
CANADA / JUDGMENT

E.S.C. v. S.L.S.

2007 BCSC 1054

COURT

Supreme Court of British Columbia

DECIDED

13 July 2007

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2007 BCSC 1054 E.S.C. v. S.L.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

E.S.C. v. S.L.S.,

2007 BCSC 1054

Date: 20070713

Docket: E019003

Registry: New Westminster

Between:

E.S.C.

Plaintiff

And

S.L.S.

Defendant

Before: The Honourable Mr. Justice Truscott

Reasons for Judgment on the Issue of Costs

Counsel for Plaintiff

K.L. Fraser

Counsel for Defendant

A. McIver

Date and Place of Trial/Hearing:

May 2, 2007

Via Telephone Conference

- [1] At the conclusion of my Reasons for Judgment of March 1, 2007 in this family law proceeding, I ordered that each party bear their own costs as I considered there to be divided success at trial.
- [2] Both counsel have made subsequent submissions on different issues to do with the trial hearing day fees, the plaintiff's work tools, a utility trailer, an income tax refund to the plaintiff, the proper amount to be shared on the line of credit, the mechanics of selling the family home and the mechanics of making the spousal support payments ordered, as well as the issue of costs.
- [3] Save for the issue of costs all other matters were resolved at the subsequent hearing by telephone, or were left to the parties to reach agreement, leaving only the issue of the defendant's application for costs. The parties may incorporate the resolution of the other matters into the formal order, if they so choose.
- [4] Counsel for S.L.S. has submitted that his client should be entitled to double costs as she has obtained a judgment as favourable as or more favourable than the terms of her offer to settle. Reliance is placed upon Rule 37(26.1) of the Rules of Court which states:

Despite subrules (23) to (26), if a party has made an offer to settle a claim in a family law proceeding, and the offer has not expired, been withdrawn or been accepted, and if the party making the offer obtains a judgment as favourable as, or more favourable than, the terms of the offer to settle, the party making the offer is entitled to costs assessed to the date the offer was delivered and to double costs assessed from that date.

- [5] Counsel for the plaintiff ESC opposes the defendant's application and submits that the original order that each party bear their own costs was the appropriate order to make and it should stand.
- [6] A summary of the orders that I issued in my Reasons for Judgment of March 1, 2007 is as follows:
 - 1. Neither party is entitled to child support.
 - 2. By agreement, the pension rights of the plaintiff are to be divided according to part 6 of the Family Relations Act, R.S.B.C. 1996 ch. 128 up to August 19, 2005.
 - 3. By agreement, each party is entitled to retain the motor vehicle presently in their possession.
 - 4. By agreement, the parties are to divide the home contents between them.

5. A \$500 Canada Savings Bond owned by the plaintiff is to be retained by him but credit is to be given to the defendant for \$250 of that amount, from the division of other family assets.
 6. A bank account in the amount of \$1,796 owned by the plaintiff is to be retained by him but the defendant is to be given a credit for one-half that amount, or \$898, from the division of other family assets.
 7. An overdraft amount of \$1,405.85 is to be the responsibility of both parties equally at \$702.93 each.
 8. A visa debt of the plaintiff of \$7,600 and a visa debt of the defendant of \$2,703.43, and a Revenue Canada debt of the defendant of \$1,546.93 are to be the equal responsibility of both at \$5,925.18 each.
 9. A joint line of credit outstanding in the amount of \$44,900 is to be the equal responsibility of both at \$22,450 each.
 10. Neither party is to receive any credit for mortgage payments made by them on the matrimonial home.
 11. The inheritance monies of the plaintiff are not to be considered a family asset.
 12. The parties' respective interests in the family home are to be considered as equal. The matrimonial home is to be sold with net proceeds after payment of a mortgage and the line of credit of \$44,900 and any other property expenses, and after adjustments for the credits ordered in numbers five and six herein, to be paid out to the parties.
 13. The plaintiff is to pay spousal support to the defendant of \$1,300 per month commencing the first of March 2007 and continuing the first of every month thereafter, indefinitely.
- [7] The defendant's offer to settle to the plaintiff, acting in person, is dated March 30, 2006 and a summary of the offer is as follows:
1. The defendant's claim for child support will be withdrawn.
 2. The plaintiff's pension rights will be divided equally up to April 3, 2006.
 3. Each party will retain any assets presently in their possession inclusive of bank accounts and vehicles. In addition the plaintiff to have his inheritance monies, his tools and his share of the family furniture and the defendant to have her share of the family furniture.
 4. Each party will be solely responsible for the credit card debts in their name.
 5. The plaintiff will transfer to the defendant his interest in the family home valued at \$380,000 with the defendant to assume the mortgage of \$137,000. After expected legal fees on sale of approximately \$1,500 and real estate commissions and GST of \$14,980, net proceeds estimated at \$226,520 to be credited equally between the parties with each to receive a credit of \$113,260.

6. The plaintiff will pay from his share of the house proceeds, to the defendant, the sum of \$45,000 in settlement of all other property issues.
7. The plaintiff will pay lump sum spousal support in the amount of \$59,000 (calculated as follows: i.e. periodic support of \$1,300 per month for six years or \$93,600 less the tax that the defendant would necessarily pay on that amount or \$34,600) which sum shall be satisfied by an accounting credit due to the plaintiff in determining the sum required of the defendant to pay the plaintiff to purchase his interest in the family home. Once paid by the transfer of title the defendant specifically agrees to waive any continuing right for ongoing spousal support at any time in the future. The plaintiff would be left with a balance of reduced credit of \$9,260.
8. The outstanding balance on the line of credit at the time of separation was \$13,700. Each person's share to repay is 50% or \$6,850 leaving a credit balance to the plaintiff prior to payment of the outstanding orders of support and outstanding orders of costs ordered to date in the sum of \$2,410. The defendant will be responsible to pay the balance of the line of credit in the sum of \$44,900 in its entirety.
9. The plaintiff to pay outstanding orders for support and costs in the amount of \$1,856.
- [8] The defendant submits that she has been successful in obtaining a judgment as favourable as or more favourable than the terms of her offer to settle to the plaintiff.
- [9] This is so, she submits, because in her offer to settle she offered to assume ownership of the family home valued between the parties at \$380,000 while assuming the mortgage of \$137,000, leaving an equitable interest in the property for both parties of \$243,000.
- [10] Assuming presumed sale costs of \$16,480 would reduce the equitable interest of both to \$226,520.
- [11] While the plaintiff's share of the equitable interest would be 50% or \$113,260, from this figure the defendant proposed to receive a further \$45,000 from the plaintiff for property issues as well as a one time only lump sum payment of spousal support of \$59,000 for a total of those two items of \$104,000. This would leave the plaintiff with a remaining right to a payment from the defendant of \$9,260.
- [12] In her offer the defendant agreed to be responsible for the total amount owing on the line of credit of \$44,900 while receiving a contribution from the plaintiff of only \$6,850. This would leave the plaintiff with the right to a net payment from the defendant of only \$2,410 but with no further responsibility for the mortgage debt, the line of credit, or any spousal support obligations.
- [13] The defendant submits that instead, on the judgment the plaintiff will be entitled to approximately \$115,000 of equity after deducting the mortgage and the presumed costs of sale, but will remain responsible for \$22,450 of the \$44,900 line of credit as well as ongoing spousal support payments of \$1,300 per month on an indefinite basis.

- [14] The defendant's offer included that each party retain all assets in their possession including bank accounts so that the plaintiff would retain his bank account of \$1,796 as well as his Canada Savings Bond of \$500 and not have to share them with the defendant. Instead by the judgment the plaintiff will have to pay the defendant the amount of \$1,148 for these two assets.
- [15] By the offer each party would be responsible for the credit card debts in their name meaning that the plaintiff would be solely responsible for his visa debt of \$7,600 and the defendant solely responsible for her visa debt of \$2,703.43 as well as her Revenue Canada debt of \$1,546.93. Instead by the judgment the defendant will have to contribute a further \$1,674.82 towards payment of these three debts.
- [16] The defendant's offer included an offer to let the plaintiff have all of his tools. At trial the defendant's appraisal of the value of the tools at home of \$22,115 was contested by the plaintiff and was ruled inadmissible because the appraisal was not delivered as required by the rules. The defendant says that the plaintiff agreed that his tools at work were valued at approximately \$7,000.
- [17] At trial the parties agreed between themselves to divide the home contents without a court order. This was reflected in my reasons for judgment and was intended to include the tools at the home. Even if the tools at work should be included as well, and the total value of the tools would be in the order of \$29,000, the plaintiff would continue to be entitled to a share of those tools along with the defendant, under s. 56 of the Family Relations Act.
- [18] Thus the offer to settle of the defendant on the issue of tools is not more favourable to the plaintiff by a total of up to \$29,000 but by only 50% of that amount.
- [19] The offer to settle does not deal at all with the overdraft amount of \$1,405.85 that was split equally between the parties by the judgment.

Analysis

- [20] Under the defendant's offer the plaintiff would have received little equity out of the family home, but he would have been free of the mortgage, the line of credit, and any ongoing spousal support obligations.
- [21] In addition the plaintiff would have kept his bank account and Canada Savings Bond and not have been required to share them with the defendant, resulting in a net benefit to the plaintiff of \$1,148 over the judgment amount for these items.
- [22] At the same time the plaintiff would have remained solely responsible for his visa debt of \$7,600, instead of the benefit he obtained from the judgment of being able to have the defendant contribute towards that debt in the amount of \$1,674.83.
- [23] The net result of these assets and liabilities is that the plaintiff is better off by the judgment to the extent of \$526.82.

- [24] Under both the defendant's offer and the judgment the plaintiff would be free of the mortgage as the judgment ordered that the property be sold.
- [25] Under the defendant's offer the plaintiff would have received equity out of the house of only \$2,410, while under the judgment he will receive approximately \$115,000 on the sale of the house.
- [26] After paying \$22,450 on the line of credit, instead of only \$6,850 under the offer the plaintiff will still obtain more equity out of the house than under the defendant's offer.
- [27] Even when the tools are considered as well, bearing in mind that the plaintiff is entitled to a share of those tools as well as the defendant, the plaintiff will still obtain more equity out of all of the family assets under the judgment than he would have had under the offer to settle.
- [28] The defendant's main submission is that the plaintiff will be better off with a one time only lump sum payment of spousal support of \$59,000, rather than what he is now faced with by the judgment of being required to pay \$1,300 per month indefinitely.
- [29] In the evidence at trial the defendant indicated she was employed full time as the office manager at a realty office, but was considering taking a correspondence course to become a licensed realtor with the hopes of making more money.
- [30] In my reasons for judgment I said that it may or may not be that she will become a realtor and make more money and the spousal support order was based on the parties' respective incomes at the time of judgment.
- [31] The defendant submits that the order amounts for practical purposes to a permanent order so that the offer to settle was far more favourable to the plaintiff than is the order.
- [32] In my opinion it is impossible at this time to say whether the offer to settle on the issue of spousal support was at least as or more favourable to the plaintiff than the order from trial.
- [33] The offer to settle still contemplated a payment of spousal support based on six years of spousal support at \$1,300 per month. At trial the defendant expressed an interest in improving her financial position by becoming a realtor. It could be that her offer to settle reflected her interest in becoming financially independent in six years time.
- [34] The plaintiff is entitled to a variation of the spousal support order if he can demonstrate in the future any material change in circumstances entitling him to that variation. In my opinion that may or may not come to pass during the six year period.
- [35] As matters now stand the plaintiff obtains some equity out of all of the family assets, including the sale of the home, and is left with some capital after taking all family debts into account. Capital may be of more value to him at this stage than the ongoing responsibility to pay \$1,300 per month spousal support indefinitely (which will give him a tax credit), and the risk that "indefinitely" might be longer than six years.

[36] Considering all of the factors I am unable to conclude that the offer to settle in total was as favourable or more favourable to the plaintiff than the judgment orders.

[37] The original order that each party will bear their own costs will stand.

"Truscott J."

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