

CANADA / JUDGMENT

Manhas v. Manhas

2024 BCCA 144

COURT

British Columbia Court of Appeal

DECIDED

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2024 BCCA 144 Manhas v. Manhas

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Manhas v. Manhas,

2024 BCCA 144

Date: 20240411

Dockets: CA49240; CA49242

Docket: CA49240

Between:

Gurjit Singh Manhas

Appellant

(Respondent by Counterclaim)

And

Baljit Manhas also known as Baljit Kaur

Respondent

(Claimant)

And

Rabinder Singh Manhas

Respondent

(Respondent)

- and -

Docket: CA49242

Between:

Rabinder Singh Manhas

Appellant

(Respondent)

And

Baljit Manhas also known as Baljit Kaur

Respondent

(Claimant)

And

Gurjit Singh Manhas

Respondent

(Respondent by Counterclaim)

Before:

The Honourable Madam Justice Stromberg-Stein

The Honourable Justice Skolrood

The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated
June 29, 2023 (Manhas v. Manhas, 2023 BCSC 1120, Abbotsford Docket E00109).

Oral Reasons for Judgment

Counsel for Gurjit Singh Manhas:

Counsel for Rabinder Singh Manhas:

A.S. Parhar

R.S. Gill

Counsel for Baljit Manhas also known as Baljit Kaur:

A.S. Kerslake

Place and Date of Hearing:

Vancouver, British Columbia

April 11, 2024

Place and Date of Judgment:

Vancouver, British Columbia

April 11, 2024

Summary:

The appellants, Gurjit Singh Manhas and Rabinder Singh Manhas, appeal from an order finding that certain assets were family property to be divided between Rabinder and the respondent Baljit Manhas in their family law proceeding. The judge also dismissed Rabinder's claim for spousal support and found that Rabinder owed Baljit \$6,975 in retroactive child support. The appellants impugn several of the judge's factual findings, including his finding that they were not credible witnesses.

Held: Appeal dismissed. The appellants have not met the high threshold for demonstrating an error in the judge's findings that would warrant appellate intervention.

- [1] SKOLROOD J.A.: The appellants Gurjit Singh Manhas and Rabinder Singh Manhas both appeal from the order of Justice Caldwell of the Supreme Court of British Columbia dated June 29, 2023. His reasons for judgment are indexed at 2023 BCSC 1120. Justice Caldwell's order was issued following a family law trial involving Rabinder Manhas and his former spouse, Baljit Manhas. Gurjit Manhas is Rabinder Manhas' father. He was a respondent by counterclaim in the family law case by virtue of his claim to ownership of certain disputed assets.
- [2] The assets in issue are a blinds business (the "Business") and the proceeds from the sale of a vacant lot (the "Lot") located in Abbotsford, B.C. Gurjit and Rabinder argued at trial that the Business and the Lot were owned by Gurjit and thus not family property to be divided between Rabinder and Baljit as part of the family law proceeding. The judge found otherwise. The judge also dismissed Rabinder's claim for spousal support and found that Rabinder owed Baljit \$6,975 in retroactive child support. The judge made a number of further orders in respect to the division of property which are not at issue on this appeal.
- [3] The appellants impugn several of the judge's factual findings, including his finding that they were not credible witnesses and that Gurjit did not have an ownership interest in the Business or the Lot. Rabinder also challenges the judge's findings on spousal support.
- [4] For the reasons that follow, I would dismiss the appeal.

Background

- [5] Baljit and Rabinder were married in 2000 and separated in 2019. Justice Caldwell granted an order for divorce as part of his order below. They have one child who was 20 years old at the time of trial. The judge found that the child ceased to be a child of the marriage as of his 19th birthday. That finding is not challenged on appeal.
- [6] It is apparent from the evidence that was before the judge that Rabinder has had a somewhat spotty employment history. Before the marriage, he had worked in the forest industry but was not employed at the time of the marriage. After the marriage he worked in the Business until it largely ceased operations in 2016. The judge found that Rabinder had worked "little, if at all" since 2016 (RFJ at para. 67).
- [7] Baljit also worked in the Business in a variety of capacities, sometimes full-time and sometimes part-time up until about 2016. She was the primary care giver to the parties' child and the child has continued to live primarily with her since separation. During the marriage, she pursued her teaching credentials and by 2016 she had obtained a full-time teaching position at a private school. In June 2017, she was hired in to a full-time teaching position with the Langley School Board, where she remained at the time of trial.
- [8] In 2002, the Business, then known as "Dennis Scott Blinds", was purchased in the name of Gurjit. The purchase included the lease, manufacturing equipment, sales floor equipment and goodwill. The purchase price was approximately \$40,000. The judge found that the \$40,000 was provided through Gurjit, but the source of the funds was never established (RFJ at para. 30).
- [9] The Business was registered in the name of "Gurjit's Window Coverings" but continued to operate under its original name. Gurjit obtained a line of credit ("LOC") for between \$10,000 and \$40,000 for the Business operations and expenses. Baljit testified that this LOC was the reason the Business was purchased in Gurjit's name, as he had a good credit rating and could qualify for the LOC, unlike Rabinder and Baljit.
- [10] The evidence again indicated that both Baljit and Rabinder worked in the Business in different capacities. They both testified that the Business generated over \$100,000 of income annually for each of the first three years of operation, although substantially less income was declared for tax purposes. The reported income remained steady for a number of years but by 2008, it had dropped to \$6500, and thereafter, further dropped to zero where it remained. Despite the reported amounts, the judge was satisfied that the Business generated significant undeclared amounts of cash.
- [11] In 2016, the Business was no longer able to afford its lease expenses. Therefore, it moved operations into the basement of Rabinder and Baljit's rented family home. While the judge noted that the Business continued to operate "at least to some extent", the evidence suggested that it generated minimal revenue and that Rabinder effectively ceased working in 2016.

- [12] At trial, Rabinder and Gurjit argued that the Business was at all times an asset of Gurjit, an argument rejected by the judge. I will return to the judge's reasons on this issue shortly.
- [13] It appears that the principal reason that Gurjit and Rabinder advanced this argument was that money generated from the Business was used to purchase the Lot, which was the other, and only significant, asset determined at trial to be family property.
- [14] The Lot was purchased in 2007 for \$235,000, of which a down payment of \$10,000 and a further payment of \$130,000 came from the account of the Business. There was a dispute at trial about the source of the remaining amount needed to complete the purchase. Ultimately, the judge found that the money was provided in the form of a \$100,000 loan from Gurjit. The Lot was registered in Rabinder's name.
- [15] The Lot remained vacant and undeveloped and was sold in March 2022 for \$1,200,000. The bulk of the sale proceeds are currently held in trust by counsel for Baljit, and certain additional lump sum payments are owing from the purchaser through 2024 to complete the transaction.

The Judge's Reasons

- [16] The judge made two preliminary observations that were central to his analysis:
- a) He noted that the case turns largely on the issue of credibility, as the parties' versions of events and stated intentions were diametrically opposed to each other (RFJ at para. 21);
 - b) There were no written loan, trust, or other documents regarding any of the key transactions prior to separation, for example setting out the terms on which Gurjit paid or contributed towards the purchase of the Business and the Lot.
- [17] These preliminary points are related in that given the absence of documentary evidence concerning the transactions, the evidence of the parties was central to the judge's analysis. As such, so too were his credibility findings. The judge considered numerous aspects of the evidence of Gurjit and Rabinder (RFJ at para. 26) which led him to approach their evidence with considerable caution. In addition to identifying these problems and inconsistencies, the judge also noted two additional points of concern (RFJ at para. 27):
- a) Leading up to and upon the sale of the Lot, Rabinder and/or Gurjit attempted to manipulate the payment of significant portions of the purchase money directly to them rather than to the real estate firm handling the matter. Baljit had to obtain an urgent court order to secure those funds from alienation by Rabinder; and
 - b) Rabinder failed to make proper and timely disclosure of relevant documents and then delivered a large number of documents on the last business day before trial. The judge described this conduct as a "calculated, intentional and unexplained delay in document production [that] amounted to a tactical ambush of Baljit".

- [18] Against these preliminary observations and findings, the judge turned to the issue of ownership of the Business. While acknowledging that the purchase price of \$40,000 was paid by funds from Gurjit and that the Business was registered in Gurjit's name, the judge was of the view that the whole of the evidence led to the "inescapable conclusion" that the Business was purchased for Rabinder, or possibly Rabinder and Baljit, by way of an intra-family loan from Gurjit or from Gurjit and his wife. A number of factors supported that conclusion, including Gurjit's lack of knowledge about many operational and financial details concerning the Business and that Rabinder and Baljit's family expenses were paid from the Business (RFJ at para. 43).
- [19] The judge found further that the loan had been repaid in full or was forgiven. One factor the judge noted in support of this finding was that no issue of repayment of the loan was ever broached by Gurjit until Rabinder and Baljit separated and division of family assets became an issue (RFJ at para. 45).
- [20] The judge therefore found that the Business was a family asset and that money generated by the Business was family money. However, he also found that the Business had no present value and that the value of Baljit's interest in it was therefore zero.
- [21] With respect to the Lot, as noted, \$140,000 of the purchase price came from the Business account. Given the judge's finding that the Business was a family asset, those funds were family funds (RFJ at para. 47).
- [22] In terms of the additional \$100,000 from Gurjit, the judge concluded on the evidence that there was a "fluid, informal and undocumented intra-family arrangement, orchestrated and directed by Rabinder" which involved a loan from Gurjit for \$100,000 to support the purchase of the Lot (RFJ at para. 57). In coming to this finding, the judge relied in part on the fact that Rabinder, in his initial pleadings and in his initial Form 8 sworn financial statement, claimed a debt owing to his father.
- [23] The judge therefore found that the proceeds of the sale of the Lot were family property, subject to the repayment of Gurjit of \$100,000.
- [24] The judge made two further orders that are the subject of the appeal. First, he rejected Rabinder's application for spousal support. The judge again noted that Rabinder had not worked since 2016. While Rabinder claimed there were medical reasons for his lack of employment, no medical evidence was tendered, despite an order for production of medical records, nor was there evidence of applications for disability benefits (RFJ at para. 67).
- [25] The judge further found that Rabinder had not established that he suffered any financial or economic hardship associated with the marriage breakdown. The judge contrasted Rabinder's position with that of Baljit who, during the marriage, assumed the role of primary caregiver to the child, worked in the family business, obtained her teaching credentials, and ultimately found full-time work as a teacher.

- [26] The judge found that Rabinder had not established an entitlement to spousal support on either compensatory or non-compensatory grounds.
- [27] In terms of child support, the judge again found that the child ceased to be a child of the marriage as of his 19th birthday. The judge also found that Rabinder owed child support for the period of January 1, 2020, when the child began residing primarily with Baljit, through to the child's 19th birthday in January 2022. In order to quantify the support owing, the judge imputed income to Rabinder of \$30,000 per year, based upon minimum wage earnings. This resulted in child support under the Child Support Guidelines of \$279 per month, for a total of \$6,975 for the 25 month period in which support was payable (RFJ at paras. 79-81).

Issues on Appeal

- [28] Rabinder and Gurjit advance many of the same arguments on appeal, specifically that the judge erred in finding:
- a) that they were not credible witnesses; and
 - b) that Gurjit did not have an ownership interest in the Business or the Lot.
- [29] Additionally, in his factum, Rabinder challenged the judge's findings on child and spousal support however today, counsel advised the Court that Rabinder has abandoned the appeal on child support and is proceeding only on the spousal support claim. For his part, Gurjit argues, in the alternative, that if the amount he paid towards the purchase of the Lot was a loan, the judge erred in not awarding him interest on the loan and reimbursement for the tax payments he made on the Lot in 2020 and 2021.

Analysis

- [30] As the judge observed, the case turned largely on the issue of credibility. The judge was faced with the difficult task of making the necessary findings of fact based upon the testimony of witnesses, specifically Gurjit and Rabinder, whose credibility was suspect, and in the absence of documentary evidence detailing the terms of the key transactions.
- [31] Despite these challenges, the judge made findings of fact, based upon the available evidence, in support of his conclusions on the various claims.
- [32] As the appellants acknowledge, the scope of appellate review in family law matters is limited. This Court stated in *R.M.S. v. F.P.C.S.*, 2011 BCCA 53 at para. 43:

The standard of appellate review on family law matters is narrow in scope. An appellate court may not interfere with a trial judge's exercise of discretion absent a material error (where the trial judge forgot, ignored, or misconceived the evidence in a way that affected the outcome), a serious misapprehension of the evidence, or an error in law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at para. 12, per L'Heureux-Dubé J.; *Van Mol (Guardian ad Litem of) v. Ashmore* (1999), 168 D.L.R. (4th) 637 (B.C.C.A.) leave to appeal refused [2000] 1 S.C.R. vi; and *Van de Perre v. Edwards*, 2001 SCC 60, [2001] 2 S.C.R. 1014 at paras. 14-15, per Bastarache J.

[33] In the leading decision of *Housen v. Nikolaisen*, 2002 SCC 33, the Supreme Court of Canada identified the applicable standards of review to different categories of error:

- a) On questions of law, the standard is correctness; and
- b) On questions of fact or mixed fact and law, the standard is palpable and overriding error.

[34] An appellate court may not interfere with the exercise of discretion of a trial judge in the absence of a material error, such as a "significant misapprehension of the evidence" or the trial judge's having "gone wrong in principle or [the] final award [being] ... clearly wrong": see *R.E.Q. v. G.J.K.*, 2012 BCCA 146 at para. 33.

[35] A judge's assessment of credibility involves findings of fact and attracts a high degree of deference on appeal: *R. v. Li*, 2023 BCCA 47 at para. 81.

[36] Gurjit and Rabinder now seek to challenge many of the judge's findings. However, they have not met the very high threshold identified in the cases for demonstrating an error in the judge's findings or analysis that would warrant appellate intervention.

[37] Dealing first with the ownership of the Business, Rabinder and Gurjit's submissions largely involve restating their evidence from trial and essentially asking this Court to come to a conclusion different from the judge. For example, after referring to various pieces of evidence, Rabinder submits in his factum (at para. 41):

The judge erred when making findings in favour of Baljit based upon incomplete evidence presented by all three parties. The judge erred in finding that the contributions made by Gurjit were a loan despite no material terms for the loan being presented including repayment, interest rate, and a term for the loan. The judge made positive inferences based upon Baljit's incomplete evidence and made negative inferences upon Rabinder's incomplete evidence.

[38] Gurjit takes a similar approach. He cites various pieces of evidence that were before the judge and then submits that the judge "made errors with respect to the credibility of Rabinder and Gurjit regarding their testimony about the Business", "misapprehended Gurjit's lack of detailed memory due to health issues and age as evidence that Gurjit had changes positions on key issues" and "drew unreasonable and illogical inferences which do not account for the health issues and frailty of Gurjit".

[39] Apart from these vague allegations of error, neither Rabinder nor Gurjit have identified specific incidents of the judge misapprehending evidence in a manner that is plain and obvious and that materially impacted the outcome: *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2022 BCCA 294 at para. 43; and *Bayford v. Boese*, 2021 ONCA 442 at para. 28.

[40] The same flaw applies to the appellants' arguments concerning the judge's finding that Gurjit's contribution towards the purchase of the Lot was a loan.

- [41] With respect to Rabinder's argument that the judge erred in coming to that conclusion in the absence of evidence of material terms, the fact is, as the judge noted, there was no documentary evidence detailing the nature and terms of the transaction including no documents produced by Gurjit or Rabinder to establish that the transaction was anything but a loan. Again, the judge made findings of fact based on the evidence that was available before him and on his assessment of the credibility of the parties. There is no error in this approach.
- [42] Of particular significance to the judge, as I have touched upon, was the fact that Rabinder originally alleged a loan from his parents in his initial pleadings and sworn F8. In Gurjit's factum, he argues that these previous positions can be explained by the fact that Rabinder is unsophisticated. In my view, it was open to the judge to reject this explanation and to find that the inconsistent positions taken by Rabinder adversely impacted his credibility.
- [43] The appellants have not demonstrated any error in the judge's analysis and findings in respect of the Business and the Lot, let alone an error approaching the palpable and overriding error standard.
- [44] With respect to Gurjit's alternative arguments that if the \$100,000 was a loan, he should be entitled to interest and reimbursement of the taxes he paid on the Lot in 2020 and 2021, it is not apparent that these arguments were made before the judge. Moreover, Gurjit's position on these alternative positions are set out in two brief sentences in his factum. Little is said about the applicable interest rate or method of calculation, nor is there any reference to evidence about what amounts Gurjit allegedly paid in taxes, or the basis for such payments. In the circumstances, I would not accede to Gurjit's alternate arguments.
- [45] That brings me to Rabinder's appeal of the judge's denial of his spousal support claim.
- [46] The judge found that Rabinder had not provided any evidence concerning his lack of employment since 2016, including any evidence to substantiate his alleged medical disability. In the circumstances, it was open to the judge to impute a relatively modest income to Rabinder approximating minimum wage earnings.
- [47] The judge again made findings based on the evidence before him or, as he characterized it, "the lack thereof" (RFJ at para. 73). Rabinder argues that the imputation of minimum wage earnings reflects economic hardship on his part that was not properly considered by the judge as part of the spousal support analysis. In my respectful view, this is yet another attack on the judge's findings of fact, which are subject to a high degree of deference. Rabinder has failed to demonstrate any error warranting appellate intervention.

Conclusion

- [48] For the reasons given, these appeals are entirely lacking in merit and I would dismiss the appeals of both Rabinder and Gurjit.

[49] STROMBERG-STEIN J.A.: I agree.

[50] WINTERINGHAM J.A.: I agree.

[51] STROMBERG-STEIN J.A.: The appeals of Rabinder and Gurjit are dismissed.

"The Honourable Justice Skolrood"

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