Citation: Ali v Ali, 2026 MBCA 59
Date: 20260619
Docket: AF25-30-10210

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Janice L. leMaistre
Mr. Justice James G. Edmond

B E T W E E N:

	)	***S. N. Rosenbaum***
	)	*for the Appellant*
AZAHIR ABDULRAHMAN MOHAMED ALI	)	
	)	***J-R. D. Kwilu***
(Petitioner) Respondent	)	*for the Respondent*
	)	
- and -	)	*Appeal heard and*
	)	*Decision pronounced:*
ADIL ALI MOHAMED ALI	)	***June 8, 2026***
	)	
(Respondent) Appellant	)	*Written reasons:*
	)	***June 19, 2026***

On appeal from *Ali v Ali*, 2024 MBKB 172 [*trial decision*]

RIVOALEN CJM (for the Court):

[1] The respondent, Adil Ali Mohamed Ali (the husband), appealed the final order granted by a judge of the Family Division of the Court of King's Bench (the trial judge). The final order dealt with a number of matters arising from the parties' separation on January 1, 2015 (the separation) and divorce proceedings.

[2] The grounds under appeal from the final order are:

i) The husband was ordered to pay retroactive child support of $212,388 for the period to and including December 31, 2023, forthwith.

ii) The husband was ordered to pay lump sum spousal support in the sum of $56,578, forthwith.

iii) The husband was ordered to immediately pay the sum of $689,927.44 to complete the division of property under *The Family Property Act*, CCSM c F25 [*FPA*].

iv) The husband was ordered to pay prejudgment interest on the equalization payment of $131,517.47.

[3] After hearing the submissions of counsel for the husband and counsel for the petitioner, Azahir Abdulrahman Mohamad Ali (the wife), we dismissed the appeal with reasons to follow. These are those reasons.

Background

[4] There is no need to repeat the history of the proceedings or all of the factual findings of the master (now referred to as an associate judge) who presided over the *FPA* accounting (see *Ali v Ali*, 2023 MBKB 89 [*the accounting*]) or the trial judge who presided over the eleven-day trial, which dealt with all of the outstanding issues arising from the separation and divorce proceedings (see *trial decision*). Both the associate judge and the trial judge prepared well-written, comprehensive reasons, which shed light on this appeal.

[5] In his factum and during submissions, the husband stated that he did not take issue with any of the trial judge's factual findings. At paragraph 3 of his factum, he specifically wrote: "The appeal does not challenge the credibility findings, factual determinations, or discretionary weighing of evidence."

Issues and Standard of Review

[6] The husband submits that, even on those findings, the trial judge applied the wrong legal tests.

[7] The husband submits that the trial judge committed four legal errors:

i) She applied the wrong legal test when she awarded retroactive child support during two separate periods of time. The first being when the parties lived under the same roof and the second being when two children resided with the husband.

ii) A redundant lump sum spousal support award was made without consideration of the undisputed rent-free accommodation and business premises, even though no ongoing support was ordered.

iii) The unequal division of family property was grounded on liabilities that do not constitute dissipation.

iv) Prejudgment interest was awarded on the equalization payment contrary to its equitable purpose.

[8] The husband says that all of these legal errors give rise to a standard of review of correctness.

[9] We do not agree with the husband's characterization of the standard of review. The grounds of appeal advanced by the husband all involve findings of mixed fact and law, attracting a standard of palpable and overriding error. A high level of appellate deference is owed to the trial judge's findings.

[10] In *Hickey v Hickey*, 1999 CanLII 691 (SCC), the Supreme Court of Canada said "that appeal courts should not overturn support orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or unless the award is clearly wrong" (at para 11).

[11] Further, questions of mixed fact and law are to be examined on the standard of palpable and overriding error, unless a question of law can be extricated (see *Housen v Nikolaisen*, 2002 SCC 33 at paras 6-37).

Analysis

Child Support: No Error

[12] The husband opposes the claim for child support and has paid no child support to the wife since the separation. No interim order of child support was ever pronounced.

[13] To understand the child support order that was awarded, it is important to underscore the factual findings and determinations of the trial judge regarding the parenting arrangements. She found that the four children of the marriage (G, B1, B2 and B3) lived with the wife after the separation. In 2016, G turned eighteen and left the wife's care to attend university, while the three youngest children continued to reside primarily with the wife. Under an

interim order pronounced in June 2017 (the interim order), the remaining three children (B1, B2 and B3) were in the joint custody of the parties, with the wife having primary physical care and control of B3. The issue of primary care and control of B1 and B2 was adjourned.

[14] The trial judge found that the husband removed B2 and B3 from the wife's primary care in November 2019, without notice to her and in violation of the terms of the interim order. The husband testified that he knew the interim order was in place, but he excused his violation of the interim order, claiming that B2 and B3 chose to leave the family home because they were angry with the wife because she refused to sign a mortgage renewal agreement.

[15] The trial judge found that notwithstanding the husband's breach of the interim order, the wife continued to provide B2 and B3 with meals, clothing and other supplies. She helped them with their homework and provided emotional support. She remained as involved in their lives as she had before their forced removal.

[16] The trial judge found that:

i) The wife was the primary caregiver to G and B1 from the separation until their respective majorities in 2016 and 2019.

ii) The wife was the primary caregiver of B2 and B3 from the separation until 2019, when the husband removed them from the wife's care.

iii) Since November 2019, B2 and B3 remained in the joint care of the parties, splitting their time equally by spending days with the wife and overnights at the husband's apartment. B2 turned eighteen in 2020.

iv) B3 would be eighteen years old in 2024. B3 remained in the joint care of the parties, splitting his time equally by spending days with the wife and overnights at the husband's apartment.

[17] Before us, the husband took issue with the trial judge's findings that the wife could have primary care and control of the children while the parties resided under the same roof, from the separation until November 2019, when the husband moved out of the family home.

[18] With respect to parenting time, the trial judge specifically found (*trial decision* at para 84):

> After separating, the parties continued to live in the family home with the wife and children occupying the top two floors of the home and the husband living in the basement level which had a separate entrance. The husband worked from 11:00 a.m. to 11:00 p.m. and on weekends. He came and went without interacting with the wife and children. He did not share meals with them and rarely spoke to the wife.

[19] In the factual circumstances of this case, we see no legal error in the trial judge having awarded primary care and control of the children from the separation until the date B2 and B3 were removed from the family home by the husband. Accordingly, the wife was entitled to claim child support as she did.

[20] When she considered the wife's overall claim for child support, the trial judge properly identified and applied the relevant provisions under the *Divorce Act*, RSC 1985, c 3 (2nd Supp) and *The Family Law Act*, CCSM c F20 [*Family Law Act*]. She identified and applied the relevant jurisprudence (see *Michel v Graydon*, 2020 SCC 24; *DBS v SRG; LJW v TAR; Henry v Henry; Hiemstra v Hiemstra*, 2006 SCC 37) with respect to the issue of retroactive child support where there has not already been a court order for child support to be paid, and she made clear, specific findings regarding the wife's claim for retroactive child support.

[21] There are no palpable and overriding errors in her application of the law to the facts. This ground of appeal is dismissed.

Lump Sum Spousal Support: No Error

[22] The husband has paid no spousal support since the separation.

[23] In the same way as she did on the issue of child support, the trial judge properly identified and applied the relevant provisions under the *Divorce Act* and the *Family Law Act*, with respect to awards of spousal support. She also identified and applied the relevant jurisprudence (see *Leskun v Leskun*, 2006 SCC 25; *Bracklow v Bracklow*, 1999 CanLII 715 (SCC); *Moge v Moge*, [1992] 3 SCR 813, 1992 CanLII 25 (SCC)) and took into consideration all of the relevant factors in making such an award.

[24] The trial judge made clear, specific findings regarding the wife's claim for spousal support and, after considering the Spousal Support Advisory Guidelines, awarded the lower end of the range of $56,578 to the wife as a lump sum payment to satisfy the wife's claim for spousal support.

[25] There are no palpable and overriding errors in the trial judge's application of the law to the facts. This ground of appeal is dismissed.

Unequal Division of Family Property: No Error

[26] The husband has not made any interim equalization payments on property since the separation.

[27] By endorsement dated December 20, 2023, the trial judge confirmed *the accounting*, save for an inclusion of a debt related to one of the husband's companies, reducing the amount of the equalization payment owing by the husband to the wife to $594,927.44.

[28] In the final order, with respect to the wife's request for an unequal division of family property, the trial judge added to that equalization payment the sum of $50,000, representing an income tax debt incurred by the wife's corporation, and the sum of $45,000 as the wife's share of a line of credit, all related to the parties' commercial assets. The trial judge found the husband's behaviour with respect to his manipulation of the commercial assets to be outrageous and egregious. He enriched himself personally. She determined that to allow him to benefit from his behaviour would be grossly unfair to the wife.

[29] There are no errors in the application of the trial judge's discretion to vary the equal division of family property. This ground of appeal is dismissed.

Prejudgment Interest: No Error

[30] Finally, the prejudgment interest awarded by the trial judge is equitable in this case. This ground of appeal is dismissed.

Conclusion

[31] In conclusion, in our view, at the root of the husband's position is dissatisfaction with the result the trial judge reached when she applied the law to the evidence before her. This is a question of mixed fact and law. The trial judge did not commit palpable and overriding error. She carefully considered and weighed all of the evidence before her, made clear credibility findings, and applied the appropriate legal tests to the facts. Under the palpable and overriding error standard, this Court cannot re-weigh the evidence that was before the trial court and arrive at a different conclusion. In reality, the husband's submissions are an attempt to have this Court do just that. This is not our role.

[32] For these reasons, the appeal was dismissed with costs.

Rivoalen CJM

leMaistre JA

Edmond JA