

CANADA / JUDGMENT

Singh v. Chandi

2024 BCSC 771

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Supreme Court of British Columbia

DECIDED

7 May 2024

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2024 BCSC 771 Singh v. Chandi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singh v. Chandi,

2024 BCSC 771

Date: 20240507

Docket: E60422

Registry: New Westminster

Between:

Simranjit Singh

Claimant

And

Amanjit Chandi also known as Amanjit Kaur Chandi

Respondent

Before: The Honourable Justice Ahmad

Reasons for Judgment

Counsel for the Claimant:

P.S. Sahota

Counsel for Respondent:

M. Chhibber

Place and Date of Trial:

Written submissions of the Claimant:

Written response submissions of the Respondent:

Written reply submissions of the Claimant:

New Westminster, B.C.

August 29 - 31, 2022

September 1 - 2, 2022

April 19 - 21, 2023

June 6, 2023

August 31, 2023

September 22, 2023

October 3, 2023

Place and Date of Judgment:

New Westminster, B.C.

May 7, 2024

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I. Introduction

- [1] The claimant, Simranjit Singh and the respondent, Amanjit Kaur Chandi were married on February 2, 2012 but only began cohabiting in February 2013. They separated on August 12, 2016.
- [2] The parties have one child, A. who was born in June 2014. The parenting issues, including child support, are the subject of orders made by the Provincial Court. In addition, during this trial, the parties consented to an order regarding the amount of arrears of child support owing by Mr. Singh to Ms. Chandi for 2020 and 2021, as well as for child support and the payment of s. 7 expenses on a going-forward basis. They also agreed to an order for divorce, which became effective on the 31st day from the date of that order.
- [3] The only remaining issue is the division of family property and family debt. At the heart of that dispute is the parties' entitlement to a share of the significant rise in the market value of the family home during the marriage and, in particular, after separation.

II. Credibility and Reliability

- [4] Mr. Singh and Ms. Chandi were the only witnesses to give evidence at trial.
- [5] Each of the parties assert that the other's evidence was not credible. While not limited, for the most part, both question the scope of the other's financial disclosure, both refer to instances in which the other party's evidence was inconsistent with the financial documents that were produced, and both assert that the other party's evidence was evasive or that their memories were selective in their own favour.
- [6] In assessing credibility, I rely on the principles as set out in the often-cited passages of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at 357, and of Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296. Of note, as set out in *Faryna*:
- []. In short, the real test of the truth of the story of a witness in such a case 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. []
- [7] Related to, but distinct from, credibility is reliability. Credibility concerns the veracity of a witness; reliability involves the accuracy of the witness's testimony. Accuracy engages consideration of the ability of the witness to observe, recall and recount what occurred: *R. v. Khan*, 2015 BCCA 320 at para. 44.

- [8] In this case, where relevant to a particular finding, I will address the credibility and reliability of the parties directly. More generally, however, there were some concerns regarding the evidence of the parties, both of whom appeared somewhat evasive and selective in their memories and disclosure in respect of some aspects, but not all, of the evidence.
- [9] For example, it was clear from her evidence that Ms. Chandi is a very capable and determined individual who carefully planned her finances. She was able to give focused and concise evidence regarding that planning and in respect of the "ins and outs" from her various accounts. However, that was not always the case.
- [10] As the most notable example, on direct examination, Ms. Chandi testified that she made regular monthly contributions of \$200 to her RSP account. However, on cross-examination, her 2013 tax return indicating that she contributed in excess of \$8,000 to her RSP account was shown to her. On seeing the tax return, she corrected her evidence to say that she contributed \$200 bi-weekly, not monthly, and that she also deposited excess overtime income to the RSP account.
- [11] That change in her evidence was notable in that her bank account statements are consistent with transfers of \$200 to her RSP. None of her bank statements appear to indicate transfers to an RSP account in excess of that amount. Moreover, none of the financial statements filed in the action list her RSP accounts or their funds.
- [12] In another example, Ms. Chandi testified that she received bi-weekly payments of \$600 as insurance proceeds in respect of a 2019 flood in her home. When challenged on the fact that those funds did not appear on any bank statement disclosed in the action, Ms. Chandi conceded that the insurance proceeds were deposited in an account she shared with her mother. She did not produce any bank statements for that account.
- [13] Both of the above-noted examples do give rise to some concern regarding Ms. Chandi's evidence and the extent of her disclosure. However, I am of the view that those issues relate more to the reliability of her evidence, rather than to any attempt on her part to be untruthful as Mr. Singh suggests.
- [14] First, despite the issues regarding the RSP accounts, Ms. Chandi did disclose the statements for her RSP accounts, leaving no uncertainty as to their existence or the balance in those accounts. Moreover, there was no suggestion, nor was it even put to Ms. Chandi, that the joint account she kept with her mother existed on the date of separation. The fact that the account was used in 2019, well after the separation in 2016, is consistent with the possibility that it did not.
- [15] Second, I do not accept Mr. Singh's argument that these lapses in Ms. Chandi's evidence suggest that she has monies or other accounts that she has not disclosed. Again, while her evidence was somewhat incomplete, there is simply no evidence to suggest where the undisclosed source of funds would originate. As I will set out in more detail below, when she

was not employed, she was either at home caring for A. or unable to work due to injury. In those circumstances, the theory that she had some source of undisclosed income or funds simply is not in harmony with the preponderance of the probabilities which a practical and informed person would recognize as reasonable.

- [16] Like Ms. Chandi, there were also issues with Mr. Singh's evidence, most notably relating to the candour with which he disclosed his transfers of joint funds to India during the marriage. Another issue arose regarding what Ms. Chandi alleges is his ownership interest in properties in India. I discuss the latter issue in more detail below.
- [17] Mr. Singh's evidence regarding the former was both evasive and misleading. In direct examination, Mr. Singh outrightly denied transferring any money from the parties' joint account to his family in India, stating he had "no idea" about specific transfers that were made through the money transfer service provider, "Moneytree". When asked about whether he transferred monies to India on cross-examination, he responded that he did, but "not on a regular basis". He suggested that the transfers were made on occasions such as birthdays and for clothes when needed. When pressed further he seemed to change tack altogether, alleging that Ms. Chandi transferred the monies to obtain dresses for herself, her family and friends, or to pay general expenses.
- [18] None of those versions of his evidence was consistent with the bank statements regarding those withdrawals and transfers.
- [19] The bank statements disclose:
- a) In 2012, a year prior to Mr. Singh's arrival in Canada, Ms. Chandi's cash withdrawals totalled \$409 for the entire year. There were no transfers through money transfer service providers such as Moneytree;
 - b) As soon as Mr. Singh arrived in Canada in January 2013, cash withdrawals from the parties' joint account increased and transfers through Moneytree, and subsequently Western Union and Remitly, commenced and became more frequent over time;
 - c) After separation, Ms. Chandi's bank statements do not disclose any cash withdrawals or transfers through money transfer service providers. Mr. Singh's statements, on the other hand, disclose that in the period from August 11, 2016 to August 11, 2017, he transferred \$6,200 using Remitly, one of the money transfer service providers through which money had been previously transferred from the parties' joint account.
- [20] Even accepting that the passage of time may have made it difficult for Mr. Singh to recall specific transactions, in light of the information derived from the bank statements, his oral evidence regarding the transfers is not credible. While I am unable to conclude how much, I accept that he transferred funds to his family in India from the parties' joint account during the marriage.

- [21] While I have some concerns with a portion of both parties' evidence, overall, Ms. Chandi presented as a more thoughtful and engaged witness, and relatively speaking, more consistent with the documentary record. By contrast, much (but not all) of Mr. Singh's evidence was combative and often vague. That is particularly true with respect to the events surrounding the separation.
- [22] Where the parties' evidence conflicts, I have generally preferred Ms. Chandi's evidence.

III. Background

- [23] I have considered all of the evidence, including the oral evidence of the parties and the documentary evidence, before me. However, in these reasons, I do not purport to canvass all the details of evidence that was advanced, except as they specially relate to an issue in dispute. A summary of the key points of the evidence is set out below.

A. The Parties and the Marriage

- [24] Ms. Chandi first moved to British Columbia from India in December 2002 and started working at various jobs including at a greenhouse and as a cashier, sometimes working more than one job at a time. With her employment, she was able to maintain a sufficient level of income to sponsor her parents, brother, and sister to come to Canada from India in June 2008.
- [25] In June 2009, Ms. Chandi purchased a townhouse located at 113-33708 King Road, Abbotsford, B.C. for \$163,000, by taking out a mortgage for approximately \$156,000. That townhouse eventually became the family home in which she and Mr. Singh resided during the marriage.
- [26] Prior to their marriage, Mr. Singh had been living in India where he was a pharmacist working in his family's business.
- [27] The parties married in an arranged marriage in India on February 2, 2012. Prior to their marriage, they did not know each other. About a month after the marriage, Ms. Chandi returned to Canada where she continued to reside at the townhouse with her parents, brother, and sister. In January 2013, almost a year after the marriage, Ms. Chandi's family moved out when Mr. Singh arrived in Canada and moved into the townhouse (the "Family Home") with Ms. Chandi.
- [28] Their daughter, A., was born in June 2014.

B. Finances During the Marriage

- [29] Mr. Singh commenced employment within months of his arrival in Canada. Like Ms. Chandi, he also worked more than one job and often for long hours. Ms. Chandi continued to be employed until a month before A.'s birth in June 2014, at which time she took a one-year maternity leave. She eventually left the paid workforce in October 2015.

- [30] Prior to the marriage, Ms. Chandi had opened several savings accounts, including an account at TD Canada. After Mr. Singh arrived in Canada, the parties maintained that account as their joint bank account. Prior to separation, both parties deposited their income, including employment income, employment insurance, and other benefits, into this joint account and all household and general living expenses, including the mortgage and strata fees, were paid from the joint account.
- [31] During the marriage, however, Ms. Chandi made regular transfers of amounts ranging between \$200 to \$600 from the joint account to an account held at the Prospera Credit Union in her name. She testified, and the bank records disclose, that she also transferred funds from the Prospera Credit Union account back to the joint account when the funds in the joint account were low.

C. The Separation

- [32] On August 12, 2016, Mr. Singh left for work in the evening. He did not return home, he said because "[he] wanted a break" and that he was "kind of depressed".
- [33] A. was two years old at the time.
- [34] Having been unable to locate Mr. Singh, Ms. Chandi filed a missing person's report with the police, who located him in Winnipeg. Apparently having spoken to Mr. Singh, the police told Ms. Chandi that he had gone there for a "two-week break". Mr. Singh did not return to British Columbia for two years. During those two years, he did not contact Ms. Chandi.

D. The Parties' Financial Status After Separation

General

- [35] There is no dispute that during the marriage, the monies in the parties' joint account were often barely enough to cover the family expenses.
- [36] In the week prior to leaving for Winnipeg, Mr. Singh withdrew \$4,500 from the joint account, leaving a balance of approximately \$742. For the two years that he was in Winnipeg, he shared a basement suite for which he paid rent of \$600. He was able to secure employment with a trucking company and earned approximately \$43,500 in 2017 and \$40,000 in 2018.
- [37] During his time in Winnipeg, Mr. Singh made no arrangements for A.'s care, in the form of financial assistance or otherwise, nor did he make any contributions to general household expenses, including the mortgage or other expenses relating to the Family Home.

- [38] At the time of separation, Ms. Chandi was suffering from a knee injury which made it difficult for her to work. As such, she was not earning any significant amounts of employment income. On learning of Mr. Singh's withdrawal from the joint account, she withdrew almost \$7,000 from her RSP account and borrowed \$1,000 from a friend to cover expenses.
- [39] In 2017 and 2018, Ms. Chandi had an income of \$20,853 and \$22,961, respectively in the form of employment income, employment insurance, and other benefits.

Application for child and spousal support

- [40] In September 2016, Ms. Chandi filed an application in the Provincial Court of British Columbia for various orders, including for child and spousal support. In October 2017, Ms. Chandi obtained orders granting sole guardianship and all parental responsibilities to Ms. Chandi. The orders required Mr. Singh to pay child and spousal support in the amounts of \$507 and \$218, respectively.
- [41] Mr. Singh denied being aware of the application until July 2017 and says that he only became aware of the support order around July 2018. At that time, he was in arrears of child support payments of approximately \$25,000.
- [42] Mr. Singh testified that on hearing of the arrears, and Family Maintenance Enforcement Program's involvement in collecting these arrears, he attended a lawyer's office in Winnipeg where he was advised that he could not commence family litigation in Winnipeg. Only then did Mr. Singh return to British Columbia.
- [43] At a family case conference conducted on July 12, 2019, Mr. Singh's obligation to pay spousal support was terminated and arrears of spousal support were cancelled. However, he remained in arrears of child support for \$11,316. An order was made regarding the payment of those arrears. In March 2020, he applied to set aside the order for child support, while at the same time seeking guardianship, parental responsibilities and parenting time with A. He withdrew that application in May 2021.
- [44] Mr. Singh has paid child support, including on arrears, since 2019. However, as of the trial date, he remained in arrears of approximately \$1,500. He continues to make payments on those arrears.

2016 and 2019 expenses relating to the Family Home

- [45] In addition to the issue surrounding child support, Ms. Chandi faced other financial setbacks after separation, including expenses in relation to the Family Home. An expense of \$4,973.25 was incurred around the separation date because Ms. Chandi had to pay their proportionate share of the strata's costs for pipe replacement.

- [46] Given her financial circumstances, Ms. Chandi asked the strata that she be able to pay off the expense over time. The strata refused that request. Instead, it threatened to file a lien against the Family Home if the payment was not received.
- [47] Given the strata's position, Ms. Chandi assumed a line of credit (the "Pipe Replacement Line of Credit") from which she was able to pay the expense. In order to obtain that line of credit, she had to put a tax-free savings account she had opened in January 2009 as collateral. As of the trial date, Ms. Chandi was still paying down the Pipe Replacement Line of Credit and the TFSA account continues to serve as collateral. She has received no contribution from Mr. Singh for this payment.
- [48] Subsequently, in 2019, the Family Home was flooded due to a burst pipe. As a result, Ms. Chandi and A. had to move from the Family Home to a basement suite for approximately 5 to 6 months. However, with the exception of a \$600 deductible, both the cost of the water damage and the cost of her alternate accommodation were covered by the property insurers. Ms. Chandi had paid premiums for that insurance, with no contribution from Mr. Singh, from the date of separation.

IV. Issues

- [49] The issues to be determined are:
- a) What constitutes family property and what is family debt; and
 - b) How should the family property and family debt be divided, in particular:
 - i. Would equal division of the family property and family debt be significantly unfair; and
 - ii. If so, what is the appropriate division of the family property, including the Family Home.

V. Discussion and Analysis

A. What Constitutes Family Property and What is Family Debt?

1. Legal Framework

- [50] Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] governs property division.
- [51] With certain exceptions, all real or personal property owned by either spouse on the date of separation is "family property": FLA, ss. 84(1) and 85. Pursuant to s. 81 of the FLA, on separation, each spouse has a right to an undivided half interest in all family property, without regard to their respective use or contribution.
- [52] Excluded from "family property" and the presumption of equal division is the excluded property set out in s. 85. Excluded property relevant to this case is property acquired before the relationship began and inheritances: FLA, s.85(1)(a) and (b).

[53] However, pursuant to s. 84(2)(g) of the FLA, the amount by which the value of the excluded property has increased since the relationship began or the excluded property was acquired is considered family property. On the other hand, where the value of the excluded property has decreased during the relationship, there is no basis on which to divide the asset: *Appleby v. Marshman*, 2018 BCSC 212 at para. 93.

[54] "Family debt" includes all financial obligations incurred by a spouse during the relationship or "after the date of separation, if incurred for the purpose of maintaining family property": FLA, s. 86.

2. Discussion and Analysis

[55] While not entirely contentious, there is some disagreement as to what constitutes family property and family debt. The main area of disagreement appears to be each of the parties' dissatisfaction and distrust of the other's level of financial disclosure, some of which I have set out in the "Credibility and Reliability" section above.

a) The Family Home

[56] Having purchased the Family Home in June 2009, Ms. Chandi made all of the mortgage payments, including principal, interest, and property taxes, for the three years prior to, and for one year after, the marriage. Her total payments during that time were \$25,377.18.

[57] As of the date of the marriage, the property had a market value of \$160,000, and \$155,000 remained owing on the mortgage, resulting in the accumulation of \$5,000 equity in the Family Home.

[58] Mr. Singh started contributing to the mortgage for the Family Home when he came to Canada in 2013, approximately one year after the marriage. Those contributions were made indirectly, by way of deposits of his income into the joint bank account from which the mortgage was paid. He continued to deposit his paycheques into the joint account, and thereby contribute to the mortgage, until the separation in August 2016. Since separation, Mr. Singh has not deposited any monies in the joint account, and has not made any mortgage payments, or made any other contributions to the Family Home.

[59] In the four years during the marriage that Mr. Singh contributed to the mortgage, together, the parties paid approximately \$29,407 toward the mortgage, including the mortgage principal, interest, and property taxes.

[60] By the date of separation on August 12, 2016, the value of the Family Home had increased to \$200,000 and the mortgage owing was \$141,067.10, leaving an equity of \$58,932.90.

- [61] Since the separation date, Ms. Chandi has made all payments of the mortgage and property taxes for the Family Home, with no contribution from Mr. Singh. From the date of separation to April 2023, those payments totalled \$48,156.78. In addition, after separation, Ms. Chandi paid other expenses, including the proportionate share for the strata's pipe replacement and property insurance, with no contribution from Mr. Singh.
- [62] By the trial date, the value of the Family Home had increased to \$400,000 and the mortgage owing was \$141,067.10, leaving equity of approximately \$271,914.78.
- [63] There is no dispute that the Family Home, and the \$5,000 equity that Ms. Chandi had in the Family Home as of the date of marriage, are excluded property. Nor is there any dispute that the increase in the value of the Family Home after the date of marriage is family property subject to division.
- [64] The issue to be determined with respect to the Family Home is whether that increase should be divided equally and, if not, how it should be divided. I discuss those issues in more detail below.

b) The Bank Accounts

i. TD Canada chequing account (the "joint account")

Ms. Chandi opened this account in 2009 when she assumed the mortgage for the Family Home. It has been operational since January 3, 2012 when the parties started using this account as their joint account.

During the marriage, both spouses deposited their paycheques to this account, from which all of the household expenses, including the mortgage, were paid. Ms. Chandi transferred between \$200 to \$600 per month from this account to her TD Canada Trust savings account. However, she transferred funds from that sole account back to the joint account when the balance was low and expenses had to be paid (particulars of the TD Canada Trust savings account are set out below).

As noted in the "Credibility and Reliability" section, from the date he arrived in Canada to the date of separation, Mr. Singh withdrew funds from the joint account in the form of cash withdrawals and through transfers via money transfer service providers such as Moneytree. Those funds totalled \$13,231. Given his lack of credibility on this point, Ms. Chandi submits that the Court should conclude that those funds, including the cash withdrawals and transfers, were transferred to his family in India. Ms. Chadi argues that she should receive a credit of half (\$6,615.50) in any equalization payment that she may owe.

I do not accept Ms. Chandi's argument. First, while I accept that at least some of those monies were transferred to Mr. Singh's family in India, there is no basis on which to conclude that all of the cash withdrawals and the money transfers were used for that purpose. Second, and in any event, the account was a joint account, to be used by both parties. There being no restrictions placed on that use, I cannot conclude that Mr. Singh's transfers to his family were improper. Third, while the transfers may have been unknown to Ms. Chandi, that was not due to any non-

disclosure or concealment by Mr. Singh. Both the withdrawals and transfers were plainly disclosed on the bank statement. Although his oral evidence was not forthright, this is not a case in which the Court can draw an adverse inference due to a party's "non-disclosure" per s. 213(2) (b) of the FLA. For all of the above reasons, I do not accept Ms. Chandi's argument that she should be credited for Mr. Singh's use of the funds in the joint account.

Ms. Chandi closed the joint bank account in October 2016 following the separation. At the time, the balance was \$742.05. As it is a joint account, those funds constitute family property.

ii. Prospera Credit Union Savings Account

Ms. Chandi opened this account in 2006, prior to the date of marriage.

As of January 1, 2014, the earliest date for which Ms. Chandi was able to obtain a statement, the balance of this account was \$2,042.51. As of the date of trial, the balance was \$0.73.

The account is excluded property. There was no increase in value in the account during the marriage.

iii. Tax-Free Savings Account

Ms. Chandi opened this account on January 9, 2009, prior to the marriage.

As of January 1, 2014, the earliest date for which Ms. Chandi was able to obtain a statement, the balance of this account was \$10,763.29. As of February 28, 2023, the balance was \$5,040.08. That amount is held as collateral for the Pipe Replacement Line of Credit.

This account is excluded property. There was no increase in value in the account during the marriage.

iv. Equitable Life Registered Retirement Savings Plan

Ms. Chandi originally opened this account in February 2010 at the State Bank of India with \$10,000. It was transferred to the Equitable Life Insurance Company of Canada in March 2015. The account was closed on March 15, 2023.

As of February 17, 2011, the balance in this account was \$10,336.03, that amount being excluded property. As of March 15, 2023, the balance was \$11,793.83. The \$1,457.79 increase in the value during the marriage to the date of trial constitutes family property.

v. Manulife Registered Retirement Savings Plan

This RRSP account was opened in June 2016, after the date of marriage, with a balance of \$6,942.18. The account was closed when the parties separated in August 2016 with the same balance.

This account constitutes family property.

vi. TD Canada Trust Savings Account

Ms. Chandi opened this account on July 2, 2012, after the date of the marriage. It was closed with a balance of \$230.32.

This account constitutes family property.

vii. Industrial Alliance RESP Account

Ms. Chandi opened this RESP account, naming A. as the beneficiary, in September 2016, after the date of separation. It is not family property.

c) Vehicles

[65] When Mr. Singh came to Canada in 2013, the parties purchased a Nissan Sentra by trading in the vehicle that Ms. Chandi had at the time and taking out a loan for the balance of the purchase price. During the marriage, almost \$9,000 was paid from the joint account for the car loan. As of the trial date, monies remained owing on that loan. Ms. Chandi remains in possession of the Nissan Sentra.

[66] The parties were also in possession of a Kia Rio which Ms. Chandi testified her mother paid for. Ms. Chandi subsequently sold the Kia Rio for \$1,000. She was unable to identify that amount being deposited into her bank account nor were any funds provided directly to Mr. Singh on that sale.

[67] Having both been acquired during the marriage, and with no "clear and cogent" evidence that the Kia Rio was a gift to Ms. Chandi [1], both the Nissan Sentra and the proceeds for the Kia Rio constitute family property.

[68] There is no independent evidence of the value of the Nissan Sentra. However, in her financial statements filed in these proceedings in March 2023, Ms. Chandi valued that vehicle at \$3,000. I am satisfied that this is the best estimate of its value. Mr. Singh is entitled to his share of that value.

[69] Mr. Singh is also entitled to his share of the \$1,000 sales proceeds for the Kia Rio.

d) Jewellery

[70] In response to questions put to her on cross-examination, Ms. Chandi confirmed that on her marriage to Mr. Singh, her parents "gifted" Mr. Singh jewellery, including a bracelet and a ring, and that his parents "gave" her jewellery, including gold, necklaces, rings, and earrings. She confirmed that all of that jewellery was deposited in a safety deposit box at TD Bank, where it remains.

[71] Mr. Singh argues that jewellery is family property that is subject to equal division. However, Mr. Singh did not include this claim in the notice of family claim nor did he apply to amend his pleadings at trial, despite his cross-examination on the issue. Rather, he raised the claim for the first time in his written submissions.

- [72] Ms. Chandi argues that his failure to include any reference to the jewellery in his pleadings is fatal to his claim.
- [73] There appears to be some support for Ms. Chandi's position in the case law. In *Brazinski v. Brazinski*, 2023 BCCA 359, the Court disallowed a self-represented litigant's claim for excluded property in light of his failure to plead that claim or particularize it in his financial statement. In addition to the important role of pleadings, the Court explained:
- [36] Additionally, Mr. Brazinski's failure to plead this claim contributed significantly to the resulting shortcomings in the trial record. While those may have been ameliorated had the judge permitted him to amend his pleadings, his failure to plead, particularize, and present adequate relevant evidence resulted in a trial record that is clearly inadequate to establish the excluded property claims.
- [74] Notably, the claim in *Brazinski* was to exclude property - in this case, Mr. Singh claims that the jewellery is family property. However, the consequence of Mr. Singh's failure to include the claim for the jewellery in his pleadings is the same: Ms. Chandi was deprived of the chance to fully consider her position or to adduce the evidence that was required to prove what she says is the proper characterization of the jewellery. However, like Mr. Singh, she also failed to include a specific claim for the jewellery in her counterclaim.
- [75] In the circumstances, where Ms. Chandi does not dispute the existence of the jewellery or that the parties received the jewellery during their marriage, I am not prepared to conclusively dismiss Mr. Singh's claim. However, without adequate evidence regarding the circumstances in which the parties acquired the jewellery or, indeed, even the specific jewellery claimed or its value, I am unable to make any finding regarding the jewellery.
- e) Property in India
- [76] On direct examination, Ms. Chandi testified that when they got married, Mr. Singh told her that he owned two homes (the "Indian Properties") with other family members in India. One of those properties was the chemist shop from whence his family conducted its pharmacy business; the other was the home in which his father grew up. She testified that Mr. Singh referred to those properties as "ours", meaning his, his mother's, and Ms. Chandi's as she had become a family member at that point.
- [77] At the initial hearing of this trial, Mr. Singh had not produced any documents relating to those properties. However, at Ms. Chandi's request, during an extended break in the trial, Mr. Singh agreed to provide his passport which Ms. Chandi had requested, thinking it contained the information that was required to allow her to obtain the documents she required from India. While Mr. Singh did subsequently provide the passport, the information that Ms. Chandi required was either redacted or missing. Ms. Chandi was not able to obtain the documents from India.

- [78] However, by the date the trial resumed, Mr. Singh produced what he testified are, and appear to be, property transfer documents dated 1982 and 1992 indicating that his grandfather and father, both of whom had since passed away, obtained title to the properties. Mr. Singh surmised that title to the property registered to his grandfather now belonged to his paternal aunt and mother and that title to the property registered to his father now belonged to his mother. He did not produce any documents to verify that was the case.
- [79] Mr. Singh testified that he has no ownership interest in the properties in India, nor did he contribute any funds toward any mortgage or toward the upkeep of those properties.
- [80] In the counterclaim filed in this action, Ms. Chandi seeks an order for compensation instead of an interest in the property in India. She testified that she has commenced an action in India in respect of the properties.
- [81] The Indian Properties are not family properties for the purposes of this trial.

f) Family Debt

- [82] During the marriage, the parties obtained a line of credit (the "Line of Credit"). On September 30, 2016, the balance was \$4,448.71. By December 2020, after both parties made partial payments, Mr. Singh paid off the balance of \$4,000. Ms. Chandi concedes that he should be credited with \$2,000 for the payment of that debt.
- [83] Likewise, Ms. Chandi claims that she should be credited for half of the \$4,973.25 Pipe Replacement Line of Credit she obtained after separation to pay for the proportionate share of the strata's pipe replacement in respect of the Family Home. On its face, s. 86 of the FLA includes those financial obligations incurred after the date of separation "if incurred for the purpose of maintaining family property".
- [84] Although I did not receive any specific submissions on the issue, I accept that the Pipe Replacement Line of Credit may fall within that category to constitute family debt. However, in this case, Ms. Chandi argues that issues regarding the Family Home should be assessed as of the separation date. I will consider this claim as part of that discussion.

B. How Should the Family Property and Family Debt be Divided?

1. Legal Framework

- [85] The property division regime under the FLA creates a presumption that family property, including the growth in the value of excluded property, will be divided equally at the date of trial, without regard to each spouse's respective use or contribution: FLA, ss. 81 and 87.
- [86] However, that presumption may be displaced if an equal division would be "significantly unfair" as set out s. 95 of the FLA.
- [87] Section 95 reads, in part:

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[Added emphasis.]

[88] As reflected in the language of s. 95(2), it is not necessary that all of the s. 95(2) factors are present for a finding of "significant unfairness". The Court may make a finding of significant unfairness based on one or more of those factors.

[89] However, as the Court of Appeal noted in *Singh v. Singh*, 2020 BCCA 21 at para. 134, citing *Jaszcewska v. Kostanski*, 2016 BCCA 286 at para 41:

"it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division."

[90] Once an anchor in one of the s. 95(2) factors have been established, "it is then necessary to consider the entire factual circumstances of the parties, all the relevant facts, all the relevant circumstances, and of course the effect of equal division, in order to fully inform oneself and to justify whether or not unfairness has been established": *Boldo v. Horobin*, 2023 BCSC 360 at para 73.

2. Discussion and Analysis

[91] With the notable exception of the Family Home and the related Pipe Replacement Line of Credit, I am unable to discern any basis on which to depart from the presumption of equal division of the family property or the family debt, valued as of the trial date. The noted exceptions aside, the following table summarizes the property that I have found to be family property and their values, the family debt, as well as the property I have found to be excluded property:

Value

(Date of Marriage or closest)

Value

(Date of Trial or closest)

Excluded or Family Property

Value for Division

Property

TD Canada Trust Chequing Account (joint account)

\$8,098.07

(as of Feb. 3, 2012)

\$742.05

(Account closed in Oct. 2016)

- Family Property

\$742.05

Prospera Credit Union Savings Account

\$2,042.51

(as of Jan. 1, 2014)

\$0.73

- Excluded Property

- No Increase in value

\$0.00

TD Canada Trust Savings Account

Account opened on July 2, 2012

\$230.32

- Family Property

\$230.32

Tax-Free Savings Account

Account opened on Jan. 9, 2009

\$10,763.29

(as of Jan. 1, 2014)

\$5,040.08

- Excluded Property

- No Increase in value

\$0.00

Equitable Life RRSP

Account opened

Feb. 2010

\$10,336.03

(as of Feb.17, 2011)

\$11,793.83

- Excluded Property

- Increase in value = \$1,457.80

\$1,457.80

ManuLife RRSP

Account opened on July 4, 2012

\$6,942.18

\$6,942.18

(Account closed in Aug. 2016)

- Family Property

\$6,942.18

Nissan Sentra

\$3,000.00

- Family Property

\$3,000.00

Kia Rio

\$1,000.00

- Family Property

\$1,000.00

Total Family Property to be Divided

\$13,372.35

Debt

Line of Credit

\$4,000.00

[92] I now turn to the Family Home and the related Pipe Replacement Line of Credit.

[93] Ms. Chandi does not dispute Mr. Singh's entitlement to an interest in the increase in the value of that property from the date of marriage. However, relying on ss. 95 and 87 of the FLA, she argues that given her contributions, and particularly given her sole efforts in paying the mortgage and other expenses relating to the Family Home after the separation, it would be significantly unfair to divide that increase in value equally. More specifically, she argues that for the purposes of dividing the property, the Family Home should be valued as of the date of separation, not the date of trial.

[94] Mr. Singh concedes that the Family Home constitutes excluded property, but he seeks an equal division of the increase in the value of the property from the date of marriage until the date of trial as contemplated by s. 87 of the FLA. He argues there is no compelling or persuasive reason to depart from the presumptive provisions of the FLA.

[95] I will consider those positions based on the relevant s. 95(2) factors.

a) Is Equal Division of the Family Home "Significantly Unfair"?

Section 95(2)(a): Duration of the Relationship

[96] The FLA does not specify what "duration" is sufficiently short to trigger a section 95(2)(a) analysis.

[97] In *Banh v. Chrysler*, 2022 BCCA 74, the Court considered that issue in the context of a two-year marriage. In that case, having considered several of the s. 95(2) factors including the parties' two-year marriage, the trial judge had concluded that it would be significantly unfair to equally divide the growth in the family property.

[98] On appeal, the Court concluded that, with the exception of the duration of the marriage, the factors the trial judge relied on had no bearing on the s. 95(2) analysis of "significant unfairness". While it concluded that the trial judge was right to consider the relatively short duration of the parties' relationship, the Court went on to consider whether the "two-year marriage of the parties justify the judge's decision to disentitle Ms. Chrysler to any of the post-separation growth in the value of [the properties]".

[99] It concluded it did not, stating:

[64] In my view, the answer is no. Two years is not so compellingly short that the duration of the relationship alone justifies an unequal division of family property.

[Added emphasis.]

[100] Indeed, where the duration of the marriage is not the only s. 95(2) factor present, marriages of approximately four years have been sufficient to warrant re-apportionment or a valuation date other than as of the trial date. See, for example: *J.M.P. v. B.S.M.*, 2023 BCSC 1439 (4-year relationship); *Williams v. Killey*, 2014 BCSC 1846 (3 ½ year relationship); *A.M.D. v. K.R.J.*, 2015 BCSC 1539 (relationship of 4 years and 3 months); and *A.J.E. v. T.B.W.*, 2017 BCSC 1657 (3 ½ year relationship).

[101] In *Ernst v. Carmichael*, 2019 BCSC 68, a 3 ½ year marriage, when combined with the passage of five years between the separation date and the trial date, was sufficient for the Court to conclude that an equal division of family property would be significantly unfair: *Ernst* at paras. 97-99.

[102] While the parties' 4 ½ year marriage in this case may not, by itself, be sufficient to justify an unequal division of family property, when combined with the six years between the separation date and trial, it is a factor that militates in favour of that conclusion.

Section 95(2)(f): Increase or decrease in the value of family property beyond market trends

[103] In *Mao v. Rao*, 2021 BCSC 2073, the Court considered a spouse's claim for reapportionment of the equity in the family home to account for her sole post-separation contribution to the mortgage and costs to preserve the property, including for property taxes, home insurance, and utilities. In that case, the parties had purchased the family home during their 12-year marriage.

[104] Referring to the decision in *Jaszczewska*, the Court confirmed that "in general, a spouse will be presumptively entitled to share in the increase in the value of family property post-separation, regardless of contribution": *Mao* at para. 208 [Added emphasis]. It clarified that the general proposition is not to say that unequal contribution will always be irrelevant. The Court referred to two decisions in which that was the case:

- [208] In Gutierrez[2], Armstrong J. concluded that it would be "significantly unfair" in the circumstances of that case for one party to benefit from the increased equity of the family home, while the other continued to pay down the principal of the outstanding mortgage debt.
- [209] In Rudyak v. Bekturova, 2017 BCSC 2223, aff'd in 2018 BCCA 414, Blok J. declined to divide family property unequally based on one spouse's contributions to the mortgage and home improvement expenses post-separation. However, Blok J. concluded that it would be "significantly unfair" for the non-occupying spouse to benefit from the appreciation in value of the family home without contributing to the tax and insurance costs necessary to preserve the property: at para. 68. Blok J. ordered an unequal division based on the payment of property taxes and insurance, but declined to order unequal division based on the mortgage payments.
- [105] At para. 68 of Rudyak v. Bekturova, 2017 BCSC 2223, Justice Blok differentiated between the tax and insurance costs, which he concluded were necessary to preserve the property, and the cost of cosmetic improvements, which were discretionary expenditures. The finding of significant unfairness was based on the payment of only the former category of expenses.
- [106] Based on those decisions, the Court in Mao concluded:
- [213] As in Gutierrez, I conclude that it would be significantly unfair for the claimant to benefit from the increased equity in the home when the respondent has taken on the sole burden of paying down the principal of the mortgage payments post-separation.
- [214] To the extent that the respondent's post-separation mortgage payments resulted in a reduction in the principal outstanding on the mortgage, they also caused an increase in the equity in the family property beyond market trends. I note that the claimant will benefit from valuing the home at the later date of trial by gaining his proportionate share of appreciation in value in market trends.
- [215] This factor supports an unequal division of that equity to give the respondent the benefit of those payments: s. 95(2)(f).
- [107] As set out above in this case, between separation and trial, Ms. Chandi has paid \$56,430 as the sole contributor to the mortgage. While some of those payments were used to pay interest and property taxes, as was the case in Mao and Gutierrez, to the extent that Ms. Chandi's post-separation mortgage payments resulted in the reduction in the mortgage principal, they also caused an increase in the value of the Family Home beyond market trends. Those payments favour an unequal division of the increase in the post-separation equity.
- [108] Indeed, Ms. Chandi's post-separation payments were not limited to the mortgage payments but also included payments for the pipe replacement, for property insurance which ensured that she was able to repair the property damage caused by the 2019 flood, and for property taxes. I cannot conclude that those payments increased the value of the Family

Property. However, they served to preserve the property. In Rudyak, the same finding made in respect of property taxes and house insurance was enough on which to conclude that equal division would be significantly unfair.

[109] This factor militates in favour of a finding of significant unfairness.

Section 95(2)(i): Any other factor that may lead to significant unfairness

[110] Section 95(2)(i) of the FLA is a general term allowing for the consideration of "any other factor" that may lead to significant unfairness. However, the consideration is not of any factor that may lead to significant unfairness, but rather is limited to factors that relate to the "economic characteristics of the spousal relationship": Singh at paras. 138-139.

[111] In this case, I have addressed the passage of time between the date of separation and trial as one "other factor" that favours a finding that equal division would be significantly unfair. Ms. Chandi argues that two other factors are also relevant considerations under s. 95(2)(i). They are: (a) her allegation that Mr. Singh failed to make full disclosure of his assets, and (b) the relative financial status of the parties at the commencement and at the end of the relationship.

[112] I will start with the first of those arguments.

Allegation of undisclosed assets and incomplete financial disclosure

[113] A party's failure to disclose assets or to provide complete financial disclosure are factors that come within s. 95(2)(i) and may support a finding of "significant unfairness": He v. Guo, 2022 BCCA 355 at para 26; Singh at para. 140.

[114] Usually, a finding that undisclosed assets exist must be based on evidence tied to a specific asset. However, where a party is completely unreliable and his own evidence leads to a reasonable inference that he is hiding assets, a judge may be justified in making that finding without evidence of a specific asset: Singh at para. 144.

[115] In this case, both parties argue that the other has failed to disclose assets or make adequate financial disclosure such that negative inferences can be drawn against the other.

[116] First, as set out above, Ms. Chandi argues that Mr. Singh was not forthcoming in his financial disclosure, either in respect of the ownership or value of the Indian Properties or in respect of his transfers of monies to India. She suggests that his failure to make full disclosure of those items indicates not only that he may have an interest in the Indian Properties but that he may have other undisclosed assets in India as well.

[117] As noted, Mr. Singh disclosed documents relating to the Indian Properties, but only after the trial commenced and Ms. Chandi was forced to make a mid-trial application for those documents. He did not provide the passport information that was required for Ms. Chandi to obtain documents relating to those properties herself.

- [118] The level of disclosure was less than ideal.
- [119] Mr. Singh's disclosure was limited to two documents dated 1982 and 1992, respectively. Those documents appear to confirm the properties were originally owned by his grandfather and father, respectively. However, by failing to provide Ms. Chandi with the passport particulars that she requested, he effectively prevented her from obtaining (or at least trying to obtain) the current ownership and historical value of those properties. His evasive evidence regarding the transfers of money to India during the marriage adds to the problems with his evidence.
- [120] In my view, together, Mr. Singh's conduct in failing to disclose current information regarding the Indian Properties, and effectively depriving Ms. Chandi of the opportunity to obtain current information regarding the Indian Properties herself, are a factor in the significant unfairness analysis.
- [121] Notwithstanding that finding, however, on the evidence, I am unable to assess Mr. Singh's possible interest in the Indian Properties (and bearing in mind his evidence that he says he does not have any interest) or the value, if any, of such interest. I decline to do so.
- [122] A related question is whether Mr. Singh's financial disclosure, or non-disclosure, provides the proper basis for a finding that he may have undisclosed assets other than the Indian Properties.
- [123] Notably, notwithstanding Ms. Chandi's suggestion that may be the case, she has not identified any specific assets Mr. Singh may be hiding. Despite my conclusion regarding his inadequate disclosure, I cannot conclude that his evidence was "completely unreliable" to justify a negative inference against him in that regard. Without any such evidence of a specific asset, and given my conclusion on Mr. Singh's evidence as a whole, I am not able to conclude that Mr. Singh has undisclosed assets in India, let alone ascribe any value to any such assets.
- [124] Finally, before turning from this point, I note that Mr. Singh has also argued that an inference should be drawn against Ms. Chadi for her alleged failure to make full disclosure of all bank accounts. His argument in that regard is set out in more detail above. He does not seek any claim for an unequal division of family property in his favour based on that allegation.

Comparative financial statuses

- [125] *Venables v. Venables*, 2018 BCSC 1736, aff'd 2019 BCCA 281 is another decision in which the Court considered "other factors" that may be taken into account on an analysis of "significant unfairness". In doing so, the trial judge compared the parties' financial position if the family property was divided equally relative to their financial position at the beginning of the marriage.

- [126] In that case, Mr. Venables came into the marriage with assets of almost \$300,000 and subsequently inherited over \$160,000, much of which went into joint savings and became family property. On an equal division of family property, he would end up with one-half of the family property worth \$236,345.50, plus his excluded savings of \$92,889, for a total of \$329,324.50.
- [127] By contrast, Ms. Venables came into the marriage with "no savings, a car loan, and some personal property of unknown value". On an equal division of family property, she would end up with one-half of the family property worth \$236,345.50.
- [128] As the Court summarized at para. 126: "[i]f the family property were divided equally, as a result of their eight years together, Mr. Venables would largely be in the same financial position as when the parties began living together while Ms. Venables would be in a substantially better position." In part on that basis, he concluded that an equal division of property would be significantly unfair. That decision was upheld by the Court of Appeal.
- [129] In this case, by the date of the marriage, Ms. Chandi had taken steps to improve her financial position by purchasing the Family Home and making regular contributions to her savings. However, by that date, she had only accumulated \$5,000 in equity in the Family Home. In that way, her financial position in the Family Home was not significantly different from Mr. Singh's, who entered the marriage with no assets. When compared on that basis, the relative financial position of the parties does not favour an unequal division of property.
- [130] The same cannot be said when their comparative financial positions are based on their contributions to the Family Home relative to what each would receive on an equal division of the increase in value.
- [131] As noted above, from the date of marriage to the date of trial, the equity in the Family Home has increased by approximately \$266,915.[3] An equal division of that increase could result in each party receiving roughly \$133,460.
- [132] From the date that Ms. Chandi purchased the Family Home in June 2009, payments totalling approximately \$150,600 have been made against the mortgage (including principal, interest, and property taxes). Assuming that each of the parties contributed equally to the mortgage payments in the four years that the payments were made from the joint account, Ms. Chandi's total contributions were approximately \$91,000. Mr. Singh's total contribution was approximately \$15,000. Accordingly, an equal division of the increase in value will result in a profit to Mr. Singh of about \$118,460 ($\$133,460 - \$15,000 = \$118,460$). By contrast, Ms. Chandi will realize a profit of about \$42,460 ($\$133,460 - \$91,000 = \$42,460$).
- [133] In other words, despite contributing six times the amount toward the equity, maintenance, upkeep, and preservation of the Family Home, Ms. Chandi would realize only 1/3 of the profit that Mr. Singh would realize.

- [134] While not to the same degree, the parties would also realize disproportionate profits if one assumes that all of the \$29,400 that was paid toward the mortgage during the period that Mr. Singh made contributions was attributable to him (and none to Ms. Chandi). In that case, an equal division of the increase in value will result in a profit to Mr. Singh of about \$104,060 (\$133,460 - \$29,400 = \$104,060). By contrast, Ms. Chandi will realize a profit of about \$57,160 (\$133,460 - \$76,300 = \$57,160).
- [135] In that scenario, Ms. Chandi would have contributed over 2 ½ to the mortgage but would realize a profit of approximately half of what Mr. Singh would realize.
- [136] On analysis, I bear in mind that the "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. As the Court noted in *Slavenova v. Rangelov*, 2015 BCSC 79 at para. 60, "[e]xactly equal contribution is more likely exceptional than commonplace". Certainly, if this were the only factor on this analysis, it would unlikely be sufficient to establish "significant" unfairness.
- [137] However, not unlike the circumstances in *Venables*, I am satisfied that the equal division of the increased value in the Family Home would put Mr. Singh in a substantially better position than Ms. Chandi relative to their input. While not determinative, or even the most significant factor, the relative financial positions of the parties are a factor that informs the significant fairness analysis.

Conclusion on "Significant Unfairness"

- [138] On the basis of the foregoing, I am satisfied that, to varying degrees, each of the s. 95(2) factors relied on by Mr. Chandi support the conclusion that an equal division of the Family Home would be significantly unfair.
- b) What is the Appropriate Division of Family Assets?
- [139] Having concluded that an equal division of the increase in the value of the Family Home would be significantly unfair, the remaining question to be determined is how that increase should be divided.
- [140] In *Slavenova* at para. 53, the Court identified two "alternate routes to address potential unfairness that may arise from a party's post-separation contributions", namely:
- a) Under s. 95, a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution; or, alternatively
 - b) Under s. 87, the Court may depart from the presumptive date of hearing or agreement as the valuation date. That section provides that unless an agreement or order provides otherwise, the value of family property or family debt must be determined according to fair market value as of the date of an agreement dividing family property and debt or as of the date of hearing before the court.

- [141] Other cases add a third option: Assessing the property as of the trial date, but crediting the payor of the post-separation mortgage payments with one-half of the amount of those payments before the property is divided: see, for example, *Rudyak* at paras. 213-217 (affirmed on appeal in 2018 BCCA 414).
- [142] Ms. Chandi argues that in the circumstances of this case, the second of those options is most appropriate and that an equal division of property at the date of separation is fair. She relies on the same factors on which I have concluded that an equal division would be significantly unfair, pointing in particular to the significant post-separation increase in the value of the family home which she says is due to her sole contributions at the time, without any contribution from Mr. Singh.
- [143] In support of her position, Ms. Chandi refers to the decisions in *Slavenova* and *Charan v. Charan*, 2018 BCSC 1537, which are cases in which the Court found the circumstances made it appropriate to value the assets as of the date of separation, rather than at the date of trial.
- [144] Mr. Singh, on the other hand, argues that there is no compelling basis on which to value the Family Home as of the separation date. As noted by this Court, before s. 87 can be invoked, there should be "compelling evidence to depart from the standard valuation date as the date of trial thereby disentitling one property owner the benefit of the increase in value of property which is brought about by market forces and not as a result of direct effort of the other party": *K.A.L. v. K.J.L.*, 2017 BCSC 651 at para. 286.
- [145] I have reviewed all of the authorities provided to me by both counsel. However, as is most often the case in family law matters (indeed, many cases before the Court), all of those cases are ultimately determined on their specific facts. While informative, none are so exactly aligned with the circumstances of this case such that any can be said to be fully determinative of this matter.
- [146] In this case, the same factors that informed the finding of "significant unfairness" are also relevant on this analysis. Of particular significance is Ms. Chandi's sole post-separation contributions to the Family Home or, viewed from a different lens, Mr. Singh's deliberate choice to not make any contributions to the Family Home in that period. He made that choice at a particularly difficult time for Ms. Chandi financially. Also relevant is the fact that Mr. Singh did not just fail to make any contributions to the mortgage; in the first two years after separation, he did not make any contributions to Ms. Chandi, financial or otherwise, at all.
- [147] Rather, Mr. Singh abandoned Ms. Chandi and A. without warning, almost depleted the parties' joint account, settled in another province without leaving any forwarding information, did not contact Ms. Chandi for two years, and made no financial arrangements for his child or his spouse in that time. He did not show any regard for the difficulty Ms. Chandi would have in maintaining the Family Home, let alone for the difficulty she may have in providing for A. Although he did start making payments of child support after he returned to B.C., he remains in arrears of child support payments.

- [148] The two years after Mr. Singh's sudden abandonment were important to Ms. Chandi's ability to preserve and increase the equity in the Family Home. In that period, she was forced to withdraw almost \$7,000 from her RSP account and borrowed \$1,000 from a friend just to cover expenses, and she assumed the Pipe Replacement Line of Credit using her TFSA as collateral to pay for the unavoidable strata expense for the Family Home. Through her determination and despite her periods of unemployment, she was able to continue to pay the mortgage and property taxes as well as the property insurance, without which she would have incurred significant expenses for the 2019 flood in the Family Home.
- [149] Notably, Mr. Singh had the means to support A., if not to make contributions to the Family Home in the two years he did not contact Ms. Chandi. He obtained employment almost immediately upon arriving in Winnipeg, earning \$43,500 and \$40,000 in his first two years in Winnipeg, while paying only \$600 in rent. He simply chose not to do so. Instead, he chose to send funds totalling approximately \$6,200 to his family in India in the first year after separation alone.
- [150] In other words, he was not a man of limited means who could not continue to make contributions to the Family Home or, at the very least, ease Ms. Chandi's burden by making support payments. Not only would support payments have assisted in the care A., but they would have freed up funds that Ms. Chandi could pay toward the mortgage and other expenses to preserve the Family Home and add to its equity.
- [151] In my view, it would be significantly unfair for Mr. Singh to receive a share in the increased value of the Family Home in the post-separation period during which he deliberately chose to make no contribution to its preservation or increase, but to impose all of the financial burden for doing so on Ms. Chandi.
- [152] However, I do bear in mind the presumption of equal division of family property regardless of contribution. In my view, an equal division of property as of the date of separation allows Mr. Singh to benefit from an increase in the value of the Family Home during the marriage and is consistent with that presumption.
- [153] For those reasons, I find that the circumstances of this case are such that it would be significantly unfair to value the Family Home at the date of trial. Rather, the valuation date for the family home should be the date of separation, that is, August 12, 2016.
- [154] As Ms. Chandi is solely entitled to the post-separation increase in the Family Home, in my view, it is also appropriate that she assume the full amount of the Pipe Replacement Line of Credit incurred after that date in order to preserve the Family Home. That debt will be solely attributable to Ms. Chandi.
- [155] On the date of separation, the Family Home had an appraised value of \$200,000 against a mortgage of \$141,067.10, leaving equity of \$58,932.90. That equity had increased from \$5,000 on the date of marriage, for a total increase of \$53,932.90 from the date of marriage to the date of separation. Mr. Singh's equal share of the increase is \$26,966.45.

[156] Finally, I note that even if I had found that the date of trial was the appropriate date to value the Family Home, for the same reasons set out above, it would be significantly unfair to allocate any portion of the increase in the Family Home to Mr. Singh. In those circumstances, the fair result would be to apportion any increase in the value of the Family Home after separation 100% in favour of Ms. Chandi.

VI. Summary of Findings

[157] To summarize my findings:

- a) With the exception of the Family Home, the value of the family property to be divided by the parties is \$13,372.35;
- b) The amount of family debt to be divided by the parties is \$4,000;
- c) The Family Home is to be valued as of the date of separation, August 12, 2016, resulting in a total increase in value of \$53,932.90 to be divided by the parties; and
- d) Ms. Chandi is to bear the full amount of the Pipe Replacement Line of Credit.

[158] As Ms. Chandi has retained all of the family property, the above results in a net equalization payment of \$31,652.63 payable by Ms. Chandi to Ms. Singh. That amount is to be paid within four months.

[159] While I have declined to make any order with respect to the jewellery, I encourage the parties to resolve that issue between themselves.

VII. Costs

[160] As Ms. Chandi has had substantial success, she is entitled to costs of the proceeding.

[161] However, if either party wishes to make submissions on costs, they may do so through Supreme Court Scheduling as follows:

- a) Any party wishing to claim costs may make written submissions not exceeding five pages, footnoting citations with pinpoint references. Any submissions are to be filed and served within 30 days of the date of these reasons for judgment;
- b) The party against whom costs are claimed may file and serve written responsive submissions not exceeding three pages, footnoting citations with pinpoint references, within 14 days of the service of the submissions of the claiming party; and
- c) Written reply submissions not exceeding two pages may be filed and served within one week of service of the opposing party's submissions.

Ahmad J.

-
- [1] Under s. 85(2) of the FLA, the spouse making the claim has the burden of demonstrating that property is excluded property. The standard of proof is on a balance of probabilities but the evidence must be "clear and cogent". To prove a "gift", the donor must have intended to make a gift: Zhao v. Fang, 2022 BCCA 227 at paras. 25 and 26, citing McKendry v. McKendry, 2017 BCCA 48 at para. 31.
- [2] Gutierrez v. Del Fierro, 2020 BCSC 679 [Gutierrez]
- [3] Calculated as the equity in the Family Home at the date of trial (\$271,915) less the equity at the time of the marriage (\$5,000): $\$271,915 - \$5,000 = \$266,915$.
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Prepared on 26 October 2026 · Esheria