212 Nfld. & P.E.I.R. 138

Chandra v. Chandra

Newfoundland Unified Family Court

Wells J.

Judgment: April 17, 2002

Chandra v. Chandra

SHAKTI CHANDRA (PETITIONER) AND RANJIT CHANDRA (RESPONDENT)

Newfoundland Unified Family Court

Wells J.

Heard: February 8, 2002
Judgment: April 17, 2002
Docket: 0680/94, 1002, Divorce Registry 94/07335

Counsel: ***David Day***, *Q.C.*, for Plaintiff

Nicholas Avis, *Q.C.*, for Defendant

Cases considered by *Wells J.*:

Burnett v. Burnett, 1999 CarswellOnt 2385, 50 R.F.L. (4th) 223 (Ont. S.C.J.) -- followed

Cunha v. Cunha, 99 B.C.L.R. (2d) 93, 1994 CarswellBC 509 (B.C. S.C.) -- followed

Rules considered:

Rules of the Supreme Court. 1986, S.N. 1986, c. 42, Sched D

R. 35 -- referred to

R. 35.01(1) -- referred to

***Wells J.*:**

1 This matter involves a lengthy and complex dispute over a division of matrimonial property. On December 12th, 2000 I filed a decision in which I dealt with all aspects of the dispute save two. The most important problem remaining was to ascertain or estimate the amount of money held in bank accounts in the joint names of the defendant and one or another of his three children. A lesser problem was the division of certain land in India, on which I have no evidence of value.

2 The matter of the bank accounts was discussed in detail in my earlier decision. In essence it concerns some 120 bank accounts which were located at one time or another, in:

(a) St. John's

(b) Ireland

(c) New Delhi, India

(d) the United States

(e) England

(f) Jersey, Channel Islands

(g) Switzerland

(h) Isle of Man

(i) Copenhagen, Denmark

3 I noted in my decision at paragraph 16, the following:

> The total face value of the referenced bank accounts appears to have exceeded two and one-half million dollars but the actual value was not as high, by reason of the fact that some of the entries for different accounts referred in fact to the same monies. The reason for the duplication is that Ranjit Chandra, who controlled and managed all of the accounts, transferred money from one account to another, from one bank to another, from one country to another, and from one currency to another, largely into and out of Canadian dollars, U.S. dollars and pounds sterling. It follows that the multiplicity of transactions, the incompleteness of the bank records, the failure of Ranjit Chandra so far as we know to keep or disclose accounting records and the absence of ledgers or other statements of account, caused the principal focus of the trial to become financial. The process became an effort to determine how much was or had been in the various accounts or other investment vehicles and whether or not they were matrimonial assets.

4 And in paragraph 117:

> During the course of these reasons I have noted the absence of full disclosure and the absence of full explanation by Ranjit Chandra, who should have full knowledge of the financial matters under discussion.

5 And at paragraphs 121, 122 and 123:

> I have examined the mass of financial material and the calculations which have been done by the parties with hugely differing results and I have come to the conclusion, as I said to counsel during the trial, that a qualified accountant is necessary to assist the court in a determination of how much money really existed in the labyrinth of accounts, currencies and transactions leading up to November 23rd, 1993.
>
> While I am prepared to make an inference as to how much money there was, such an inference should be based on premises which have been examined by a qualified accountant.
>
> I am conscious of the fact that the calculations presented by Shakti Chandra and her counsel, are calculations prepared largely by her on her interpretation of the raw data in her possession. These calculations may be correct, but they cannot be accorded the same weight as would calculations made by a professional accountant bringing a professional competence and detachment to the task.

6 In due course under rule 35.01(1) I appointed a chartered accountant, Mr. Robert Healey, C.A., as an independent expert to examine the large volume of materials referencing bank accounts in the names of Ranjit Chandra and one or another of his children. My purpose in so doing was to endeavour to ascertain with greater accuracy if possible, how much money was in the various accounts at the time of separation, or in the alternative, whether or not it is possible to make an accurate, or any determination.

7 Having examined the referenced materials, Mr. Healey reported as follows, on December 30th, 2001:

> **PRIVATE AND CONFIDENTIAL**
>
> Dear Justice Wells:
>
> *Re: Chandra Divorce matter*
>
> As specifically agreed and outlined in your letter of November 21, 2001, I have reviewed the material which you made available to me as an expert under Rule 35 of the Rules of the Supreme Court.
>
> As instructed by you, I have limited my review to matters involving bank accounts (Canada and Foreign countries) of Doctors R. Chandra, S. Chandra and their children, all being joint accounts in the names of both parties and their children.
>
> Having reviewed the material, I am unable to express an opinion on the "probable amount of funds" in the numerous accounts referred to in the material as of November, 1993 without the full disclosure and cooperation of Dr. R. Chandra in view of the fact that no accounting or other records were made available to the Court by Dr. R. Chandra.

Yours sincerely

8 On the basis of that report coupled with my own examination of the evidence, I am satisfied that I cannot be certain as to exactly how much money existed in bank accounts as matrimonial assets at the time of separation. Nevertheless I am satisfied on a balance of probabilities that the total amount was substantial.

9 In paragraphs 77, 78 and 79 I noted:

> Ranjit Chandra managed all financial matters. His own accounting methods and documentation have neither been produced nor explained. I cannot conceive that the volume of funds managed by him, especially with the complexity of the transactions involved could have been managed without record keeping, but no records have been produced.
>
> The most difficult aspect of this matter is attempting to determine with any accuracy the full extent of the monies in about 120 bank accounts operated under various combinations of family names by Ranjit Chandra, usually in his name and the names of one or another of the children.
>
> A very rough compilation of amounts mentioned at one time or another in bank documents, excluding amounts solely in the names of the children, after rough conversions from U.S. dollars and sterling, to Canadian dollars, produces a figure of about $2,750,000. That amount must be reduced because of the duplication of figures which occurred when monies were converted into different currencies and redeposited in new or different accounts. Whatever the proper figure for the bank accounts may be, it is quite separate from a wide variety of other financial holdings.

10 In paragraphs 115, 116, 117 and 118:

> "To infer" is defined by the Oxford Encyclopedic Dictionary as being "deduce or conclude from facts" and "inference", as "the forming of a conclusion from premises". It has been found by Canadian courts that when considering the division of matrimonial assets there are occasions when the level of disclosure falls below the standard required in order to accomplish an equitable division according to law. In such cases when disclosure has been non-existent or incomplete, the courts have resorted to inferences drawn from known facts, to arrive at conclusions and findings with respect to non-disclosed or concealed facts. Failing to draw such inferences would be to permit failure to disclose, to accomplish its purposes.
>
> Thus, in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.) the principle was expressed in the headnote as follows:

> "**Family property on marriage breakdown - Factors affecting equal or unequal division - Effect of conduct of spouses during marriage - Removal or concealment of assets - Husband failing to disclose assets throughout litigation - Court assuming undisclosed assets to have value equal to disclosed assets - Division of assets calculated accordingly.** In proceedings for the division of family assets, husband persistently failed to make full disclosure of his assets. Held, judgment was made accordingly. Non-disclosure of assets was the "cancer" of matrimonial property litigation. It discourages settlement or promoted settlements which were inadequate and increased the time and expense of litigation. An award of costs did not adequately address this problem nor was it enough to deal only with the known assets. Therefore, where there had been non-disclosure of assets at any stage of the proceedings, it was ordinarily to be assumed that the concealment was ongoing and the division of assets affected accordingly. If the offending party was able to satisfy the Court by the conclusion of the trial that there had been full disclosure, an award of costs only might be the appropriate penalty. In this case, it was likely that husband's undisclosed assets were in the form of investments rather than land or bank accounts. The proper working inference to draw was that the value of undisclosed assets was at least equal to the value of those disclosed. Accordingly, the division of assets was calculated on that basis."

and in *Burnett v. Burnett* (2000), 50 R.F.L. (4th) 223, as follows:

> "**Family law - Family property on marriage breakdown - Factors affecting equal or unequal division - Presumption in absence of other factors -**Family had opulent and luxurious lifestyle and resided in Toronto, Geneva and Florida - Wife and husband separated after eight years while ordinarily resident in Toronto - Wife successfully petitioned for divorce and other relief including equalization payment - Husband moved to set aside judgment and series of orders setting aside and reinstating judgment followed - Wife petitioned for determination of equalization payment - Husband did not make complete financial disclosure and did not seek to be heard at trial - Reconciliation of husband's disclosure with balance sheet of family company was not possible - Documentary record included envelope given to wife by husband prior to move to Geneva containing letters that were indicated as husband's will and setting out assets - Attribution of $12 million to husband's business investments was reasonable and proper amount of available evidence - Equalization payment of $6,659,067 was awarded with prejudgment interest of $2,868,835.52 calculated from commencement of proceedings."

During the course of these reasons I have noted the absence of full disclosure and the absence of full explanation by Ranjit Chandra, who should have full knowledge of the financial matters under discussion.

The court is therefore entitled to infer from the facts which are known, findings in respect of matters that could have been clarified and explained but were not.

11 I found at paragraphs 119 and 120 that that joint accounts held mainly in Jersey and the Isle of Man held £212,151.95, $81,391.02 U.S. and $6,049.71Cdn., which I converted to approximately$650,000 Cdn. I am satisfied that the foregoing figure is reasonably accurate.

12 In respect of other joint accounts I find on a balance of probabilities and I am prepared to infer, using the principles applied in *Cunha* [(1994), 99 B.C.L.R. (2d) 93 (B.C. S.C.)] and *Burnett* [(2000), 50 R.F.L. (4th) 223 (Ont. S.C.J.)], that there was at least a further amount of $100,000 Cdn. for a total of about $750,000 Cdn. In that inference and finding I have adopted a conservative approach and if I have erred in my estimation of the total figure, I have erred on the side of caution.

13 On the basis of my having found in my earlier reasons, that some of these funds may have been held in trust for INIF, I will deduct $250,000 from the total, leaving a balance of at least $500,000 which was held jointly by the defendant and one or other of his children and was a matrimonial asset at the time of separation. That sum is subject to equal division. I have not attempted to include in the foregoing amount the 2021 "units" in one account nor the 165.571 "shares" in another. I have no evidence at all concerning these assets and cannot attempt to divide them.

14 Counsel for the plaintiff has tendered documentation which he obtained from Switzerland, which suggests that INIF was never an incorporated company in Switzerland and was only incorporated in January 1977 in Liechtenstein, long after the parties separated in the autumn of 1993. Thus he argued, none of the money in any of the bank accounts under discussion should be attributed as being held in trust for INIF.

15 Counsel for the defendant vigorously disputed the reception of that evidence on the basis of unsatisfactory proof of its authenticity. In that regard I accept the defendant's argument and have not taken it into consideration in any of my foregoing calculations. In any event I had already decided that some portion of the total sums held in joint bank accounts by Ranjit Chandra and his children was used at Dr. Chandra's discretion for research.

16 Another outstanding matter is the land in India. In my earlier decision I referred to it and noted that I had no evidence before me as to value. That position still obtains and I am unable to make any order as to that property.

COSTS

17 In many cases involving a division of matrimonial assets there is no order as to costs. The present case falls outside the norm. The trial was very lengthy and a huge amount of time and effort was expended by the plaintiff and her counsel and in court in an attempt to make some sense of the labyrinth of bank accounts and the transactions relating to them. That process was made necessary because the defendant refused to provide the normal disclosure information which only he had, because he had determined and organized all financial matters involving the 120 accounts. Only he knew the sources of the funds, the amount of them and the details of the dealings with them. It was the transfers of funds from one place to another and one currency to

another, which created what I have referred to as the labyrinth. Only the defendant knew the details and he disclosed very little.

18 It was the defendant's refusal to disclose, despite requests and orders for disclosure, that prolonged the trial. According to plaintiff's counsel the defendants failure to cooperate resulted in 900 hours of counsel's time in an attempt to unravel the details.

19 Counsel for the defendant argued that certain aspects of the trial, particularly that of custody should not be included in any order of costs. In the light of that submission I will reduce the number of trial days to which costs will be applicable, by five, and I award costs on a party-and-party basis to the plaintiff.

20 Plaintiff's counsel argued that I should calculate costs and make a lump sum award. I would not be comfortable doing so and accordingly I order that costs including all disbursements shall be taxed on a party-and-party basis. The account of the court-appointed expert under Rule 35 shall also be born by the defendant as the appointment was made necessary in an effort to do justice to the parties as a result of the defendant's non disclosure.

21 In all of the circumstances, which I shall not repeat, I believe also that the plaintiff is entitled to a portion of her solicitor-and-own-client costs. I set that proportion of the solicitor-and-own-client costs at 50 percent of the total amount of such costs as taxed and they shall be in addition to the party-and-party costs.

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