

CANADA / JUDGMENT

Ratnasingam v. Balasubramaniam

2025 ONCA 898

COURT

Court of Appeal for Ontario

DECIDED

24 December 2025

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Ratnasingam v. Balasubramaniam

Collection

Decisions of the Court of Appeal

Date

2025-12-24

Neutral citation

2025 ONCA 898

Docket numbers

COA-25-CV-0002

Judges

Trotter, Gary T.; Copeland, Jill M.; Gomery, Sally A.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Ratnasingam v. Balasubramaniam, 2025 ONCA 898

DATE: 20251224

DOCKET: COA-25-CV-0002

Trotter, Copeland and Gomery JJ.A.

BETWEEN

Anojan Ratnasingam, Indradevi Ratnasingam,

Ratnasingam Nadarajah, Ahilan Ratnasingam,

Aravind Ratnasingam and Abiramy Amalan

Plaintiffs (Appellants)

and

Rukshian Balasubramaniam

and Saravanithi Velupillai

Defendants (Respondents)

Robert G. Plate, for the appellants

Sean Dewart and Peter Yaniszewski, for the respondents

Heard: December 8, 2025

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated September 26, 2024, with reasons reported at 2024 ONSC 5345.

Gomery J.A.:

- [1] This appeal revisits the question of when a final order ought to be set aside where it resolves a claim by a person lacking capacity and was obtained in non-conformity with the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. The motion judge dismissed the appellants' motion to set aside the order ending this action and the underlying settlement, based primarily on an analysis upheld by this court in *Book v. Cociardi*, 2022 ONSC 3125, *aff'd* 2024 ONCA 589. The appellants agree that the *Book* factors are relevant, but they contend that the motion judge failed to take relevant considerations into account and made other errors of law or mixed fact and law.
- [2] I disagree. I would dismiss the appeal, for the reasons that follow.

Background

- [3] In 2010, Anojan Ratnasingam, then 21 years old, was seriously injured when the car in which he was a passenger crashed. He and his family members retained a lawyer, Bradley Duby, and sued the respondents, the driver and owner of the car. The tort action was defended by the motor vehicle's insurer, TD Insurance.
- [4] The action was settled in 2013. The same settlement resolved a second tort action against the car's driver and owner by Mr. Ratnasingam's fellow passenger, who was represented by another lawyer.

- [5] The settlement agreement was negotiated by Mr. Duby, TD Insurance, and the lawyer for the plaintiff in the second tort action. Under the settlement terms, TD Insurance paid close to its policy limit of \$1,000,000, plus \$100,000 in legal costs. Mr. Ratnasingam was to receive 80 percent of the settlement proceeds. His family members would receive nothing. The other 20 percent of the proceeds was payable to the plaintiffs in the other action. The plaintiffs in both actions released the respondents and TD Insurance from any further liability arising from the accident and agreed to dismiss the actions.
- [6] Mr. Duby settled the appellants' action without their knowledge or consent, and he forged at least one signature on the settlement documents. When TD Insurance sent him a cheque for the appellants' share of the settlement funds, Mr. Duby kept the funds for his own use.
- [7] In early 2014, Mr. Duby took out a consent dismissal of the appellants' action, again without the appellants' knowledge or consent. He misrepresented to them for years afterwards that the tort litigation against the respondents was ongoing. It was only in 2020, after hiring another lawyer, that the appellants discovered the settlement, the dismissal, and Mr. Duby's misappropriation of the settlement funds. Mr. Duby died in 2021.
- [8] The motion judge found that Mr. Ratnasingam was a person under disability as a result of his injuries in the 2010 accident. As a result, he should have been represented by a litigation guardian in the action, and the settlement with the respondents should have been subject to the court's review and approval under r. 7.08 of the Rules. No litigation guardian was appointed, however, and the consent dismissal issued without a r. 7.08 motion or court approval.

The motion to set aside

- [9] In 2024, the appellants brought a motion to set aside the 2014 consent dismissal as well as the underlying settlement, and to appoint a litigation guardian for Mr. Ratnasingam. They argued that the court should grant the motion because:
- (1) The consent dismissal and the underlying settlement were obtained in the absence of a litigation guardian for Mr. Ratnasingam or a court approval of the settlement under r. 7.08;
 - (2) The consent order and settlement were procured through Mr. Duby's fraud; and
 - (3) The settlement was unconscionable and improvident.

The motion judge's decision

- [10] The motion judge dismissed the motion, relying primarily on the analytical framework in Book.

- [11] As here, Mr. Book appealed the dismissal of his motion to set aside a settlement and consent dismissal on the basis that he was under disability at the time and that court approval of the settlement had therefore not been obtained as required under r. 7.08. In determining whether the settlement should be set aside, the motion judge in Book considered five factors:
- (1) Whether the party seeking to set aside the order was under a disability;
 - (2) Whether the plaintiff was prepared to pay the money back;
 - (3) Whether the defendant had knowledge of the disability or whether it settled the action in good faith;
 - (4) Whether the settlement was unfair or unreasonable; and
 - (5) How quickly after the settlement the motion was brought.
- [12] This court endorsed the analytical framework used by the motion judge in Book, holding that he had not erred in law nor had he made a palpable and overriding error.
- [13] As noted earlier, the motion judge in this case found that Mr. Ratnasingam was a party under disability when the settlement was reached. This was the threshold finding to grant the appellants' motion. The motion judge found that two of the other Book factors were neutral: the appellants could not repay the settlement funds, and the appellants had not delayed unduly in bringing their motion after discovering the settlement. The remaining two factors weighed against granting the appellants' motion. TD Insurance had no knowledge of the disability and acted in good faith when reaching the settlement, and the settlement was neither improvident nor unreasonable.
- [14] These last two factors were deemed conclusive.
- [15] The motion judge concluded that the settlement was neither improvident nor unconscionable. The appellants were represented by counsel; the settlement terms, including the allocation of funds to Mr. Ratnasingam, were supportable on the evidence regarding the accident and his damages; the record included written instructions by the appellants to Mr. Duby not to pursue the vehicle's owner and driver for any recovery beyond the insurer's policy limits; and TD Insurance paid out the entirety of its policy limits less \$50,000, plus costs.
- [16] The motion judge observed that the appellants' complaint was not truly with the terms of the settlement but with Mr. Duby, who had defrauded them. She concluded, at para. 50, that:
- There may have been a better settlement to be had, but the real problem in this case is not the settlement reached with respect to the policy; it is that Mr. Ratnasingam never received anything from the settlement due to the actions of Mr. Duby. Mr. Duby's conduct constitutes a separate wrong which does not impugn the reasonableness of the settlement, considered from the point of view of Mr. Ratnasingam's tort claim.

- [17] The motion judge declined to determine whether the order should be set aside on the basis of fraud under r. 59.06(2), because this would leave the settlement agreement intact. She also declined to appoint a litigation guardian for Mr. Ratnasingam as no proceedings were ongoing.

The motion judge committed no reviewable error

- [18] The motion judge applied the correct legal principles and committed no reviewable error in deciding the motion. She correctly found that the motion to set aside the consent dismissal and settlement based on non-compliance with r. 7.08 should be assessed based on the Book factors. It was open to her to find, on the record before her, that the respondents acted in good faith and without knowledge of Mr. Ratnasingam's incapacity, and that the settlement was neither unreasonable nor unconscionable. Given these findings, I endorse the motion judge's conclusion at para. 52 of her reasons that this was not the rare case "where circumstances warrant deviation from the fundamental principle that a final judgment, unless appealed, marks the end of the litigation line".
- [19] Although the appellants concede that it was appropriate for the motion judge to follow the Book analysis, they fault her for dismissing the motion given that the settlement would not have been approved had it been the subject of a r. 7.08 motion. Rule 7.08 imposes evidentiary requirements to protect vulnerable parties. Notably, under r. 7.08(4), the motion record must include an affidavit by the litigation guardian setting out the reasons supporting the proposed settlement, and an affidavit by the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement.
- [20] I do not accept this argument. The procedural requirements for a r. 7.08 motion do not apply on a motion to set aside a final order, even where the basis for the motion is the absence of compliance with r. 7.08. It was however open to the appellants to include, as part of their motion materials, any evidence that the settlement was unconscionable or improvident. On the evidence filed, the motion judge concluded that the settlement was not unreasonable. This was not a reviewable error on the record before this court. There is accordingly no basis for this court to revisit the motion judge's findings.
- [21] The motion judge likewise did not err in finding r. 59.06(2) could not meaningfully assist the appellants. This rule permits an order to be set aside on the basis of fraud. As the motion judge aptly observed, at para. 55:

In this case, it does no good to the plaintiffs to set aside only the order. The entire settlement must be set aside for them to pursue TD Insurance. I thus decline to consider the impact of r. 59.06; there is simply no point to setting aside the order while leaving the release and the settlement agreement in place.

- [22] Finally, the appellants argued that the motion judge should have considered whether the dismissal order and settlement should be set aside based either on r. 7.09 or the *parens patriae* jurisdiction. Pursuant to r. 7.09, settlement funds payable to a person under

disability other than a minor shall be paid into court, unless a judge orders otherwise. Based on its broad *parens patriae* jurisdiction, a court may do whatever is necessary “to act for the protection of those who cannot care for themselves”, including children and persons lacking capacity: *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388, at p. 426.

- [23] The motion judge’s reasons show that she was aware of the scope of the court’s *parens patriae* jurisdiction and its interplay with the Rules. Even though she did not explicitly refer to this jurisdiction, her decision balances the court’s role in the context of claims by parties lacking capacity and the principle that final orders can be set aside only in exceptional circumstances.
- [24] The motion judge began her analysis of this issue by citing *Tsaoussis (Litigation Guardian of) v. Baetz* (1998), 41 O.R. (3d) 257 (C.A.), at paras. 15, 44, leave to appeal refused, [1998] S.C.C.A. No. 518. In *Tsaoussis*, this court emphasized that final orders should be set aside only where a party demonstrates that the circumstances justify making an exception to the principal of finality. New evidence showing that a minor plaintiff was inadequately compensated in a settlement of a personal injury claim does not, in itself, give rise to such exceptional circumstances.
- [25] Writing for the court, Doherty J.A. in *Tsaoussis*, at para. 26 stated that the *parens patriae* jurisdiction “neither creates substantive rights nor changes the means by which claims are determined.” It must be exercised in the context of the substantive and procedural law governing the proceedings. As a result, this court held at para. 13 that:
- [A] judgment approving the settlement of a minor’s personal injury claim that has been signed, entered and not appealed is final, and must be given the same force and effect as any other final judgment. A motion to set aside that judgment should be tested according to the same criteria used on motions to set aside other final judgments.
- [26] The motion judge’s analysis was consistent with these principles. She correctly proceeded from the presumption that the dismissal order was final. Her observation that the appellants must demonstrate circumstances which “warrant deviation from the fundamental principle that a final judgment, unless appealed, marks the end of the litigation line” echoes Doherty J.A.’s reasons at para. 20 of *Tsaoussis*. The motion judge was aware that the procedural safeguards in r. 7, which codify in part the *parens patriae* jurisdiction, had not been respected. She was aware that Mr. Ratnasingam had received no benefit from the settlement. She nevertheless concluded, in the circumstances of this case, that the parties’ settlement and consent dismissal should not be set aside. Her reasoning again reveals no error.

Disposition

- [27] This is a tragic case. Mr. Ratnasingam has been injured twice over: first, by suffering terrible injuries in the 2010 car accident and, second, by having the compensation for his injuries stolen by his lawyer. I agree with the motion judge, however, that TD Insurance is not responsible for the loss arising out of Mr. Duby's conduct. Mr. Ratnasingam will, we hope, be entitled to obtain compensation elsewhere.
- [28] The appeal is dismissed. The respondents are entitled to all-inclusive costs of \$15,000, the amount that the parties agreed would be recoverable by the successful party on the appeal.

Released: December 24, 2025 "G.T.T."

"S. Gomery J.A."

"I agree. Gary Trotter J.A."

"I agree. J. Copeland J.A."

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Prepared on 29 October 2026 · Esheria