

CANADA / JUDGMENT

Singh v. Narayan

2024 BCSC 2631

COURT

Supreme Court of British Columbia

DECIDED

29 August 2024

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2024 BCSC 2631 Singh v. Narayan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Singh v. Narayan, 2024 BCSC 2631 Date: 20240829 Docket: E220079 Registry: Vancouver Between: Sanadhika Singh Claimant And Jagdish Narayan, Alveena Devi Sehdeve, Ashika Devi Narayan and Rajesh Narayan Respondents And Nawal Prakash Singh and Kristine Sheetal Singh Respondents by Counterclaim Before: Associate Judge Bilawich Oral Reasons for Judgment In Chambers Counsel for the Claimant: A. Grewal Counsel for the Respondent Jadish Narayan: A. Gupta Place and Date of Hearing: Vancouver, B.C. August 29, 2024 Place and Date of Judgment: Vancouver, B.C. August 29, 2024

Introduction

- [1] THE COURT: Before me is an application by the respondent Jagdish Narayan ("Mr. Narayan"), seeking an order that he have exclusive occupancy of a residence located at 3545 Wellington Avenue, Vancouver, B.C. (the "Wellington Property"). The application is made pursuant to s. 90(2) of the Family Law Act, S.B.C. 2011, c 25 ("FLA"). The original application requested that exclusive occupancy start on July 1, 2024, which is an oddity, because the application was filed July 24, 2024. Nonetheless, I am told that this application was "bumped" three or four times before it got on for hearing today.

Background

- [2] Mr. Narayan is 76 years of age. The relationship which is the subject of this action is, I understand, his second significant relationship. His first, with his former wife, was a marriage. His first wife passed away on August 2, 2009. They had three children together, Alveena, Ashika, and Rajesh, all of whom are named as co-respondents in this action. There is suggestion that Mr. Narayan owns at least three other pieces of real estate.
- [3] The claimant is -- what is the claimant's age?
- [4] CNSL A. GREWAL: She was born in 1953, so I'm just trying to kind of work my math, back here.

- [5] THE COURT: 72 years old, more or less. There is a suggestion in the materials that she owns or owned a number of properties. There is a list of five in the application, albeit many of them are listed as having been subsequently sold.
- [6] The parties disagree about whether or not they were ever in a marriage-like relationship. The claimant ("Ms. Singh") says they were and that the Wellington Property has been her and Mr. Narayan's family home since 2011. Mr. Narayan denies that the parties were ever in a common law relationship.
- [7] The trial is scheduled in October, which is roughly four weeks from today.
- [8] The other piece of relevant background for this application is that since the parties separated, or rather the date of separation alleged by the claimant, May 2021, she has been residing in a bedroom in the Wellington Property. Both parties have been living at the property. There are currently at least three international students who are temporary tenants. There is a suggestion in the material there may be a new lady, who is vaguely described, but potentially a new romantic interest for Mr. Narayan. Her status and place of residence were not clearly identified in the material I was taken through.
- [9] An important piece of history for the purposes of this application is that there was a previous application for exclusive occupancy made by Mr. Narayan. It was filed in November 2022 and was heard by Justice Wilkinson on February 8, 2023. She issued reasons for judgment on February 28, 2023: *Singh v. Narayan*, 2023 BCSC 2511. She dismissed the application. The Threshold Argument
- [10] Section 3(1)(b) of the FLA sets out the circumstances under which two persons who did not marry can be considered "spouses". Spouses and relationships between spouses 3 (1) A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.
- [11] One of the arguments which Ms. Singh made is what her counsel characterizes as a "threshold argument". It provides that the exclusive occupancy section of the Family Law Act is s. 90(1) and (2): Temporary orders respecting family residence 90 (1) For the purposes of this section, "family residence" means a residence that is
- (a) owned or leased by one spouse or both, and
 - (b) the ordinary place of residence of the spouses.
- (2) The Supreme Court may make an order granting a spouse, for a specified period of time,

- (a) exclusive occupation of a family residence, or
 - (b) possession or use of specified personal property stored at the family residence, including to the exclusion of the other spouse.
- [12] Section 90(1) says the term "family residence" means a residence that is owned or leased by one spouse or both, and the ordinary place of residence of the spouses. Sub-section (2) provides that the Supreme Court may make an order granting a spouse, for a specified period of time, exclusive occupation of a "family residence".
- [13] Ms. Singh argues that the threshold issue arises because Mr. Narayan has denied that the parties were ever in a marriage-like relationship, which also means he also denies they were ever "spouses". The relief under s. 90(2) of the FLA is only available to a "spouse". She says that unless he admits he is, or the court finds him to be a "spouse", he lacks standing to apply for exclusive occupancy relief which is intended to benefit someone who is a "spouse".
- [14] Ms. Singh made similar argument before Justice Wilkinson, but she declined to address that issue. She ultimately decided she was not satisfied that the pre-conditions for making an order for exclusive occupancy had been made out. The first part of the test is that the court find that shared use of the family residence is a practical impossibility. The second part of the test is that the court find that the applicant is the preferred occupant of the property, on a balance of convenience. Justice Wilkinson was not persuaded that it was a practical impossibility for the parties to have shared occupation or shared use of the Wellington Property. She dismissed the application on that basis, without addressing the "threshold issue".
- [15] There is some confusion, on the material before me, as to what specific factual arguments were made before Justice Wilkinson. Current counsel for Mr. Narayan was not his counsel for the previous application. Current counsel for Ms. Singh did appear at that application. He indicated that the "threshold issue" arguments he made to her are similar to those which were made to me.
- [16] I asked counsel for Mr. Narayan to identify what new developments he relies on, or what new circumstances had arisen since Justice Wilkinson dismissed the previous application. I was taken to a medical report which was prepared in January 2024, which describes medical issues that Mr. Narayan has been experiencing. It generally describes him as a vulnerable person who is easily persuaded, or subject to being taken advantage of. There are also references to him experiencing confusion and having a negative reaction to this litigation generally.

- [17] There was also evidence of events which have occurred. One of the lines of argument is that Ms. Singh has allegedly been having confrontations with or has been interfering with people who are coming to visit Mr. Narayan, or who are coming in to assist him with his physical needs, such as cleaning and the like. There have also been confrontations with his family members who are coming to support him. Counsel emphasizes that Mr. Narayan is 76 years old and needs a higher level of support.
- [18] I am not persuaded that these issues were not also factors at the time of the hearing before Justice Wilkinson. There was no medical report at that time, but I suspect Mr. Narayan's health issues are not new developments. These are the type of symptoms that generally arise gradually with aging. The more practical concern I have is that this medical report came out in January 2024. It is now being described as a basis for an "urgent" intervention by the court in the form of an exclusive occupation order. It took Mr. Narayan from January 2024 to July of 2024 to file this application. This does not give one the sense that it was viewed as raising an urgent concern. Today, we are just four weeks away from trial. It does not appear the issues raised in the report are urgent, in the sense that something absolutely must happen between now and when trial starts.
- [19] There is also evidence tendered by a friend of Mr. Narayan, who has given an account of essentially having been hectored and physically handled by Ms. Singh. Ms. Singh has given her own version of the events, which sets out a much different perspective on what occurred. There is conflicting evidence on those issues. There is clearly a level of tension between the parties which has heightened somewhat. There are clearly some difficulties between Ms. Singh and Mr. Narayan's adult children. I am not suggesting that is not warranted, but it is something which existed at the time of the application before Justice Wilkinson. It is a continuing problem. There have been some new developments, but the dynamic appears to be largely the same.
- [20] Ms. Singh has put forward her own evidence indicating that her real conflict is with Mr. Narayan's children, and that when it is just the two of them in the Wellington Property, they have a relatively congenial and friendly coexistence there. Applicable Law
- [21] The parties do not have a significant disagreement about what the applicable test is. I summarized it in *Glowacki v. Nesbeth*, 2021 BCSC 535, at paras. 68-73. I described the two parts of the test, at para. 69:
- [69] To obtain an order for exclusive occupancy, the applicant must show that (1) shared use of the family residence is a practical impossibility and (2) the applicant is the preferred occupant of the property, on a balance of convenience. See *Bateman v. Bateman*, 2013 BCSC 2026 at para 44 and *Ferguson v. Ferguson*, 2014 BCSC 216 at para 62, citing *Rinta v. Rinta*, [1980] B.C.J. No 1389 (S.C.) (QL).
- [22] Expanding on the first part of the test, at para. 71:

- [71] Under the first part of the test [is shared use a practical impossibility], there must be something more than the parties simply having differences and not wanting to live together. There must be something which makes the situation intolerable or unacceptable in an objective sense. See *Wilson v. Wilson*, 1995 CanLII 1445 (BCSC) at page 17-18 citing *Graham v. Graham* (unreported) 1990 B.C.J. No. 1151 - Prince George Registry No. 18882 (BCSC) at page 5.
- [23] And expanding on the second part of the test, at para. 72:
- [72] Under the second part [preferred occupant on a balance of convenience], this is an objective test. Among the factors to be considered are (a) any acquiescence or delay, (b) the conduct of the parties, (c) the economic position of the parties, (d) alternate living accommodation available to either of the parties and (e) other relevant circumstances such as health. See *Sun v. Cook*, 2007 BCSC 2045 at para. 16. Analysis and Order
- [24] I have some concern that this is the second application for exclusive occupancy that Mr. Narayan has made. The first was heard and decided by Justice Wilkinson in February 2023. She dismissed the application, having concluded that the first stage of the test had not been satisfied. She declined to address the so-called "threshold issue".
- [25] A difficulty I have is that now we are only four weeks away from the start of trial. There are many issues, on the affidavit evidence before me, which are clearly contested. There is conflicting evidence on virtually every factor that the court is being asked to consider. When applying the test for exclusive occupancy, counsel for Ms. Singh also emphasized that applying the test would require that I make a preliminary determination regarding whether the parties were "spouses" or not, before we can get into s. 90(2) of the FLA at all. Counsel argues that since there is conflicting evidence on that point, it would not be appropriate for me to make that sort of a determination on an interim application.
- [26] I am skeptical as to whether difficulty deciding the "threshold issue" would completely disable the court from making a remedial order under s. 90(2) of the FLA. One of the goals of that type of order is to protect and promote the safety of parties. I also note that any determination I might make would only be an interim determination, and would not be binding the trial judge.
- [27] That said, it is not necessary for me to address the "threshold issue". I am not persuaded that the present circumstances are materially different than the circumstances which existed at the time of the hearing before Justice Wilkinson. I am not satisfied that there has been a change in circumstances which would warrant a re-hearing of the exclusive occupancy issue. The dynamic between the parties and many of the arguments were the same. There are some new facts and a medical report which may cast a somewhat different light on things. However, it is a medical report which is now seven or eight months old. The fact that it took Mr. Narayan six months to file the application after receiving the report speaks to the relative urgency that he and the other respondents viewed the report as having.

- [28] It is also a practical concern that, it being just four weeks before the start of trial, any order I make for exclusive occupancy which ends up displacing Ms. Singh would be unduly prejudicial to her. She is in the final throes of preparing for a substantial trial. This is the prime trial preparation period. To suggest that she ought to instead be devoting large parts of that time to finding and securing alternate accommodation and arranging a move is simply not appropriate at this stage of the proceedings.
- [29] I am also mindful of the fact, given how much conflict there is in the evidence, and being only four weeks away from trial, the trial judge will be in a much better position to hear evidence from the parties and will have the benefit of cross-examination. He or she will be in a better position to make findings of fact on contested issues and to formulate a more thoroughly considered and just result.
- [30] I find that, given the timing and the nature of the highly conflicting evidence before me, it is in the interests of justice that the trial judge be the one to deal with the exclusive occupancy issue, among the many issues that he or she will be asked to determine. It would not be fair, at this time, to make an order which would cause great disruption to the claimant in the four weeks leading up to trial. Further, even if, for the sake of argument, such an order had been found to be appropriate, it would still be necessary to give Ms. Singh a reasonable amount of time to find new accommodation and arrange a move. That could easily require at least four weeks, which would take us to the start of trial. Such timing would be completely inappropriate.
- [31] I dismiss Mr. Narayan's application. [SUBMISSIONS RE COSTS]
- [32] Since we have gone beyond a half-day, costs are based on this being a full-day application. I order that Mr. Narayan pay Ms. Singh costs of this application, in any event of the cause. This is appropriate based on it being dismissed and because this was Mr. Narayan's "second kick at the can" seeking exclusive occupancy.
- [33] [I have made editorial changes to the reasons to add statutory and authority excerpts, improve clarity and readability. The reasoning and outcome have not changed.] "Associate Judge Bilawich"

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Prepared on 28 October 2026 · Esheria