

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Grewal v. Grewal***,  
2006 BCSC 1406

Date: 20060918  
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 on Costs**

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] In my judgment of July 13, 2006, I gave the parties liberty to make written submissions on costs, since no submissions had been made at trial.

[2] The two-day trial involved one issue: division of the former matrimonial home. Neither party achieved the result he or she advocated at trial. The plaintiff, Mrs. Grewal, sought a substantial reapportionment in her favour, a 2001 or 2002 valuation date, and credits for insurance, maintenance, mortgage, and other loan payments she made on behalf of the defendant during the period of separation. The defendant, Mr. Grewal, sought an equal division. I found that a fair division would be 80% to the plaintiff and 20% to the defendant, using the trial date for valuation and without giving the plaintiff the credits she sought.

[3] The plaintiff submits that costs should be awarded in her favour because she achieved a result closer to her position at trial than did the defendant. The defendant submits that each party should bear his or her own costs, primarily because the judgment reflected more of a middle ground between the positions of each party.

### **Should costs follow the event?**

[4] The general rule, as reflected in Rule 57(9) of the **Rules of Court**, is that costs follow the event. The party seeking to displace this general rule has the burden of satisfying the court that costs should not follow the event. The court has considerable discretion in awarding costs under Rule 57, but that discretion must be exercised judicially.

[5] The plaintiff achieved more success than the defendant. The effect of her position at trial was that the value of the defendant's interest would be approximately \$33,400. The effect of the defendant's position was that the value he should have received was \$121,000 on an equal division or, alternatively, approximately \$96,800 on a more modest reapportionment in favour of the plaintiff. The defendant received a 20% interest in the amount of \$48,400. In this circumstance, the burden is on the defendant to satisfy the court that the plaintiff should not be entitled to her costs.

[6] Counsel for the defendant submitted that there are a number of factors that the court should take into account in assessing this issue – factors, he says, that would justify an order for costs in favour of the defendant. I will summarize his main points, and address each:

- (a) In her Statement of Claim, the plaintiff did not seek to enforce an agreement regarding the defendant's alleged waiver of his interest in the former matrimonial home, yet evidence about this allegation was introduced at trial. In addition, the plaintiff did not seek spousal support as an alternative. These deficiencies in the pleadings put the defendant at a disadvantage, as he was not fully aware of the nature of the case against him before trial.

[7] There is some merit to this. The plaintiff did not raise this issue in her pleadings, so the defendant was not fully aware of these allegations before trial. There was some inefficiency at the trial as a result, although it is not possible to quantify in any precise manner.

- (b) Counsel for the plaintiff sought to argue this case on the basis of constructive trust, despite the fact that this was, again, not

pleaded, and the **Family Relations Act**, R.S.B.C. 1996, c. 128, was applicable in the circumstances.

[8] Counsel for the plaintiff did not abandon this position until final argument. However, the issue of constructive trust did not require the presentation of evidence that was not relevant to reapportionment considerations under the **Family Relations Act**. I do not consider this factor to be relevant to costs.

- (c) Although the Court reapportioned the former matrimonial home 80% in favour of the plaintiff, it did so based on the defendant's analysis of the facts and relevant case law.

[9] Implicit in this submission is the suggestion that the plaintiff was not substantially successful in the action. I disagree. Although the basis for reapportionment was not in accordance with the plaintiff's position, she did succeed in convincing the Court that a substantial reapportionment in her favour was appropriate.

- (d) The Court did not accept the plaintiff's position on several key issues (valuation date, credits for mortgage and other payments) and preferred the defendant's analysis.

[10] In my view, this would require a consideration of Rule 57(15), which permits the Court to award costs that relate to some particular issue or part of the proceeding. Counsel for the defendant did not suggest in his submission that this subrule applies; rather he submitted that the Court should consider this as a factor in denying the plaintiff her costs. I disagree. The issues in this case were all related to the one central issue of reapportionment. This is not a case where the Court should

analyze each separate issue in dispute. As I have stated above, the plaintiff was substantially successful on the main issue at trial.

- (e) Counsel for the plaintiff objected to the admission of the most recent appraisal of the former matrimonial home, without any notice to counsel for the defendant, which objection was not accepted by the Court.

[11] While I did not consider this objection to have merit in the circumstances, the matter did not occupy very much time at trial.

- (f) The plaintiff spent some time at trial trying to prove that the former matrimonial home was purchased in part with funds that the parties had saved when they lived in India, despite documentary evidence from the defendant to the contrary. Again, the Court accepted the defendant's evidence on this issue.

[12] I determined that nothing turned on this issue in any event. Although some time was spent at trial on this issue, that time was not excessive.

- (g) The defendant will receive very little as a result of the reapportionment decision, and a large portion will be paid to the Trustee in Bankruptcy for past debt, some of which were joint debts. Requiring him to pay the plaintiff's costs with what little he will have left after paying the remaining creditors is unfair and unjust.

[13] The defendant's financial position is not a relevant consideration; this is only relevant to sympathy, which is not a proper ground for the exercise of my discretion

under Rule 57: see **McDowell v. Barry** (1985), 1 C.P.C. (2d) 278 (B.C.S.C.); **Grealy v. Kuntz** (1994), 27 C.P.C. (3d) 76 (B.C.S.C.).

[14] I appreciate some of the concerns expressed by counsel for the defendant. Some of the factors he raised are related to the conduct of the proceedings. Had these factors resulted in prolonging the trial unnecessarily to any significant degree, I would have considered them to be more relevant on the issue of costs. The balance of his position, as I understand it, is essentially that the plaintiff was not substantially successful because the court did not accept her position on a number of matters or on the basis for reapportionment. As stated above, I do not consider this to be a proper basis to disentitle the plaintiff to her costs, as in my view she was successful in obtaining a substantial reapportionment in her favour, even if it was on a basis different from that which she put forward at trial.

[15] The plaintiff is entitled to costs at the usual scale.

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