
CANADA / JUDGMENT

S.K.A. v. A.S.A.

2004 BCSC 1566

COURT

Supreme Court of British Columbia

DECIDED

29 November 2004

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

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.K.A. v. A.S.A.,

2004 BCSC 1566

Date: 20041129

Docket: D35457

Registry: Kamloops

Between:

S.K.A.

Plaintiff

And

A.S.A.

Defendant

Before: The Honourable Mr. Justice Powers

Reasons for Judgment

Counsel for the plaintiff

G.A. Kay

Counsel for the defendant

K.P. Jensen

Date and Place of Trial/Hearing:

November 17 and 18, 2004

Kamloops, B.C.

INTRODUCTION

- [1] These are proceedings under the Divorce Act and the Family Relations Act for the divorce, division of assets and spousal support.

BACKGROUND

- [2] The plaintiff, Ms. S.K.A., was born [], 1976 and is presently 28 years of age. The defendant, Mr. A.S.A., was born [], 1970 and is presently 34 years of age.
- [3] Mr. and Ms. S.K.A. were both born in India. Mr. A.S.A. came to Canada in May of 2000 and has lived in Kamloops with his two uncles and their families in a home in Kamloops.
- [4] Mr. A.S.A.'s family had placed an advertisement in a newspaper in India to take steps to arrange a marriage for Mr. A.S.A..
- [5] Ms. S.K.A. was living in India with her family. She had not formed an interest in any particular individual and agreed with her family that it would be alright for them to arrange a marriage. They considered a number of suitors, including some from India and Mr. A.S.A..
- [6] Mr. and Ms. S.K.A. met at the end of January 2002 and were married March 17, 2002 in India.
- [7] Mr. A.S.A. was a landed immigrant in Canada and had to make arrangements to allow Ms. S.K.A. to immigrate to Canada. He remained in India until sometime in April of 2002, when he returned to Canada. It was in November in 2002 before the immigration documents were signed and July 22, 2003, before Ms. S.K.A. landed in Canada. She was met by Mr. A.S.A. and some members of his family, as well as her uncle and her uncle's daughter. She and Mr. A.S.A. travelled to Kamloops after spending a couple of hours at one of Mr. A.S.A.'s relatives in Vancouver or Surrey.
- [8] Ms. S.K.A.'s evidence is that her expectations were high, including getting to know her new husband, finding employment and continuing with her education. She knew that Mr. A.S.A. was living with relatives, but believed that they would be finding accommodation of their own. Her evidence is that she was discouraged from seeking employment outside the home and had little opportunity to socialize in Kamloops.
- [9] Mr. A.S.A.'s evidence is that he did nothing to discourage Ms. S.K.A. from working. He says that his mother works and his sisters work, he has modern ideas and would not discourage her from pursuing employment. He recognizes that she is a well-educated, intelligent person. His evidence is that he suggested that she simply have some inner space to become settled in her new country.

[10] Ms. S.K.A.'s evidence is that although Mr. A.S.A. did not have much time for her even while they were in India, for the first 15 to 20 days in Canada, things went reasonably well. She said that after that, however, her husband became uncommunicative and would not discuss any of their problems with her. Her evidence was that she was provided with no spending money whatsoever and relied on some money that her parents had given to her when she left India. Eventually, she says that she began to assert herself more strongly, going out of the home and making friends. On approximately October 24 or 25, she and Mr. A.S.A. had a confrontation in which she says she was grabbed and dragged partially down the stairs. The next day, after he had gone to work, she said that she ran or left the home. Her evidence is that she was scared that she was living with all of his family there and they were not providing her with any support, except for a younger cousin who intervened in the confrontation. I would note that Mr. A.S.A. was charged criminally and acquitted at trial. The parties separated at that time and have not resided together since.

DIVORCE

[11] The application for the divorce is unopposed. The grounds for divorce have been proven as one year separate and apart and the divorce is granted.

DIVISION OF ASSETS

[12] The parties do not have a great number of family assets. They resided in a home owned by Mr. A.S.A.'s uncle. Mr. A.S.A. has no interest in this home and there is no evidence to suggest it is a family asset. Ms. S.K.A. did claim a lien against that home in the pleadings. Any claim she has against that home, including the claim to the Certificate of Pending Litigation, is dismissed.

[13] Mr. A.S.A. has some form of interest in a property described as an ancestral home in India. The evidence was unclear as to how that property was registered. Mr. A.S.A. said at one point that the property was registered in his name and his mother's name. He also said that he may or may not receive an interest in that property through his mother's Will. He lists a debt of approximately \$15,000.00 relating to that property. His evidence is that he took out or borrowed money against the property to meet some of the expenses of his travelling to and from India to arrange the marriage. His evidence is that he repays this debt by sending his mother \$300.00 per month and she ensures that the mortgage is paid. I have no authority or jurisdiction over the property in India, although counsel agree I could make a compensation order if I found the property to be a family asset. The evidence with regard to this asset is very limited. Even if it were determined to be a family asset, I find that I would reapportion it entirely in favour of Mr. A.S.A.. This is so especially in light of the very brief time the parties were together during their marriage, and it is clear that there was no contribution made by Ms. S.K.A. to the acquisition or maintenance of this property, therefore, any claim with regard to this property, is dismissed.

RRSP'S

- [14] Mr. A.S.A. cashed in an RRSP in January 2004, in the amount of \$4,900.00. This is disclosed on his Property and Financial Statement filed August 20, 2004. Ms. S.K.A. had obtained an ex-parte order January 5, 2004, restraining the disposition of any family assets. There is no evidence that Mr. A.S.A. was aware of the order preventing him from disposing of any of the family assets at the time the RRSP was cashed in. The only evidence of when this RRSP might have been acquired, is in Mr. A.S.A.'s Individual Income Tax Return Information Summary for the tax year 2002. This summary shows business income of \$18,430.00 and an RRSP deduction of \$4,929.00. There has been no evidence elicited as to exactly when the RRSP contribution may have been made or where the funds came from. The parties were married in March of 2002 and spent approximately two months together in India, but did not live together at any other time during that year. There is no evidence that Ms. S.K.A. contributed in any way to the acquisition of this family asset. The Family Relations Act s.58(3)(d) provides that a retirement savings plan is a family asset. Section 56 provides that if Ms. S.K.A. is entitled to an interest in that asset, it would be an undivided half interest in an asset as a tenant in common.
- [15] Section 65 would allow a reapportionment of the family asset based on fairness, including having regard to such things as duration of the marriage, the date when the property was acquired or disposed of, needs of the spouses to remain economically independent and self-sufficient or any other circumstance relating to the acquisition, preservation, maintenance, improvement or use of the property or the capacity or liabilities of a spouse. I find that the RRSP is a family asset, but find that it should be reapportioned entirely in Mr. A.S.A.'s favour because the division under s.56 would be unfair having regard to the duration of the marriage and the acquisition of the RRSP.

JEWELLERY

- [16] This is the most controversial property issue. Ms. S.K.A.'s evidence is that upon her marriage she acquired a large amount of jewellery, including bangles and chains and rings etc. Her evidence is that it is the custom of her religion that upon marriage, the bride receives a number of gifts of jewellery. She has produced photographs of herself at or shortly after the marriage which show some of the jewellery which she says she brought with her to Canada. In particular, there is one photograph, exhibit "5", which shows her with her mother-in-law. She is wearing some red plastic bracelets or bangles. Her evidence, which is uncontradicted, is that it is a tradition that upon marriage a bride wears these plastic bangles for a certain amount of time. When that time has passed, the mother-in-law removes the plastic bangles and replaces them with gold bangles. The plastic ones are then disposed of by throwing them in the river. Ms. S.K.A.'s evidence is that the photograph was taken at the time this change of bracelets occurred and the photograph shows the bracelets she received from her mother-in-law in a container on the table.

- [17] Ms. S.K.A.'s evidence is that when she was preparing to come to Canada, she took her jewellery to a jeweller and had it itemized, described and weighed. She believed she might require this sort of document for customs. Exhibit "3" is two pages on unlined paper itemizing 27 various items of jewellery. The document is handwritten and not on letterhead. There are no values shown for these items. The list shows the gross weight of each piece of jewellery and the net weight of the gold. The total weight of the gold items is 952.11 grams. The first two items are indicated to be 22 karat gold, but the quality of the gold in the other items is not specified. I note as well, that some of the other items are described as gold platinum plated bangles, for instance items 1 and 4, but the net weight is the same as the gross weight. I assume therefore, that the jeweller has included the weight of the platinum with the weight of the gold.
- [18] Some of the items of jewellery contained pearls or precious stones, and there is some description of those stones, but only their weight is given without any reference to value or quality of stones or pearls.
- [19] Exhibit "2" is a document that Ms. S.K.A. says was completed at the customs office in India on her departure. She said she was present when this document was completed and signed by the customs officer. The document states that it is "(To be used in the case of private personal property intended to be re-imported into India subsequently)". Ms. S.K.A.'s evidence is that the customs officer was shown the list of jewellery, and that he required that she produce most, if not all, of the items on the list. The customs document indicates that the total weight is 952.110 grams, which is the same as the list she says was produced by the jeweller.
- [20] Mr. A.S.A. questions the authenticity of this customs document and the document that Ms. S.K.A. says was produced by the jeweller. He acknowledges that he does not have much experience with jewellery or jewellers, but would expect that a document produced by a jeweller would be on letterhead, might be accompanied by photographs, would be typewritten and would have some estimate of value. Ms. S.K.A. explains that she was not concerned about value so much as identification. She did not expect that there would ever be any issue about the value of the items.
- [21] Mr. A.S.A. questions the authenticity of the customs document. He argues that corruption is not unknown in India, and it would be an easy matter for someone to obtain or create a false document if they wished to do so, and wished to pay for it. He has only his suspicions and the fact that he has never seen a document like this to support his allegation. There was no evidence led by him to raise a question about the authenticity of this document.
- [22] It is unrealistic to think that Ms. S.K.A. would be so sophisticated as to obtain a falsified customs document that is very official-looking, and then a very unofficial-looking list of the jewellery without any values. If she were fabricating the documents to support a claim, it would certainly be an easy matter to produce a document on letterhead from a jeweller.

- [23] Ms. S.K.A.'s evidence is that she wore and carried all of the jewellery on the list with her to Canada. When she arrived in Kamloops, she advised her husband that she had the jewellery with her. Mr. A.S.A.'s evidence is that he does not particularly pay attention to jewellery, and did not notice whether she was wearing any when she arrived in Kamloops.
- [24] Ms. S.K.A.'s evidence is that Mr. A.S.A. told her the jewellery would be better in a safety deposit box. She gave it to him and has not seen it since. Exhibit "10" is a bank record indicating a safety deposit box being opened on July 25, 2003 by Mr. A.S.A.. The record indicates the safety deposit box was again accessed on October 27, 2003 shortly after the separation. Mr. A.S.A. is the person who accessed that. The safety deposit box is further accessed on December 9, 2003 by Mr. A.S.A.. Subsequent to December of 2003, counsel, in the company of the parties, attended to inspect the safety deposit box and jewellery was not in the safety deposit box. Ms. S.K.A.'s argument is that Mr. A.S.A. took the jewellery from the safety deposit box shortly after they separated, and has hidden it somewhere or disposed of it.
- [25] Mr. A.S.A.'s evidence is that before Ms. S.K.A. came to Canada he had a room of his own in his uncle's house. He had a closet that had his personal belongings, including some papers, such as his passport, social insurance number, health care card, identity card and a small amount of Indian currency, worth approximately \$200.00 Canadian. He said that when Ms. S.K.A. arrived she took his clothing from the closet and put it into a closet that his uncle was using, and that she put her own belongings into the closet. He decided for the safety of these cards and passport etc., that he should open a safety deposit box. His evidence is that he had no fear that anyone in the household may interfere with his personal property or his private spaces, nor does he indicate that he feared that Ms. S.K.A. would do so.
- [26] His evidence is that in October he accessed the safety deposit box in order to obtain his passport. He was planning to travel to the United States to attend a conference. He was unable to attend the conference because he was advised he would need a travel visa. He was a landed immigrant, not a citizen of Canada and, therefore, his passport would not be sufficient to travel to the United States. He said that he accessed the safety deposit box in December to get his social insurance number.
- [27] Ms. S.K.A. argues that his explanation is simply not believable.
- [28] Ms. S.K.A.'s evidence is that she kept some of her daily-wear jewellery. It did not go to the safety deposit box. She said it was in a small bag in her room. She said that when she came to recover some of her belongings, after the separation, that somebody had gone through them and that this bag was missing. Mr. A.S.A. argues that when she left, he was absent, and that she packed a number of things to take with her. He argues it is simply unrealistic to think that she would not have taken her daily-wear jewellery because it was easy to pack or wear.

- [29] The safety deposit box was approximately one and a half inches deep, six inches wide and eleven and a half inches long. This size is simply an estimate. Mr. A.S.A. suggested the jewellery on the list would not fit into such a box. Ms. S.K.A.'s evidence is that the jewellery was contained in two jute bags that she gave to Mr. A.S.A., and that it would fit into such a box. Looking at the photographs and the descriptions, I find it is more likely than not the jewellery would fit into such a box.
- [30] Mr. and Ms. S.K.A. were both cross-examined about their version of events. Neither one of them was seriously shaken. They both appeared to give their evidence in a straightforward fashion. Ms. S.K.A.'s evidence indicated that she was looking forward to coming to Canada to live with her husband. It was suggested to her the reason for the marriage was simply to come to Canada. However, I accept her evidence that she came to Canada because that is where her husband was, and that was not the reason their family was seeking to find a spouse for her. Mr. A.S.A. is highly suspicious of Ms. S.K.A. and blames her for leaving the marriage after spending only three months in Canada. Mr. A.S.A. seemed more willing to speculate and make allegations of dishonesty on Ms. S.K.A.'s part, without any foundation.
- [31] The decisions on credibility are often difficult to make. However, these are decisions the courts are called upon to make every day. Some guidance is provided by court decisions on the point as follows:

Faryna v. Chorny, [1952] 2 D.L.R. 354 at 356 (B.C.C.A.):

On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility

Vanderbyl v. I.C.B.C. (1993), 79 B.C.L.R. (2d) 156 at 166 (S.C.):

In a case where the plaintiff is the only witness giving direct evidence, a finding of credibility must not depend solely on a trial judge's assessment of whether the plaintiff gives the appearance of telling the truth. That assessment is only one of the elements to be considered and it must be tested against the preponderance of probabilities. As O'Halloran J.A. said [in Faryna v. Chorny at p. 357], "the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

White v. R. (1947), 89 C.C.C. 148 at 151 (S.C.C.):

The issue of credibility is one of fact and cannot be determined by following a set of rules that it is suggested have the force of law and in so far as the language of Mr. Justice Beck [in R. v. Covert (1916), 28 C.C.C. 25 (Alta. C.A.)] may be so construed, it cannot be supported upon the authorities.

- [32] Mr. A.S.A. acknowledges that Ms. S.K.A. was wearing a good deal of jewellery at the wedding, and acknowledges that the photographs accurately depict the jewellery she was wearing. However, he says he has no knowledge of it coming to Canada. I accept Ms. S.K.A.'s evidence as to the customs of her religion, and that it is customary to receive jewellery from your new in-laws, as well as for a bride to receive jewellery from the new in-laws as well as her own family upon marriage. Some of this jewellery is handed down from generation to generation. The photographs clearly show that she was wearing a substantial amount of jewellery, and I accept her evidence that it is an important part of her culture.
- [33] I accept her evidence that the customs documents and the lists that she has presented are authentic. Mr. A.S.A. really has no idea about their authenticity, but merely suggests suspicion and argument. If Ms. S.K.A. was attempting to prepare false documents in order to convince the court of the value of the jewellery, certainly the list from the jeweller would have dealt with the value and been more formal looking.
- [34] It is unlikely that Ms. S.K.A. would not have brought her jewellery with her to Canada, which was to be her new home.
- [35] Her explanation that Mr. A.S.A. was concerned about the safety of the jewellery in the home is certainly consistent with commonsense and experience. It would be logical to have valuable jewellery placed in a safety deposit box and protected against the possibilities of break and enter and theft and fire.
- [36] Ms. S.K.A.'s explanation that he suddenly required a safety deposit box to place his passport and some other documents in, and that he required documents shortly after he and Ms. S.K.A. separated, is not as believable as her explanation that she gave him the jewellery, and that is why he obtained the safety deposit box shortly after she arrived in Canada. His explanation that he simply required his passport and, therefore, accessed the safety deposit box two days after they separated, is too much of a coincidence to accept.
- [37] The burden is on Ms. S.K.A. to prove that the jewellery existed, that it was in the possession of Mr. A.S.A. and that it has not been returned to her. The burden is to prove that on the balance of probabilities. The balance of probabilities simply means that something is more likely than not. Based on the evidence that I have heard, I find that it is more likely than not that Ms. S.K.A. did give her jewellery, other than the daily-wear jewellery, to Mr. A.S.A., and that he placed it in the safety deposit box. It is also more likely than not that he removed it from that safety deposit box shortly after their separation, and has simply failed to disclose it.
- [38] The daily-wear jewellery is more difficult. Mr. A.S.A. makes a good point that it is unlikely that Ms. S.K.A. would have left her daily-wear jewellery behind when she left the home taking with her some of her belongings. I note, however, she was not seriously cross-examined on this point, and it was only in Mr. A.S.A.'s evidence that it was suggested she had taken some of her luggage the day she left. Ms. S.K.A.'s evidence is that she was scared the day she left. She said when she left she did not even have her basic clothing, and she had no

job. Her evidence is that when she eventually returned in November to obtain her belongings with the assistance of the R.C.M.P., her daily-wear jewellery, which had been in a bag in her suitcase, was missing.

- [39] Considering all of the circumstances, I find on the balance of probabilities that the jewellery was present in the home when the parties separated, and that it has not been returned to Ms. S.K.A..
- [40] The value of the jewellery is difficult to determine. Ms. S.K.A. did not have the jewellery assessed before coming to Canada. I accept that she did have it itemized and weighed. I find the jewellery is not in her possession since the separation and, therefore, extremely difficult for her to obtain evidence as to its value.
- [41] The net weight of the gold appears to be 952.110 grams. Counsel have calculated this to be the equivalent of 30.467 Troy ounces.
- [42] Counsel have agreed that the price of pure gold is \$533.86 per Troy ounce. If this were pure gold, it would be worth approximately \$15,000.00. However, that is not the end of it. Clearly, the gold in this jewellery was not pure gold. Some of it is described as 22 carat gold, but others are not described in any detail. Some of the weights as well include platinum and some of the items are described as gold platinum plated.
- [43] With regard to the precious gems and the pearls, they are described by number and weight, but there is no indication as to quality or value. For instance, there are three sets of pearls, and the weight of the pearls is shown as 50 grams. There is a zircon pearl cluster set, and again the pearls are shown as 22 grams and the zircon at 6 grams. There is a ruby set indicating three pieces and the rubies are 18 grams. There is another ruby crystal set with three pieces and the rubies are shown as being 23 grams. There is a pearl chain and earring set consisting of three pieces and the pearls are said to weigh 18.5 grams. There is a coral diamond set, and the coral weighs 4.5 grams and the diamond .8 grams. There are three pairs of earrings and one pendant; the pearls are 24 grams and the rubies 4.5 grams. There is a pair of earrings simply described as two, and the stones are .52 grams. There is no indication as to what type of stones they are. There is a description of three diamond rings, two Pain diamond earrings and a diamond and pearl set. There is a gross weight for these items, but no description to the number or quality of the stones.
- [44] Simply multiplying the weight of the gold by its value would also ignore the value of the work that went into creating the jewellery from the gold.
- [45] This makes determination of the value extremely difficult. However, I have found that the gold was in the possession of Mr. A.S.A., and the difficulty in determining its value is caused by the fact that he has not produced it. The best I can do is make some form of assessment as to the value. Gold which is 24 carat is considered pure gold. 18 carat gold is approximately 75% gold. If the jewellery on average 18 carat gold, its value would be approximately \$11,250.00. Some of the gold is described as plated and, therefore, that may be generous.

However, considering that the gem stones have not been valued, the value of the jewellery may exceed this. It is difficult to say by how much.

[46] I find that these items were in the possession of Mr. A.S.A.. I find that they have a value of \$15,000.00. I order that Mr. A.S.A. return these items to Ms. S.K.A. within ten days of the date of this order. He may do so by delivering them to Ms. S.K.A.'s counsel, through his own counsel. He should document what he returns so there is no further argument. Failing the return of these items, Mr. A.S.A. will pay to Ms. S.K.A. the sum of \$15,000.00.

[47] Mr. A.S.A. argued that it was possible that these might be family assets. However, I find that they were the personal property of Ms. S.K.A.. Certainly, they were gifts upon their wedding from her family and some from his family. However, I find they were intended to be gifts to her.

SPOUSAL SUPPORT:

[48] Ms. S.K.A. seeks spousal support under the Divorce Act. The Divorce Act provides as follows:

15.2(4)

Factors In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse including

- (a) the length of time the spouse cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal

Misconduct (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of

Spousal

Support order (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[49] Ms. S.K.A. also refers to the sponsorship agreement which was signed by herself and Mr. A.S.A., in order to allow Ms. S.K.A. to immigrate to Canada. The date on which Mr. A.S.A.'s signature appears to have been placed is August 2, 2002. Ms. S.K.A.'s signature appears to have been placed there September 3, 2002. Her evidence was that it was later than that, and that she was told by Mr. A.S.A. to backdate it. That, however, if not significant.

[50] The agreement provides in part:

This agreement lists the obligations and responsibilities that fall onto the sponsor and, if applicable, the co-signer as well as unto the person being sponsored and his or her family members.

[51] The sponsor is obliged and promises to provide the basic requirements for his spouse for three years following the day in which they become a permanent resident.

[52] The obligations of the person being sponsored are also spelled out, and they promise to make every reasonable effort to provide for their own basic requirements.

[53] The basic requirements are defined to include food, shelter, clothing, fuel, utilities, household supplies, personal requirements and health care not provided by public health, including dental care and eye care. The agreement also makes it clear that the undertaking is unconditional and is not terminated upon divorce, separation or relationship breakdown.

[54] Mr. A.S.A. also signed an Application to Sponsor and Undertaking which repeats his obligations. It also makes it clear that if he breaches his obligations and the government makes a payment that he has promised to repay that. He acknowledges that any social assistance paid to the sponsored person becomes a debt owed by him to Canada or the province concerned.

[55] The plaintiff referred to three cases that refer to sponsorship agreements. They are:

Achari v. Samy, 2000 BCSC 1211

Segal v. Qu, [2001] O.J. No. 2646

Anshasi v. Ramlawi, [2004] O.J. No. 1978

[56] The Ontario cases refer to the Achari case and seem to support the principle that the sponsorship or undertaking agreement is a factor to be considered, or something that cannot be ignored when considering an application for support under the Divorce Act. The sponsorship agreement does not affect the length of time over which support would be payable, but the Achari case says:

The sponsorship agreement must be considered together with the general principles applicable to spousal maintenance. In the circumstances the provisions of both the Divorce Act and the Family Relations Act are nevertheless applicable. (¶13)

[57] The application in this case is pursuant to the Divorce Act. In this case, I find that the sponsorship agreement does not make a great difference. Mr. A.S.A. may find that he has obligations to Canada or a province of Canada if Ms. S.K.A. is unable to support herself and receives social assistance. However, in this case, I am satisfied that the principles of the Divorce Act adequately deal with the issues of maintenance. The real purpose of the sponsorship agreement is not to determine the rights between Mr. and Ms. S.K.A., but to determine the rights as it relates to each of them and the governments which may be called upon to support Ms. S.K.A..

[58] Ms. S.K.A. was approximately 25 years of age at the time of the marriage. She had a Bachelor of Science degree from India and a Masters degree in journalism from a university in India. She has had those degrees evaluated by an international credit evaluation service in British Columbia. The Bachelor degree has been evaluated as follows:

The completion of the Punjab University Bachelor of Science (general) is considered generally comparable to the completion of the first three years of undergraduate study (three year bachelor degree) at a recognized post-secondary institution in British Columbia and elsewhere in Canada.

[59] The Masters degree has been evaluated as follows:

The first year of study toward the Punjab agricultural university, Master of journalism is considered generally comparable to the completion of a four year Bachelor degree at a recognized post-secondary institution in British Columbia and elsewhere in Canada. The completion of the Punjab agricultural Master of journalism is considered generally comparable to the completion of one year of Master level study (1 year Masters degree) at a recognized post-secondary institution in British Columbia and elsewhere in Canada.

[60] It would appear then that Ms. S.K.A. has the equivalent of a Bachelor's degree and a Master's degree in Canada. Ms. S.K.A. was working as a journalist in India before her marriage. She said that after her marriage, out of respect for her new in-laws, she did not work. She says that she was told that she did not need to work. She did, however, study French for one month because she felt it would be useful in her new home. It is clear that it was always Ms. S.K.A.'s wish to pursue employment and advance her education when she arrived in Canada.

- [61] Her evidence is that she had little opportunity to do so before she and Mr. A.S.A. separated. Subsequent to her separation from Mr. A.S.A., she did some volunteer work at a Robins Donut shop in Kamloops. This shop was owned by friends of hers. She did so in order to become familiar with the operations of a cash register and dealing with customers. She did obtain part-time work at a Dairy Queen. Her evidence is that due to feeling depressed, she returned to visit her family in India in February of 2004. She was there for approximately three months. Her brother sent her the money and she attended his wedding in March. She returned to Kamloops and continued to work part-time. She did receive social assistance for at least two months. She moved to Calgary, Alberta in August of 2004, after the criminal charges against Mr. A.S.A. were dismissed. She said she had concerns about continuing to reside in Kamloops, but I am satisfied that she desired to move to a larger centre to pursue employment in any event. Since moving to Calgary, she has worked part-time at a Tim Hortons outlet, and is presently working at The Bay as a customer service representative. She is presently paid \$8.25 an hour. She says this will be seasonal work. She is earning, therefore, approximately \$100.00 to \$140.00 per week, based on fifteen to twenty hours of work per week.
- [62] Her plans are to return to university. She requires approximately two more courses before she can enter into a Masters program in physiotherapy or occupational therapy; that is her desire. The Masters program is a two-year program. She estimates the cost of books and tuition to be \$10,000.00 per year. The cost for the two courses she needs would certainly be less than that.
- [63] She is presently sharing accommodation with a cousin. She pays the cousin \$250.00 per month for rent. She estimates that her expenses, if she were on her own, would be:

Rent

\$ 600.00

Heat/Electricity

\$ 50.00

Telephone

\$ 50.00

Food

\$ 300.00

Furniture

\$ 20.00

Bus

\$ 120.00

Clothing

\$ 100.00

Hair cuts

\$ 20.00

Cosmetics

\$ 20.00

Entertainment

\$ 20.00

TOTAL:

\$1,300.00

There is no amount for education at this time.

[64] Ms. S.K.A. is certainly intelligent, healthy, well-spoken and capable. The only detriment she has to obtaining employment is the fact that she has moved from India to Canada, and has been out of the job market after her marriage in March of 2002. However, she is well-able, within a reasonably short period of time, to become employed and self-sufficient.

[65] Mr. A.S.A. works for his uncle. The exact description of his position, either commission sales person or sub-contractor, is not important. His uncle has a business selling and installing accessories on new and used vehicles to car dealers. Mr. A.S.A. attends at dealerships in Kamloops, Salmon Arm, Vernon, Williams Lake and Quesnel. He enjoys the work, meeting with people and says that he is good at it.

[66] He estimates his income to be \$18,000.00 per year. I do note, however, that his income tax return shows his income in 2003 to be \$24,400.00. He says that his income varies depending on the sales. He has provided a letter from his uncle that indicates that his income up to and including October of 2004 was \$11,900.00. This would work out to \$14,280.00 per year. His counsel suggests that an appropriate figure would be \$18,000.00 as a reasonable average for the purposes of calculating what his support obligations would be.

[67] Mr. A.S.A. is well-educated and has a Bachelor's degree from India. He also has a commercial flying licence from India. He does not fly because two of his brothers were killed in flying accidents, and his family does not wish him to fly.

[68] Mr. A.S.A.'s means are not great, although his expenses are moderated by the fact that he resides with his uncles. He estimates his expenses at about \$1,657.67 per month, or a total of \$19,892.04 per annum. These consist of:

Payroll deductions

\$ 216.67

Utilities

\$ 110.00

Food

\$ 200.00

Meals outside the home

\$ 75.00

Gas and oil

\$ 80.00

Charitable donations

\$ 20.00

MSP premiums

\$ 46.00

Medications

\$ 200.00

Clothing

\$ 150.00

Hair care

\$ 50.00

Toiletries

\$ 50.00

Life insurance

\$ 60.00

Alcohol and tobacco

\$ 100.00

Debt payment to mother in India

\$ 300.00

TOTAL:

\$1,657.67

[69] Mr. A.S.A.'s position is that he would like to argue that there should be no spousal support, but acknowledges that Ms. S.K.A. has suffered some economic disadvantage as a result of the marriage and its dissolution, particularly as a result of moving to Canada. He argues, however, the amount of support should be modest and for a time limit.

[70] Ms. S.K.A. argues that a reasonable amount of support would be \$500.00 per month, as was ordered in an interim order, and for a period of one year. Mr. A.S.A. says that \$200.00 to \$300.00 per month would be more reasonable, and considering that support has been ordered for three months already, only for a further six months.

I am satisfied that Ms. S.K.A. should be able to do more to support herself than she has to this point in time. She was originally upset and depressed by the dissolution of her marriage and the impact it might have on her family. However, it would appear that she has fully recovered.

[71] Some of these expenses are probably a little high, including the clothing, hair care, toiletries and cosmetics. The alcohol and tobacco are a discretionary expense. I am satisfied that he does not have a great deal of extra income, but can afford to pay \$300.00 per month spousal support.

[72] I fix the spousal support at \$300.00 per month, commencing December 1, 2004 and continuing on the 1st of each and every month thereafter for six months.

COSTS

[73] Both counsel agree that in this case each party should bear their own costs. Therefore, I order that each party bear their own costs.

"R.E. Powers, J."

The Honourable Mr. Justice R.E. Powers

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/04/15/2004bcsc1566.html>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-k-a-v-a-s-a-2004>

Prepared on 28 October 2026 · Esheria