

COURT OF APPEAL FOR ONTARIO

CITATION: Lau v. Tao, 2025 ONCA 819

DATE: 20251201

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Roberts, Miller, and Monahan JJ.A.

BETWEEN

Mei Yee Lau

Applicant (Respondent)

and

Wing Hong Tao

Respondent (Appellant)

Nasar Iqbal, for the appellant

Genevieve M. Samuels, for the respondent

Heard: November 12, 2025

On appeal from the judgment of Justice Barry M. Tobin of the Superior Court of Justice dated January 14, 2025, with reasons at 2025 ONSC 157, and the cost order dated February 12, 2025.

REASONS FOR DECISION

[1] The parties were married in 2014 and initially lived in Hong Kong. They emigrated to Canada in June 2018 and lived together in a home they purchased in London, Ontario (the “London Property”), until their separation in December 2019. They have two children.

[2] The parties had an 11-day trial to resolve all outstanding issues arising from the parties' marriage and separation. The appellant appeals certain property-related aspects of the trial judge's order, and only those matters will be discussed in these reasons.

[3] The parties agree that the trial judge made a minor error in the calculation of the equalization payment owed by the respondent to the appellant. Other than that adjustment, the appellant's appeal is dismissed for the reasons that follow.

I. BACKGROUND FACTS

[4] During the marriage, each of the parties received substantial gifts from their respective parents. In 2015, the respondent used funds contributed by the maternal grandparents and the paternal grandmother to fund the purchase of a home in her name in Hong Kong (the "Hong Kong Property"). The parties lived in the Hong Kong Property until it was sold in June 2018 and the parties moved to Canada.

[5] The trial judge found that the maternal grandparents and the paternal grandmother's contributions to the respondent's purchase of the Hong Kong Property were gifts to the parties. The trial judge further found that the respondent's 50% share of the net proceeds of sale of the Hong Kong Property represented funds that had been gifted to her by the maternal grandparents, and those proceeds, along with other cash gifts, could be traced into certain assets owned

by the respondent at valuation date. Accordingly, the trial judge found these assets to be excluded assets, in accordance with s. 4(2)(1) of the *Family Law Act*, R.S.O. 1990, c. F-3 (the “*FLA*”), and excluded their value as of the valuation date from the calculation of the respondent’s net family property. However, the trial judge did not exclude any of the appellant’s assets from the calculation of his net family property corresponding to the paternal grandmother’s contribution to the purchase of the Hong Kong Property.

[6] In addition to cash gifts, the parties received loans from the paternal grandmother and maternal grandparents. The trial judge found that these amounts were valid liabilities and deducted the amounts owing by the parties to their respective parents on the valuation date in his calculation of each party’s net family property.

[7] On valuation date, each party owned a registered education savings plan (“RESP”) for the children. The trial judge followed the decision in *L. v. L.*, 2022 ONSC 4787, 79 R.F.L. (8th) 484, noting that RESPs generally belong to the subscriber and not the child, unless a party shows that all three elements needed to create a valid trust have been established. He therefore found that the valuation date values of the RESPs should be subject to equalization.

[8] The trial judge made certain minor post-separation adjustments, resulting in credits to the appellant of \$751 and \$1,418.02 to the respondent.

[9] In a subsequent costs order, the trial judge found the respondent, as the more successful party, was entitled to her costs, excluding costs associated with previous steps in the case where costs had been or could have been dealt with. He awarded the respondent her costs on a partial indemnity basis in the amount of \$60,000.

II. DISCUSSION

[10] Both parties agree that the trial judge erred by only deducting \$100,000 in respect of the appellant's debt to the paternal grandmother on the valuation date when in fact he owed her \$108,500. Deducting the additional \$8,500 from his net family property results in an increase of \$4,250 in the equalization payment owing from the respondent to the appellant.

[11] The remaining grounds of appeal focus on the trial judge's findings of fact or of mixed fact and law, or incorrectly allege errors of law on the part of the trial judge. They are without merit.

[12] Our findings with respect to the various grounds of appeal advanced by the appellant are as follows:

- (i) The appellant argues that the paternal grandmother contributed slightly more than 50% to the purchase price of the Hong Kong Property and, accordingly, the respondent should not have been entitled to trace 50% of the sale proceeds from the sale of the Hong Kong Property. There were numerous transfers between the maternal

grandparents, paternal grandmother, and the parties before the respondent purchased the Hong Kong Property. We see no palpable or overriding error in the trial judge treating the grandparents' contributions as roughly equal to each other and therefore finding that the respondent was entitled to trace her 50% share of the sale proceeds into assets owned on the valuation date;

- (ii) The appellant objects to the fact that the respondent was permitted to exclude assets traceable to gifts from the maternal grandparents from her net family property, whereas he was not permitted a similar exclusion. The trial judge's approach was correct because the respondent was able to trace the funds she was gifted into assets she held on the valuation date. The appellant could not provide a similar tracing analysis, which meant he was not entitled to a similar exclusion;
- (iii) The trial judge did not err in finding that the Hong Kong Property was not a "matrimonial home" as defined in s. 18(1) of the *FLA*, since it was sold in 2018 and was therefore not occupied by the parties at the time of separation: see also *Folga v. Folga* (1986), 2. R.F.L. (3d) 358, at p. 363;
- (iv) The appellant claims that the trial judge misapprehended the evidence by relying on a defective letter from a solicitor in Hong Kong to prove the maternal grandparents' gift to the respondent for the Hong Kong Property. We do not agree. In addition to documentary evidence, the trial judge relied upon the *viva voce* testimony of the respondent and the maternal grandmother in order to find that the respondent received valid gifts and loans. We see no palpable and overriding error in the trial judge's findings;

- (v) The appellant objects to the inclusion of the value of each party's respective RESP in the calculation of their net family property. We see no error in the trial judge's approach to this issue. In that regard, we agree with the analysis of Fajeta J. in *L. v. L.*, who found that RESPs should, as a general rule, be regarded as the property of the subscriber, since the subscriber retains significant control over the RESP assets, including the right to withdraw the amounts that they contributed or change the beneficiaries;
- (vi) The appellant seeks additional credit for property-related payments he made during his sole occupation of the London Property after the parties' separation that were not addressed in the trial judge's reasons. The respondent had resisted these claims at trial because the London Property was mortgage-free, thus limiting the appellant's occupation costs, and the respondent was paying rent on her separate residence during this time. An omission in reasons is only a material error if it gives rise to the reasoned belief that the trial judge forgot, ignored, or misconceived the evidence: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 72. We see no such error in the manner in which the trial judge exercised his discretion in making post-separation adjustments; and
- (vii) We see no basis to intervene with respect to the trial judge's costs order, which awarded the respondent roughly 50% of her actual costs and excluded costs for steps in the case that had already been dealt with by court order or by agreement of the parties.

III. DISPOSITION

[13] The order below is varied by increasing the amount of the respondent's equalization payment to the appellant by \$4,250, from \$38,097.42 to \$42,347.42. The appeal is otherwise dismissed and leave to appeal costs is denied. The respondent is entitled to her costs in the agreed upon amount of \$12,000, all-inclusive.

"L.B. Roberts J.A."

"B.W. Miller J.A."

"P.J. Monahan J.A."