

CANADA / JUDGMENT

Willie v. Willie

2012 BCSC 377

COURT

Supreme Court of British Columbia

DECIDED

15 March 2012

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2012 BCSC 377 Willie v. Willie IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Willie v. Willie, 2012 BCSC 377 Date: 20120315 Docket: E020933 Registry: New Westminster Between: Raymond Edward Willie Claimant And: Suzanne Marion Willie Respondent Before: The Honourable Mr. Justice Truscott Reasons for Judgment Counsel for the Claimant: G.A. Laughlin Counsel for the Respondent: D.J. Manson Place and Date of Hearing: New Westminster, B.C. March 1, 2012 Place and Date of Judgment: New Westminster, B.C. March 15, 2012

- [1] The parties consented to an Order of this Court on April 23, 2008 that dealt with a number of property issues between them.
- [2] Chief among the issues dealt with was the sale of the matrimonial home. The claimant transferred his 50% interest in the matrimonial home to the respondent with the obligation that she list the property and have conduct of sale, and with the requirement that she not accept any offer of less than \$820,000 plus sale expenses (as defined) without the written consent of the claimant.
- [3] That proved to be no problem at all for the respondent because when she listed the property on October 23, 2008 for \$875,000, she received no offers at all during the listing period and the listing expired on May 30, 2009.
- [4] Thereafter the property was not listed again until August 2011, over two years later.
- [5] Presently, the respondent has agreed to purchase the property herself for \$1,107,000, effective March 30, 2012.
- [6] The claimant has agreed to the purchase price. This will be a purchase price without payment of any amount for real estate commission since the respondent is purchasing the property herself and there is no real estate agent that has to be paid.

- [7] The parties have also agreed that \$104,727.28 of the purchase monies will be used to pay out the mortgage on the property and \$663,000 of the net sale proceeds are to be credited towards payment of the "adjustment payment" to the respondent as defined in the April 23, 2008 Order. The other agreements between the parties are that \$20,000 will be credited towards payment to the respondent for the sale expenses and \$2,500 credited to her for her share of the cost of a new roof.
- [8] The adjustment payment in the Order of April 23, 2008 was described as the amount of \$1,013,000 to be paid by the claimant to the respondent. \$350,000 of that money was to be paid on or before April 30, 2008, with the net sale proceeds to be paid to the respondent upon sale of the property. In the event a total of \$350,000 plus the net sale proceeds added up to more than \$1,013,000, the extra amount was to be paid by the respondent to the claimant. Presumably if the total added up to less than \$1,013,000 the claimant was to pay the difference to the respondent.
- [9] In the Order of April 23, 2008 the claimant also agreed to pay certain expenses of the respondent until the adjustment payment had been paid to her. These expenses included premiums for her medical and dental insurance coverage, her gas expenses for her car to a maximum of \$300 per month, her annual fee for a Costco membership, the monthly payments on the mortgage registered against title, and \$1,200 per month to the respondent directly.
- [10] The sole issue on the hearing was what portion of these expenses the claimant should have to pay bearing in mind that the respondent did not keep the property listed after May 30, 2009 until August 2011, a time of over two years, while the expenses continued to mount up.
- [11] The claim for the expenses is made by the respondent in the amount of \$129,044.82 made up as follows: Medical and dental expenses \$11,221.25 Gas expenses \$8,392.70 Mortgage payments \$65,030.87 37 months x \$1,200 - \$44,400 for a total of \$129,044.82.
- [12] The submission of the claimant is that he should not have to pay these expenses during the time the property was not listed because the respondent was in breach of the April 23, 2008 Order in not maintaining a listing on the property after May 30, 2009.
- [13] The claimant's position is that the respondent should not be allowed to benefit from her own breach of that Order.
- [14] It is however agreed by his counsel that as the claimant did not make the mortgage payments when he was required to do so under the Order, and the respondent had to make those payments, once the value of the property started to rise as better economic times prevailed it is the claimant who benefited by the increase in value and he is prepared to reimburse the respondent for the mortgage payments now.

- [15] However, it is submitted at the same time the respondent should have to pay occupational rent for the same period of time when the property was not listed and the claimant should not be obliged to pay the other expenses claimed during that period of time.
- [16] It is also submitted that under the Order of April 23, 2008 the claimant was only responsible for the medical and dental premiums and not for the full expenses.
- [17] When I inquired at the hearing what was going on between the parties with respect to the sale of the property, after the listing expired on May 30, 2009, until it went on again in August 2011, I was told by both counsel that both parties basically decided to sit back and do nothing with the respondent not listing the property and the claimant not paying the expenses, waiting for judgment day.
- [18] While a drop in the market might not have been contemplated at the time of the Order, it was certainly a reasonable decision to make at the time to de-list the property when the values were so poor.
- [19] By holding onto the property after the listing expired on May 30, 2009 it is the claimant that has benefited by the increase in value thereafter in terms of his overall responsibilities to the respondent.
- [20] The claimant has acknowledged that benefit through his agreement to reimburse the respondent for the mortgage payments now.
- [21] I reject the submission by counsel for the claimant for occupational rent from the respondent as I do not consider that claim to have any place in the circumstances here.
- [22] I also reject the submission made by the claimant that not having other property of his clear of a mortgage given to the respondent for security has denied him the possibility of being able to deal with it. I find that to be too speculative.
- [23] I do agree with the claimant, however, that he should only have to pay the premiums for medical and dental expenses which on a net basis appear to be \$2,010.
- [24] That would reduce the claim for the medical and dental expenses down from \$11,221.25 to \$2,010, and reduce the overall claim down from \$129,044.82 to \$119,833.59.
- [25] The respondent was technically in breach of the April 23, 2008 Order in not maintaining the listing on the property and I consider it only fair and equitable that she assume the cost of the expenses, apart from the mortgage payments, for the time period when the property was not listed from May 30, 2009 to August 2011 when it was listed again.
- [26] Accordingly it is my order that paragraph 1 (to be effective March 30, 2012), 2, 3, 4 and 5 of the respondent's application dated January 17, 2012 be granted, and in addition she be entitled to reimbursement in full for the mortgage payments as well as for the other expenses apart from the period of time May 30, 2009 to August 2011.

[27] There has been divided success on this application and each party will bear their own costs.

[28] In the circumstances, the application of the claimant will be dismissed with no costs on that application. "The Honourable Mr. Justice Truscott"

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