

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Grewal v. Grewal***,
2006 BCSC 1085

Date: 20060713
Docket: E016205
Registry: New Westminster

Between:

**SATINDER PAL KAUR
A.K.A. SATINDER PAL KAUR GREWAL**

PLAINTIFF

And

**TEJ PAL GREWAL
A.K.A. TEJ PAL SINGH GREWAL**

DEFENDANT

Before: The Honourable Madam Justice Fisher

Reasons for Judgment

Counsel for the plaintiff

K. S. Taunk

Counsel for the defendant

J.A. Thomson

Date and Place of Hearing:

June 5 and 6, 2006
New Westminster, B.C.

[1] The parties separated in 1998 after a 25-year marriage. They were divorced in 2001. The defendant, Tej Pal Grewal, has since remarried. The plaintiff, Satinder Pal Kaur Grewal, claims a reapportionment of the only remaining family asset, the former matrimonial home.

Background

[2] The parties married in 1973 in Punjab, India. They have two daughters; Sonia was born in 1974 and Simran in 1978. Mr. Grewal moved to Canada in 1989 as a refugee and the rest of the family joined him in 1991.

[3] They had little money in India. Mr. Grewal worked in a bank. Mrs. Grewal did not work outside the home. In Canada, Mr. Grewal did similar work. For most of the marriage while in Canada, he worked for the Khalsa Credit Union and later the Surrey Metro Savings Credit Union. Mrs. Grewal began working in a bakery in 1992. She worked there until 1999, just after the parties separated.

[4] This was a traditional marriage. Mr. Grewal looked after the family's finances. Mrs. Grewal gave all of her income to him. There is some dispute as to whether their daughters also gave their incomes to Mr. Grewal when they were working. Mrs. Grewal and her daughter Simran said that they did. Mr. Grewal denied this; he said that they were able to make their monthly payments with his income, Mrs. Grewal's income and the rents from the basement suites.

[5] Mr. Grewal owned a plot of land in India. There is a dispute as to whether Mr. Grewal paid for this land. Mr. Grewal said that his father gave him the plot. Mrs.

Grewal said that he bought it with his savings. The land was eventually sold for approximately \$70,000. Mr. Grewal received about one-half of the proceeds and his brother received the other half. The parties used these funds towards the purchase of a home on 144th Street in Surrey. This is the property that is in dispute (the “144th Street Property”). They purchased it in 1995 for \$290,000. It has risen in value quite significantly and is now worth \$442,000. There is a mortgage owing of approximately \$200,000. There are two rental suites in the basement. The rent is \$400 per month for one \$550 for the other. The suites were rented almost continuously during the marriage. Since separation, there have been periods of time when one or the other suite was vacant, and repairs had to be done due to damage by the tenants.

[6] During the marriage, Mr. Grewal took out two loans. There is a dispute as to whether Mrs. Grewal was aware of these loans at the time, although both parties are named as debtors in the loan documentation. The first was a loan from the Khalsa Credit Union for \$5,000. The second was a loan from the Surrey Metro Savings Credit Union for about \$15,000.

[7] Mr. Grewal was fired from his job at Surrey Metro Savings Credit Union in 1997. He then worked as an assistant to a mortgage broker. The marriage became troubled. Mrs. Grewal said that her husband was seeing another woman and was drinking. They had a serious fight in September 1998. The police were called, and Mr. Grewal was arrested and charged. He left the home and did not return. At that time, their daughter Simran was living at home. The other daughter, Sonia, came

back after that periodically. Mr. Grewal has been estranged from his former wife and daughters since that time.

[8] After this, Mrs. Grewal paid off what was remaining of the Khalsa Credit Union loan and some of the Surrey Metro Savings loan. She also had to make additional mortgage payments because Mr. Grewal had not made regular payments during 1997. She has maintained the mortgage since then, and has renewed it.

[9] In 1998, Mr. Grewal moved to Calgary. He obtained a divorce in November 2001 and remarried in 2002. He had financial problems. In 2002, he declared bankruptcy. Although he was discharged in April 2005, the Trustee of the Estate in Bankruptcy is registered on title to Mr. Grewal's undivided ½ interest in the 144th Street property. Mr. Grewal now works in Kelowna.

[10] In 1999, Mrs. Grewal began babysitting at a daycare. She said she earned about \$1,000 per month, but her income tax returns reflect earnings between about \$4,000 to \$8,000 per year. She did that work until very recently. She stopped working due to health problems. She has supported herself since separation with her income, the rent from the two basement suites and assistance from her daughters, primarily from her younger daughter, Simran. She now lives in the 144th Street Property on her own, and there are tenants in the basement suites.

Issue

[11] The only issue involves the division of the 144th Street Property. Mrs. Grewal seeks a substantial reapportionment in her favour. Mr. Grewal seeks an equal division.

The plaintiff's position

[12] Counsel for the plaintiff initially submitted that the claim rested under the principle of constructive trust. However, he abandoned that position at trial, and claimed reapportionment under s. 65 of the *Family Relations Act*, R.S.B.C. 1996, c. 128.

[13] Mr. Taunk submitted that an equal division of the 144th Street Property would be unfair because Mrs. Grewal has maintained and preserved this asset since the parties separated in 1998, and she needs it to be economically self sufficient. He argued that there should be a reapportionment of 80% in her favour, that she should be credited with all of the payments she made on Mr. Grewal's behalf after the separation, and that the valuation date should be 2001, the date of the divorce.

The defendant's position

[14] Counsel for the defendant submitted that equal division of this asset would not be unfair, and that the valuation date should be the date of trial. Mr. Thomson pointed out that this was a long marriage, where the parties had little but worked hard and pooled their incomes. They were able to purchase the 144th Street Property in part with the money they received from Mr. Grewal's father from the sale of the plot of land in India. He also submitted that all loans were family loans.

Division of property

Reapportionment

[15] The claim is properly brought under Part 5 of the *Family Relations Act*, as the parties are “spouses” within the definition set out in s. 2. Although the parties were divorced by an order of the Court of Queens Bench of Alberta dated October 2, 2001 (which took effect November 6, 2001), this action was commenced on March 5, 2003, within two years of the divorce.

[16] Section 65 permits the Court to reapportion each party’s undivided half interest in the 144th Street Property, which was triggered in this case by the order for divorce in 2001, if an equal division would be unfair. In doing so, I must have regard to the following factors:

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstance relating to the acquisition, preservation, maintenance, improvement or use of property or the capacities or liabilities of a spouse.

[17] Counsel for Mr. Grewal referred to several cases to support his position that an equal division of this asset would not be unfair, having regard to the length of the marriage, that Mrs. Grewal has had the use of the property and the rents from the

basement suites, and that the rise in value is not a result of improvements Mrs. Grewal has made but rather to market conditions.

[18] In ***Bibi v. Rahman***, 2004 BCSC 942, the parties were separated for 22 months after a 20-year marriage. The wife had remained in the former matrimonial home with the couple's two children. The home required little maintenance, as it was relatively new and in good condition. There were, as in this case, two rental suites in the home. During the period of separation, the wife retained the rents and paid all of the expenses for the home. However, these expenses were modest; after applying the rents they were approximately \$4,000 per year. Bernard J. found that the wife's maintenance of the home was not burdensome, financially or otherwise. Moreover, the parties had agreed to this arrangement for the first two years after separation.

[19] Both parties had worked throughout the marriage. The wife was a hospital worker and the husband a plant supervisor. The wife earned less than the husband, but for most of the time after separation she earned more. The judge found that neither party had been economically disadvantaged or advantaged by their respective roles in the marriage. He was not persuaded that the wife's economic needs were such that an equal division would be unfair.

[20] In my view, the case at bar is quite different from ***Bibi v. Rahman***. For their entire marriage, Mrs. Grewal assumed significant homemaker responsibilities, which prevented her from acquiring more marketable skills. She worked outside the home only after the family moved to Canada at part-time jobs that did not require particular

training, and she earned amounts equivalent to minimum wage. In addition to this economic disadvantage, her maintenance of the home – carrying the mortgage and the other expenses related to it – was financially burdensome on her.

[21] **Pearson v. Pearson**, 2004 BCSC 1720, involved a long marriage as well, where the husband had become disabled. Despite his need for self-sufficiency, the judge found no basis to find an equal division of assets unfair. The parties had started out with very little and accumulated what they had by virtue of their joint efforts over the years. This is the only aspect similar to the case at bar.

[22] Counsel also cited **Pelli v. Pelli** (1999), 45 R.F.L. (4th) 51 (B.C.C.A.), 1999 BCCA 215, where the Court of Appeal adjusted the trial judge's 65-35 division of assets back to an equal division. The facts in that case were also quite different. Moreover, one of the factors that did not support a reapportionment in favour of the husband was his larger financial contribution to the initial purchase of the family home, given the length of the marriage (over 20 years) and the general pattern of the relationship between the parties.

[23] In my view, an equal division of the 144th Street Property would be unfair, having particular regard to the factors in s. 65(1)(b), (e) and (f) of the **Family Relations Act**.

S. 65(1)(b) and (f) – duration of separation & preservation and maintenance of the 144th Street Property

[24] The parties have been separated for eight years. During all of that time, Mrs. Grewal has been solely responsible for preserving and maintaining the 144th Street Property.

[25] Using her limited income, the income from the two basement suites and assistance from her daughters, she has managed to keep the mortgage in good standing and pay all of the expenses of the home. She did this without any assistance from Mr. Grewal.

[26] Mrs. Grewal relied heavily on her daughter Simran, who lived with her at the 144th Street Property until June 2004, when she was married. Simran worked at numerous jobs and took out student loans while attending school. According to Simran, since 1998, she provided her mother with about \$15,000 per year. Copies of cancelled cheques written by Simran to the Surrey Metro Savings Credit Union show that she paid \$12,252 in 2001, \$17,410 in 2002, \$17,744 in 2003 and \$3,733 in 2004. Simran claimed she had a verbal agreement with her mother that the amounts she paid toward the mortgage were to be considered a loan, to be repaid when the 144th Street Property was sold. Mrs. Grewal did not specifically confirm this in her testimony. However, Simran is not a party to this action. Whether or not Mrs. Grewal is indebted to Simran is not an issue to be determined in these proceedings. It is clear, however, that Mrs. Grewal would not have been able to make all of the necessary mortgage payments without her daughter's assistance, which was quite significant.

[27] The mortgage payments were approximately \$24,000 per year. The property taxes, insurance and utility expenses were approximately \$4,000 per year. While the rents should have been \$11,400 per year, Mrs. Grewal said that the suites were vacant for periods of time and she had to do repairs. She thought her net income from the suites was about \$100 per month. She provided no supporting evidence of this, and I find it unlikely that the income from the suites was that low. In any event, she did keep up with all of the necessary payments and she did receive whatever rents were paid.

[28] Mrs. Grewal has also maintained the 144th Street Property. She painted the interior about three years ago and made various repairs, but otherwise has not made any significant improvements.

[29] Also during the period of separation, the value of the 144th Street Property increased quite substantially. The value in December 2002 was \$310,000. This rose to \$383,000 in October 2005 and to \$442,000 in May 2006.

[30] Counsel for Mrs. Grewal objected to the most recent appraisal being admitted into evidence on the basis that insufficient notice was provided under Rule 40A. However, counsel did not make this objection until trial. Moreover, the May 2006 appraisal was an update of a joint appraisal which was prepared in October 2005. In my view, there was no prejudice to the plaintiff in allowing the most recent appraisal to be admitted into evidence.

[31] There is no evidence that the increase in value of the 144th Street Property is related to any improvements Mrs. Grewal made to it. The increases are mainly

attributable to the rising real estate market. However, had Mrs. Grewal not maintained the property, it is likely it would have been sold years ago to pay the mortgage. The fact that there is substantial equity in the home now is mainly due to Mrs. Grewal's actions and perseverance over the past eight years.

S. 65(1)(f) – other circumstances relating to the use of the property

[32] Although the statement of claim does not mention any agreement between the parties and does not seek to enforce an agreement, there is some evidence that Mr. Grewal relinquished his interest in the house.

[33] Mrs. Grewal testified that after the fight that precipitated their separation in 1998, Mr. Grewal came back to the house with a police officer to pick up his clothes. He told Mrs. Grewal that he did not want any share of the house, as long as she did not ask him for child maintenance and kept making the mortgage payments. He signed a blank piece of paper, gave it to her, and told her to write anything she wanted on it. Mrs. Grewal wrote nothing on the paper because, she said, she trusted him. Simran Grewal testified that she was in the family room with her mother when Mr. Grewal signed this paper. She said that her father gave the paper to her, saying that he did not want anything to do with the house as long as her mother did not ask him for any support.

[34] Mr. Grewal denies this. He agreed that the signature on the paper was his, but he said that he did not give it to Mrs. Grewal or his daughter. He testified that he had no conversation about “walking away and leaving her the house.”

[35] Mr. Grewal's evidence about this is not consistent with his actions. When he left, he took nothing with him but his clothes, gave nothing to his family for support and paid nothing for the mortgage or what was then still owing on the two loans. He moved to Alberta. He said that when the mortgage came due in June 2000, he asked Surrey Metro Savings not to renew it because he wanted to divide the house and sell the property. However, when he commenced divorce proceedings the following year, he made no claim for a division of property. He did not claim an interest in the 144th Street Property until Ms. Grewal commenced this action.

[36] For her part, Mrs. Grewal did not make any claims for spousal or child support and she made the mortgage payments. Although the children were over 19 at the time of separation, it is not clear if either of them at any time thereafter were still dependent on their parents. However, it is apparent that both became self sufficient in short order, likely due in large part to the family's financial circumstances as well as their parents' separation.

[37] Mr. Taunk submitted that Mrs. Grewal relied on Mr. Grewal's promise. She made no claims against him, stayed in the house and kept making payments. Now, there is significantly more equity in the house because she was able to keep it.

[38] I find that Mr. Grewal left his family in 1998 with no intention of making a claim against the 144th Street Property, provided that Mrs. Grewal made no claims against him. Given her circumstances, Mrs. Grewal had a claim for spousal support. The only source available at the time was the rent from the basement suites. The most reasonable inference to be drawn from the evidence is that at the time of separation,

the arrangement between the parties was that Mrs. Grewal would stay in the house and would receive the rents as a basis of support.

[39] This is not an action that seeks to enforce an agreement or claims spousal support. However, I find that Mr. Grewal's representations and his subsequent actions in not claiming any interest in the 144th Street Property until this action was commenced, coupled with Mrs. Grewal's actions in making no support claims and keeping up the mortgage, are relevant to the issue of reapportionment.

S. 65(1)(e) – need for economic self-sufficiency

[40] This was a traditional marriage. Mrs. Grewal is now 53 years old. She worked outside the home only after the family moved to Canada. She had no formal training. She is not able to earn more than a very modest income. She recently stopped working altogether due to health concerns; however there was no medical evidence indicating that she is not able to work.

[41] Mr. Grewal earned a higher salary. After going through a bankruptcy, he seems to have recovered reasonably well. Last year he earned about \$36,000.

[42] I find that Mrs. Grewal has been economically disadvantaged as a result of the breakdown of her marriage and she is not capable of earning anything beyond a very modest income. Although she has not claimed spousal support, the 144th Street Property provides the only source from which she will be able to remain self-sufficient.

S. 65(1)(f) - liabilities

[43] Another factor to be considered under s. 65(1)(f) is debt. In addition to the mortgage, Mrs. Grewal paid the Khalsa Credit Union loan of about \$4,000, and about \$1,175 towards the Surrey Metro Savings loan. The rest of this loan was to be dealt with in Mr. Grewal's bankruptcy. Mrs. Grewal said she was not aware of these two loans until she was asked to pay them. Mr. Taunk submitted that they were not family debts.

[44] Mr. Grewal testified that the loan from the Khalsa Credit Union was to finance a family trip to California, and that Mrs. Grewal went with him to the bank and co-signed it. The loan from Surrey Metro Savings was to finance the purchase of furniture for the house. Again, Mr. Grewal said that Mrs. Grewal co-signed this loan and was aware of it and what it was for.

[45] I accept Mr. Grewal's evidence about these debts. It is consistent with the documents, which clearly show that Mrs. Grewal is jointly responsible for the debts with Mr. Grewal. These were family debts. Both parties contributed to these liabilities before separation; only Mrs. Grewal did so after separation.

[46] Apparently Mr. Grewal still owes his creditors approximately \$19,000 plus interest. Although he is a discharged bankrupt, his counsel advised the Court, subsequent to the trial, that a number of unsecured creditors were to be repaid from Mr. Grewal's share of the 144th Street Property once this matter was determined. There was no evidence about these liabilities at trial, and there is no evidence as to whether these include the remaining amounts owing to the Surrey Metro Savings

Credit Union. In these circumstances, I do not consider these liabilities to be family debts. Mr. Grewal will be responsible for dealing with these liabilities.

Other issues

[47] Mrs. Grewal testified that Mr. Grewal purchased the plot of land in India with his “job savings”, and when it was sold, he gave his share to his brother and they used her share to purchase the 144th Street Property. Her position as to the effect of this was not clear.

[48] Mr. Grewal testified that his father purchased the land in India and that it was put into Mr. Grewal’s name because a person could not own more than one plot in a common service. The plot was later sold, and Mr. Grewal received about one-half of the proceeds from his father. He and Mrs. Grewal used these funds as a down payment for the purchase of the 144th Street Property.

[49] Mrs. Grewal’s evidence is not consistent with the evidence of the parties’ limited financial circumstances when they lived in India, nor is it consistent with the documentary evidence. Mr. Grewal’s father made a sworn statement in 1995. He deposed that the plot of land was allotted to Mr. Grewal, who sent a power of attorney so that the land could be sold. The father sent the sale proceeds of about \$70,000 to Mr. Grewal and asked him to give a half share to his brother.

[50] I accept Mr. Grewal’s evidence that his father gave him his interest in the plot of land. The funds he received from its sale in 1995 contributed to the acquisition of the 144th Street Property.

[51] However, nothing turns on this. Mr. Grewal does not take the position that this gift should be a factor in reapportionment in his favour. Given the timing, the nature of the gift and the length of the marriage, I would not consider it to be a factor in any event.

Reapportionment & valuation

[52] Mrs. Grewal seeks a reapportionment of 80% after crediting her with all mortgage, taxes, insurance, maintenance and other loan payments she made on Mr. Grewal's behalf, in an amount of approximately \$143,000 (which amount includes 6% interest and \$27,104 owing to Simran). She also seeks to value the 144th Street Property as of 2001, when the parties were divorced. Mr. Taunk relies for this purpose on an appraisal dated December 11, 2002, stating a value of \$310,000. The effect of this position is that the value of Mr. Grewal's interest would be approximately \$33,400.

[53] I do not agree that the 144th Street Property should be valued as of 2001. In **Blackett v. Blackett** (1989), 22 R.F.L. (3d) 337 (B.C.C.A.), the Court of Appeal established that valuation should normally be the date of trial. In this case, there are property assessments showing assessed values of \$260,000 in July 2001 and 283,000 in July 2002. Mr. Taunk relied on the appraisal valuing the house as of December 2002. There is no reasoned basis for using December 2002 as a valuation date. The best evidence of value is the most recent appraisal from May 2006, showing a value of \$442,000.

[54] In my view, any inequity related to the length of the separation and Mrs. Grewal's contributions during that time can be resolved through a reapportionment in her favour. This may or may not include a credit to her of the value of the expenditures she made on the property on behalf of Mr. Grewal since 1998.

[55] ***Karreman v. Karreman***, 2001 BCSC 1327, a case cited by Mr. Taunk, involved a 17-year period of separation, where the husband remained in the home with the children and maintained the property. He made considerable improvements to the property, but provided only estimates of his expenditures. The value increased during the separation. However, the court found that the increase was unrelated to the husband's improvements but instead was largely attributable to the rising real estate market. Rather than crediting the husband for his expenditures and crediting the wife with an estimated amount for occupational rent, the court reapportioned the property 80%-20% in favour of the husband.

[56] In this case, the parties have approximately \$242,000 of equity in the 144th Street Property.

[57] If reapportionment could be achieved through a mathematical calculation of credits, I would credit Mrs. Grewal with the total amount she paid on behalf of Mr. Grewal for the mortgage, property taxes and insurance, from September 1998 to the date of trial. I would also credit her with the payments she made on the family loans. I would not credit her with any amounts for interest and I would not credit her with any amount she may owe to her daughter Simran, as that issue has not been addressed in this action. I would not credit Mrs. Grewal with any other expenditures

she made to maintain the property, as she has had the benefit of living there since 1998; similarly, I would not credit Mr. Grewal with an estimated amount for occupational rent. Finally, I would not credit Mr. Grewal with the amounts Mrs. Grewal received in rents, because that was one of her limited sources of support.

[58] In this case, the evidence is not clear as to precisely what Mrs. Grewal paid each year for the mortgage, property taxes and insurance, what other expenditures she made and what she received in rent. Because of this, and other factors outlined below, I do not consider it appropriate to determine a fair apportionment through a mathematical calculation. However, calculations prepared by Mr. Taunk provide an idea of the result of a mathematical calculation. These show that the total amount that Mrs. Grewal paid for the mortgage, property taxes and insurance on behalf of Mr. Grewal from 1999 to 2006, as well as the family loans, was about \$97,000. If the property were to be divided equally after crediting Mrs. Grewal with this amount, Mrs. Grewal would receive \$169,500 and Mr. Grewal would receive \$72,500. This is roughly equivalent to a reapportionment in favour of Mrs. Grewal of 70%.

[59] There are other factors that must be considered regarding the division of property, which in my view, cannot be addressed through a straight mathematical calculation. Mrs. Grewal has a great need for economic self-sufficiency, given her age, lack of training and job experience. Her contributions to preserving and maintaining the 144th Street Property over the eight years of separation were onerous. She also provided a home for Simran until 2004, albeit Simran was contributing substantially to the cost of maintaining the home. Mr. Grewal contributed nothing towards the house, his former wife or his daughters. His actions

following the separation demonstrated that he was prepared to relinquish his interest in the 144th Street Property in exchange for not having to maintain the debt and not having to pay any support to Mrs. Grewal or provide any assistance to his daughters.

[60] In all of these circumstances, I am satisfied that Mrs. Grewal is entitled to a reapportionment of the equity in the 144th Street Property in her favour, and I find that a fair division would be an 80% share to her and a 20% share to Mr. Grewal. By my calculations, this will provide Mrs. Grewal with a share valued at approximately \$193,600 and Mr. Grewal with a share valued at approximately \$48,400.

[61] Neither counsel made submissions as to how this is best accomplished. I will leave that to the parties to resolve or take whatever steps they consider necessary to effect the result.

Costs

[62] While there has been mixed success, Mrs. Grewal achieved a result closer to her position than did Mr. Grewal. However, counsel made no submissions on costs. The parties will have liberty to make written submissions on costs within 30 days from the date of this judgment. Failing this, Mrs. Grewal will be entitled to costs on the usual scale.

“B. Fisher, J.”
The Honourable Madam Justice B. Fisher