

CANADA / JUDGMENT

Sekhon v. Sekhon

2011 BCSC 516

COURT

Supreme Court of British Columbia

DECIDED

26 April 2011

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2011 BCSC 516 Sekhon v. Sekhon IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sekhon v. Sekhon, 2011 BCSC 516 Date: 20110426 Docket: E101702 Registry: Vancouver Between: Jatinder Kaur Sekhon Claimant And Kuldeep Singh Sekhon, Jagdev Singh Sekhon and Balbir Singh Sekhon Respondent Before: The Honourable Mr. Justice R. Punnnett Reasons for Judgment re: Costs Counsel for the Claimant: L. Spencer Counsel for the Respondent Kuldeep S. Sekhon: K.K. Sandhu Place and Date of Trial/Hearing: Vancouver, B.C. January 7, 2011 Written submissions of the Claimant received February 3, 2011 Written submissions of the Respondent received February 11, 2011 Place and Date of Judgment: Vancouver, B.C. April 26, 2011

- [1] This is an application by the claimant wife for an order of costs arising from her application for interim spousal support, heard on January 7, 2011.
- [2] The parties are husband and wife. They married on November 16, 1998 and separated on April 7, 2010 nearly 11 ½ years later. There are no children of the marriage. They were unable to agree on appropriate interim spousal maintenance which resulted in the wife bringing her application. The key issues in this dispute were the true income of the husband, allegations of undeclared income by the husband and quantum of interim spousal maintenance.
- [3] During the course of the hearing it became clear that the husband's tax returns in fact did not accurately reflect his true income. The husband conceded this point and through his counsel asserted that in future he would ensure all of his income is declared and if necessary would make the appropriate re-filings. He blamed his accountant and his wife for the lack of accurate reporting.
- [4] I delivered oral reasons on January 14, 2011. I found that the wife was entitled to interim spousal maintenance of \$876 per month. I further found that the husband's tax returns were inaccurate. However, I also determined that the figures suggested to be accurate during the hearing were not correct. I held that the husband's actual income was still substantially greater than he acknowledged. Income was therefore imputed to the husband.

- [5] The parties indicated that they wished to address the issue of costs if they were unable to agree on costs and in that event were given leave to file written submissions on costs. Those submissions have now been received. Positions of the Parties
- [6] The wife seeks costs on the basis that interim spousal maintenance was the only issue on the application. She claims costs because her interim application was successful, there were no offers to settle the application by either side and that the normal rule for costs should apply. She seeks costs for a full day consisting of a half day on the date of hearing and a half day for the oral delivery of reasons for judgment.
- [7] The husband submits that costs should not be awarded because the parties were, prior to the application, in discussions for a global settlement and there was an offer from the claimant that was outstanding. He suggests that the spirit of Rule 11-1(5)(a) of the Supreme Court Family Rules, supports an order that no costs should be ordered. He also asserts that the time estimated by the claimant was inaccurate resulting in the matter being removed from the chambers list and remitted to another court causing unnecessary delay. He further argues that the hearing took approximately 1.2 hours and as a result costs for a full half day are not justified. Finally, he submits that attendance by counsel at court for hearing of the reasons was not necessary given leave to appear by phone had been granted. Law
- [8] Costs in family matters are now governed by Rule 16-1. However, the principles that are applicable remain the same as those that have been developed generally in civil litigation. The principle that costs follow the event remains, subject to the discretion of the court to order otherwise.
- [9] Rule 16-1(7) states: Subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders.
- [10] How the court's discretion is to be exercised was discussed in *Gold v Gold* (1993), 82 B.C.L.R. (2d) 180 (C.A.). The Court of Appeal emphasized that the discretion is broad and open to a number of factors. The court listed examples at para. 20 of their decision:
20. The question, then, is: when should the Court order otherwise? With respect, when the court should order otherwise is a matter of discretion, to be exercised judicially by the trial judge, as directed by the Rules of Court. To lay down any strict guidelines or even to attempt to give exhaustive examples is not, I think, helpful because the facts and issues in each family law case vary so greatly. Factors such as hardship, earning capacity, the purpose of the particular award, the conduct of the parties in the litigation, and the importance of not upsetting the balance achieved by the award itself are all matters which a trial judge, quite properly, may be asked to take into account. Assessing the importance of such factors within the context of a particular case, however, is a matter best left for determination by the trial judge. Discussion

- [11] Substantial success can, in certain cases, require a careful balancing of the claims made and the outcome of the hearing or trial. This is not such a case. This was a simple application for interim spousal maintenance. The only complication arose from the respondent payor's belatedly admitted inaccurate employment information.
- [12] The wife was successful not only in establishing her entitlement to interim spousal maintenance but also in her claim that the husband was not reporting his income accurately to either Revenue Canada or the Court. Therefore, unless the court is convinced to exercise its discretion to order otherwise, she is entitled to her costs. As noted, the husband submits that there are such reasons.
- [13] The fact that there was a global offer outstanding does not assist the husband as the application related only to interim spousal maintenance and there was no offer relating to such. The underestimating of time by the wife's counsel may have delayed hearing of the matter, but it was still dealt with on the day set. Given the demands on chambers time it is not unusual for counsel to have to spend time at court waiting to be heard.
- [14] The submission relating to the time taken runs counter to the provisions of Appendix B relating to how the length of hearings is accounted for. The tariff deals in half days as the smallest time increment defined as 2.5 hours or less. In addition the units per day are fixed and not subject to a minimum or maximum range. This is not a case where a party has had substantial success and as a result the court may award only a portion of the successful party's costs. The wife was wholly successful in her application.
- [15] With respect to attending for oral reasons, in person attendance, as opposed to attendance by telephone, is the norm rather than the exception. The latter is usually done to accommodate counsel and only at their request. In my view attending for oral reasons when they could be dealt with by phone does not justify a denial of costs for such a hearing.
- [16] As a result the claimant is entitled to her costs at Scale B to be taxed on the basis of two half day attendances. "Punnett J."

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