CANADA / JUDGMENT

Chandler v. Chandler

2020 BCSC 1457

COURT
Supreme Court of British Columbia

DECIDED
1 October 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1457 Chandler v. Chandler IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chandler v. Chandler, 2020 BCSC 1457 Date: 20201001 Docket: E182305 Registry: Vancouver Between: Jocelyn Mary Chandler Claimant And Christopher John Chandler Respondent Before: The Honourable Madam Justice W.A. Baker Reasons for Judgment Counsel for the Claimant: J. Sheppard Counsel for the Respondent: A. Winters S. Silber Date Written Submissions Received from the Claimant: August 5 and 26, 2020 Date Written Submissions Received from the Respondent: August 18, 2020 Place and Date of Judgment: Vancouver B.C. October 1, 2020

[1] These reasons follow a trial judgment released on April 1, 2020. In August 2020, I received written submissions from the parties on costs. These are my reasons on the issue of costs.

[2] The parties agree on the relevant law on this application, which can be summarized as:

a) Costs of a family law case must be awarded to the successful party, unless the court otherwise orders (Rule 16-1 (7)), Supreme Court Family Rules.

b) Where there are multiple issues and success is divided, costs will be awarded to the party who has achieved substantial success: Fotheringham v. Fotheringham, 2001 BCSC 1321, para. 40 - 45.

c) "Substantial success" is to be determined objectively considering the whole of the issues, the weight and importance of the different issues, and each party's relative success or failure. While 75% success is a useful rule of thumb, it is not determinative and the judge is not required to determine success with mathematical precision: Fotheringham v. Fotheringham, supra, para. 45; Marquez v. Zapiola, 2014 BCCA 35, para 16.

d) The court may consider factors it considers relevant to the case before it, including hardship, earning capacity, the purpose of the particular award, the conduct of the parties in relation to the litigation, and the importance of not upsetting the balance achieved by the court in relation to the substantive issues (Gold v. Gold (1993), 82 BCLR (2d) 180, para. 20).

[3] In Fotheringham at para. 46, Mr. Justice Bouck suggested a four-step inquiry the court may undertake in deciding whether to award costs:

1. First, by focusing on the "matters in dispute" at the trial, these may or may not include "issues" explicitly mentioned in the pleadings.
2. Second, by assessing the weight or importance of those "matters" to the parties.
3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.
4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs. What were the matters in dispute at trial?

[4] The following key issues were in dispute at trial:

a) the date the parties entered into a marriage like relationship,

b) the guideline income of Dr. Chandler,

c) the guideline income of Ms. Chandler,

d) Ms. Chandler's entitlement to spousal support, both past and future, and

e) determination of special or extraordinary expenses for the children.

[5] There were a number of other issues determined at trial, but these were either not contentious, took up a minimum of court time, or flowed directly from the contentious determinations set out above. These include:

a) order for divorce,

b) quantum of child support,

c) security for support,

d) division of family assets, including Dr. Chandler's LIRA, CPP benefits, household effects, costs to wind up Chandler Enterprises Inc. and the Chandler Family Trust, and

e) division of the RESP account. What is the importance of the issues to the parties? Significant issues in the litigation

[6] A significant amount of time at trial was spent on determining the date the parties began their marriage like relationship. This determination was critical to a number of other issues, including the commencement date for dividing pension credits, the excluded portion of Dr. Chandler's LIRA, and the duration of spousal support. I am satisfied that this was a significant and important issue in dispute.

[7] The determination of guideline incomes for both parties was critically important to this litigation. A significant amount of time was spent at trial addressing these issues. The incomes of both parties varied substantially during the marriage and after separation. There were allegations by both parties that income should be imputed to the other's reported incomes. Determination of guideline incomes was critical to determining spousal support and child support.

[8] The entitlement, quantum and duration of spousal support for Ms. Chandler was a significant and hotly contested issue at trial. There was significant evidence led regarding how much time each parent devoted to their career during the marriage, how much time and effort each parent spent dealing with childcare and household matters, and how each parent's career and lifestyle choices impacted the career and lifestyle choices of the other parent. These issues had to be determined independently of the guideline income determinations.

[9] A considerable amount of time at trial was spent on the children's activities, who had borne what costs, and what expenses were to be shared. While this issue was not as significant as the other issues discussed above, it was a significant issue that required trial time and argument, and upon which the parties were sharply divided. Issues resolved by consent

[10] The following issues were resolved by consent: the order for divorce, and the division of most family assets (including savings and chequing accounts, RESP accounts, investment accounts, Ms. Chandler's interest in Dr. Christopher Chandler Inc., the wind up of Chandler Enterprises Inc., the family vehicles, Ms. Chandler's interest in Northern Therapy Services, CPP pension division, property in Saskatchewan, debts, and assets held in the parties' names). Issues which were resolved following determinations of significant issues

[11] There were a few issues which were determined based on the determinations of the date the marriage like relationship began, and the parties' guideline incomes. These included: child support payments, the date for the commencement of pension benefits, and the date at which Dr. Chandler's LIRA exclusion ended.

[12] With respect to child support, the parties agreed with the application of the Child Support Guidelines; the only issue was the determination of the appropriate guideline incomes to be used in applying the Guidelines. While both parties advanced argument on retroactive and prospective child support, ultimately the parties agreed that child support would be determined with reference to the Guidelines, once guideline incomes had been determined.

[13] While these are not minor issues, per se, they are issues which were entirely dependent on the significant determinations described above. Minor issues raised by Ms. Chandler

[14] There were a number of minor issues advanced by Ms. Chandler which had to be decided, including whether Dr. Chandler should provide security for his support obligations, Ms. Chandler's claim for some sentimental household items, whether Ms. Chandler was entitled to half of a shareholder loan which Dr. Chandler alleged repaid to himself, and whether if

one party did not make the maximum permitted contribution amount to an individual RESP, the other party should be allowed to top up their own RESP and apply for any remaining Canada Education Savings Grant that year. None of these issues were significant to the litigation. Minor issues raised by Dr. Chandler

[15] Dr. Chandler sought to have Ms. Chandler share in the costs of winding up the Chandler Family Trust. This was also a minor issue at trial. Which party was substantially successful?

[16] I find that success at trial in this case is to be determined with reference to those issues I have described as significant issues in the litigation. I find that it is not helpful in my analysis to address the minor issues, the issues which were resolved by consent, and the issues which were resolved with reference to the significant determinations.

[17] In determining which party is entitled to costs, I find that the party who achieved substantial success on the significant, contested issues is the party who is entitled to their costs. Commencement of marriage like relationship

[18] On the issue of the date of the commencement of the marriage like relationship, Ms. Chandler was entirely successful. Special and extraordinary expenses

[19] Ms. Chandler was entirely successful on the issue of special and extraordinary expenses. Dr. Chandler's income

[20] On the issue of Dr. Chandler's guideline income, there were two significant issues. The first issue was the treatment of a dividend issued in Dr. Chandler Inc. Ms. Chandler argued that the dividend of $161,000 should be included in his 2019 income. Dr. Chandler argued that the whole of the $161,000 dividend was already included in his 2018 income, and should not be included in his 2019 income. The second issue was an argument advanced by Ms. Chandler that Dr. Chandler was under-employed, and additional income should be imputed to him.

[21] In closing submissions, Dr. Chandler argued that his 2018 income should be set at $273,113, and his 2019 income should be set at $185,836. Ms. Chandler argued in final submissions that his 2018 income should be set at approximately $180,000 and his 2019 income should be set somewhere in the range of $277,582 to $413,060.

[22] I agreed that a portion, although not all, of the dividend income should be added to Dr. Chandler's 2019 income, and I agreed to impute income to Dr. Chandler. The final determinations of Dr. Chandler's guideline income were: 2018 - $285,000 and 2019 - $290,000.

[23] While the determination of Dr. Chandler's income in 2018 was closer to the number he advanced, the determination of his income in 2019 was significantly higher than the number he advanced. While neither party was awarded exactly the amount they argued for at trial, on balance Ms. Chandler ultimately benefited from the higher income determinations of Dr. Chandler's income in the years 2018 and 2019. As such, I find that Ms. Chandler was substantially successful in the determinations of Dr. Chandler's income. Ms. Chandler's

income

[24] On the issue of Ms. Chandler's guideline income, Dr. Chandler argued that Ms. Chandler was under employed and income should be imputed to her. He argued that $5,500 should be imputed to her 2018 income, and $10,000 to $20,000 should be imputed to her 2019 income. Ms. Chandler argued that there should be no imputation of income to her, and that her expected income for 2019 in the amount of $116,661 should be reduced to reflect the fact that she anticipated losing a number of sources of income.

[25] I did not agree to impute income to Ms. Chandler, and I also did not agree to reduce her income in 2019. The final determination of Ms. Chandler's income was in line with her reported income for 2018 and her anticipated income for 2019, without any deduction.

[26] Success on this issue was mixed. For the 2018 income amount, Ms. Chandler was successful. For the 2019 income amount, neither Dr. Chandler nor Ms. Chandler were successful in obtaining the number they sought. Spousal support

[27] Ms. Chandler sought retroactive spousal support from January 1, 2018 to September 1, 2019. Dr. Chandler argued that no retroactive spousal support was payable. $51,459 in retroactive spousal support was ordered. Ms. Chandler was successful on this issue.

[28] With respect to prospective spousal support, Ms. Chandler sought mid-range SSAG spousal support using the amounts based on the guideline incomes she argued for. She provided a number of "options" ranging from $2,643/month to $5,988/month. She also sought an order than spousal support be reviewed on or after July 1, 2022 as to duration and quantum, but not entitlement.

[29] Dr. Chandler opposed any spousal support or, in the alternative, argued for time limited spousal support of $493/month, terminating on either September 30, 2021 or August 31, 2022.

[30] Ms. Chandler was awarded prospective spousal support in the amount of $2,500/month for 15 years, and an order than spousal support be reviewed on or after July 1, 2022 as to duration and quantum, but not entitlement.

[31] While Ms. Chandler was awarded a monthly spousal support payment slightly less than the lowest number she argued for, she was substantially successful on this issue, in that she was awarded support in an amount far higher and for a substantially longer duration than that argued for by Dr. Chandler. Which party was substantially successful?

[32] Having considered all of the significant issues determined in this litigation, I find that Ms. Chandler was substantially successful in this litigation. Prima facie, she is entitled to her costs. Is there a reason not to order costs to the substantially successful party?

[33] The party who asks the court to "order otherwise" bears the onus to persuade the court why it should do so (S.D.W, v. c. W.W., 2006 BCSC 162, para, 29). In considering whether to order costs otherwise than in favour of the substantially successful party, the court must consider factors such as the impact of a costs award on the balance achieved by the court in its substantive decision, hardship to the parties, and the earning capacity of the parties: Gold v. Gold (1993), 82 BCLR (2d) 180.

[34] Dr. Chandler argued that costs should not be awarded in favour of Ms. Chandler, even if the court found that she was substantially successful. The primary argument he advanced was that the settlement offers he made before trial should have been accepted by Ms. Chandler. He argued Ms. Chandler's failure to accept his reasonable settlement offers justifies an order that each side bear their own costs.

[35] Dr. Chandler referred to three settlement offers he made, dated August 23, 2018, August 23, 2019, and September 15, 2019. August 23, 2018 offer by Dr. Chandler

[36] If this offer had been accepted by Ms. Chandler, it would have resulted in the following disadvantages as compared the trial decision:

a) a slightly lower retroactive child support award between January 1, 2018 and August 31, 2018,

b) a significantly lower retroactive child support award between September 1, 2018 and trial,

c) a lower prospective child support award,

d) a significantly lower retroactive spousal support award between September 1, 2018 and December 31, 2018,

e) a lower spousal support award between January 1, 2019 and the trial,

f) a lower prospective spousal support award,

g) a review of entitlement, quantum and duration of spousal support beginning in January 2020, as opposed to a review in July 2022 limited to quantum and duration,

h) a greater amount of Dr. Chandler's LIRA and CPP being excluded family assets, and

i) payment to Dr. Chandler of $10,000 with respect to household effects.

[37] If this offer had been accepted by Ms. Chandler, it would have resulted in the advantage of a slightly higher spousal support award between January 1, 2018 and August 31, 2018, as compared the trial decision. August 23, 2018 offer by Dr. Chandler

[38] If this offer had been accepted by Ms. Chandler, it would have resulted in the following disadvantages as compared the trial decision:

a) guideline incomes for Dr. Chandler in 2018 and 2019 accepted at significantly lower amounts than were found at trial,

b) a significantly lower retroactive child support award between January 2018 and trial,

c) a significantly lower retroactive and prospective spousal support award, and

d) a review of entitlement to spousal support in July 2022, in addition to quantum.

[39] If this offer had been accepted by Ms. Chandler, it would have resulted in the advantage of a slightly lower guideline in 2019 income for herself, as compared the trial decision. September 15, 2019 offer by Dr. Chandler

[40] If this offer had been accepted by Ms. Chandler, it would have resulted in the following disadvantages as compared the trial decision:

a) guideline incomes for Dr. Chandler in 2018 and 2019 accepted at significantly lower amounts than were found at trial,

b) a significantly lower prospective child support award,

c) a significantly lower prospective spousal support award,

d) a review of entitlement to spousal support in July 2022, in addition to quantum and duration,

e) a reduction of approximately $30,000 in retroactive support (child and spousal) owing by Dr. Chandler, and

f) a reduction in section 7 expenses payable by Dr. Chandler.

[41] If this offer had been accepted by Ms. Chandler, it would have resulted in the advantage of a slightly lower guideline income in 2019 for herself, as compared the trial decision. In addition, Dr. Chandler would have agreed to name the children as beneficiaries on a life insurance policy as security for his support obligations. Impact of settlement offers on costs at trial

[42] Having reviewed the three settlement offers made by Dr. Chandler prior to the trial, I am satisfied that none of them were offers which Ms. Chandler reasonably ought to have accepted. As compared to the trial decision, the advantages to Ms. Chandler were insignificant and were far outweighed by the significant financial disadvantages she would have accepted in any of the three offers.

[43] Dr. Chandler has not established that he will suffer undue hardship if ordered to pay costs, or that paying costs will upset the balance achieved in the trial decision.

[44] I find that Dr. Chandler has not persuaded me that there is a sufficient basis upon which I should not order costs to the successful party.

Conclusion

[45] I find that Ms. Chandler was substantially successful at trial, and is entitled to her costs at trial, including of this application. "Baker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bccourts.ca/jdb-txt/sc/20/14/2020BCSC1457.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/chandler-v-chandler-2020-bcsc-1457

Prepared on 24 October 2026 · Esheria