

CANADA / JUDGMENT

Grewal v. Bal

2020 BCSC 1588

COURT

Supreme Court of British Columbia

DECIDED

28 October 2020

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

2020 BCSC 1588 Grewal v. Bal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Bal,

2020 BCSC 1588

Date: 20201028

Docket: E60688

Registry: New Westminster

Between:

Ameen Grewal

Claimant

And

Amarjot Singh Bal

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraph 14 on November 4, 2020.

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for both the Applicants:

Paramjit S. Malhi

Place and Date of Judgment:

New Westminster, B.C.

October 28, 2020

- [1] The parties apply for annulment of their marriage, by way of what is commonly referred to as "desk order", that is, an application that is presented to the court, with supporting application and affidavit materials that are intended to demonstrate that the judgment and order should be made without a hearing of any kind. The application is made pursuant to Rules 10-10(1) and 10-10(5) of the Supreme Court Family Rules, B.C. Reg. 169/2009 ("SCFR").
- [2] They filed a notice of joint family claim September 15, 2020, in which they jointly seek an order as follows:

A Declaration that the marriage purported to have been solemnized between the claimant #1, Ameen Grewal and Claimant #2 Amarjot Singh Bal on August 20, 2020 be pronounced null and void for all intents and purposes.

- [3] As a "joint family law case" under Rule 2-2 of the SCFR, where no party has filed a notice of withdrawal, the case comes within the definition of "undefended family law case" pursuant to the definition set out within Rule 1-1.
- [4] Rule 10-10(1) provides as follows:
 - (1) To apply for judgment in an undefended family law case, a party must apply
 - (a) by requisition in accordance with subrule (2), or
 - (b) at trial.
- [5] Rule 10-10(5) is as follows:

Powers of court on application

- (5) On being satisfied that an application under subrule (1) (a) is appropriate, the court may give any directions it considers will further the object of these Supreme Court Family Rules and may, without limitation,
 - (a) make an order or grant judgment without the attendance of lawyers or the applicant,
 - (b) direct the attendance of lawyers or the applicant, or
 - (c) direct that further evidence be presented.
- [6] Each claimant has sworn an affidavit headed "affidavit - desk order divorce" pursuant to Rule 21-1 of the SCFR, although they do not seek a divorce. Both state that the certificate of marriage filed in this family law case fully and correctly describes the true particulars of marriage. The certificate of marriage, issued by the Province of British Columbia, Vital Statistics Agency, indicates that the parties were married on August 20, 2020, in Richmond, British Columbia.

- [7] In their affidavits, each party indicates that after the marriage ceremony, the parties went to a park, for wedding photographs to be taken. They both indicate that at the park, with family members present, a serious argument took place between them. It is unnecessary for me to recite the details of the argument.
- [8] It is common ground that claimant one, Ms. Grewal, became very upset and immediately left the park. She abandoned the rest of the wedding festivities, and advised Mr. Bal that she "did not wish for [the] marriage to continue". Both parties indicate that they did not consummate the marriage, and that they wish an annulment of the marriage.
- [9] In brief, I am not satisfied that it is "appropriate" for this application to proceed by way of a requisition under Rule 10-10(1)(a), set out above. Therefore, I dismiss the application.
- [10] Divorce is governed by statute, the Divorce Act, R.S.C., 1985, c.3 (2nd Supp.). The legal requirements that enable the court to make an order for divorce are clearly set out in the statute. However, the law relating to annulment of marriage is governed by common law. Where annulment of a marriage is claimed, various findings of fact must be made, depending on the precise grounds advanced.
- [11] In *C.M.D. v. R.R.S.*, 2005 BCSC 757 at para. 8, Mr. Justice Bernard states:

A marriage void ab initio never existed at law, and a voidable marriage exists until it is annulled by court order. When a party seeks an annulment on a ground that renders marriage void ab initio, the court's order is merely declaratory-the court simply declares that the marriage never happened. When a marriage is voidable, an order for annulment dissolves an existing marriage and changes the legal relationship between the parties.

- [12] Similarly, in *Ross-Scott v. Potvin*, 2014 BCSC 435, Justice Armstrong states at para. 34:

In *Canadian Family Law*, 5th Ed. Julien D. Payne and Marilyn A. Payne, the authors describe the distinctions between void and voidable marriages. At page 21, they say:

Marriages may be valid, void, or voidable accordingly to law. A void marriage is one that is null and void from its inception. It is regarded as though it had never taken place. A voidable marriage, on the other hand, is treated in law as a valid and subsisting marriage unless and until it is annulled by a court of competent jurisdiction. A voidable marriage can only be annulled on the petition of one of the spouses and the annulment must occur during the lifetime of both spouses.

- [13] In this case, the materials filed do not support an annulment. There is no evidence that would support the conclusion that the marriage is void, that is, void ab initio. There is no evidence to suggest that the parties were not capable of being married to each other, or that their consent to the marriage was invalid, or that the marriage ceremony itself did not comply with the formal requirements pursuant to the Marriage Act, R.S.B.C. 1996, c. 282. In fact, the evidence they have adduced shows exactly the opposite.

- [14] There is a presumption of valid marriage with consent if the marriage ceremony followed the requisite formalities. The burden of proof is on the person seeking the annulment to show otherwise: *R.H. v. R.T.*, 2011 BCSC 678 at paras. 72 and 78; *Ross-Scott v. Potvin*, 2014 BCSC 435 at para. 50. The burden of proof in civil matters is on a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53, at para. 40; *Nagy v. BCAA Insurance Corporation*, 2020 BCCA 270, at paras. 41-42.
- [15] Nor does the evidence indicate that the marriage is voidable. There seems to be a common misconception that a marriage is voidable simply if it is not consummated, in the sense that following the marriage, the parties engaged in sexual relations. The law is not that simple. In order to obtain annulment of the marriage, on the grounds of failure to consummate, it is not sufficient for the parties to simply establish that they have not had sexual intercourse since the marriage: *H.L.C. v. M.A.L.*, 2003 BCSC 1461, at para. 13 [H.L.C.]; *C.M.D. v. R.R.S.*, 2005 BCSC 757 at para. 34 (citing H.L.C.).
- [16] In *S.Z. v. X.J.*, 2020 BCSC 1336, Justice Baker stated:
- [9] In *C. v. L.*, 2003 BCSC 1461 [*C. v. L.*], Mr. Justice Bauman, as he then was, reviewed the law relevant to an action for annulment on the grounds of a failure to consummate. He confirmed that such a common law action remains available in British Columbia: para. 11. He noted the onus is on the claimant to establish that one or both of the parties is incapable of engaging in sexual intercourse due to a physical or psychological incapacity: *C. v. L.*, para. 14; *Razavian v. Tajik*, 2019 ONSC 5662. Further, the impotence need not be a general incapacity to engage in sexual intercourse, but can be with respect to the particular spouse only: *C. v. L.*, para. 15.
- [17] However, if a platonic marriage was intended by the parties, then the absence of sexual intercourse cannot be grounds for annulment of the marriage: *Norman v. Norman*, [1979] O.J. No. 1899 (Unified Family Court).
- [18] It appears quite clear to me in this case that failure to consummate the marriage has nothing to do with the wishes of the parties for an annulment. There is no evidence, for example, that either party is physically or psychologically incapable of sexual relations with the other.
- [19] Therefore, even though both parties agree that they would like to have an order annulling the marriage, as no relevant grounds for annulment have been shown, the order cannot be granted.
- [20] In addition to the foregoing, a party seeking to apply for judgment under Rule 10-10(1)(a) must file a certificate of the registrar in form F36 certifying that the pleadings and proceedings in the family law case are in order: Rule 10-10(2)(d). Perhaps not surprisingly in the circumstances of this case, no such certificate of the registrar has been filed in this case.

- [21] In this case, there would be no point in making the other directions referred to in Rule 10-10(5), such as directing the attendance of lawyers or the applicant, or directing that further evidence be presented.
- [22] The application for judgment is therefore dismissed.
- [23] I add the following comments. Orders for divorce are commonly granted as desk orders. In the case of divorce orders, the evidentiary and procedural requirements for the order are quite clear, as are the administrative processes and the rules of court. However, given the findings of fact that are required in order to grant a judgment annulling a marriage, I suggest that an application for a desk order annulling a marriage is almost certainly doomed to fail. Therefore, the more appropriate practice would be to commence an action, and to proceed to a trial, or perhaps a summary trial. Applications for annulment by way of desk order are likely to be a waste of time and expense for the parties, and a waste of judicial resources, as in this case.

"Verhoeven 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/20/15/2020BCSC1588cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/grewal-v-bal-2020>

Prepared on 24 October 2026 · Esheria