$600 per month. She is looking at the possibility of putting another foreign student in a downstairs bedroom.

Cross Examination

- [93] She had hoped he would have gone to school when he arrived in Canada but he said he wanted to work. She agreed his education seemed to limit him.
- [94] With respect to the Logan House, she agreed she got \$50,000 from her parents but it was a loan that was not repaid, nor was there an expectation of repayment. With respect to the \$28,000 loan for the Caton House, she said she did repay that from the sale of the Logan House. She did not pay back the \$50,000 as she did not have that money. She denied the \$28,000 was a loan and the \$50,000 a gift.
- [95] She denied the house was bought with their marriage in mind. She said it was an investment. She said she hoped that they would obtain another house once Mr. Bajwa came to Canada.
- [96] She agreed the renovations to the house were made before Mr. Bajwa came to Canada and that she paid the contractor about \$15,000 from her savings, and she also bought a new car in 1998. She likes her job.
- [97] She denied Mr. Bajwa having made any contribution to the marriage. Put that Mr. Bajwa contributed with maintenance, cleaning and house-painting, she denied that, saying she hired a painter. She said Mr. Bajwa occasionally cut the grass, that if anything was broken around the house she took of it. She recalled an occasion there was a problem with the furnace and she had to show him what to do.
- [98] Put that Mr. Bajwa shared their bills, she said that would be limited to utilities and food.
- [99] With respect to Mr. Bajwa's drinking, she stated that while she knew of it from the outset, at their wedding, it became abusive after 2002. She denied ever hitting Mr. Bajwa and said she was scared of him and she denied throwing things at him.

- [100] Mrs. Bajwa said that the children had no relationship with their aunt, Ginny Atwal, Mr. Bajwa's sister. It was put that Ginny Atwal had tried to contact her and been rebuffed and she denied that. With respect to Mr. Bajwa's mother who came to stay in April 1995, she said she only came for a short time and denied that they were not able to get along. She said there was no relationship between the grandmother and the children.
- [101] With respect to bank accounts, she agreed they had a joint bank account in 1992 at the Toronto-Dominion Bank and that ended in 1995 when they separated. She said that if Mr. Bajwa deposited anything it would be because she gave him a cheque to deposit and that he deposited none of his own money into the joint account to pay the mortgage.
- [102] She denied Mr. Bajwa helped cook and clean on occasion. With respect to the children, she said that Mr. Bajwa had little to do with Shannon in 1994 although she agreed that Mr. Bajwa and his sister took care of Shannon in 1994 through 1996.
- [103] She agreed she paid for Mr. Bajwa to do his nursing course.
- [104] With respect to a fight that occurred in 1995, she denied starting the fight or throwing dishes. She said she was scared and she would not do that.
- [105] She agreed he worked at Bobs Janitorial in 1995 and 1996, working hours of 5:00 pm to 11:00 p.m., that she left for work at 2:20 p.m., and Mr. Bajwa cared for Shannon.
- [106] She conceded Mr. Bajwa did occasionally help with the children in the mornings if he was not working.
- [107] With respect to the Caton House mortgage that they both signed, it was put to her that his income was necessary to qualify for the mortgage. She denied that, saying the bank did not ask about his income but she agreed hers alone was sufficient, that he said he would pay half the down payment, and he did not.
- [108] With respect to her claim she got a \$50,000 discount on purchasing the Caton House property from her uncle, she recalled \$420,000 was asked and they got it for \$365,000 due to her relationship with the vendors. It was also put to her the original listing was \$409,000 and by the time they purchased the listing has dropped to \$389,000. She said she did not know. She disagreed that the current appraisal value of the house is \$615,000.
- [109] Exhibit 6 is an appraisal dated August 24, 2005, opining the value of Caton House at \$615,000.
- [110] She was asked various questions regarding the sale of the Logan House in November 2002. She agreed that the various money movements or refinancing she had done without asking Mr. Bajwa, stating that it was "her stuff".

- [111] In the long term, she feels any relationship between the father and the children be premised on counselling to a stage where the children feel safe, and that she has no objection to it as she considers it is important the children have a relationship with their father.
- [112] The mortgage is \$1,620 but she has rental of \$600 per month and she does get the odd foreign student but they are two weeks at a time and not regular.

Other Plaintiff Witnesses

- [113] The next witness was the plaintiff's uncle, Mr. Bal. He described the wife's family (the Hundels), as hardworking and reliable. His observation was that the plaintiff's children were nice and well taken care of by their mother. He said the grandfather is helpful in that the children often were with him going to and from school and were not far from school when staying at the grandfather's. As for social events at his home, he said Mr. Bajwa never attended. He did recall going on one occasion to the Bajwa's house when Mrs. Bajwa called him saying she had been beaten. He went with his brother to the Logan House and a shouting match with Mr. Bajwa ensued, and he told Mr. Bajwa never to touch Wendy. Mr. Bajwa left in his car. He observed glass was broken at the front door and he understood Mr. Bajwa had kicked it in because it was locked. The police attended because he called them and he was there when the police arrived. On cross-examination he was asked if he had been drinking, and he denied that he or his brother drank at all.
- [114] The plaintiff's father was called. He is now 78 years of age, born in the Punjab and now a retired farmer.
- [115] With respect to his grandchildren, he said he has looked after them since 1996, when Wendy would drop them off on her way to work before school, and he would walk them to school and if Wendy was unable to pick them up after school he would help with that as well. He said the children would play, eat and refresh themselves at his house.
- [116] When asked about his son-in-law, he said he rarely saw him and when he did he could be affected by alcohol. Sometimes, he would simply drop the children off at the door saying "the kids are here". He said his daughter had not complained to him about Mr. Bajwa but the children had. He was asked if he gave money to help his daughter and he said he did with respect to the first house that was bought before the marriage. His observation of his daughter and the children was very good and he still wanted to care for the children while his daughter continued working.

- [117] Roxanne Underwood (nee Kaiser) said she was a friend of the plaintiff and had worked with her since 1998. She described Mrs. Bajwa as a true friend, caring, kind, honest and happy. She would see her at least twice a month, if not more, and talked regularly on the telephone. She recalled meeting Mr. Bajwa (Sandy) in 1999 or 2000. She said she did not have a good relationship with him, that they were not friends, "a bad experience". She previously lived on Belmont, close to Wendy and her work.
- [118] She said Mr. Bajwa often tried to talk to her and tried to tell "his side of things" but he blamed all problems on Wendy and when she tried to suggest something that might be his fault, he would not hear of it. He claimed the counsellor agreed with his view of things and he thought he had a right to hit her.
- [119] When asked if she had seen Sandy hit Wendy, she said in August 2004 she attended the house as Mr. Bajwa was not letting her leave the house. Wendy managed to sneak out the back door with the children and he then stood in front of her car and then dragged her in and out of the car two times in front of the children. She eventually talked him into letting her drive to the library and dropped off the children. They were all terrified of him. She also said she had seen bruises on Wendy.
- [120] She recalled another occasion when she drove to the house and four or five police cars were there and she drove away.
- [121] She gave Wendy keys to her condominium so Mrs. Bajwa could get away from the family house and she said that Wendy and the children did stay quite a bit, sometimes up to ten days and the kids seemed to love it.
- [122] On cross-examination, she was asked when last she saw Mr. Bajwa, and she said the occasion when she was locked in the house with Mrs. Bajwa on August 19, 2004.
- [123] When asked her opinion regarding the future, she said the children are terrified of Mr. Bajwa for good reason and should not be made to see him. She was of the view they should not have any relationship with the father as it was not safe and she was fearful of him herself. She believed the children lived in fear of their father. She agreed there had been no incidents since August 2004 but that was because he was out of the house and under restraining orders. She said most times during incidents he was affected by alcohol. She was not aware what the affect might be if he stopped drinking.

Evidence for the Defendant

- [124] The defendant gave evidence. Mr. Bajwa was born in 1966 and is 39. He said his father died in 1982 and his mother still lives in India. He has a brother who died in 1992. He said he took school to Grade 12 in 1987 and was admitted to University in Civil Engineering at the University of India. His father had been a civil engineer with the Punjabi government and the government offered the university degree course.

- [125] He said he did study for two years. He said he met Mrs. Bajwa in 1998 and got engaged. He was then at school. He said he left because he met Mrs. Bajwa. He is now a non-union building janitor working two jobs Monday to Fridays from 7:00 a.m. to 4:30 pm. and 5:00 p.m. to 10:30 p.m. on weekends. Neither job has a pension plan.
- [126] He said he is living with one of his sisters (Ginny Atwal) who is married to Rajinder Atwal and they have two children. He has been living at his sister's since August 20, 2004 and he lives downstairs in the recreation room and sleeps on the sofa-bed.
- [127] He said his aunt was the matchmaker. He said the Hundel family had come to India and were looking for a husband for Wendy. There was not much discussion and the decision was based on the aunt's representations regarding Mr. Bajwa.
- [128] After the engagement the parties telephoned each other two or three times per month and he asked about life in Canada. He said he stopped his studies so that he could come to Canada. He said there no discussions about housing. He said he asked about work and was told there were lots of jobs.
- [129] They got married November 1991. He said it was a traditional small wedding with some 20 people.
- [130] He said they discussed the house purchase in 1990, that she had saved monies and they were getting married and he said "it's your decision, I don't know". When asked if they talked about children, he said not before the marriage. When asked about other plans, he said no, that he wanted to go to Canada and then decide. He acknowledged he had previously travelled to Singapore and throughout India.
- [131] He came to Canada in January 1992 on his wife's sponsorship. He said it meant for him that he was going to be taken care of for 10 years.
- [132] He said to get Canadian citizenship now he would need five clear years without criminal conduct and that he wants to live in Canada.
- [133] When he arrived in Canada Mrs. Bajwa had the Logan House and they went there. Initially, he said they lived upstairs and then he suggested renting the upstairs and living downstairs. The basement had two bedrooms, a bathroom and a separate driveway in reasonable condition. Renovations had been done before he arrived.
- [134] His understanding was she had saved the monies to buy the house.
- [135] After two or three weeks he said his father-in-law came to visit and offered him work at the farm. He said he was not ready for manual work, as he had never done it, having been supported by his mother.
- [136] He said he started to help paying the bills when he started work and he opened a joint account to put his cheques in. He said the joint account worked until 1995.

- [137] He denied the evidence of his wife that he had never paid monies against the mortgage.
- [138] He said he got a job at Victoria Plywood Mills and had worked there for two years. In November 1992, he went to India because his brother had died and was there five or six weeks with Mrs. Bajwa and returned in December 1992 to the plywood job. He stayed there until October 1993 and then he went back to India because his mother needed his help and he stayed there for six months. He said his mother had a property with ten rental shops and the tenants were not paying the rent. He said his mother has a house and a market that she can rent.
- [139] He said he returned in March 1994. The plywood factory had shut down so he then delivered newspapers. He said his sister and mother came in January and they stayed at the house. He said he delivered the newspapers for a year.
- [140] In 1995, he went to Camosun College and did the resident care course for nine months, completing it in September. He then did some volunteer work in the field, before he took on work at Bob's Janitorial Services in September 1995.
- [141] When asked about the assault on his wife in the summer of 1995, he said there was a separation for six weeks but they reconciled and both returned to the Logan House, and in December 1996 he returned to India.
- [142] He said at the time he was working 5:00 pm. to 11:00 p.m. and Mrs. Bajwa, 3:00 p.m. to 11:00 p.m. when Shannon was age two, and his sister Ginny looked after Shannon. He said he helped change diapers and helped feed Shannon.
- [143] In 1996 he said he was working 12 to 13 hours per day and did not start driving a cab until 1999. In that period he would work some 10 to 12 buildings for the janitorial service working 4:30 p.m. to 3:00 a.m.
- [144] Erica was born in 1996 and Sabina in 1998. When asked about his relationship with the children, he said he would get up at 10:00 or 11:00 a.m., Shannon would be at school and he would help pick her up.
- [145] He would go to the school and bring them home and make lunch for them.
- [146] He said his wife was working 3:00 p.m. to 11:00 p.m. and after 1996, Ginny, his sister, moved out and he had to care for the children five to six hours per day.
- [147] He said he started driving the cab on the weekend.
- [148] When he was asked about differences that occurred when he came home late and Erica was still a baby, he said Mrs. Bajwa would have Erica in the crib in the master bedroom. All his stuff was in the master bedroom. He would come home, shower, eat and if he turned the lights on Ms. Bajwa would get upset. He said she wouldn't ask him how his day was and he was having to feed himself.

- [149] He said after a while the Friday night work for the janitor became flexible so he started driving the taxi Fridays, Saturdays and Sundays and then he figured the taxi pay was better so he went full time in the year 2000.
- [150] The trip to India in 1996/1997, was for his sister's wedding. His wife did not go though she could have.
- [151] He said once he started driving the taxi it would from 4:00 p.m. to 4:00 a.m. and he would come home, sleep two hours then drive the children to school at 8:00 a.m., shower, eat and then sleep. That job ended in January 2003.
- [152] In 2001, he bought a taxi with his brother-in-law. He said he put down \$20,000 and he did not tell his wife until some two or three months later.
- [153] When asked why he waited, he said he had previously asked her to help get a bank loan and had been refused so he said he worked longer hours and saved monies. He acknowledged Mrs. Bajwa might not believe that.
- [154] He said taxi earnings could be \$100 to \$300 per day in cash on a 12-hour shift, and they had expenses to meet for the dispatcher at \$1,100 per month, car repairs of \$400 including gas, insurance and regulatory requirements.
- [155] He said he spent his money on his family as it cost money for the children to go to a private school and they shared the fees. He said he paid cash. He said he helped pay for the phone, the groceries and for the children's clothing "whatever they needed". When asked if he declared his income to CCRA for tax purposes, he said no.
- [156] In January 2003, he was arrested on a complaint of driving while drunk and he lost his cab permit. In 2002 there had been an impaired charge and he lost his licence for three months. He said he did not drive from June 2003 to November 2003, then drove again for two to three months and lost his licence again due to a 24-hour suspension.
- [157] After the impaired charges he said he hired a driver but it didn't leave him much money, perhaps about \$500 - \$600 per month, so he decided to sell the taxi. He sold the taxi in June 2003 for \$35,000. He said he put \$10,000 down against the joint account balance so that all the family could go to India and they were there for four weeks in July 2003.
- [158] In the fall of 2003, his wife helped him get a G-permit to drive a taxi.
- [159] He said then from December 2003 he drove a taxi for three months for others but in January 2004 he lost his job again and he said he became very upset and depressed and he just stayed at home looking after the children and cleaning the house while his wife continued to work.
- [160] In May or June of 2004, he said he found a job with Baye's Building Maintenance and worked 5:00 p.m. to 11:00 p.m. until December 2004.

- [161] On August 20, 2004, he left the Caton House to live with his sister. He is still there.
- [162] He said in the fall of 2004 when the court ordered child maintenance he was in India. He said he paid the first amount in August 2005 and he had given post-dated cheques since. There are eight months arrears and he said that his intention was that he wanted to pay but that he "lost it all" and that he sent money from India but his lawyers took it all.
- [163] He said he was in India from December 2004 to mid-2005 and that he basically went to India to feel better. He said the last time he had seen the children was August 20, 2004, when he was charged with assault. With respect to the child report before the court, he said he would abide by that.
- [164] Mr. Bajwa acknowledges he is depressed and is taking medications, although he says they do not help that much. He acknowledges he has an alcoholic abuse problem and he has gone to Alcoholics Anonymous for some six weeks as of trial. He has seen the counsellor, Mr. Churchill, for some nine weeks, every Saturday, and that is helpful.
- [165] With respect to the purchase of the Caton House, he recalled a discussion to the effect that they were both making good money and they should get a bigger house. He said Mrs. Bajwa was not keen on getting a bigger house and wanted to keep the mortgage low. He said the advantage of the new house would be lower maintenance costs. He said he helped with the financing by borrowing \$20,000 from his brother-in-law and he wrote a cheque for that amount to Mrs. Bajwa. He said the rest was financed from the Logan House and that Mrs. Bajwa also borrowed money from her parents.
- [166] The house was bought in mid-2002. Mr. Bajwa went to India in July. The mortgage was covered by renting out the Logan House, upstairs and downstairs for \$1,500 and a further \$600 rental at the Caton House. Then the tenants at Logan became a problem and Mrs. Bajwa decided to sell that house. He said there was no discussion, she just did it and it was done by the time he returned in October.
- [167] He said that he spoke on the telephone to Mrs. Bajwa and she indicated there were financial difficulties and that he telephoned his sister to put \$1,000 into the joint account and another \$1,500 from his brother-in-law and he said he paid almost \$5,500 to the mortgage. He said on his return from India he paid cash to Mrs. Bajwa to help pay the mortgage.
- [168] With respect to the \$20,000 he had put forward, he said he put \$5,000 on the house and then he went to a mortgage broker. He said there was a problem because Mrs. Bajwa had told him she had lost monies on her mutual funds and was indebted on the TD Powerline. She went to her parents and he went to his brother-in-law. He said he gave \$20,000 and repaid \$17,000. The other \$3,000 he said came from selling the taxi. He said all this arose on the mortgage application.

- [169] He disagreed they got a "good price" on the purchase of the Caton House from Mrs. Bajwa's aunt. He said he was instrumental in suggesting the offer of \$350,000 because the house was not selling.
- [170] A listing agreement was produced for the Caton House property of April 23, 2002, showing a current price of \$389,900. He said deducting commission meant a price of \$365,000 which they discussed. However, the house was listed and there was an obligation to pay commission, so the discount was some \$5,000-\$6,000.
- [171] Asked about the mutual fund loss, he said he did not know Mrs. Bajwa had refinanced the mortgage on the Logan House but said he had read a letter stating that she had lost \$40,000 but he had never seen the papers. He said she took the money off the house without telling him. He was not aware of the investment loss, that only became an issue on the mortgage application when the debt showed and she advised him of the debt to the bank.
- [172] He acknowledged he went gambling at the casinos when he was driving the taxi in 2001 and that he would go two times a month and play the 25¢ slots. He said he stopped when he sold his taxi and lost his job. He estimated his total losses as being some \$4,000-\$5,000.
- [173] As to various assaults on Mrs. Bajwa, he said in 1995, there was an argument and that he did hit her and bruised her arm and she called the police, or her uncle called. In any event, he was arrested and charged with spousal assault and plead guilty, the penalty being eight months probation and 50 hours of community work. He said he was not drinking then. The next was in February 2003. He said there were arguments with his mother and sister and he was drunk and Mrs. Bajwa pushed him and he pushed back and he bruised her arm and the police were called again. He said he left the house and his brother-in-law, Rajinder, picked him up. The police looked for him for one or two days and asked him to come down to the station where they charged him. Again, he pled guilty and was given one years' probation and counselling. He said he took courses in relationships and alcoholism at the time. He said he felt bad and sorry it was his mistake.
- [174] A third assault occurred August 20, 2004. He said he had been working from 5 to 11 and drank and woke up at 4:00 a.m. and had to clean a building by 7:00 a.m. He says he asked Mrs. Bajwa to help and Shannon said she would help. The cleaning job was done and he was home by 7:30 and he made \$60.00 which he gave to Shannon. He said Mrs. Bajwa did not like it and it led to an argument with pushing and he hit Mrs. Bajwa. Shannon evidently ran to the tenant and the tenant telephoned the police and led to his arrest. Again, he pled guilty and was give a conditional three months' sentence.
- [175] In 2004, a restraining order was made and he breached that. He said he was trying to contact Mrs. Bajwa through his sister and Roxanne. He acknowledged going to her workplace and after three or four times they did meet. He said she felt sorry. He said he went to the Caton House three or four times with her consent. He said that he was staying at his sister's and he was trying to find an apartment and then he went back to Caton House and knocked and wanted to get into the house and Mrs. Bajwa telephoned the police and he

was arrested. He said it was a big mistake that charges were laid and they were dropped.

[176] With respect to other criminal matters outstanding, there was an impaired driving charge in 2003 still before the courts.

[177] He acknowledged his alcohol problem and the legal costs that followed. He said he had not had a drink since Father's Day 2005.

[178] Asked what he would do if he received a share of the family assets, he said he needed a place to live, to be able to see the children and in that regard he had met the counsellor, Mahoney.

[179] He said he was working two jobs some 12-14 hours from Monday to Friday. On Saturday he gets counselling. On Sunday he does some work. He said he felt stressed and was tired of having to pay lawyers, child support, rent and \$300-\$400 a month for groceries.

Cross-examination

[180] He agreed basically his mother supported him and he did not obtain much job experience in India.

[181] He still has an Indian passport which expires June of 2008.

[182] He acknowledged he had been able to renew his Indian passport in spite of a criminal record. His passport still shows his address on Railway Road in Gudaspar, India. He said his mother moved there in 2001-2002 when she down-sized from the previous dwelling. He denied the proposition that he was the owner of the house.

[183] With respect to the various assaults on Mrs. Bajwa, it was put to Mr. Bajwa that he could not control his anger to which he responded that neither of the parties could.

[184] He had met Mrs. Mahoney, the author of the child care report, and acknowledged to her he was taking antidepressants and had lost weight, that he was going to AA and he had taken relationship counselling. He acknowledged he now weighed 180 lbs. but was 220 lbs. on the times of the previous assaults.

[185] It was pointed out that the order of October 21, 2004, allowed for supervised access to which he replied he understood that he was not allowed any access.

[186] He understood the recommendations of Ms. Mahoney were being put into the court order by agreement and he confirmed his consent. He was aware Mrs. Bajwa did not want to terminate his relationship or access to the children.

[187] He is taking anger management counselling with Mr. Churchill. He stated he was aware that the children were afraid of him and indeed might not recognize him. With respect to the purchase of the Caton House, he said he wanted a bigger house and that in 2002 they were both making good money. He denied ever saying he would pay one-half of the deposit or that he would pay one-half of the mortgage payments. He did not agree he made half

share proposals. His answer was that they had \$1,300 rent from Logan and \$600 rent from Caton House, so he did not feel he needed to contribute. When it was put he had promised to pay half, he said he only offered to help "if needed," and he would pay "the other bills" like the children's school fees. He acknowledged his 2002 income at \$3,208. He said he made up figures for 2001, 2002 and 2003 for income tax filings. When it was suggested the \$108 was overtime at Bob's Janitorial, he said it was \$6,000.

[188] He acknowledged the loss of the taxi business was because of his drinking and his assault on his wife, that he could not drive for three years, and therefore, had lost his job.

[189] He said he lost the cab job and eventually sold his interest in his taxi in June 2003. He used those monies to pay down the Mastercard which, in turn, allowed the purchase of tickets to take the family to India. The Mastercard charges eventually became a debt to CIBC which his wife has had to pay.

[190] With respect to an assault that had taken place where Roxanne was a witness, it was put that Mr. Bajwa had pulled Roxanne out of a car to which he responded he simply wanted her to go to her family and he did not pull Wendy out of the car or in front of it. With respect to his December 2004 trip to India, he acknowledged getting advice to pay maintenance for the children but he claimed to have sent the money to the lawyers and the lawyers took all of his money. There was no re-examination.

Other Defence Witnesses

[191] Ginny Atwal gave evidence. She is the sister of Mr. Bajwa. She is married with two boys aged seven and nine.

[192] She said Mr. Bajwa had been living at her house and sleeping on a couch in the recreation room since August 2004 and was not paying any rent but he got along well with the family.

[193] She said she came with her mother to Canada in 1994 and lived with the Bajwas at Logan Avenue. She started working in 1995 and stayed until December 1996.

[194] She married in India in 1997 and returned to Canada. She did not pay rent. In her culture, that was her brother's responsibility.

[195] She said a typical day in 1994 would see Mr. Bajwa going off to deliver papers or going to school and Mrs. Bajwa working 3:00 to 11:00 p.m., and therefore, she would provide child care.

[196] She said Mr. Bajwa's relationship with Shannon and Erica was that he was a good father who loved the children, played with them, fed them, took them to the park and got upset when they fell while learning to walk.

[197] She said as to the relationship between Mr. and Mrs. Bajwa, that they fought all the time, swore, threw dishes at each other and pushed each other, sometimes in the presence of the children.

- [198] She said Mr. Bajwa helped maintain the house, cut the grass, provided house maintenance and painted it and she claimed to have seen him do all those things.
- [199] The incident in 1995, she described as a "normal fight" with pushing and yelling on both sides. She said Mrs. Bajwa telephoned the police the following day and she threw Ms. Atwal's "stuff" out of the house saying she could not live there, so she went to a motel at which she was working. Mr. Bajwa likewise rented a suite, for some four to six weeks, and then the parties got back together and she rejoined them at the house on Logan until December 1996, when she married. She said Mrs. Bajwa was involved in her engagement but did not go to India for the wedding. Since then she has not talked to her though she had bought presents for the children. She felt Mrs. Bajwa simply did not want her near the children. She was happy for her children to contact the Bajwa children but she did not feel Mrs. Bajwa reciprocated.
- [200] With respect to her mother, she said Mrs. Bajwa spoke unkindly of her, that she smelled, that she swore at her and was angry so that eventually her mother did not want to be there. She said she heard Mrs. Bajwa speaking to her children saying grandmother smelled, that she was not their grandmother, and she would hear Shannon repeat such things. She said that Mrs. Bajwa would get into arguments with Mr. Bajwa, for instance, if Shannon was messing up his newspapers that he was preparing for the newspaper route, that she would yell and push at him, that she saw her rip his t-shirt, that she threw slippers and screamed. On another occasion she said, Shannon was interested in grandmother's picture books and a wedding album but Mrs. Bajwa got upset and started yelling that Shannon could not see those pictures and took her out of the room. She said Mrs. Bajwa could push at people, throw phones and throw remote controls. She further claimed Mrs. Bajwa had physically assaulted her, pulled her hair, and scratched her arm on occasion when she was sleeping with Shannon at 10:00 a.m. in the morning.
- [201] In cross-examination, she acknowledged she was Mr. Bajwa's younger sister and signed for his police bond. She agreed he quit university because he wanted to come to Canada. She did not recall him working while he was waiting for his entrance to Canada.
- [202] She said her mother was living in Amritsar in India and previously had lived in Gudaspar. She said she went to Grade 12 and was 17 when she came to Canada and that she believed the Bajwas had paid for her travel. She reiterated that Mrs. Bajwa's treatment of her mother caused her mother to go back to India. She said her mother came back again because she wanted to be with Mrs. Atwal and she wanted to maintain her immigration status. She said she had been with her mother all her life.
- [203] It meant the Logan House was full with the downstairs being rented, her mother sleeping in the living room, Ginny sleeping with Shannon and Mr. and Mrs. Bajwa in another room. She conceded she stayed in the house even though Mrs. Bajwa was mean and nasty, stating that she had no choice, and it was in her culture that she had to stay in the house until she married herself in 1996. This was also an arranged marriage and she said Mrs. Bajwa did

not come to her wedding because she did not like her. She agreed, however, that Mrs. Bajwa trusted her to care for Shannon and stated of herself that she was a good caregiver and that she treated Shannon like her own. She said Mrs. Bajwa cared for the children when she was not working.

- [204] With respect with Mr. Bajwa going to India over the winter of 1994-1995, and she and Mrs. Bajwa were in the home and Shannon was two years old. She said she was horrified at the stories being told to Shannon. She denied that Mr. Bajwa had ever hit her or thrown anything at her.
- [205] With respect to the altercation in 1995, she was not present and that she heard later that Mrs. Bajwa had called the police and that Mrs. Bajwa had thrown Mrs. Atwal's chattels on the street at that time.
- [206] Asked who cared for Shannon, after she and Mr. Bajwa left the house, she said Mr. and Mrs. Bajwa started talking to each other within a week and they started leaving Shannon with Mrs. Atwal while they were getting counselling.
- [207] She said Mr. Bajwa did things such as fix toilets and paint the house and cut the grass at the house. She did not recall seeing a repair man. When it was put to her she was saying the marital problems were caused by Mrs. Bajwa, she denied that, but she said there were little things that led to much anger and hurt.
- [208] She agreed her brother was an alcoholic but stated he had now quit for a year. His problem was that when he started he could not stop, that she had seen him drunk and passed out on the couch but she did not think his anger was worse when he was drinking.
- [209] She said she was aware of the driving charges arising from an incident on June 19, 2005, but attributed those to being on antidepressants, that he had a drawer full of them and was dependent on them and that they caused him to appear drunk, that he appeared he was dizzy and talkative when ordinarily he was quiet. She said she would know the difference if he was drinking. She acknowledged Mr. Bajwa did not have a car and had borrowed theirs, but ordinarily took the bus to work. She was aware there was a bail order prohibiting him from driving and that he had an 11:15 p.m. curfew and at weekends 6 p.m. She said he was going to his AA classes but she did not let him drive the car.
- [210] With respect to reports of the children being afraid of their father, she said there had been a lot of yelling going on and that when she was first in the house she went to her room.
- [211] She said she had taken gifts over to the Bajwa children but Mrs. Bajwa did not want them. She said in terms of access she would please to provide her home, that she would welcome the Bajwa children coming to see their father and that Mr. Bajwa was able to stay on at her house for as long as he wanted to.

The Plaintiff's Argument

- [212] It was submitted equal division of assets would not be fair as it was primarily the plaintiff's work and her need for economic self sufficiency that came into focus, i.e., Mrs. Bajwa's work had acquired the property and her need for economic self sufficiency given her primary responsibility of raising the three children went to the argument there should be reapportionment in her favour. The plaintiff then reviewed the history of abuse and alcoholism which I need not detail as it is set out in the evidence but that behaviour is not relevant save the concern of Mr. Bajwa's ongoing ability to maintain and support the children given his prior history of under achievement and alcoholism. Counsel submitted that Mr. Bajwa's promises of reform of his behaviour and ongoing support for his children, given the prior history of broken promises, was not to be relied on.
- [213] As to Mr. Bajwa's contribution towards the assets, the plaintiff submitted they were non-existent. She did acknowledge while Ms. Atwal was in the house she had helped but other than that all real assistance came from her own parents.
- [214] She noted Mr. Bajwa had never gone to a parent-teacher meeting and only gone to one concert of the children.
- [215] On the other hand, he had gone back to India over six British Columbia winters and made no contribution to his house in his absence, as evidenced by the latest visit for six months to India over 2004-2005 when he failed to pay any maintenance. As of trial, he had lost his taxi job and still had two pending criminal charges outstanding.
- [216] It was submitted the plaintiff had kept the family together and ongoing, she had taken on the responsibility of the children and had upgraded her education to get a better job compared to Mr. Bajwa who had frittered his monies away on trips, gambling, alcohol and now lawyers.
- [217] As well, Mrs. Bajwa had taken on and paid off all family debts. The purchase by Mastercard of the tickets to India in 2003 which Mr. Bajwa had promised to pay had resulted in a further debt for Mrs. Bajwa to pay. From 1994, separate accounts had been kept due to Mr. Bajwa's prior monetary issues.
- [218] Thus, the plaintiff submitted she should be reapportioned 100% of the family assets: see *Toth v. Toth* (1995), 17 R.F.L. (4th) 55 (B.C.C.A.), and *LeBlanc v. LeBlanc*, [1988] 1 S.C.R. 217 (S.C.C.).
- [219] It was submitted to give any of the house equity monies to Mr. Bajwa would be to throw the money away. It was submitted Mr. Bajwa, given his prior history, would fritter it away. He has not taken opportunities to develop his skills for his own benefit or for the benefit of others.
- [220] It was suggested, but not proven that Mr. Bajwa had assets and bank accounts in India.

[221] The plaintiff submitted her ongoing need to provide a home and maintain the children had to be premised on a lack of any support from their father. Reference was made to Bablitz v. Bablitz (1994), 10 R.F.L. (4th) 84 (B.C.C.A.); Webb v. Webb, 6 November 1981, Victoria Registry, 11353/81 (B.C.S.C.); and Emery v. Emery (1994), 113 D.L.R. (4th) 592 (B.C.S.C.).

[222] Alternatively, Mr. Bajwa's interest should be set at a fixed amount together with interest, or alternately, secured by second mortgage to be paid when the youngest child left the house. That would provide security for Mr. Bajwa to pay child support, but if he should not, then the payments could be offset against the mortgage.

[223] However, counsel cautioned that that would continue the unhealthy relationship, that Mr. Bajwa would continue to assert himself in Mrs. Bajwa's life. Counsel submitted Mr. Bajwa was not reliable, he had broken promises, he had falsified documents and he was still in denial regarding matters primary to the relationship both with his wife and the children.

[224] The mother therefore sought:

- (1) sole custody and guardianship;
- (2) supervised access per the Mahoney report;
- (3) restraining order, both as to her house and place of work;
- (4) a non-molestation clause regarding the plaintiff and the children;
- (5) a police officer assistance clause;
- (6) child support order for basic maintenance and extraordinary expenses, premised on her income of \$50,442 and his income at \$28,080; and,
- (7) as to assets and liabilities, that they be reapportioned entirely in her favour.

The Defendant's Argument

[225] It was submitted there had been a long marriage. There had been a separation of a year. The dates as to when property was acquired and disposed of were not in issue. As to the issue of acquisition by the plaintiff, it was noted Mrs. Bajwa had bought the Logan House with a \$50,000 gift from her parents but time had melded that gift into the family treasury. There have been no suggestion of repayment, nor that it was a wedding gift or part of a dowry as compared to the \$28,000 she did repay in paying down family debts on the sale of the Logan House.

[226] Counsel submitted Mr. Bajwa was the weaker spouse, both vocationally and financially, as compared to Mrs. Bajwa, and thus the best course would be to sell the house and divide the proceeds, keeping in mind the need for each party to be economically self-sufficient.

- [227] It was asserted Mr. Bajwa needed access to his half of the assets and that it was speculation as to whether Mr. Bajwa would waste the money drinking or gambling. It was submitted both sides had shown they could handle money properly. He noted Mr. Bajwa was now working 14 hours a day. While it is conceded there was a period where no child support had been paid, he was, as of trial, paying child support.
- [228] It was submitted Mr. Bajwa did contribute to the marriage in looking after the children and while it may have been imbalanced, he had contributed and that his only real failing had occurred in the last two years of the relationship.
- [229] The reason for the breakdown of the relationship itself was not a factor regarding the property division, neither in fact, nor in law.
- [230] It was further submitted Mr. Bajwa had contributed to the two periods of time when the parties had a joint account and although Mrs. Bajwa denied his contribution, Mr. Bajwa asserted he did, though no documentation was put before me confirming that.
- [231] Further, Mr. Bajwa had asserted he had painted the house and that he was involved with the children.
- [232] It was conceded Mr. Bajwa's income varied substantially and, of course, had fallen off for the last three years after the loss of the cab.
- [233] It was asserted the assets in the wife's name, in fact, did reflect his contributions through various menial jobs and the fluctuating income. The fact of the matter was that the family had assets and money in the bank.
- [234] Reference was made to *Kopejtko v. Kopejtko* (1985), 49 R.F.L. (2d) 26 (B.C.C.A.), which requires the court have strong and compelling circumstances before ordering reapportionment.
- [235] It was submitted that situation was not before the court, that Mr. Bajwa would pay support and the proper solution was to sell the Caton House to allow two more modest residences to be purchased.
- [236] Reference was also made to *Livingstone v. Livingstone* (1999), 68 B.C.L.R. (3d) 109 (C.A.), 1999 BCCA 295; and *Fraser v. Fraser*, 2005 BCSC 281, a decision of Gray J., which provided for the alternative argument of securing child support.
- [237] Through counsel, Mr. Bajwa indicated the various orders sought regarding all items save reapportionment could be made, although it was submitted the restraining orders were not necessary.

Assets and Liabilities

- [238] Mr. Bajwa filed a Form 89 dated August 13, 2005, which declared his income at \$20,080.

[239] In his expenses he claimed rent at \$650 a month. That evidence was contradicted by his sister who said he slept in her basement without payment of rent.

[240] The following were put forward as family assets:

1. 1999 Toyota Corolla valued at \$ 8,000 in possession of wife;
2. RESP \$15,000 in possession of wife;
3. Jewellery \$1,000 in possession of wife;
4. RRSP - (1) TD Bank \$8,000 in name of wife; (2) CIBC \$21,000 in name of wife;
5. Caton House resident \$615,000 - mortgage \$253,000 - equity \$362,000 in joint tenancy;
6. Plaintiff's pension plan - unknown
7. House furnishings - \$10,000 (no evidence);
8. Cash - \$2,000 (no evidence); and
9. Husband's debts: (a) VISA - \$7,500; (b) MASTERCARD - \$3,200; (c) family loan - \$5,000 (no evidence).

[241] The court order made in September 2005 includes child maintenance at \$544 a month and extraordinary expenses of \$300 a month, in total \$844 or \$10,128 per annum.

[242] Mr. Bajwa is making some \$28,000 per annum, while Mrs. Bajwa is earning close to \$44,000 per annum and rental income of \$7,200 per annum for a total of approximately \$51,000 per annum.

Legal Principles and Analysis

[243] Section 56 of the Family Relations Act presumes an equal division of assets:

- (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when
 - (a) a separation agreement,
 - (b) a declaratory judgment under section 57,
 - (c) an order for dissolution of marriage or judicial separation, or
 - (d) an order declaring the marriage null and void

respecting the marriage is first made.

- (2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.
- (3) An interest under subsection (1) is subject to

- (a) an order under this Part or Part 6, or
- (b) a marriage agreement or a separation agreement.
- (4) This section applies to a marriage entered into before or after March 31, 1979.

[244] Section 65 of the Family Relations Act provides for reapportionment in the division of property between the spouses, if it is unfair, having regard to the enumerated grounds. The onus of proof lies on the person asking for reapportionment:

If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[245] The case law indicates the longer the marriage, the more likely family assets will be divided equally, and less so in the event of a short marriage.

[246] Much of the law in this area has been based on a mother giving up her vocation and sacrificing a career to assume family responsibilities and thus becoming economically disadvantaged in the workplace. Here, there is no such evidence. Rather, the defendant focussed on his alcoholism, which counsel described as a disease, as a reason for consideration of the defendant's self sufficiency on the division of assets. But the evidence was Mr. Bajwa had not had a drink for a year, and if he maintained that behaviour, he might have a reasonable prospect of reattaining his taxi licence. However, in my view, he has been in the fortunate position of being maintained by his parents and then his wife and now has an obligation to improve his own circumstances by dint of his own application which only lies within his own control. Or, he can continue to be a janitor. That is his choice. Mr. Bajwa had the ability to begin university in India, and had the ability to take a residential care attendant's course and pass it, yet has been satisfied to work as a janitor and a taxi driver. There is no suggestion their marriage has had any causal effect in his work ability or capacity.

- [247] At trial, Shannon was 12, Erica, 8 and Sabina 7. Throughout the marriage, their mother had been primary parent and principal breadwinner. I do not overlook the help of her sister-in-law, Ginny Atwal, and her own parents in this regard. Mrs. Bajwa will require and need the matrimonial premises for at least a dozen years and Mr. Bajwa's child support obligations will continue for at least that period of time.
- [248] In *Wundele v. Wundele* (1994), 8 R.F.L. (4th) 325 (B.C.C.A.), the court held a spouse's significant contribution through inheritance coupled with her need for economic independence justified a 75% reapportionment of the former home and its contents in her favour after a 20-year marriage.
- [249] Recently, Drost J. in *Kaur v. Ram*, 2005 BCSC 1536, considered a 12-year marriage where he held the wife had been the main contributor to the acquisition of the family home and the payment of household expenses. He found the mother had a need to become and remain economically independent and self-sufficient while at the same time providing for the care and the upbringing of the children aged 12 and 14 in Victoria. In that case, the wife was working as a janitor, while the husband drove a taxi, had worked in a mill and was hoping to be a truck driver. He had moved away from Victoria. An additional factor was the husband's failure to pay child support pursuant to a Provincial Court order. His Lordship apportioned 100% of the asset to the plaintiff wife.
- [250] Counsel for the plaintiff argued that given Mr. Bajwa's history and his refusal to pay child support until shortly before trial, consideration should be given to apportion wholly in the wife's name, or secure future maintenance against any interest that the court might award in the matrimonial home, to the husband: see *Emery, supra*, and *Kreuzkamp*, [1994] B.C.W.L.D. 1288 (S.C.).
- [251] Here, the principal item for consideration is the matrimonial home, which, due to the real estate market, has increased greatly in value from the time of its purchase to the time at trial.
- [252] The evidence is clear there has been a substantial imbalance regarding the acquisition and preservation of the real property. Mrs. Bajwa was gifted \$50,000 by her father when purchasing the Logan House, but given the lengthy marriage, that melds into the family asset.
- [253] The disparate contributions of the respective parties shows in Schedule 4 which lists the annual income of each party.

Year

Wendy Bajwa

Gurminder Bajwa

1990

\$28,602.00

1991

\$28,857.00

1992

\$32,713.00

\$15,514.00

1993

\$17,609.00

\$16,102.00

1994

\$29,719.00

\$ 1,551.00

1995

\$31,349.00

\$ 5,967.00

1996

\$32,117.00

\$22,160.00

1997

\$25,760.00

\$ 8,740.00

1998

\$21,535.00

\$23,809.00

1999

\$37,884.00

\$32,829.00

2000

\$45,250.00

\$19,720.00

2001

\$47,810.00

\$ 7,731.00

2002

\$45,785.00

\$ 3,208.00

2003

\$46,937.00

\$ 2,291.00

2004

\$43,874.00

\$ 644.00

Totals

\$515,801.00

\$160,266.00

[254] It should be noted that Mr. Bajwa's 1992 and 1993 income included rental income from the Logan House.

[255] As well, from the 1991 wedding to the date of trial, Mr. Bajwa made ten trips to India, on only three of which (1992, 1993 and 2003) Mrs. Bajwa accompanied him.

[256] Mr. Bajwa's trips to India total approximately 34 months: in 1994, for four months; in 1996, six months; in 1999, six months; in 2001, six months; in 2002, five months; in 2004, two months; and, in 2004-2005, five months, all substantial periods of time where there is little or no evidence of financial support provided to the family. Nor was there evidence of any meaningful financial contribution in times of good employment such as 1996, 1998 and 1999, as it appears his funds went towards his trips and his taxi business.

[257] There is no question on the evidence that the ownership of the house and indeed the principal family assets reflect the labours of Mrs. Bajwa, more so than any effort of Mr. Bajwa.

Conclusion

- [258] With respect to the alleged debts of Mr. Bajwa, I have no evidence before me to indicate those are family debts, and they remain his solely.
- [259] With respect to the claims regarding an interest in house furnishings and cash for \$2,000, I have no evidence those items are family assets. The jewellery is Mrs. Bajwa's alone. The RESP is for the children and is held in trust for them by Mrs. Bajwa.
- [260] Mr. Bajwa can properly claim an interest in the 1999 Corolla and the RRSPs, one-half of which would be \$18,500.
- [261] After his arrival in Canada in January 1992 that leaves then the substantial equity in the house on Caton Place. The family assets as I have noted have been largely the product of Mrs. Bajwa's industry and effort. That is not to say that over the lifetime of the marriage, Mr. Bajwa did not have some input but given his lesser financial contribution and his absences from the family home, as well as Mrs. Bajwa's ongoing responsibility for the raising and schooling of the three children, albeit with some most maintenance assistance from Mr. Bajwa, the substantial portion of that asset must be Mrs. Bajwa's. There is no evidence that Mr. Bajwa cannot be economically self-sufficient. He has in my view far more ability, both physically and mentally, than he has chosen to use to this stage of his life. Nor do I overlook that he has fathered three children who Mrs. Bajwa, in spite of the history recited, continues to believe their father should play a part in their lives. By association, he has acquired a half-interest in Mrs. Bajwa's pension, and \$18,500 of her savings and motor vehicle. Prior to trial, he had not made maintenance payments for several months but that had been rectified at trial and I trust has continued.
- [262] After careful consideration of the enumerated grounds in s. 65, I am of the opinion fairness dictates reapportionment in favour of Mrs. Bajwa. Accordingly, I award Mr. Bajwa \$50,000 of the equity in the family home. That will be secured by a mortgage and will be payable in five years, or such earlier time as Mrs. Bajwa wishes to pay it out. It will be subject to interest at 5% per annum. Should there be any shortcomings or failure to make child maintenance payments those may be deducted from the sum owing under the mortgage. There will be an order that Mr. Bajwa transfer his interest in the premises to Mrs. Bajwa forthwith.
- [263] Mrs. Bajwa is entitled to her costs.

"R. Crawford, J."

The Honourable Mr. Justice R. Crawford

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