

CANADA / JUDGMENT

Najm v. Najm

2026 ONCA 13

COURT

Court of Appeal for Ontario

DECIDED

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Najm v. Najm

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COA-24-CV-0498

Judges

van Rensburg, Katherine; Miller, Bradley; Sossin, Lorne

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Najm v. Najm, 2026 ONCA 13

DATE: 20260114

DOCKET: COA-24-CV-0498

van Rensburg, Miller and Sossin JJ.A.

BETWEEN

Fareeha Najm

Applicant (Respondent)

and

Saquib Ahmed Najm

Respondent (Appellant)

Kristy Maurina and Stephen Kirby, for the appellant

Jonathan Robinson and Crystal Heidari, for the respondent

Heard: November 26, 2025

On appeal from the order of Justice David Jarvis of the Superior Court of Justice, dated April 8, 2024, with reasons reported at 2024 ONSC 2053.

van Rensburg J.A:

A. Introduction [1] This is an appeal of an order after a 12-day trial in a family law case. The primary issues at trial were in respect of equalization. Both parties sought various exclusions from their net family property under s. 4(2) of the Family Law Act, R.S.O. 1990, c. F.3. The respondent wife[1] also claimed an unequal division of net family property.

[2] The order under appeal provided for the appellant husband to pay the wife an equalization payment of \$353,752 plus prejudgment interest from September 26, 2015 (the valuation date as determined by a prior court order).[2]

[3] The appeal is in respect of the trial judge's treatment of one refused exclusion claimed by the husband, in respect of his 50% interest in Safina Investments Inc. ("Safina Canada"). Safina Canada was incorporated in Ontario in March 2006. The husband claimed that the value of his shares in Safina Canada at the valuation date should be excluded from his net family property on the basis that they were received by him during the marriage by way of gift and inheritance from his late father.

[4] For the reasons that follow, I would dismiss the husband's appeal.

B. Facts [5] It is sufficient to provide a brief chronology of the relevant facts.

[6] The parties married in 1985 in Pakistan. After living in Saudi Arabia for six years, they immigrated to Canada in 1992 but did not move permanently from Saudi Arabia to Ontario until 2000. The husband, who was qualified as a chartered accountant in the United Kingdom, continued his Saudi Arabia work until around 2005, by which time he had established a consulting business providing information technology services in Canada and the United States.

- [7] Around March 2005, the husband's mother passed away in Pakistan. At this time, the parties were experiencing problems in their marriage. They consulted with Ontario lawyers who prepared draft domestic contracts that were never signed. In July 2005, the husband made notes stating, among other things, "Onus of proof-e.g. offshore accounts-say mostly from parents."
- [8] In October 2005, the husband signed a Talaq Nama, a religious divorce decree, which he later acknowledged had no legal effect in Canada. On November 1, 2005, the husband's father, who was living in Pakistan, swore a declaration in Pakistan respecting itemized gifts given by him and his late spouse to the husband, along with the gifts' values. The document stated that the gifts were for the husband's sole benefit and were not to become part of his net family property. The same month, the husband changed his will to remove the wife as a beneficiary. Although the parties resumed cohabitation that month, until the valuation date was determined by the court, the husband maintained that the parties had separated on September 20, 2005.
- [9] In March 2006, Safina Canada was incorporated in Ontario. Although the trial judge stated that the company was incorporated by the husband's father, in fact the husband, his brother and their father are all listed as incorporators on the corporate registration documents, and all are listed as directors of the corporation. The husband relies on share certificates and entries in the company's shareholder ledgers, indicating that his father was issued 313 common shares in Safina Canada at \$1,000 per share on March 17, 2006, and that a month later, on April 10, 2006, the father transferred ten shares each to the husband and his brother.
- [10] In July 2006, the husband's father signed an affidavit in Ontario appending the declaration he had made in Pakistan on November 1, 2005, affirming its truth. He also made a will that left his estate in equal shares to his two sons and contained the prescribed term excluding income from property and any increase in value of inherited property from the equalization provisions of the Family Law Act.
- [11] Safina Canada was operated as a real estate holding company. It owned a single commercial rental property in Cambridge, Ontario. The husband testified that he and his brother were very active in the operation of the company. Conversely, the husband's father lived in Pakistan and was experiencing health challenges.
- [12] With their father's death in July 2011, the husband and his brother each inherited 50% of the balance of their father's shares in Safina Canada.[3] The husband's 50% net interest in Safina Canada on the valuation date had an agreed value of \$530,000.

C. Decision Under Appeal [13] The trial judge addressed two claims for exclusion advanced by the wife (in respect of which he gave effect to one) and 18 exclusion claims of the husband (allowing the husband more than \$1 million in exclusions). He referred to s. 4(3) of the Family Law Act, which puts the onus of proving an exclusion under s. 4(2) on the person claiming it.

- [14] The trial judge refused the claimed exclusion with respect to the husband's 50% interest in Safina Canada on the basis that there was an "absence of any documentary evidence corroborating the source of funding for the company when it was incorporated." He noted that "the husband was alive to the concept of 'exclusion' in the Family Law Act" when Safina Canada was incorporated and had "every reason ... to insulate himself financially from any future claim by the wife as evidenced by the religious divorce that he obtained in Pakistan in October 2005, the documents which his elderly father signed that month in Pakistan adopting language from the Act and making a new Will."
- [15] The trial judge questioned the husband's testimony that Safina Canada was incorporated "as part of his elderly father's transition or inheritance plan". He observed that, "[n]ot only was the father resident in Pakistan but why was it necessary for him to incorporate the company when that could have easily been done by the husband or funds transferred to the husband (for which there might be a record) to undertake property investments in Ontario" (emphasis in original).

D. Issues on Appeal [16] The husband's arguments may be summarized as follows.

- [17] First, he asserts that the trial judge erred in law in imposing an evidentiary burden requiring him to establish that his father was the source of the funds used to establish Safina Canada before giving effect to the clear documentary evidence supporting a gift and inheritance.
- [18] Second, the husband contends that the trial judge's findings were based on speculative, unproven inferences and that he erred in law in making findings that were not supported by evidence.
- [19] Third, the husband submits that the trial judge erred in law in concluding that there was no documentary evidence to support his evidence that the father was the source of the funds for the incorporation of Safina Canada when there was such evidence in the record.

E. Discussion [20] In an appeal of an order resolving financial disputes in a family law case, an appeal court should only intervene "when there is a material error, a serious misapprehension of the evidence, or an error in law": *Cronier v. Cusack*, 2023 ONCA 178, at para. 8, citing *Hickey v. Hickey*, [1999] 2 S.C.R. 518, at para. 12. I see no such error in this case.

- i. The trial judge did not err in requiring the husband to prove the source of the funds for the father's shares in Safina Canada [21] The husband submits that the trial judge erred in law by building in an additional component to the test for the establishment of an exclusion under s. 4(2) of the Family Law Act: proof of the absence of fraud or other misconduct meant to evade the operation of the Family Law Act. He states that, in doing so, the trial judge ignored the fact that the husband's father had actual and legal control of the property given and bequeathed to him and his brother and the documentary evidence confirming that the gratuitous transfers actually took place.

- [22] The husband submits that Ontario's Family Law Act recognizes and respects the important societal interest in preserving the ability of property owners to dispose of their property in the manner they see fit. To require a donee to marshal evidence to show they were not the source of the funds used to acquire the property they received by way of gift or inheritance, as a precondition to the operation of the exclusions within s. 4(2), would impose an impossible burden of proof in many cases. The husband contends that, unless a fraudulent conveyance is alleged and proven, the court should not look behind a properly documented gift or conveyance in the context of a s. 4(2) exclusion claim.
- [23] I disagree. The exclusion relied on by the husband is in respect of "[p]roperty, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage": Family Law Act, s. 4(2)(1). In many cases, the focus in applying this exclusion will be on tracing the property in question back to a gift or inheritance from a third party, and there will be no need for proof of the funds used by the donor to acquire the asset. In this case, however, the trial judge was concerned that the husband had structured his affairs with a view to avoiding potential property claims by the wife. The trial judge made findings of fact that were amply supported by the evidence: that the husband was alive to the concept of exclusion of property from net family property under the Family Law Act before Safina Canada was incorporated; that he had the incentive to take steps to insulate himself from a future equalization claim; and that he had already taken steps around the time Safina Canada was incorporated in respect of the father's declaration in Pakistan, confirmed by affidavit in Ontario and the father's new will. Further, the husband did not explain why his father (who lived in Pakistan) would have incorporated Safina Canada, a company in which the husband and his brother were very much involved, to undertake property investments in Ontario.
- [24] The trial judge's findings were based on his assessment of the credibility of the parties and their witnesses. He explained why he found the husband's evidence lacked credibility (a finding not challenged on appeal). He accepted that the expert evidence did not assist in tracing the source of the funds that were used in establishing Safina Canada. In particular, the husband's expert "[did] little more than [trace] the various assets for which the husband was claiming an exclusion through their various manifestations based on the CPY Chart prepared for and by the husband" (emphasis in original).[4] The trial judge concluded that the husband was both incentivized to and was in fact taking steps to document assets as gifts from his parents and that he had not provided documentary evidence linking money from his father to the subscription for the Safina Canada shares, unlike his evidence for the other exclusions.
- [25] There was no error in the trial judge's determination that the husband had not established an exclusion in respect of his interest in Safina Canada. Contrary to the husband's submission, the trial judge was not limited to the law of fraudulent conveyance in refusing to recognize the alleged gift and inheritance. Rather, the trial judge had to determine, as a foundational issue in the present case, whether certain property owned by the husband had

been received by him as a gift or inheritance during the marriage. The trial judge appropriately concluded that the husband failed to establish that the husband's shares in Safina Canada in fact had belonged to the father such that they could have been gifted and bequeathed to the husband as part of his father's estate.

ii. The trial judge's factual findings did not rely on speculation [26] The husband contends that the trial judge erred in law in speculating in the absence of evidence that his father had not paid for his shares in Safina Canada. He says that the trial judge had a theory, but there was no evidence of a transfer between the husband and his father to fund the father's share subscription. He submits that the trial judge should not have rejected his testimony denying that any of the funds for Safina Canada came from him, based on the conclusion that the husband had "every reason ... to take steps in early 2006 to insulate himself financially from any future claim by the wife", without evidence he had acted on that intention.

[27] There is no question that, in dealing with exclusion claims, judges are encouraged to take a "common sense" approach to the evidence, recognizing that not all documents can be obtained. However, in this case, the trial judge was of the view that the husband ought to have been able to provide evidence that his father's funds were used to subscribe for the Safina Canada shares, as he had done with other exclusions he had claimed. The trial judge noted that the absence of any evidence linking the funding of the company to the husband's father, "[stood] in sharp contrast to virtually all the other documented exclusion claims of the husband."

[28] This was not a case of speculation but of the application of the rules of evidence and the husband's burden of proof to establish the exclusions he claimed. The trial judge was entitled to rely on the circumstantial evidence that the husband was arranging his affairs to defeat property claims by his wife at the time that Safina Canada was incorporated. The evidence fully supported the conclusions drawn by the trial judge that led to the denial of the exclusion claim for Safina Canada on the basis that the husband had not established that the shares in fact were paid for by the father and therefore could be the subject of a valid gift and inheritance from the father.

[29] The husband additionally contends that the trial judge erred in reaching inconsistent findings regarding the exclusion claims for Safina Canada and the "Defense Phase 9" plot, which the husband claimed to have received from his father as a gift in 2008. The Defense Phase 9 exclusion was allowed notwithstanding that the husband had not proven the source of the father's funds to acquire the plot. In respect of the Defense Phase 9 plot, the trial judge rejected the wife's theory that the husband was channeling funds through the father then rerouting them back to him to corroborate an exclusion, asking, "[i]f that was so, then why is there a transaction whereby both the husband and his brother were allocated plots on the same date?" The husband says that the same thing happened in respect of the shares in Safina Canada: both he and his brother were gifted ten shares on the same date, and as equal beneficiaries of the father's estate, each received one half of the rest of his shares on his death.

[30] There is no merit to the argument that the trial judge treated the two exclusion claims inconsistently. The circumstances were entirely different. Defense Phase 9 involved plots of vacant land for development in Pakistan. The trial judge was satisfied that, while the husband was unable to produce evidence about the source of the father's funds to acquire the plots, the evidence was clear that the father had allocated one plot to each of the husband and his brother[5] and that the husband's brother paid for ongoing development charges on the basis that he and his brother would balance their accounts later. By contrast, Safina Canada was incorporated in Ontario to hold Ontario property at a time when the husband had reason to structure his affairs to avoid his wife's claims. It was a company in which the husband testified that he and his brother were very involved, much the same as Safina USA, a Georgia corporation that the two brothers had incorporated together. The record included voluminous bank statements and other financial documents contemporaneous with the incorporation of Safina Canada. And yet, the husband was unable to prove the \$313,000 his father had allegedly paid to acquire his shares.

iii. The trial judge did not ignore evidence that confirmed the father's own money was used to purchase the Safina Canada shares [31] The husband contends that the trial judge erred in law in stating that there was an "absence of any documentary evidence" linking the funding of Safina Canada to the father. On appeal he points to an excerpt from his own testimony at trial, together with certain documents, in particular statements for a TD Bank account in the husband's and his father's names, from June 30, 2005 to June 30, 2006, that were included as documents considered by the experts. The husband's factum states that "[w]hile some of this material was addressed within different evidentiary contexts, it was nevertheless before the trial judge". In oral argument, the husband's counsel submitted that his testimony and these documents were part of his evidence in relation to his exclusion claim in respect of Safina Canada.

[32] A close examination of this evidence does not support the husband's submission. In fact, the testimony in question was offered by the husband as evidence on "smaller amounts that the experts did not trace", and in particular on a withdrawal of \$18,000 from the aforementioned TD account, which was confirmed to have been transferred into the husband's RRSP account. The husband's counsel on appeal, pointing to the bank statements, suggested that there was an amount that was deposited by the father into the joint account (\$83,000) that made its way into the ledger for Safina Canada. In fact, this assertion was specifically addressed by the wife's expert, who stated in his report that a review of the joint account indicated that the \$83,000 was actually transferred to the husband and wife's joint line of credit, that the source of the monies was asserted to be from the sale of "Rawalpindi property" and that he had not been provided with any further information with respect to that property or its sale.

[33] Accordingly, there is no merit to the argument that the trial judge overlooked relevant evidence that should have satisfied him that the father had subscribed for the Safina Canada shares with his own money. In any event, it is too late for the husband, on appeal, to attempt to prove the source of the father's funds to acquire the Safina Canada shares, based on

documents that were in the record, but that were not addressed in the husband's testimony about Safina Canada or the report or evidence of his expert. The experts who were tasked with the tracing exercise confirmed they were unable to find any documentary evidence in what they had been provided to corroborate the husband's claim about the source of the funds.

F. Disposition [34] For these reasons I would reject the appellant husband's arguments on appeal and dismiss the appeal. I would award costs to the respondent wife in the agreed inclusive amount of \$25,000.

Released: January 14, 2026 "K.M.v.R."

"K. van Rensburg J.A."

"I agree. B.W. Miller J.A."

"I agree. L. Sossin J.A."

- [1] The parties are referred to in this decision, as in the reasons for judgment and the parties' submissions, as the "wife" and the "husband", although they are now divorced.
- [2] *Najm v. Najm*, 2017 ONSC 4777.
- [3] By the time of his death, the father had received an additional 91 shares of Safina Canada, created through the conversion of a loan, such that there were 404 shares in Safina Canada. Later, and after the valuation date, the brother's shares in the company were transferred to his wife as part of a matrimonial settlement, and the husband ultimately acquired those shares.
- [4] The CPY Chart refers to a chart prepared by the husband's former legal counsel, which identifies transactions over a twelve-year period involving accounts belonging to the husband, his parents, the parties' joint line of credit, businesses and third parties.
- [5] The husband's tracing expert noted that the claim that the plots of land were gifted to the husband and his brother was supported by forms signed by the father, copies of which were attached to the expert's report.

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