

CANADA / JUDGMENT

Amiri v. Nazer

2025 ONCA 726

COURT

Court of Appeal for Ontario

DECIDED

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Amiri v. Nazer

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Judges

Gillese, Eileen E.; Favreau, Lise G.; Rahman, Moiz

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Amiri v. Nazer, 2025 ONCA 726

DATE: 20251022

DOCKET: COA-24-CV-0853

Gillese, Favreau, Rahman JJ.A.

BETWEEN

Ali Amiri

Applicant (Appellant)

and

Sana Nazer

Respondent (Respondent)

Ali Amiri, acting in person

Alessandra Muia, for the respondent

Heard: September 26, 2025

On appeal from the order of Justice M. Suranganie Kumaranayake of the Superior Court of Justice, dated July 9, 2024, and from the costs order, dated April 3, 2025.

REASONS FOR DECISION

I. Introduction [1] This is an appeal of the trial judge's final order made following the parties' family law trial.

[2] The appellant and respondent had a short marriage. They had a religious marriage ceremony (Nikah) in July 2017 and a civil marriage ceremony in April 2019. Their only child was born in August 2018. The parties separated in February 2020 when the appellant was charged with assaulting the respondent and left the matrimonial home. The parties' family litigation started in April 2020 and resulted in several appearances and interim orders, mostly relating to parenting, over the next three years. The Superior Court litigation came to an end after a nine-day trial in September 2023.

[3] The following issues had to be determined at the trial:

- (1) Decision-making responsibility for the child and his primary residence;
- (2) The parenting time schedule;
- (3) The respondent's request to relocate with the child;
- (4) The appellant's child support obligation and expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175;
- (5) The appellant's request for equalization of net family property, and his request for a resulting or constructive trust in the matrimonial home;
- (6) Whether the appellant owed the respondent \$20,000 for payment of a Mehr (i.e. contractual dowry) in relation to the parties' Nikah; and
- (7) The costs of the application.

- [4] The trial judge decided all of the issues in favour of the respondent, except her request to relocate with their child. The appellant does not appeal the trial judge's orders relating to decision-making, parenting time, or the child's primary residence. His appeal relates only to the issues involving money and property. The appellant frames the issues he raises on appeal as follows:
- (1) The trial judge made palpable and overriding errors in her interpretation of key evidence relating to the matrimonial home, including ownership, contributions and unjust enrichments. The trial judge also denied the appellant natural justice by "relying on issues not raised at trial, such as non-disclosure, without providing the appellant an opportunity to address them";
 - (2) The trial judge made palpable and overriding errors of fact, and misapprehended evidence, by imputing \$86,553 as the appellant's annual income for the years 2020 to 2023;
 - (3) The trial judge committed an error of mixed fact and law in awarding the respondent the \$20,000 Mehr payment;
 - (4) The trial judge created a reasonable apprehension of bias by blindly accepting the respondent's evidence, ignoring the appellant's evidence, and advocating for the respondent at the trial; and,
 - (5) The trial judge's costs award was unreasonable. In support of this ground of appeal, the appellant brought a motion for fresh evidence seeking to introduce an affidavit and psychological report which purport to show that complying with the costs award will cause him undue hardship.
- [5] After hearing the appellant's oral submissions, we did not find it necessary to hear from the respondent's counsel. We dismissed the appeal with reasons to follow. These are our reasons.
- [6] Before addressing the specific issues raised by the appellant, it is important to emphasize that the issues the appellant now raises on appeal turn largely on the trial judge's finding that the appellant was not credible. The trial judge gave several reasons why she did not find the appellant to be a credible witness, which she said were not exhaustive.
- [7] The trial judge's reasons for finding that the appellant was not credible included the following: he admitted to using a false name and a doctored bank statement in connection with his watch repair business; his financial statements did not comply with the Family Law Rules, O. Reg. 114/99, and there was a lack of transparency in his financial transactions; his testimony about how much flexibility he had in his schedule regarding parenting time was contradictory; in describing how he obtained a mortgage for the matrimonial home, he admitted to participating in what could be construed as mortgage fraud; his actions during the litigation demonstrated that he was manipulative and tried to exert control over the respondent, CAS workers, and the court; and finally, his conduct relating to an Office of the Children's Lawyer clinician who was a witness at the trial was concerning, because he had

surreptitiously recorded their meeting and because he sent the clinician an email during cross-examination telling the clinician that he should retain counsel.

- [8] This court's role is not to conduct a re-trial. We must defer to the trial judge's factual findings, including any underlying credibility findings. This court cannot interfere with factual findings unless the appellant establishes that the trial judge committed palpable and overriding errors in making such findings. As explained below, the appellant has not established that the trial judge committed any reviewable error in deciding any of the issues on appeal.

II. The Matrimonial Home, Equalization, and Alleged Denial of Natural Justice [9] The trial judge dismissed the appellant's claim that he had a resulting or constructive trust in the matrimonial home. The trial judge also dismissed the appellant's claim for equalization. The appellant asks us to reverse these findings.

- [10] The trial judge made several evidentiary findings that supported her decision that the appellant's claims for a resulting or constructive trust and for equalization should be dismissed. The appellant's claim for a resulting or constructive trust was based on his assertion that he had paid \$60,000 towards the home's purchase price and that it was always the parties' intention that the home be in the appellant's name. The trial judge rejected the appellant's evidence that he had contributed \$60,000 towards the purchase. The trial judge noted that, even accepting the respondent's acknowledgement that the appellant contributed \$50,000 towards the purchase, and the appellant's assertion that he had been solely responsible for the carrying costs of the matrimonial home before separation, the appellant had not paid any carrying costs for the three-year period between the date of separation and the trial. The trial judge observed that this was longer than the duration of the parties' marriage and longer than the time they lived together in the home. The trial judge also remarked that the parties' marriage lasted only 10 months and that they had been separated longer than they had been married. Moreover, she found that the appellant had not produced any appraisals for the matrimonial home either at the date of marriage or the date of separation, and had failed to lead any evidence of unjust enrichment. The trial judge ultimately concluded that "because of the numerous deficiencies in the [appellant's] evidence and his financial statements", combined with her concerns about his credibility, she was unable to determine his debts and assets.

- [11] We see no basis to interfere with the trial judge's findings.

- [12] In light of these findings, the trial judge first considered the appellant's trust claims. As already mentioned, the trial judge decided that the appellant was not credible and that where his evidence differed from the respondent's, she preferred the respondent's evidence. Having rejected the appellant's evidence regarding his financial contributions to the matrimonial home, and in light of the absence of any evidence of unjust enrichment on the part of the respondent, she decided the appellant was not entitled to a resulting or constructive trust. We see no basis for appellate intervention with the trial judge's

determinations of the appellant's trust claims.

- [13] The trial judge then proceeded to determine the appellant's entitlement to an equalization payment under ss. 4 and 5 of the Family Law Act, R.S.O. 1990, c. F.3. Before deciding whether the appellant was entitled to an equalization payment, the trial judge had to determine the parties' respective net family property amounts. The trial judge was not able to determine the appellant's debts and assets at the date of marriage or the valuation date, in part because of his inconsistent financial disclosure. Thus, given this lack of financial information and the short duration of the parties' marriage, the trial judge concluded that there should be no order for an equalization payment. Again, the appellant has not established a basis for appellate intervention.
- [14] Further, the trial judge did not deny the appellant natural justice in considering his inconsistent financial disclosure. The appellant himself submitted these inconsistent financial statements and was cross-examined on them. He was aware that they were not consistent. We see nothing unfair about the trial judge expressing concern that the financial statements listed different gross income figures, and different numbers of bank accounts.

III. Imputation of Income [15] The trial judge imputed an annual income of \$86,553 to the appellant for the years of 2020-2023 in order to determine his child support and s. 7 obligations. This was because that was the figure he listed as his 2022 income in his initial May 2023 financial statement. The appellant revised this figure to be \$0 in his second financial statement, filed in August 2023.

- [16] The appellant argues that the trial judge ignored his testimony about the discrepancies between his income in the two financial statements. The appellant contends that he explained to the trial judge that the \$86,553 he first reported reflected his gross corporate income. He says that after consulting a lawyer, he determined that it was incorrect for him to include this figure in his initial financial statement.
- [17] We reject the appellant's submission that the trial judge erred. Again, it is important to emphasize that the trial judge did not consider the appellant to be a credible witness. She expressed concerns about how difficult it was to follow his evidence, and that his financial transactions were not transparent. The trial judge was troubled by the discrepancy in income between his two financial statements. When cross-examined about why his annual income was \$0 on his August 2023 financial statement, the appellant explained that he revised his annual income based on advice he received from an accountant. He later explained that he changed his annual income from \$86,553 to \$0 based on advice from a lawyer. The trial judge did not accept the appellant's explanation for the discrepancy, noting that his explanation involved "a passing reference to an unnamed accountant who did not testify in this trial". The fact that she did not also refer to his second explanation about consulting a lawyer is of no consequence, especially given her general findings that the appellant was not credible.

[18] The trial judge was rightly concerned about the difficulty in determining the appellant's income, since she found he had not been forthright in his financial statements, or in his evidence about his financial situation. The only evidence that she had about the appellant's income came from his May 2023 financial statement. We see no error in her reliance on this amount to impute income to the appellant for the purpose of determining his child support obligations.

IV. Mehr Payment [19] The trial judge determined that the appellant was obligated to pay the \$20,000 set out as the Mehr in the parties' marriage contract. The trial judge noted that this amount is normally included as a date-of-marriage asset to the party claiming entitlement of it, and a debt on the valuation date for the party who is liable. However, because she was not ordering an equalization payment, the trial judge ordered that the appellant had to pay the Mehr as a debt owed under an enforceable marriage contract.

[20] The appellant had opposed the payment of the Mehr because he claimed that the respondent relied on a forged marriage certificate.

[21] Again, the trial judge did not accept the appellant's claim because she preferred the respondent's evidence on this issue. The respondent explained that two original certificates existed – one held by the mosque where the Nikah was held, and one that she had. The trial judge found that the appellant had not pursued a motion to compel the respondent to produce an original certificate. The trial judge observed that she had no evidence before her that the certificate was forged. Given the appellant's admission that he had not paid the Mehr, she ordered that he had to pay it under the parties' marriage contract.

V. Alleged Apprehension of Bias [22] The appellant's apprehension of bias claim is essentially an attack on all of the adverse findings that the trial judge made against him, and all of the findings that she made in favour of the respondent. There is no merit to the appellant's claim of bias.

[23] The trial judge did not display any bias, real or apprehended. The mere fact that the trial judge found the appellant not to be credible does not demonstrate any bias. Moreover, the appellant's allegation that the trial judge helped the respondent is baseless. A fair reading of the record reveals that the trial judge treated both sides fairly. The fact that the appellant was not successful and was found not to be credible does not demonstrate a reasonable apprehension of bias.

VI. Costs Appeal [24] The trial judge ordered the appellant to pay \$85,000 in costs. The trial judge ordered that 50 percent of the costs award is enforceable by the Family Responsibility Office because 50 percent of the trial related to child support issues.

[25] The award of costs is highly discretionary. This court will not interfere with a costs order unless the trial judge has committed an error in principle, or the costs award is plainly wrong. The appellant has not demonstrated either. Even if we were to consider the appellant's fresh evidence, we see no basis to interfere with the costs award.

VII. Disposition [26] The fresh evidence motion is dismissed because it discloses no information relevant to the costs decision. The appeal is also dismissed. Costs of the motion and the appeal are ordered to the respondent in the amount of \$10,000, all-inclusive.

“E.E. Gillese J.A.”

“L. Favreau J.A.”

“M. Rahman J.A.”

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