

CANADA / JUDGMENT

Cho v. Jo

2025 BCSC 225

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Supreme Court of British Columbia

DECIDED

13 February 2025

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2025 BCSC 225 Cho v. Jo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cho v. Jo,

2025 BCSC 225

Date: 20250213

Docket: E231094

Registry: Vancouver

Between:

Hyun Suk Cho

Claimant

And

Eunseong Cho aka Eunseong Jo

Respondent

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the claimant:

Y. Luo

Counsel for the respondent:

S.Y. Kim

Place and Date of Hearing:

Vancouver, B.C.

January 30, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 13, 2025

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Introduction

- [1] This is a family law proceeding in which the primary claims, advanced by the respondent Eunseong Jo, relate to the division of property. The respondent also advances claims in relation to spousal support and child support. The respondent's applications are brought under the summary trial rule - Rule 11-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009.

Background and procedural history

- [2] The parties were married in September 2010 in California. They were separated on February 26, 2022. Their relationship was therefore approximately 11.5 years in length. They have a child, Jueun Cho, who was born in January 2016.
- [3] The parties are both from South Korea. Before marriage, the claimant, Hyun Suk Cho, lived in California and the respondent lived in South Korea. After the marriage in September 2010, the respondent moved to California to be with the claimant, and they lived there until February 2014 when they moved to South Korea. Jueun was born in South Korea.
- [4] The claimant first came to British Columbia in August 2017. The respondent and the child arrived on October 30, 2017, on a visitor's visa. She deposes that throughout her time in British Columbia, she did not have status to work and was dependent on the claimant.
- [5] When the claimant came to Canada, he obtained a student visa to study at a theological college in Vancouver, where he also worked.
- [6] Throughout the marriage, the respondent was the primary caregiver for the child while the claimant worked to provide for the family. The claimant dealt with the bill payments, rent, and daily expenses. The respondent alleges that the claimant did not provide her with any details about their financial circumstances, but that allegation is contested.
- [7] After the parties separated in February 2022, the respondent returned to Korea.
- [8] At a judicial case conference on March 1, 2024, Justice Milman made an order, by consent, in relation to guardianship, parental responsibilities, parenting, and child support (the "JCC Order"). He ordered that the claimant's and respondent's guideline incomes were \$47,981 and \$26,793, respectively. The applications for property division and spousal support were adjourned generally.
- [9] On June 7, 2024, Associate Judge Neilson granted an order pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], restraining the claimant from transferring or otherwise disposing of any and all property held by him, or in which he has a legal or beneficial interest (the "Section 91 Order").
- [10] On January 2, 2025, this Court granted a divorce to the parties by way of desk order.

Issues

- [11] The following issues are to be determined on this summary trial:
 - a) What property is family property?
 - b) How is the family property to be divided, and what orders ought to be made for this purpose?
 - c) Should the child support order in the JCC order be varied?

d) Should spousal support be ordered?

[12] I will address these issues in turn, below, after addressing the issue of suitability.

Suitability

[13] On a summary trial under Rule 11-3, the Court must decide whether it is able, on the whole of the evidence before it, to find the facts necessary to decide the issues of fact and law, whether it would be just to decide the issues on the application, and if so, whether the applicant has established on the evidence that she is entitled to the relief sought. Neither party has contested that these issues are suitable to be determined under the summary trial rule.

[14] In *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at para 13, this Court cited the well-known decision in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at para 215, in which the Court of Appeal set out some of the factors relevant in determining whether it would be unjust to grant a judgment in a summary trial. These factors include:

- a) the amount of money involved;
- b) the complexity of the matter;
- c) the urgency of the case;
- d) the prejudice likely to arise by reason of delay in taking the case to trial;
- e) the cost of taking the case forward in relation to the amount involved; and
- f) the course of the proceedings.

[15] Although I had some concerns at the commencement of this hearing that the issues in this proceeding might not be suitable for determination under Rule 11-3, I have concluded that I am able to find the facts necessary to decide the issues of fact and law and that it is just to decide the issues on the application.

[16] I note that many of the factors set out in *Inspiration Mgmt. Ltd.* weigh in favour of finding the matter suitable for determination under the summary trial rule. The amounts of money involved are relatively modest, and the issues are not particularly complex. The cost of a full trial or indeed, any further proceedings at all, would probably be beyond the means of these litigants.

Discussion

Identification of family property

[17] Family property and family debt are defined in ss. 84 and 86 of the FLA. Once the Court has determined what assets and liabilities are family property and family debt, the Court will divide that property and debt.

[18] In this case, the assets at issue include financial assets held at Canadian financial institutions in the claimant's name, a condominium in Korea registered in the claimant's name, and a truck purchased by the claimant in 2023. Further, the respondent alleges that the claimant owns financial assets in Korea which have not been disclosed.

[19] I will address these issues in turn.

Canadian financial assets

[20] The claimant filed a Form F8 financial statement on February 24, 2024. It shows that the claimant's financial accounts at that time contained Canadian dollar assets valued at \$58,816 and U.S. dollar assets valued at US\$36,685.45. According to an updated Form F8 filed in January 2025, a few days before this hearing, the Canadian dollar assets were valued \$44,011.38 and the U.S. dollar assets were valued at \$10,517. The claimant concedes that the Canadian financial assets listed on his Form F8 are family property.

The Korean condominium

[21] The most valuable asset at issue in this proceeding is a condominium in Korea. It is valued at between \$190,000 and \$300,000 depending on whose evidence as to value is accepted.

[22] The claimant asserts that the condominium is not his and that it is beneficially owned by his parents. He deposes that "[w]hen my father realized that each household can only hold one property for the optimal tax benefits, my parents decided to [put the property in my] name strictly for the purpose of my parents' strategic tax planning for my parents' own benefits." He deposes that "Ms. Jo was made fully aware of this arrangement at the time," that his father handled the title transfer, and that he and the respondent were never given copies of the paperwork or any documents relating to the condominium.

[23] The claimant deposes that he has not financially contributed to nor benefited from this condominium in any way. He attaches documents to his affidavit demonstrating that his parents were the sole occupants of the condominium between December 2007 and February 2022, and that they paid all of the condominium fees during that period.

[24] In turn, the respondent deposes that the claimant's parents told her that they planned to give the condominium to the parties. Further, she relies on the fact that the condominium is in the claimant's name. She argues that he has not proven that the condominium does not beneficially belong to him.

[25] The respondent has demanded that the claimant produce documents in relation to the condominium, such as a tenancy agreement and documents relating to a "key money" deposit, and the claimant has not done so. The respondent argues that as a result of the claimant's failure to produce the documents demanded, adverse inferences ought to be drawn against him. However, the claimant deposes that he does not have any documents regarding the condominium or the key money deposit because the condo is not his, and his

father dealt with all of the paperwork and monies in relation to the condominium. There is a letter from the claimant's former counsel advising that the claimant's father is unwilling to supply the documentary evidence sought.

- [26] In submissions, the respondent repeatedly submitted that the burden of proof rests on the claimant to establish that the Korean condo is not his beneficially. She is correct as to the burden of proof but that does not mean that the claimant must prove every fact that bears on that issue. The Court is required to consider all of the relevant evidence and to reach a conclusion on a balance of probabilities. In those circumstances, the burden of proof only comes into play when the Court cannot otherwise decide in which direction the balance tips.
- [27] This case is different from cases in which one party owned property before the marriage. In those cases, the party claiming a share in the property only must establish that the property is beneficially owned by the other party: s. 84(1)(a).
- [28] In this case, it is not sufficient for the respondent to establish that the condominium is beneficially owned by the claimant alone, since that would imply that the condominium was gifted by his parents solely to him. In those circumstances, it would be excluded property pursuant to s. 85(1)(b.1). In order to conclude that the condominium is family property, this Court must find that the condominium was given as a gift to the respondent and the claimant together during the marriage.
- [29] In my view, the evidence is insufficient for that finding to be made. As stated above, the only evidence on this subject from the respondent, repeated in two separate affidavits, is that the claimant's parents told her that they planned to gift the condominium to the parties. One might expect that upon the bequeathing of such a large gift to their son and daughter-in-law as alleged, there would have been some communication to the parties from the claimant's parents that this gift was being given, and some acknowledgement or thanks given by the parties. However, there is no evidence whatsoever in this regard.
- [30] I also observe that the parties lived in South Korea from February 2014 to August 2017. Although this period was after the date on which the condominium was put in the claimant's name and was allegedly gifted to the parties, the parties rented accommodation in Korea and never resided in the condominium.
- [31] Finally, there is evidence that the parents have put at least one other asset, a car, into the claimant's name for their own benefit, which supports the proposition that the parents may have put the condominium into the claimant's name, also for their own benefit, without intending to transfer the beneficial interest to him.
- [32] For all of these reasons, I find on a balance of probabilities that the condominium belongs beneficially to the claimant's parents, as the claimant asserts. I find that it was not gifted to the parties in 2013 as alleged by the respondent, and therefore it is not family property.

The Toyota vehicle

- [33] The Toyota vehicle is not, itself, family property, since the claimant purchased it a year after the parties separated. However, the claimant deposes that he traded in the family vehicle in order to buy the Toyota and received a \$4,500 credit for the family vehicle. Further, he used \$15,000 of family funds to make the down payment on the Toyota. As a result of this transaction, the respondent is entitled to credit for one half of \$4,500 + \$15,000, or \$9,750.

Korean financial assets

- [34] The respondent alleges that the claimant has concealed assets in this proceeding, and that an inference ought to be drawn that the claimant has other financial assets in Korea. In this regard, she cites the decision in *Cunha v. Cunha*, 1994 CarswellBC 509 for the proposition that "non-disclosure is the cancer of matrimonial litigation" and that "where there has been concealment of assets, it ordinarily should be held that the concealment is ongoing, that there are assets still undisclosed, and that the division of assets should be affected accordingly."
- [35] In my view, however, this case falls short of the circumstances in *Cunha*, or in cases in which *Cunha* has been applied such as *Tucker v Moore*, 2024 BCSC 427, wherein the Court was unequivocally able to find that the parties in question did not make adequate disclosure of their financial dealings.
- [36] In this case, the respondent alleges non-disclosure on the basis that she only learned of many of the claimant's Canadian financial assets when the claimant filed and provided his Form F8 financial statement on February 23, 2024. There is conflicting evidence about this point: he deposes that they discussed, and that she was aware of, his savings and their financial circumstances. But, in any event, even if her allegations in this regard are accepted, the respondent's claim that the claimant did not share details of his financial assets during the course of their marriage is very different from evidence that he failed to disclose financial assets under oath in the course of the litigation.
- [37] The respondent is critical of the claimant's sworn evidence that he believes that all of his bank accounts in Korea are "either closed, dormant or inactive." She argues that the claimant's "lack of disclosure [of] the Korean bank accounts, or even an effort to obtain details regarding the Korean bank accounts if it were to be accepted that he has not accessed these accounts in a long time is concerning"; however, his evidence, as well as hers, is that when the parties lived together in Korea, the respondent dealt with the parties' financial affairs. Her arguments on this issue ignore his further evidence that he has not had any access to any Korean bank accounts since he moved to Canada in 2017, and that he has not held any Korean bank account that the respondent could not access.

[38] Based on the foregoing, I am not able to find that the claimant has concealed or misrepresented his assets under oath, or that any inferences ought to be drawn against him that he has failed to disclose financial assets in Korea. I do not agree that this Court ought to attribute Korean financial assets to the claimant for the purpose of the division of property in this proceeding.

Division of family property

[39] As a result of the foregoing, the family property exists solely of the Canadian financial assets listed in the claimant's Form F8. As stated above, those assets were valued as of February 2024 at \$58,816 and US\$36,685.45

[40] The presumption under the FLA is that the parties have an equal entitlement to family property and an equal responsibility for family debts:

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[41] There is a strong presumption that family property and debt should be divided equally between the parties, but the Court may order an unequal division of property if equal division would be significantly unfair, pursuant to s. 95(1).

[42] The respondent cites cases such as *Friedl v. Friedl*, 2008 BCSC 1222, for the proposition that this Court ought to reapportion the disclosed Canadian assets in her favour, as partial compensation for her share of property located outside Canada. However, as I have found that there is no family property located in Korea, that proposition is inapplicable to this case. I do not understand the respondent to be seeking unequal division or to be alleging that equal division would be significantly unfair on any other basis.

[43] As a result, it is appropriate to divide the family property equally. As the claimant's Form F8 made in February 2024 is the evidence of value closest to the separation date, the respondent shall be paid one half of the value of the Canadian financial assets set out in that document.

Imputation or assessment of income for the purpose of support

[44] The claimant agrees that the respondent is entitled to prospective spousal support, and that child support should be continued. The Court's only task in this regard is to determine the income or incomes to be attributed to the parties for the purposes of determining support.

- [45] In the JCC Order, the parties' guideline incomes were determined to be \$47,981 for the claimant and \$26,793 for the respondent.
- [46] The respondent seeks an order imputing an annual income of more than \$60,000 to the claimant on the basis that he earned this amount in his highest earning year as an "administrative officer" at a lodge in Campbell River. The claimant contests this figure, stating that the highest amount that he earned was equivalent to approximately \$55,000 per annum, and that he earned an average of \$43,623.33 in the last three years (2020-2022) during which he worked full time. Further, the claimant is presently unemployed.
- [47] The respondent alleges that the claimant is intentionally unemployed or underemployed but the evidence on that issue is not persuasive. The claimant has described at length his efforts to find further employment. Even assuming that he will find employment soon, the evidence does not demonstrate that it is likely that he will be able to earn \$60,000 per year as alleged.
- [48] The JCC Order and the income figures therein were made by consent, less than a year ago. Although the claimant's work status in Canada has changed since then, there is no reason to conclude that the salary that he is able to earn has increased materially. As a result, I have concluded that spousal support, child support, and section 7 expenses shall be paid, going forward, based on the guideline incomes set out in the JCC Order. The quantum of spousal or child support payable may be varied upon the establishment of a material change in circumstances under s. 152(2) or s. 167(2) of the FLA.
- [49] Child support and the payment of section 7 expenses are presently in arrears. The respondent deposes that he intends to pay these amounts but has been precluded from doing so by the freezing of his Canadian financial accounts as a result of the Section 91 Order. In my view, no order needs to be made regarding the arrears at this time.

Orders

- [50] The Section 91 Order shall be vacated, on condition that the respondent shall be paid from the claimant's Canadian financial assets as follows:
- a) \$29,408 in respect of the Canadian dollar financial assets held by the claimant in February 2024;
 - b) US\$18,342.72 on account of the U.S. dollar financial assets held by the claimant in February 2024; and
 - c) \$9,750 on account of the claimant's trade-in of the family vehicle and his use of family funds to purchase the Toyota vehicle.
- [51] The claimant shall pay spousal support to the respondent based on the guideline incomes set out in the JCC Order.

[52] The respondent's application to vary the quantum of child support payable by the claimant is dismissed.

Costs

[53] I have concluded that no costs of this application shall be payable by either party. I have reached this conclusion because success was mixed, and because of the importance of not upsetting the balance achieved by this Court's award on the substantive issues addressed in these reasons: see *M.N. v. C.G.F.*, 2020 BCSC 2071 at para. 7, citing *Gold v. Gold*, [1993] B.C.J. No. 1792 at para. 20, 1993 CanLII 1248 (B.C.C.A.).

"The Honourable Justice Loo"

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Prepared on 26 October 2026 · Esheria