

CANADA / JUDGMENT

Wicke v. Hilderley

2025 ONCA 810

COURT

Court of Appeal for Ontario

DECIDED

27 November 2025

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Wicke v. Hilderley Collection Decisions of the Court of Appeal Date 2025-11-27 Neutral citation 2025 ONCA 810 Docket numbers COA-24-CV-0911 Judges Gillese, Eileen E.; Pepall, Sarah E.; Zarnett, Benjamin Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Wicke v. Hilderley, 2025 ONCA 810 DATE: 20251127 DOCKET: COA-24-CV-0911 Gillese, Pepall and Zarnett JJ.A. BETWEEN Kelly Lynn Wicke, Kody Andrew Wicke, Kassi Rae Wicke and Kayden Jacob Wicke Plaintiffs (Respondents) and Roger Hilderley Defendant (Appellant) Catherine Patterson, for the appellant Phillip Millar, for the respondents Heard: November 20, 2025 On appeal from the judgment of Justice Maria V. Carroccia of the Superior Court of Justice, dated July 30, 2024, with reasons at 2024 ONSC 4265 and 2024 ONSC 5364. REASONS FOR DECISION

- [1] The appellant appeals from the judgment ordering him to pay damages to the respondent, Kelly Lynn Wicke, and two of her children, Kody Andrew Wicke and Kassi Rae Wicke.
- [2] The trial judge accepted the respondent's evidence that, on May 1, 2002, the respondent attended at the appellant's home for coffee, was administered the drug temazepam without her knowledge, and was sexually assaulted by the appellant.
- [3] The evidence of the appellant reflected a very different version of events. He maintained that the respondent was a sexual predator and had sexually assaulted him. He said he did not ejaculate during his encounter with her as he was asexual or impotent and unable to have sex.
- [4] In his Notice of Appeal and Supplementary Notice of Appeal, the appellant raised four grounds of appeal. In oral submissions, he abandoned his ground of appeal relating to prejudgment interest.
- [5] His first ground of appeal is that the trial judge failed to consider or give adequate weight or effect to several aspects of material evidence. He submits that she ignored relevant evidence that was crucial to credibility and failed to address the implausibility of the respondent's account of events which was central to liability. This included evidence on timing and the rare effects of the drug in issue, temazepam.
- [6] We would not give effect to this ground of appeal.

- [7] The trial judge conducted a thorough credibility assessment and concluded that the respondent was credible, and the appellant was not. She expressly assessed the appellant's argument that the respondent's evidence was implausible and unbelievable and that the physical effects of ingestion of temazepam described by the respondent were highly unusual. She was alive to the timing of the events and the fact that the respondent had suffered some memory loss. She stated at para. 151 of her reasons that: "The effects of that drug, including dizziness, headache, lack of coordinated movement and some memory loss are consistent with the evidence of the [respondent] about how she felt when she was at the [appellant's] residence and afterwards." While the trial judge acknowledged that there were some inconsistencies in the respondent's evidence, she found her evidence to be clear and uncontested. Moreover, the appellant had failed to put his version of events to the respondent in cross-examination. Confirmatory evidence also supported the respondent's evidence. The drug temazepam was found in her blood and her urine. It was a prescription drug that had never been prescribed to the respondent but had been to the appellant. The evidence of her friend also confirmed some of the respondent's evidence.
- [8] In contrast, the trial judge gave numerous reasons for not accepting the evidence of the appellant. Among other things, she noted the significant inconsistencies in his testimony at trial, during examination for discovery, and at his criminal trial. For example, the trial judge noted that on cross-examination, the respondent was confronted with his examination for discovery evidence in which he testified that he had had a life-long problem with impotence and that his medical records would support this. However, at trial, he acknowledged that there were no such medical records. At trial, when cross-examined, he said he never talked to his doctor about his medical condition but in his criminal trial, he maintained that he had spoken with his doctor on the subject.
- [9] The appellant takes issue with the trial judge's reliance on Sgt. Reece's evidence. Specifically, he challenges the trial judge's finding that Sgt. Reece had detailed notes of the appellant's interview.
- [10] The trial judge recognized that the audio recording of the interview had been lost but accepted that Sgt. Reece had notes and a report on the interview and a recollection of the investigation. The transcripts filed on appeal fail to establish that the trial judge made any palpable and overriding error in this regard.
- [11] The trial judge engaged in a thorough review of the evidence and she did not ignore relevant evidence. Absent error, the trial judge's credibility findings are entitled to deference. Based on the totality of the evidence, it was clearly open to the trial judge to decide in the respondent's favour as she did.
- [12] As for the appellant's second ground of appeal, there is no basis for the appellant's submission that the trial judge's reasons were insufficient. The trial judge gave extensive reasons for decision. It is obvious from her 185 paragraph reasons why she decided as she did, and her reasons are capable of appellate review.

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- [13] Lastly, the trial judge's use of the rule in *Browne v. Dunne* (1893), 6 R. 67 (H.L.) was proper. The appellant never put his competing version of events to the respondent in cross-examination and the trial judge made no error in relying on this in her analysis.
- [14] The appeal is dismissed. Costs in the agreed upon amount of \$25,000 inclusive of disbursements and applicable tax are to be paid by the appellant to the respondent. "E.E. Gillese J.A." "S.E. Pepall J.A." "B. Zarnett J.A."
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