

CANADA / JUDGMENT

Bassi v. Grewal

2008 BCSC 1573

COURT

Supreme Court of British Columbia

DECIDED

18 November 2008

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2008 BCSC 1573 Bassi v. Grewal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bassi v. Grewal,

2008 BCSC 1573

Date: 20081118

Docket: E023954

Registry: New Westminster

Between:

Rajinder Kaur Bassi

Also known as Rajinger Kaur Grewal

Plaintiff

And

Jagroop Singh Grewal

Defendant

Before: The Honourable Mr. Justice Truscott

Reasons for Judgment

Counsel for the plaintiff:

S.K. Basi

No one appearing on behalf of the defendant.

Date and Place of Trial/Hearing:

September 30, 2008

New Westminster, B.C.

- [1] The plaintiff applies pursuant to Rule 18A of the Rules of Court for orders increasing child and spousal support amounts previously ordered, orders that arrears of both be paid by the defendant, and orders dividing family assets.
- [2] The plaintiff's Notice of Motion and supporting affidavits together with her financial statement sworn August 20, 2008 were all served upon the defendant in person by a process server on August 27, 2008, as appears by the Affidavit of Service provided to the court at the hearing of this motion.
- [3] The defendant did not respond to the plaintiff's Notice of Motion or affidavits.
- [4] Plaintiff's counsel has also proven by affidavit that on September 24, 2008 she arranged for delivery to the defendant's mailbox at his residential address notice of the hearing set for September 30, 2008.
- [5] The defendant did not appear on the hearing and the hearing proceeded in his absence.
- [6] The parties were married on November 18, 2000 and separated on January 7, 2006 before the birth of their second child. They were divorced by court order on April 22, 2008.
- [7] The parties have two children presently aged two and five who have been residing with the plaintiff since separation and the parties consented to an order of the court on December 11, 2007 giving the plaintiff sole custody and sole guardianship of the children.
- [8] Previously on March 21, 2006 the parties consented to an order at a judicial case conference that the defendant pay \$877 per month for child support commencing March 1, 2006, payable on the 1st and 15th of each month, based on a Guidelines income of the defendant of \$66,000.
- [9] At that time a s. 57 declaration was issued and a trial date set for February 5, 2007.
- [10] Subsequently, on October 11, 2006, the court further ordered that the defendant pay the plaintiff \$797 per month for spousal support commencing October 15, 2006 until further order of the court, and \$96 per month for pre-school special expenses for the older child, until further order of the court. An application of the plaintiff for retroactive spousal support was adjourned to the trial date.
- [11] The plaintiff says there are presently no special expenses for the children but requests an order that any future special expenses be shared by the parties proportionate to their respective incomes.

- [12] The plaintiff says she is currently unemployed and is a stay at home mother taking care of her two-year-old and five-year-old. She says that prior to the birth of her first child she worked and after his birth returned to work at a garden nursery in Pitt Meadows, but ceased work altogether after the birth of her second child on February 21, 2006. A review of her resume indicates that her experience back to 1995 was as a packaging employee in the food industry, a cook in a pizza factory, a packaging employee at a mushroom farm and an employee at a garden nursery. She says that her goal now is to work in retail as a cashier and eventually to own and run her own janitorial service.
- [13] The plaintiff did not return to work after the birth of her second child because of the travel time and hours of work which interfered with her responsibility for her children. She says she has made attempts since to find flexible employment with cleaning companies and at a bakery to allow her the necessary time to care for her children but is unable to find anything to date.
- [14] The plaintiff says that she and the defendant agreed that she would stay at home to take care of the children until they were in school full time. At that time, which in the case of the child born in 2006 will not be until about 2012, the plaintiff says she will have to retrain.
- [15] The plaintiff says the defendant paid no child support from the date of separation of January 7, 2006 to the order of March 21, 2006 and no spousal support from January 7, 2006 to the order of October 11, 2006. She claims retroactive support orders for both these time periods at the amounts set out in the court orders.
- [16] The plaintiff says the defendant has not paid any child support or spousal support since April 2008, pursuant to the court orders and seeks an order declaring the amount of those arrears to date and ordering that they be paid.
- [17] Commencing at the present time, she seeks an increase in child support to the present Guidelines amount of \$996 for two children, based upon the defendant's declared Guidelines income of \$66,000.
- [18] In addition she seeks an increase in spousal support to the Guidelines amount of \$1,102 per month with a review to take place in 2012 to deal with her efforts to become self-sufficient when both her children are at school full time.
- [19] The plaintiff registered with the Family Maintenance Enforcement Program ("FMEP") and a printout of the statement of payments disbursed indicates that as of September 26, 2008 the defendant was in arrears for both child and spousal support in the amount of \$9,589. Interest has been charged of \$178.83.
- [20] The FMEP statement indicates that until May 22, 2008 the defendant made some payments, although as of that date arrears were already in the amount of \$2,579.58.
- [21] Since May 22, 2008 the defendant has made no payments for child or spousal support.

- [22] The plaintiff is living with her two children in the family home which is a townhouse she says she purchased in April 2001 for \$130,000 in her sole name using her savings for a down payment and a loan of \$20,000 from her family, and a mortgage for the balance. The plaintiff says the defendant did not receive any work permit until October 2001, after she had purchased the town house, and did not begin working until December 2001. When he did begin work he contributed towards the house utilities and other house expenses but the plaintiff says she continued to make the mortgage payments, maintenance fees and property tax payments on the house.
- [23] The plaintiff seeks a reapportionment in her favour of the matrimonial home to the extent of 100% based upon her need to become economically independent and self-sufficient and based on the fact that she acquired the home in the first place through her own resources and she has been making the monthly mortgage payments of \$619.53 and maintenance fees of \$165 as well as all other house expenses, since separation on January 7, 2006. She says she is making these payments from borrowed money and a line of credit.
- [24] The plaintiff says she is prepared to assume the loans from her family in return for a reapportionment of 100% and she seeks an order removing the certificate of pending litigation that the defendant has filed against the title.
- [25] The parties separated for approximately six months between March 2004 and August 2004 during which time the plaintiff says she remained in the home and paid all the house expenses from her maternity benefits and a line of credit, with the defendant contributing nothing towards the house or the children or the plaintiff.
- [26] The plaintiff says that once they reconciled the parties kept separate bank accounts thereafter and she continued to pay the mortgage, maintenance fees and property taxes while the defendant only paid for the groceries and shared in the cost of utilities.
- [27] The plaintiff says she has no knowledge of what the defendant did with the rest of his income after reconciliation.
- [28] Alternatively to a reapportionment in her favour of 100% the plaintiff submits that if the defendant is to be entitled to any portion of the home then the value of the home should be assessed at the time of separation in January 2006 when its value was in the order of \$215,000 on an appraisal and the mortgage was in the amount of a little over \$88,000.
- [29] The plaintiff says that the defendant has also accumulated RRSPs but has since disposed of the majority of them. She seeks an order that she be entitled to one half of the RRSPs as they existed at the time of separation.
- [30] She also seeks a share of the defendant's employment pension and Canada Pension Plan benefits.

- [31] The plaintiff has a 1997 motor vehicle in her possession which she says she bought with a loan from a family member and she seeks a 100% reapportionment of that vehicle in her name as well.
- [32] Finally, as I understand, she requests that a registered education savings plan in existence for the older of her two children be registered in her own name.
- [33] On consideration of all of this evidence I am prepared to vary the order of March 21, 2006 as to child support by increasing it commencing December 1, 2008 to the amount of \$996 per month for the two children based on a Guidelines income for the defendant of the same amount of \$66,000. Child support will be payable on the 1st and 15th of each month in equal amounts commencing December 1, 2008 and continue as long as the children remain children of the marriage at law.
- [34] The original child support order of March 21, 2006 for \$877 will continue until December 1, 2008
- [35] I am prepared to reapportion the matrimonial home in favour of the plaintiff to the extent of 85% based upon a present value of the house as of September 8, 2008 in the amount of \$260,000 and a mortgage of \$82,000. The defendant is left with equity in the home of approximately \$27,000. In lieu of an order that the defendant pay any portion of the expenses on the house since separation, 50% of which I understand to be in an amount of approximately \$14,500, in lieu of his withdrawal of RRSP monies accumulated during the marriage prior to separation, 50% of which I understand may be in the order of \$5,000, and in lieu of any order for the payment of arrears of child support from January 7, 2006 to March 21, 2006 and for spousal support from January 7, 2006 to October 11, 2006, the defendant's equity in the home is assigned to the plaintiff. Accordingly I reapportion the matrimonial home to the plaintiff to the extent of 100%.
- [36] Hereafter the plaintiff will be solely responsible for all expenses associated with the home and all family loans outstanding.
- [37] The certificate of pending litigation filed by the defendant against the title to the matrimonial home at #46 - 8555 King George Highway, Surrey, British Columbia, on March 17, 2006 will be removed and the Registrar of Land Titles is authorized to sign any papers necessary to ensure its removal from title on application by the plaintiff and on production of this order.
- [38] Commencing December 15, 2008 the defendant is ordered to pay spousal support to the plaintiff of \$850 per month payable on the 15th of each month thereafter, on an indefinite basis, with the defendant having the right of review on or after December 15, 2011 to determine the efforts of the plaintiff to become economically independent and self-sufficient.

- [39] Because there is some overlap on this issue of economic independence and self-sufficiency for the plaintiff between that factor as a basis for a reapportionment order under s. 65 of the Family Relations Act, R.S.B.C. 1996 ch. 128 and that factor as a basis for a spousal support order, I have set the spousal support order commencing December 15, 2008 at the lower end of the Guidelines amount for spousal support orders.
- [40] The original spousal support order of October 11, 2006 in the amount of \$797 will continue until December 15, 2008.
- [41] The defendant's arrears for child and spousal support under the court orders as of September 26, 2008 in the amount of \$9,589, together with interest at \$178.83, are confirmed and payable by him immediately.
- [42] The order of October 11, 2006 requiring the defendant to pay \$96 per month for preschool special expenses will be vacated as there are no present special expenses. Any future expenses qualifying as special expenses under s. 7 of the Guidelines will be paid by the parties in proportion to their incomes with those incomes to be agreed upon or determined by the court as necessary.
- [43] The plaintiff will also be entitled to a portion of any private pension accumulated by the defendant from his employment during the period of time from the date of marriage on November 18, 2000 to the s. 57 declaration on March 21, 2006, in accordance with the provisions of Part 6 of the Family Relations Act.
- [44] The plaintiff will also be entitled to a portion of the defendant's Canada Pension Plan benefits in accordance with applicable legislation.
- [45] Finally, the plaintiff will be entitled to a 100% reapportionment of her 1997 vehicle and she will be responsible for any outstanding loans against that vehicle.

"Truscott J."

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