

CANADA / JUDGMENT

Dhanda v. Dhanda

2001 BCSC 945

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BALVIR KAUR KALER ALSO KNOWN AS BALVIR KAUR DHANDA
PLAINTIFF

AND:

HARDIAL DHANDA
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE K. SMITH

Counsel for the plaintiff: Ruth Lea Taylor and
Heather Cunningham

Counsel for the defendant: William R. Storey

Date and Place of Trial: June 18 - 22, 2001

Vancouver, BC

INTRODUCTION

[1] This action concerns the remnants of the breakdown of an arranged marriage.

- [2] The plaintiff (the "wife") seeks a divorce on the grounds of mental and physical cruelty; sole custody and guardianship of the infant son of the marriage with supervised access by the defendant (the "husband"); permission to return to her home in England with the child; child support in accordance with the Child Support Guidelines; spousal support until she can become self-supporting; an equal division of family assets; an order for the return of certain personal property; and costs.
- [3] The husband opposes the divorce and spousal-support applications and seeks sole custody and guardianship of the child with reasonable, specified access to the wife or, alternatively, joint custody and guardianship with primary residence to be with him; an order restraining the wife from removing the child from British Columbia; and an order for child support from the wife. He also seeks an equal division of family assets and costs.

BACKGROUND FACTS

- [4] The parties were married on April 21, 1999, in England. The marriage was arranged by a matchmaker acting on behalf of their respective families. Their son, Tanvir, who was born on June 16, 2000, in Surrey, British Columbia, is now one year old. They separated on July 8, 2000, when Tanvir was three weeks old, after cohabiting for less than 15 months.
- [5] The wife is twenty-four years old. She was born and raised in England, where her parents and extended family continue to reside. This is her first marriage. She has a diploma from a technical school in business and finance. Before the marriage she worked in a duty-free store at Heathrow Airport followed by two years' employment with Barclays Bank as a terminal operator. She resigned that job on May 17, 1999, in anticipation of her leaving for Canada with her new husband. Since the parties separated, she has resided with the child in the home of her parents in England. She is seeking gainful employment.
- [6] The husband was born in Punjab, India thirty years ago, and is the youngest of ten children. He came to Canada as a young boy and was raised here. This is his second marriage, the first having ended in a divorce following cohabitation that lasted about one year. After completing high school, he obtained a diploma in Criminology at a junior college and a Bachelor of Arts degree from Simon Fraser University, with Sociology and Anthropology majors. He has been employed as a health care worker for the Ministry of Health in the Forensic Psychiatric Hospital since 1994. His annual salary is \$34,000.
- [7] The parties had known each other only briefly before the marriage. After the marriage, the wife immigrated to Canada, with the husband's sponsorship, and resided in a basement suite with him and his mother. She had never before been to Canada and knew no one in this country aside from her husband and his family.
- [8] The wife was unhappy in the marriage from the start. She said that was because she was dominated by her new husband and mother-in-law. She was required to do the housework and to cook for them. She was given no money and was not allowed to leave the home except in their presence. She said that the husband and mother-in-law were very demanding and

critical of her. She said that she was afraid of them and that she submitted to their demands with little complaint. When she did complain, she said, her husband berated her and struck her. The wife described six assaults specifically and many more in a general way. According to her, the assaults always occurred when no one else was present but she and her husband. She testified that she left the matrimonial home following the final assault.

- [9] The husband denied the alleged assaults and his wife's assertion that he and his mother were demanding and critical. His position was that the couple had minor arguments, which he characterized as normal, and that the wife was an equal participant in the disputes. The problem with the marriage, according to him, was that his wife preferred England to Canada and was resistant to changing her ways to accommodate life in this country. As well, he said, she would not listen to him and to his mother. All of their problems could have been worked out, he said, if she had not precipitously left him and returned to England, abducting his son in the process.
- [10] The wife left the matrimonial home on July 8, 2000, taking the baby with her. She resided for about four weeks at the home of her husband's sister, Kashmeer Kumar. While there, on July 26, 2000, she applied for a passport for the baby. She left her sister-in-law's home and stayed for a few days with a family in Abbotsford. Then, in mid-August 2000, her parents and her uncle came to Canada to attempt to assist to salvage the marriage. Their attempts to open communications with the husband's family were fruitless and, as neither they nor the wife and child had a place to stay, they all returned to England.
- [11] The wife commenced custody proceedings in England immediately on her return. On August 17, 2000, after the wife had gone, the husband obtained an ex parte order of the Provincial Court of British Columbia granting him interim custody of the baby and restraining her from removing the baby from the Lower Mainland of British Columbia. He then applied in the High Court of Justice in England to enforce the order. By consent, on October 23, 2000, that Court ordered that the child be returned to British Columbia to facilitate a determination of custody by this Court. By further order of that Court made on December 22, 2000, the wife was given until January 10, 2001, to return to British Columbia with the child. She did so, arriving on January 9, 2001. The next day, she obtained a restraining order against the husband in this Court.
- [12] On February 1, 2001, this Court declared that the parties have no reasonable prospect of reconciliation; dismissed the husband's application for interim custody; set aside the ex parte interim custody and restraining orders of the Provincial Court; granted interim custody to the wife; granted specified, supervised access to the husband; granted the wife permission to return to England with the baby upon the understanding that she would return no later than May 7, 2001; and ordered the husband to pay interim child support of \$295 per month commencing as of February 1, 2001.

- [13] Following this order, the wife and child went home to England and returned to Canada in May 2001 for this trial. Since their return, they have resided in a transition house for battered women. The wife has no income and, as a non-resident, is not entitled to social assistance. She and the baby have been subsisting on the \$295 per month that she receives from the husband for the maintenance of the child.

THE APPLICATION FOR DIVORCE

- [14] The wife's position is that the marriage has broken down because of the husband's physical and mental cruelty. She relies on s. 2(b)(ii) of the Divorce Act, which provides:

- (2) Breakdown of a marriage is established only if

...

- (b) the spouse against whom the divorce proceeding is brought has, since the celebration of the marriage,

...

- (ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

- [15] Neither counsel cited any authority as to the nature of the proof required. I have concluded that the wife must show conduct of a grave and weighty nature and that, if she does so, I must then consider whether its effect upon her in a subjective sense rendered intolerable her continued cohabitation with the husband: see *Jordan v. Jordan* (1979), 13 B.C.L.R. 1 (B.C.Co.Ct.) and *Lacey v. Lacey*, [1970] 1 O.R. 279 (H.C.J.). As well, the standard of tolerable behaviour should reflect contemporary standards: see *Bens v. Bens* (1983), 50 A.R. 197 (Alta. C.A.).

- [16] Before setting out my analysis of the evidence, I should comment on certain evidence offered on behalf of the wife as expert opinion evidence.

- [17] Constable Poon is a member of the R.C.M.P. whose duties include the investigation of passport fraud. He received a complaint from the husband on August 17, 2000, that the wife had falsified a passport application for Tanvir and had abducted him. The alleged abduction was within the jurisdiction of the Delta Police force, to whom the husband had already lodged a complaint. Detective-Constable Adams of the Delta Police was given conduct of that investigation, and she and Constable Poon collaborated on the matter.

- [18] Constable Poon took a statement from the husband and from a brother-in-law of the husband. As a result, charges were laid against the wife. Constable Poon spoke to the wife in March 2001 and testified that he concluded then that she had been the victim of domestic violence and that she had falsified the passport application in order to seek safety and the assistance of her family. He said that he discussed the matter with Crown counsel and that they agreed that it was not in the public interest to prosecute the wife and therefore stayed

the charge.

- [19] Detective-Constable Adams said that she took a lengthy statement from the husband. She said that, in the course of her investigation, she spoke to the Abbotsford police about a "related file", and to the passport and immigration authorities, as well. She spoke to the husband's sister Kashmeer. She made inquiries through the usual police databases and discovered that the husband had a conviction for spousal assault of his first wife. She spoke to the first wife and, as she put it, "put together a case of similar fact evidence." She also spoke to the wife on the telephone. Because the husband said that he did not want a charge of abduction to be laid and that his only interest was in finding out who was responsible for assisting the wife to leave his home and return to England, she closed the file.
- [20] However, in September 2000, she said, the wife complained to her on the telephone of numerous assaults by the husband. She arrested the husband on November 17, 2000, on a charge of spousal assault. She said that he was released later that day on a peace bond. As a result of requests from Crown counsel, she said, she sought statements from the husband's mother and sister Kashmeer, but they refused to co-operate. She obtained a statement from Dr. Buttar, the wife's physician, and delivered it to Crown counsel. She said that Crown counsel decided not to proceed with the charge because of the expense involved in bringing the wife from England, because of the upset it would cause to the family, and because civil proceedings were underway with respect to custody and to the marital situation. She testified that, on the basis of the statements obtained from the wife and from the husband's first wife and on the information in "other files within the police system", she believed that the wife and child were in danger from the husband and told the wife that she would attempt to place her in a witness-protection program on her return to Canada.
- [21] Much of what these officers said was hearsay. Most of the facts upon which they based their opinions were not disclosed at all - only their sources of information were disclosed. As the foundational facts for the opinions have not been proven, their opinions are of no value. Moreover, expert opinion evidence is admissible only if it is necessary to assist the court to reach a correct conclusion because the subject-matter of the opinion is likely outside the experience and knowledge of the judge or jury: *R. v. Mohan*, [1994] 2 S.C.R. 9. The opinions offered here are not necessary in that sense, and the opinions are not admissible. Accordingly, I have not considered them in my deliberations.
- [22] I turn now to my analysis and conclusions on the question of the divorce.
- [23] Both parties called witnesses to support their respective versions of the events. On the whole, I found the evidence offered by the wife to be more credible and more reliable than that offered by the husband.
- [24] First, I found the wife to be straightforward, frank, and responsive throughout her testimony. By contrast, the husband's demeanour was less impressive. He was often evasive and unresponsive in his cross-examination.

- [25] Demeanour as a measure of credibility can often be misleading and should not, standing alone, be determinative. It is important, as well, to examine a witness' testimony in the light of its internal consistency and its consonance with the evidence of other witnesses and with the probabilities inherent in the circumstances. On these tests, also, the testimony of the wife scores higher for credibility and reliability than does that of the husband.
- [26] For example, the wife's testimony is supported in some material respects by evidence independent of her. It is not disputed that, as a result of an altercation in Dr. Buttar's office on July 4, 2000, the wife suffered a cut on her forehead. She testified that the husband became angry with her on the way to the doctor's office and threatened to kill her and her family. She said that, after the doctor examined the baby, she was afraid that her husband was going to take the baby away from her. When she tried to take the baby from him, she said, he punched her in the head and knocked her backward over a chair. On the other hand, the husband testified that he grabbed the car seat after his wife put the baby in it and, as he turned around, she attacked him from behind and struck her head accidentally on his elbow. Dr. Buttar testified that she entered the room within seconds and saw a laceration and the beginning of a bruise on the wife's right temple. The laceration was bleeding and, in Dr. Buttar's opinion, it would have taken a forceful blow to inflict such an injury. The wife asserted immediately that her husband had struck her. The husband, however, left the office before Dr. Buttar arrived and told no one at the time that the injury was sustained accidentally. He explained at trial, suspiciously, in my view, that he left because he was afraid that his wife would lay criminal charges against him. Moreover, the husband's description of the event strains credulity. It is difficult to imagine how such an injury could have been sustained in the way that he described and demonstrated it in the witness box. I reject the husband's evidence and I accept the wife's evidence in relation to this event.
- [27] Further, the wife testified that, on July 8, 2000, the day she left him, the husband came into the bedroom while she was changing the baby's diaper. He complained, she said, that she changed the baby too often and that he would have to buy more diapers as a result. According to her, the husband struck her in the arm when she disagreed and continued to change the diaper. Then, she said, he took the telephone out of the bedroom and hid it from her. She said that she told the husband's niece, Tina Dhanda, about the assault and asked her to bring the telephone to her so that she could call the police. She said that Tina did so, and she telephoned the police, who attended shortly thereafter and facilitated her leaving the home.
- [28] According to the husband, the wife was "racking up" phone bills that day by calling her family in England "constantly." He said that she was on the telephone with them for two or three hours. He testified that he was going to return a movie that he had rented and, to ensure that the wife made no more telephone calls while he was gone, that he took the telephone out of the bedroom, wrapped it up, and hid it from her. Curiously, he said that he "didn't hit her or none of that" and that he did not throw the telephone at her and that "I just grabbed the phone - she didn't fight back." That suggests that there was an altercation over

the telephone of which the wife said nothing.

- [29] In any event, Tina Dhanda confirmed that the husband emerged from the bedroom with the telephone. She testified further that when she went into the bedroom she observed the wife to be crying and upset and "sort of" frightened. In my view, Tina's evidence, which I accept, supports the wife's version of the events in the bedroom. Moreover, there is nothing in the husband's version of what happened that would account for the wife's condition as observed by Tina nor for the fact that the wife telephoned the police and complained of an assault. Seen in the light of the surrounding circumstances, the husband's version of this event is inherently improbable. Again, I accept the wife's evidence and reject the husband's in this connection.
- [30] A significant piece of evidence that supports my conclusion that the wife's testimony is credible and reliable and that the husband's is not came during the husband's case. The husband called several members of his family to testify on his behalf. It is obvious that he has the love and support of a large, close family. These witnesses were consistent in their testimony that they saw no assault, that they saw no evidence of an assault, and that the husband is not the type of person who would have assaulted his wife. The husband's sister Kashmeer, with whom the wife stayed initially after she left the husband, was one of these witnesses.
- [31] Kashmeer was supportive of her brother and critical of the wife in relation to the material events. She was obviously very nervous as she testified and she tended to give long and sometimes unresponsive answers to counsel's questions. She gave the impression, in several instances during her cross-examination, that she was attempting to avoid a direct answer. In her cross-examination about the period of time during which the wife resided with her, it was put to her that she had a fight with her brother over his treatment of the wife. After rejecting the suggestion that they had a "fight" and allowing that they had an "argument", she gave a long answer which she began by saying that, as an older sister, she was trying to bring the two of them back together. She then said, unwittingly, in my view, that she told her brother "you shouldn't beat" her and "you should listen to her and be quiet when she talks." That testimony speaks volumes, in my opinion, and is cogent evidence in support of my conclusion that the wife was truthful in her description of the relationship that she had with her husband and his mother. As well, it belies the husband's denial, and that of the witnesses called on his behalf, of assaultive and dominating behaviour.
- [32] Also supportive of the wife's testimony was the testimony of her mother, her father, and her uncle that when they came to Canada after the birth of Tanvir they were treated rudely by the husband and his family and were made to sleep on the floor in the matrimonial home. As well, their observations of relations between the wife and the husband and his mother were consistent with the wife's description of how she was treated by them. I accept their evidence on these points.

- [33] Also worthy of note are the husband's actions on July 10, 2000, when he attempted to register the baby's birth without the wife's signature on the application. He did this as part of an attempt to block the wife from obtaining a passport for the baby and from returning to England with him. In the required statutory declaration, the husband swore that the reason that the wife was unable to complete and sign the registration was "because she is out of town for vacation." That was a deliberate lie on his part - he knew that the wife was staying with his sister at the time. This demonstrates that the oath is of little significance to the husband and undermines his testimony at trial where it conflicts with that of the wife.
- [34] The husband attempted to paint the wife with the same brush by accusing her at trial of forging the baby's passport application on July 26, 2000. In this regard, the wife signed her own name on the line that called for the "signature of other parent." She explained in her testimony that she was relying on her understanding of English law to the effect that the husband's signature was not required. I do not accept that explanation. However, I am satisfied that she was motivated to sign as she did by the dire necessity of her circumstances. She knew that she could not live with her sister-in-law indefinitely. She had nowhere else to stay, she had no money, and she knew no one in Canada except her husband and his family. She could not return to her husband, as her life with him had become intolerable. She was twenty-three years old and in a strange country far from home and family, with a breast-feeding, five week old infant to care for. In the circumstances that she faced what she did is understandable, and neither it nor her attempt at trial to justify it reflect adversely on her credibility in relation to other matters.
- [35] There are many instances not mentioned where the testimony of the husband and of his witnesses was incongruent with the relevant circumstances. As well, there was conflicting evidence on several issues. As a decision is required quickly, I will not deal specifically with these matters. Suffice it to say that, where the wife's evidence and that of her witnesses conflicts with that of the husband and his witnesses, I accept the evidence offered by the wife.
- [36] I find the following to be the facts in relation to the allegations of mental and physical cruelty.
- [37] From the time that she arrived in Canada, the husband isolated the wife and treated her, in essence, like a servant. She was made to cook and to clean for the husband and his mother and was not allowed to leave the family home except in the company of one or other of them. When she did not please him, the husband shouted at her and struck her. On the six occasions described by her in her testimony, the husband assaulted her physically. Following the birth, he had little regard for the wife and was primarily concerned with his son, whom he viewed with a proprietary interest. An example of his indifference to his wife occurred when he visited the hospital following the birth. On that occasion, he made the wife sleep on a couch in her hospital room so that he could sleep on her bed, which he found to be more comfortable.

- [38] When the wife's parents and her uncle came from England to visit, as is customary following a birth, he treated them rudely. He acknowledged in his testimony that the wife was unhappy from the outset of their marriage, but he became angry when she told her family of her unhappiness. He berated her about this on the way to the doctor's office on July 4th and threatened to kill her and her family. Whether or not he was serious, he intended to frighten her and he achieved that effect. After the doctor examined the baby and left the examining room, he took the baby from the wife and, when she attempted to wrest the baby back, he punched her over the eye, cutting and bruising her forehead.
- [39] Over the next few days, the husband rebuffed the attempts of the wife's family members to bring about a change in his behaviour that would enable the marriage to work. He blamed the wife for the marital problems and blamed her family for getting him involved with her. The wife's parents and uncle had to return to England and left on July 7th. The wife was extremely unhappy at this time and the husband made no attempt to relieve the sources of her unhappiness. Rather, he continued his old ways. On July 8th, he berated her over the expenses incurred in relation to her care of the baby and, when she did not submit to his wishes, he struck her in the arm and took the telephone from their room to prevent her calling anyone for assistance. The wife, with the assistance of the husband's niece Tina, was able to telephone the police and, with their help, she left the home.
- [40] Even then, the husband made no attempt to reconcile their differences or to persuade the wife to return. It was his stated position that, because she had left him, it was up to her to return unasked. He did not attempt to see the wife or the baby while they resided with his sister Kashmeer. Finally, Kashmeer told the wife that she and the baby would have to leave and, as a result, she went to live for a few days with strangers in Abbotsford, whose assistance had been arranged by her uncle by telephone from England. Unable to stay there any longer and with her marriage irretrievably broken, she had no alternative but to return with her parents and her uncle to her home in England.
- [41] I am satisfied that the husband's conduct toward the wife during the entirety of the marriage was, in an objective sense, grave and weighty. Further, I am satisfied that, viewed subjectively and in the light of contemporary standards, the husband's continuing mental and physical abuse of the wife made continuing cohabitation intolerable to her. In the result, the burden of s. 2(b)(ii) of the Divorce Act has been met and the wife is granted a decree of divorce.

CUSTODY, GUARDIANSHIP, AND ACCESS

- [42] Counsel agree that the questions of custody, guardianship, and access are governed by s. 16 of the Divorce Act and, in particular, that the paramount consideration is the best interests of the child. They also agree that the factors relevant to whether the wife should be permitted to take the child to England to live are set out in *Gordon v. Goertz*, [1996] 2 S.C.R. 27.

- [43] Tanvir is just one year old. He has spent virtually his entire life with the wife. His only time spent with the husband was during the three weeks immediately following his birth, which culminated in the wife leaving home on July 8, 2000, and on three access visits this year, in which the husband estimates that he spent, in total, about twenty minutes with his son. Accordingly, to the extent that a one-year-old infant can form a parental attachment, that attachment is entirely with the wife.
- [44] The wife has a loving and supporting family in England. If she is granted custody and permission to take the child to England, she will continue to live in the near future in a semi-detached, four bedroom home with her parents, two brothers and a sister. However, she is entitled to Council housing at the government's expense and has filed an application with the housing agency. She is on a priority list and expects that she will be provided with housing, in which she intends to live independently with Tanvir. She has an automobile, which was a gift from her father. She has an offer of employment as a customer-service representative with a mobile-telephone company. Her anticipated salary would be approximately \$38,000 CAN per annum. Also, she has applied to be re-hired by Barclays Bank. So long as she remains unemployed, she and Tanvir are entitled to free medical care under the National Health Insurance plan. She has begun steps to enrol Tanvir in a pre-school day-care group to facilitate his care while she is at work.
- [45] Like the wife, the husband has the support and love of a close family. However, his job requires that he work day shift, afternoon shift, and night shift in rotating cycles, although he says there is flexibility available to him in his shift schedules. More significantly, his plans for Tanvir's care if he should be granted custody are inchoate. He said that his first option would be day care, although it is clear that he has done little to investigate its availability. He said that his second option would be a nanny. Beyond asserting that he was "looking into a number of candidates right now", he offered no evidence of the viability of this option. Third, he said that he would rely on his relatives and, in particular, on his sisters and his nieces. The only two of this group who were called to testify were his sister Kashmeer and his niece Tina. Kashmeer is a wife and a mother and has a full-time job as well, so her ability to assist with the care of Tanvir would be minimal. Similarly, Tina is a sixteen-year-old who is still attending school and has the usual outside interests of normal teenagers. She impressed me as a mature and reliable young woman but it cannot be realistic to expect that she would be anything more than of casual assistance to the husband. Fourth, the husband said, is his mother. By all accounts, she was a caring and loving mother to her many children and has been a devoted grandmother to her numerous grandchildren. However, she is elderly and could not be expected to care effectively for an infant child at this stage of her life. Finally, the husband said that he would rely on his friends. When pressed to name them he responded with the names of two brothers. He went on to say that the two brothers work, that they have children, and that their wives stay at home to care for their children. This evidence was not impressive.

[46] In *Gordon v. Goertz*, supra, at para. 49, McLachlin J. (as she then was) listed several principles relevant to the question to be decided here (I have omitted those that are not relevant):

The law can be summarized as follows:

...

5. Each case turns on its own unique circumstances. The only issue is the best interests of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly, the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;

...

- (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
- (f) disruption to the child of a change of custody

[47] The wife has had custody of Tanvir since the parties separated almost a year ago and has been the primary caregiver since he was born. Her relationship with the child is exemplary, as was attested to by Dr. Buttar, by the workers from the transition house who testified, and by her parents and her uncle. Indeed, the husband's witnesses, while critical of the wife in her dealings with the husband, had nothing critical to say about her care of Tanvir.

[48] The husband's relationship with Tanvir is, by reason of the circumstances, not well-formed. There is no question of his affection for his son, but it cannot be said that they have developed any meaningful relationship.

[49] The requirements of section 16(10) of the Divorce Act in relation to maximizing contact with both parents are problematic in this case. The reality is that access by the non-custodial parent will be very difficult. While the husband argued that the wife should, if granted custody, live in British Columbia, that is not a realistic expectation. His submission overlooks the fact that she is not a Canadian citizen and that he revoked his sponsorship of her in August 2000 as soon as he learned that she had returned to England. Further, the wife has no ties to Canada whatsoever other than the fact that her son was born here. It makes as much sense to say that, if the husband should be granted custody, he should be compelled to live in England to facilitate access by the wife. The husband suggested joint custody and

guardianship as an alternative. However, that is not viable either, given the nature of the relationship between the parties and their geographic distance from each other. None of these alternatives is acceptable in the circumstances.

[50] In this regard, I adopt the apt remarks of Abella J.A., speaking for the Ontario Court of Appeal, in *MacGyver v. Richards* (1995), 22 O.R. (3d) 481 (C.A.) at 491-92:

We must also forcefully acknowledge that the custodial parent's best interests are inextricably tied to those of the child. The young child is almost totally dependent on that parent, not on the parent seen during visits. While it would always be preferable to attempt to find a solution which protects the child's relationship with both parents, this ideal is simply not always possible. It is practically inevitable, when two parents no longer live together, that the child's relationship with each will be different. This means that the child, and each of its parents, must adjust to the new realities. The adjustments may be painful, including the adjustment of a parent seeing a child less often than anticipated. However painful, that parent's desires cannot be paramount.

The child's best interests must be assessed not from the perspective of the parent seeking to preserve access, but from that of the child entitled to the best environment possible. It is a mistake to look down at the child as a prize to be distributed, rather than from the child up to the parent as an adult to be accountable. This by no means eliminates the adult's wishes from the equation; it means that those wishes cannot always be accommodated. It is the child's right to see a parent with whom she does not live, rather than the parent's right to insist on access to that child. That access, its duration, and quality, are regulated according to what is best for the child, rather than what is best for the parent seeking access.

[Emphasis in original]

[51] As I have already observed, access will be problematic for the non-custodial parent. Nothing can be done in any practical way to avoid that unfortunate fact.

[52] I have already set out the reasons for the wife returning to England. They are not relevant to her ability to meet the needs of the child.

[53] No direct evidence was led of the effect that a change in custody might have on Tanvir, but I take judicial notice that it would likely be a traumatic and disruptive experience for him. The wife is the only parent that he has had an opportunity to know and her parents and siblings will have become familiar to him over the past ten months. He has no similar attachment to the husband or to members of the husband's family.

[54] After considering the evidence and the principles as I have set them out, I am satisfied that the wife should have sole custody and guardianship of Tanvir and that she should be permitted to return with him to her home in England.

- [55] Counsel for the wife asked for an order dispensing with the husband's signature on a passport application for Tanvir. However, she was unable to identify any authority for such an order. Accordingly, I will not make that order. However, there will be an order that the husband shall execute all such documents as may be necessary to enable the wife to obtain a passport for Tanvir and to take him with her to England.
- [56] Counsel for the wife sought an order for reasonable, supervised access. However, she marshalled no evidence and made no submission in support of an order for supervision of the husband's access visits. Accordingly, there will simply be an order for reasonable access.

CHILD SUPPORT

- [57] The husband's annual salary is \$34,000 and counsel advise that the Guidelines table amount is \$295. Accordingly, the husband will pay to the wife the sum of \$295 per month on the first of every month, commencing July 1, 2001, for the maintenance and support of Tanvir.

SPOUSAL SUPPORT

- [58] As already noted, the wife left gainful employment in England in May 1999 to travel to Canada with her new husband. She has been unemployed since. Although she has an outstanding offer of employment, it is realistic to expect that she will not be able to organize her affairs and to return to work immediately. She has suffered, since the parties separated, and will continue to suffer economic hardship as a result of the breakdown of the marriage. However, she will likely become economically self-sufficient within the next several months. I have given consideration to the requirements of s. 15 of the Divorce Act and to the condition, needs, means, and other circumstances of the parties as disclosed by the evidence. There will be an order that the husband pay to the wife the sum of \$750 per month for a period of six months, commencing on July 1, 2001, for her maintenance and support.

DIVISION OF FAMILY ASSETS

- [59] Both parties seek an equal division of family assets. The only assets in issue are the husband's R.R.S.P., his Canada Pension, and his superannuation fund.
- [60] The R.R.S.P. is a family asset by virtue of s. 58(3)(d) of the Family Relations Act, R.S.B.C. 1996, c. 128. According to the evidence, it has a value of approximately \$16,500 as of January 31, 2001. The husband will pay to the wife one-half of its value as of February 1, 2001, the date of the triggering event, net of taxes.
- [61] The husband's pensions will be divided as provided in Part 6 of the Family Relations Act.

PERSONAL PROPERTY

[62] The wife claims the return of certain jewellery and clothing that is the property of herself and Tanvir. There is a dispute between the parties as to what has happened to several items of jewellery and clothing.

[63] As before, I accept the wife's evidence and reject the husband's evidence on this issue. In particular, I accept the wife's testimony about the jewellery that is missing from the safety deposit box and conclude that the husband removed it on one of his several documented visits to the box. In this regard, his testimony about opening a second box is not believable and adds to my overall impression that he was not a credible and reliable witness.

[64] Accordingly, there will be an order that the husband return to the wife the items of personal property highlighted in yellow in Exhibit 19.

COSTS

[65] The wife will have her costs on scale 3.

THE HUSBAND'S CLAIMS

[66] The husband's claims are dismissed.

"K.J. Smith, J."

The Honourable Mr. Justice K.J. Smith

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