

CANADA / JUDGMENT

Rai v. Rai

2025 ONCA 879

COURT

Court of Appeal for Ontario

DECIDED

16 December 2025

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Rai v. Rai Collection Decisions of the Court of Appeal Date 2025-12-16 Neutral citation 2025 ONCA 879 Docket numbers COA-25-CV-0732 Judges Trotter, Gary T.; Copeland, Jill M.; Gomery, Sally A. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Rai v. Rai, 2025 ONCA 879 DATE: 20251216 DOCKET: COA-25-CV-0732 Trotter, Copeland and Gomery JJ.A. BETWEEN Hardat Rai Plaintiff (Appellant) and Kemkumarie Rai Defendant (Respondent) Veena Pohani, for the appellant Ella Aiaseh, for the respondent Heard: December 11, 2025 On appeal from the order of Justice Kenneth G. Hood of the Superior Court of Justice, dated May 21, 2025. REASONS FOR DECISION

- [1] The appellant appeals the motion judge's order granting the respondent's summary judgment motion and dismissing the appellant's claim.
- [2] After hearing submissions, we dismissed the appeal with reasons to follow. These are our reasons.
- [3] The appellant raises two arguments on appeal.
- [4] First, the appellant argues that he was denied the ability to marshal a factual record in support of his claim. The appellant contends that the motion judge made a palpable and overriding error in finding that, "[a]t no time [did the appellant] bring a disclosure motion or seek a court order ordering the [respondent] to produce documentation." In fact, the appellant had brought a motion seeking "financial statements" under the Family Law Rules, O. Reg. 114/99.
- [5] Although we accept that the motion judge made a palpable error in finding that the appellant had not brought a disclosure motion, the error was not overriding. As the motion judge noted, the appellant took the position that he had been unable to respond properly to the summary judgment motion, yet he did not make use of the tools available in the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, to create an evidentiary record to respond to the motion.

- [6] Some context is helpful to understand this issue. The appellant commenced his claim in 2016. Although this matter was commenced as a civil action, in 2019, it was traversed by a judge of the Superior Court to the family law stream of the Superior Court in Toronto, apparently because the parties had been previously married. However, the issues arising out of their divorce had been addressed by a judgment in Florida in 1999.
- [7] Because of the COVID-19 pandemic, there was a delay in moving the matter forward. In March 2023, the appellant filed a motion for disclosure of financial statements from the respondent under the Family Law Rules. This motion was never heard.
- [8] In April 2023, a judge of the Superior Court traversed the matter back to the civil stream on the basis that none of the appellant's claims were family law claims and the matter should proceed pursuant to the Rules of Civil Procedure. This was clearly explained in an endorsement. In November 2023, another judge of the Superior Court reiterated to the parties in a case conference that the matter was proceeding under the Rules of Civil Procedure and was not a family law case. Again, this was clearly explained in an endorsement.
- [9] In September 2023, the respondent was cross-examined on her affidavit filed in the summary judgment motion. At the respondent's cross-examination, she refused to answer a number of questions about financial issues. It was open to the appellant to seek to compel answers to the refused questions, pursuant to rule 34.12(3) of the Rules of Civil Procedure. Yet the appellant did not bring a refusals motion. The earlier disclosure motion filed under the Family Law Rules in March 2023 was not a refusals motion, since it was filed before the respondent's cross-examination and brought under the Family Law Rules.
- [10] In summary, while we acknowledge that the transfer of this file back and forth between the civil and family streams of the Superior Court in Toronto was unfortunate, the appellant was advised repeatedly by the court well in advance of the hearing of the summary judgment motion, in May 2024, that the matter was proceeding under the Rules of Civil Procedure. He was not entitled to demand disclosure under the Family Law Rules. The appellant was represented by counsel. It was open to him to seek to compel answers to the questions refused by the respondent at her cross-examination on the motion and he failed to do so.
- [11] The appellant also argued before the motion judge that he would have required witnesses from a bank who he said had relevant evidence. But, as the motion judge noted, he did not provide evidence that these individuals were unwilling to provide affidavits or seek to compel their evidence under rule 39.03.
- [12] The erroneous finding by the motion judge that the appellant did not bring a disclosure motion was not overriding because it had no impact on the gaps that the appellant claims exist in the record. Rather, the appellant failed to use the procedural tools available to him under the Rules of Civil Procedure. He was required to put his best foot forward. He failed to do so.

- [13] Second, the appellant argues that this matter was not appropriate for summary judgment because credibility findings were required and factual findings could not fairly be made without viva voce evidence, and because there was “too much at stake”.
- [14] The motion judge applied the correct legal principles in considering whether there was a genuine issue for trial and whether he could reach a fair and just determination on the merits by summary judgment. His conclusion that he could do so is entitled to deference, as are his factual findings: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 81-82.
- [15] The heart of the motion judge’s conclusions with respect to credibility was that the appellant presented a shifting narrative in his evidence that was contradicted by the documentary evidence. By contrast, the respondent’s evidence was supported by the documentary evidence. Those findings were open to the motion judge on the record. We see no palpable and overriding error in the motion judge’s conclusion that the case could be fairly decided by summary judgment or in his factual findings.
- [16] The appeal is dismissed, with partial indemnity costs to the respondent in the amount of \$14,000, including disbursements and applicable taxes. “Gary Trotter J.A.” “J. Copeland J.A.” “S. Gomery J.A.”

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