

CANADA / JUDGMENT

Angelillo v. Mughal

2025 ONCA 769

COURT

Court of Appeal for Ontario

DECIDED

13 November 2025

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Angelillo v. Mughal

Collection

Decisions of the Court of Appeal

Date

2025-11-13

Neutral citation

2025 ONCA 769

Docket numbers

COA-25-CV-0218, COA-25-CV-0228

Judges

Huscroft, Grant; Coroza, Steve A.; Monahan, Patrick J.

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Angelillo v. Mughal, 2025 ONCA 769

DATE: 20251113

DOCKET: COA-25-CV-0218 & COA-25-CV-0228

Huscroft, Coroza, and Monahan JJ.A.

BETWEEN

Vincenzo Angelillo

Applicant (Appellant/Respondent)

and

Sanaa Amal Mughal

Respondent (Respondent/Appellant)

Vincenzo Angelillo, acting in person

Sanaa Amal Mughal, acting in person

Heard: October 22, 2025

On appeal from the judgment of Justice Yvonne Fiamengo of the Superior Court of Justice, dated December 31, 2024.

REASONS FOR DECISION

- [1] The parties were married on September 2, 2021 and separated on July 2, 2022. They have one child, R.A., who was born on April 7, 2022.
- [2] On December 31, 2024, following a six-day trial, the trial judge issued a final order resolving the issues arising from their divorce. Both parties appeal from that order.[1]
- [3] For the reasons that follow, Mr. Angelillo's appeal (COA-25-CV-0228) is allowed. The trial judge's order dismissing his relocation request is set aside and the matter is remitted for reconsideration to the Superior Court. All other relief sought in his appeal, as well as in Ms. Mughal's appeal (COA-25-CV-0218) is dismissed.

I. BACKGROUND [4] Following the parties' separation in July 2022, Mr. Angelillo had primary care of R.A. pursuant to a number of interim orders. Ms. Mughal's parenting time with R.A. was required to be supervised by her parents. By the time of trial, Ms. Mughal had day-time parenting time with R.A. three to four days a week and one overnight.

- [5] At trial, Mr. Angelillo sought permission to relocate with R.A. to Montréal, with Ms. Mughal having parenting time with R.A. one extended weekend a month. He further sought to affirm his sole decision-making authority for R.A. and Ms. Mughal's supervised parenting time with R.A. Mr. Angelillo also sought a restraining order prohibiting Ms. Mughal from contacting him or attending at his home.
- [6] Ms. Mughal opposed Mr. Angelillo's relocation request. She sought various relief at trial, including sole decision-making authority, the majority of parenting time with R.A. and the elimination of the supervision requirement for her parenting time.
- [7] The trial judge stated that Mr. Angelillo's relocation request was to be assessed on the basis of s. 16.93(2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), which provides that where a child "spends the vast majority of their time in the care of the party who intends to relocate

the child, the party opposing the relocation has the burden of proving that the relocation would not be in the best interests of the child.” The trial judge also cited this court’s observation in *Berry v. Berry*, 2011 ONCA 705, 343 D.L.R. (4th) 501, at para. 10 that “the superordinate consideration in a mobility case is the best interests of the child from a child-centered perspective.”

- [8] The trial judge accepted that Mr. Angelillo had bona fide reasons for wanting to relocate to Montréal. He had recently begun employment with an Ottawa law firm, and, while he often works remotely, the move to Montréal would mean that he could more easily commute to his new employer for any in-person work. He also planned to live in Montréal with his mother and brother, which would enable R.A. to have more meaningful relationships with her extended paternal family.
- [9] At the same time, the trial judge noted that since December 2023, R.A. has had a consistent schedule involving meaningful parenting time with both parents. The trial judge was troubled by Mr. Angelillo’s relocation plan, particularly his proposal that the maternal grandfather would drive R.A. between Montréal and Toronto once a month to enable Ms. Mughal to have parenting time with R.A. The trial judge noted that the maternal grandfather was 68 years old and, when probed by the trial judge, had testified that he was reluctant to do this amount of driving. The trial judge was also unpersuaded by Mr. Angelillo’s claim that he needed to relocate because of his new employer in Ottawa, finding it “hard to believe” that Mr. Angelillo could not organize his schedule to commute from Toronto to Ottawa on days when R.A. was in Ms. Mughal’s care. Accordingly, the trial judge declined to permit Mr. Angelillo to relocate with R.A. and directed that the parties continue to share parenting time with R.A. “while residing within the same geographic location”.
- [10] The trial judge also maintained the status quo with respect to Mr. Angelillo’s decision making responsibility for R.A. but imposed a requirement that he consult and take into consideration Ms. Mughal’s views. In addition, the trial judge increased Ms. Mughal’s parenting time with R.A. to include one weekday overnight and every other weekend from Friday afternoon to Monday evening and removed the supervision requirement provided Ms. Mughal continues to reside with her parents. The trial judge dismissed Mr. Angelillo’s request for a restraining order.
- [11] Finally, the trial judge resolved various financial issues between the parties, including the payment of child support by Ms. Mughal to Mr. Angelillo, based on Ms. Mughal’s evidence that her current annual income was \$50,000.

II. ISSUES ON APPEAL [12] As noted above, both parties appeal the trial judge’s order.

- [13] Mr. Angelillo argues that the trial judge erred in denying his relocation request by failing to apply the burden of proof set out in s. 16.93(2) and instead evaluating relocation against the status quo, which put the burden on him to demonstrate why the status quo ought to be displaced. He also argues that the trial judge made palpable and overriding errors in overlooking evidence regarding Ms. Mughal's ability to care for R.A.
- [14] Ms. Mughal argues that the trial judge's denial of Mr. Angelillo's relocation request should be upheld. She further argues that she has been the primary caregiver of R.A. since birth and that the trial judge ignored evidence of harassment, intimidation and coercive conduct on the part of Mr. Angelillo and mischaracterized her mental health. Therefore, she should have sole decision-making authority for R.A. and the majority of parenting time, while Mr. Angelillo's parenting time should be supervised, and he should be subject to a restraining order. Ms. Mughal also seeks to have the trial judge's findings with respect to her child support obligations revised in accordance with "updated financial information".

III. DISCUSSION [15] It is well established that the standard of review on questions of law is one of correctness, whereas findings on questions of fact or mixed fact and law are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 36.

- [16] In this case, the trial judge assumed that Ms. Mughal had the burden of proving that the relocation would not be in R.A.'s best interests, in accordance with s. 16.93(2) of the Divorce Act. However, the trial judge failed to actually apply that burden.
- [17] In cases where the s. 16.93(2) burden applies, the presumption is that relocation is in the child's best interests. The fundamental premise is that where the parent who is the predominant primary caregiver of the child proposes to relocate, it is usually in the child's best interests to relocate with that parent since this will maintain continuity of care and stability in the child's life: see D.A. Rollie Thompson, "Legislating About Relocating Bill C-78, N.S. and B.C.", (2019) 38 Can. Fam. L.Q. 219, at pp. 241-42. This is the logic that justifies requiring the non-relocating parent to rebut the presumption in favour of relocation by showing that the relocation is not in the child's best interests and should not be permitted.
- [18] The trial judge was properly focused on the child's best interests. What she did not do was begin her analysis from the presumption that relocating with the father was in the child's best interests. Instead, she simply identified concerns with Mr. Angelillo's relocation plan, particularly his proposal to have the maternal grandfather transport R.A. between Montréal and Toronto once monthly, and dismissed his relocation request. The trial judge then went further, directing Mr. Angelillo to abandon his own plans to move to Montréal and instead remain in the same geographic location and share parenting time with R.A. pursuant to a new parenting schedule.
- [19] Having determined that the s. 16.93(2) presumption applies, the trial judge was required to do more than simply identify a flaw in the relocating parent's plan and then default to the status quo. This was particularly true here, where the trial judge accepted that Mr. Angelillo

had bona fide reasons supporting his plan to relocate. Rather than apply the s. 16.93(2) presumption, the trial judge, in effect, applied a straightforward “best interests” analysis as if s. 16.93(3) applied, placing an equal burden of proof on both parties to show whether relocation would be in the best interests of the child.

- [20] We acknowledge, as the trial judge did, that the crucial question in relocation cases remains whether relocation is in the best interests of the child. We also recognize that the inquiry is highly fact specific and discretionary: *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at para. 152. However, in circumstances where s. 16.93(2) applies, the presumption is that relocation is in the best interests of the child, subject to the non-relocating parent establishing otherwise. The failure to properly apply that presumption, as occurred here, is an error of law: *Shipton v. Shipton*, 2024 ONCA 624, 5 R.F.L. (9th) 17, at paras. 70-74. But for this legal error, the trial judge could have reached a different conclusion regarding Mr. Angelillo’s relocation request, which requires this court to set it aside.
- [21] Mr. Angelillo urged this court to correctly apply the presumption and determine whether his relocation request is in R.A.’s best interests. Unfortunately, we are not in a position to do so.
- [22] Relocation decisions must be made based on the facts at a particular point in time. We see no palpable and overriding error in the trial judge’s parenting order, which has now been in place for 10 months. As mentioned above, this order increased Ms. Mughal’s parenting time with R.A. to include one weekday overnight and every other weekend from Friday afternoon to Monday evening. This arrangement differs significantly from the one that was in place when Mr. Angelillo initially asked to relocate the child. While both Mr. Angelillo and Ms. Mughal argue that the trial judge ignored or misapplied material evidence regarding their respective parenting capacities and that the parenting schedule should be different, in our view the findings of the trial judge about parenting time and decision-making responsibility were open to her on the record and are entitled to deference on appeal. In essence, both parties invite us to reweigh the evidence and substitute their preferred findings in place of those made by the trial judge.
- [23] A fresh consideration of whether it would be in R.A.’s best interest to relocate to Montréal with Mr. Angelillo would focus on the child’s present circumstances: *Shipton*, at para. 86.
- [24] Finally, as noted above Ms. Mughal asks this court to vary the trial judge’s child support order based on “updated financial circumstances”. The child support order was based on Ms. Mughal’s own evidence regarding her income for child support purposes. Any variation of that order would require a motion to change, which has not been brought.

IV. DISPOSITION [25] The trial judge’s relocation order is set aside. The relocation issue is remitted to the Superior Court for a fresh hearing which we request be heard on an expedited basis. All other relief sought by the parties in their respective appeals is hereby dismissed. No costs are ordered in respect of either appeal.

“Grant Huscroft J.A.”

“S. Coroza J.A.”

“P.J. Monahan J.A.”

- [1] The parties were recalled on February 28, 2025 to resolve the issue of retroactive child support, on consent. The trial judge issued supplementary reasons for judgment dated February 28, 2025, pertaining only to this matter.

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Prepared on 27 October 2026 · Esheria