

COURT OF APPEAL FOR ONTARIO

CITATION: Chen v. Zhang, 2026 ONCA 137

DATE: 20260226

DOCKET: COA-25-CV-0628

Fairburn A.C.J.O., Huscroft and Zarnett JJ.A.

BETWEEN

Shaojing Chen

Applicant (Respondent)

and

Xin Zhang

Respondent (Appellant)

Heng (Pandora) Du, for the appellant

Wen Chin (Celia) Hu, for the respondent

Heard: January 30, 2026

On appeal from the order of Justice Kenneth G. Hood of the Superior Court of Justice, dated April 29, 2025.

**Fairburn A.C.J.O.:**

**Overview**

[1] This is an appeal from an order: (a) extending time to permit an equalization claim to proceed; and (b) allowing a claim to real property to proceed.

[2] For the reasons that follow, I would allow the appeal. In my view, the motion judge erred in principle by finding that the respondent's non-compliance with prior court orders was irrelevant to extending the limitation period in relation to the equalization claim. It was incorrect to suggest that the non-compliance was not "a response" to the motion and that the appellant should bring "a specific motion" to deal with any "alleged" non-compliance. In addition, the clear language of the divorce agreement precluded the respondent from bringing the ownership claim.

### **Factual Background**

[3] The appellant and respondent are from China. They came to Canada as international students. They began residing together in Ontario around 2010.

[4] The appellant purchased the Toronto property that lies at the centre of this litigation in October 2011. The property was registered in her name alone. The appellant's parents and a family friend advanced funds to assist with the purchase of this \$400,000 property, and the appellant assumed a mortgage of \$240,000. The respondent did not contribute toward the down payment and did not take any responsibility for the mortgage. The monthly mortgage payments have always come solely from the appellant's bank account. While the appellant claims she has maintained the Toronto property on her own, the respondent submits that they both maintained the home through joint efforts.

[5] The parties were married in Beijing, China, on February 14, 2015. A child was born of that union shortly after the marriage. That child is now nine years of age. The parties lived at the Toronto property both before and during their marriage.

[6] The parties returned to China on August 21, 2019. The appellant and child went to her hometown and the respondent went to his, which was a long distance away. Although there is some dispute about the precise date of separation, there is no dispute that by the fall of 2019, this was the new status quo. Indeed, the parties did not see one another between August 22, 2019, and June 1, 2020, when they reconnected to discuss a divorce.

[7] Over the ensuing months, the parties negotiated and agreed upon the terms of their upcoming divorce. To this end, a divorce agreement was prepared. On September 21, 2020, the parties signed the agreement and a divorce certificate was issued in Fuzhou City, China. There is no dispute that the divorce agreement is valid, binding and enforceable.

[8] Paragraph III of the divorce agreement was central to the motion below. The certified translation of that section reads as follows:

### III. Handling of Pre-Marital Property

Both parties mutually confirm that all fixed assets, deposits, equities, investments, and all other assets owned by each party prior to marriage belong solely to

that individual. Neither party shall raise objections or assert rights for any reason.

[9] The appellant remarried about a year later. She and her new husband had two more children. She returned to Toronto on June 13, 2023, with the child of her first marriage and one of the children from the second marriage.

[10] In August 2023, almost three years following their divorce, the respondent commenced the application that brings this matter to this court. The application includes a claim for a 50% beneficial interest in the Toronto property (the “ownership claim”) and, in the alternative, a claim for equalization (the “equalization claim”). Eighteen months after commencing his application, the respondent brought a motion seeking the extension of time he required to proceed with the equalization claim.

[11] That motion resulted in the order under appeal.

### **The Motion Judge’s Reasons**

[12] The motion judge stated that the issues that had been directed to him to decide were “whether the [divorce agreement] decided all of the property issues between the parties and if not, whether the limitation period for the equalization claim could be extended.”

[13] On the limitation period issue, the motion judge identified that under s. 7(3)(a) of the *Family Law Act*, R.S.O. 1990, c. F.3 (“*FLA*”), no equalization claim can be brought two years after a marriage is terminated by divorce. Section 2(8)

of the *FLA*, however, states that the court can extend this time if it is satisfied that (i) there are apparent grounds for relief; (ii) the delay has been incurred in good faith; and (iii) no person will suffer substantial prejudice by reason of the delay.

[14] The appellant asked the motion judge to dismiss the request to extend the limitation period on the basis that, contrary to the court's prior orders, the respondent had failed to make child support payments and financial disclosure. Specifically, on February 16, 2024, the respondent was ordered to commence paying table child support in accordance with his employment income or imputed minimum wage income, whichever was higher. He was also ordered to deliver his financial information.

[15] There is no dispute that, up to the date of the hearing of this appeal, the respondent has paid no child support and has not produced his financial information.

[16] On that basis, the appellant asked the motion judge to exercise his jurisdiction pursuant to rr. 1(8), 1(8.1) and 2(2) to 2(4) of the *Family Law Rules*, O. Reg. 114/99 (the "*Rules*"). Rules 1(8) and 1(8.1) set out the consequences the court may impose upon failure to obey court orders or the *Rules*. These consequences include dismissing claims and striking notices of motion. Rules 2(3) and 2(4) require the court to apply the rules in a way that promotes the primary objective of dealing with cases justly, including by ensuring that the procedure is

fair to all parties, saving expense and time, and giving appropriate court resources to the case while taking account of the need to give resources to other cases.

[17] The motion judge dismissed the appellant's request, finding that "any alleged non-compliance should be dealt with on a specific motion brought by the [appellant], not as a response to what is effectively a pleading motion."

[18] The motion judge invoked his discretionary jurisdiction pursuant to s. 2(8) of the *FLA* to extend the limitation period. In doing so, he was satisfied that there were apparent grounds for relief, that the delay had been incurred in good faith and that no one would suffer substantial prejudice because of the delay.

[19] He also found that he was unable to determine, on the material before him, whether the divorce agreement barred the ownership claim in respect of the Toronto property. What the motion judge was able to decide was that the divorce agreement did "not bar the [respondent] from seeking an equalization claim" relating to that property.

[20] The motion judge concluded as follows:

Order to go extending the [respondent's] limitation period to August 28, 2023, being the date that the application was issued in this matter. The [respondent] is free to proceed with the equalization claim contained in his application with respect to [the Toronto property] and is not barred by the Agreement from doing so.

I am unable to determine on the evidence before me whether the [respondent] is or is not barred by the

Agreement from making a claim that he owns 50% of the beneficial interest in [the Toronto property] and a claim that the [appellant] is holding 50% of [the Toronto property] in trust for him. I am unable to determine on this motion whether [the Toronto property] comes within paragraph III of the Agreement, which appears to bar any ownership claim, such as this 50% claim. This is a matter better left for trial on proper evidence, such as proper expert reports followed by cross-examination.

[21] Therefore, the motion judge:

- (a) Refused to dismiss the application for failure to comply with a court order;
- (b) Granted an extension of time to bring the application;
- (c) Found that the equalization claim was not barred by the divorce agreement; and
- (d) Left the “ownership claim” to be determined “at trial on proper evidence.”

### **Grounds of Appeal**

[22] The appellant raises two overarching grounds of appeal.

[23] First, she claims that the motion judge erred in his approach to rr. 1(8) and 2(2) to 2(4) of the *Rules*, specifically in his finding that “any alleged non-compliance [with court orders] should be dealt with on a specific motion brought by the [appellant], not as a response to what is effectively a pleading motion.” The

appellant argues that under the circumstances of this case, the request to extend time should have been denied.

[24] Second, the appellant contends that the motion judge erred in his interpretation of the divorce agreement. The appellant maintains that, read as a whole, it is clear that the parties intended the agreement to achieve complete resolution of their affairs. To this end, paragraph III, quoted above, states that the parties reached agreement on their “pre-marital property”, specifically that they “mutually” confirmed that all “assets owned by each party prior to marriage belong solely to that individual” and that “[n]either party shall raise objections or assert rights for any reason” (emphasis added).

[25] As I will explain, I would allow both grounds of appeal. The first ground disposes of the equalization claim. Applying the proper legal framework, which must account for the respondent’s breach of court orders, I conclude that the extension of time should not have been granted. Therefore, the equalization claim is statute barred. The second ground disposes of the ownership claim. The clear language of the divorce agreement precluded the respondent from bringing the ownership claim, and he failed to produce proper evidence to undermine that clear language.

### **The Motion Judge Erred in Extending the Time to Bring the Equalization Claim**

[26] The appellant maintains that the motion judge erred in his interpretation of the divorce agreement. The parties agreed that pre-marital property, such as the Toronto property, was owned by the individual who brought it into the marriage. What is more, the agreement bars the other party from asserting any right in relation to that property. The appellant argues that this clause is clear evidence that, in signing the divorce agreement, the respondent agreed that he would not assert any rights in relation to the Toronto property. This, says the appellant, includes the “ownership” claim but also extends to any right to equalization. The absence of specific reference to the term “equalization” in the agreement matters not. To the appellant, it is simply a reflection of the fact that this agreement was reached in China, not here in Ontario, where the term “equalization” is used. The important thing is that the parties agreed that the respondent would not assert any right to the Toronto property or anything arising from that property.

[27] There is much to be said in relation to the appellant’s argument that the divorce agreement encompassed all claims in relation to the Toronto property, including equalization claims. In my view, though, we need not reach that issue because the respondent’s ability to proceed with the equalization claim is resolved on the first ground of appeal. The motion judge erred in his application of rr. 1(8) and 2(2)-2(4) of the *Rules*.

[28] Specifically, the motion judge erred in law when he found that “alleged non-compliance” with the prior court order had to be dealt with “on a specific motion brought by the [appellant], not as a response to what is effectively a pleading motion.” Rules 1(8) and 2(2)-2(4) were entirely relevant to the motion.

[29] Rule 1(8) grants the court jurisdiction to address any failure to abide by its orders “in a case or a related case”. There is nothing in the *Rules* to suggest that the party aggrieved by the failure to comply with the court’s orders must bring a separate motion. To the contrary, when the party who has failed to comply with court orders requests an indulgence of the court, such as a request for an extension of time, the court is required to take this non-compliance into account by virtue of its duty to promote the primary objective of dealing with cases justly and efficiently, as articulated in rr. 2(2)-(4).

[30] The parties agreed in the divorce agreement upon the amount that the respondent would pay in child support “until the child reaches the age of eighteen.” The respondent did not pay. The appellant then had to seek enforcement of that agreement in court. On February 16, 2024, Shin Doi J. ordered the respondent to pay child support, to continue to seek employment, and to provide financial disclosure within 30 days of the request being made. Two years later, the respondent appeared before this court, responding to the appeal, still in complete breach of that order. To this date, he has not paid any child support and he has not provided financial disclosure.

[31] The motion judge's decision to treat these facts as irrelevant to the respondent's request for an extension of time to pursue an equalization claim against the appellant was in error because it runs contrary to the primary objective of the *Rules*.

[32] As this court warned in *Manchanda v. Thethi*, 2016 ONCA 909, 84 R.F.L. (7th) 374, at para. 13: "Those who choose not to disclose financial information or to ignore court orders will be at risk of losing their standing in the proceedings as their claims or answers to claims may be struck." That principle has equal force in situations like this, where a litigant who appears to be flouting the court's orders comes to court and asks for an indulgence.

[33] The operative two-year limitation period was specifically chosen by the legislature as fair under most circumstances. The failure to pay child support, in breach of court orders, is an important consideration in determining whether the court should grant a party permission to proceed despite having missed the statutory date. The motion judge erred in law in failing to account for this factor.

**The Motion Judge Erred in Allowing the Ownership Claim to Proceed to Trial**

[34] This ground of appeal turns on the motion judge's determination that the record left him "unable to determine ... whether the [respondent] is or is not barred

by the Agreement” from bringing the ownership claim. Accordingly, the motion judge sent the matter to be determined at trial.<sup>1</sup>

[35] The motion judge was “prepared to accept that [the Toronto property] is a pre-marital property” and, therefore, “arguably comes within the definition at paragraph III of the Agreement, as being owned by the [appellant] prior to marriage.” He went on: “The Agreement acknowledges that this type of property is owned by the [appellant] and belongs solely to the [appellant].” Finally, the motion judge accepted that the respondent’s trust claim “is the equivalent of an ownership claim” apparently barred by paragraph III of the divorce agreement.

[36] However, the motion judge found that “whether the Agreement actually covers [the Toronto property] is unclear”. He therefore declined to answer the question before him concerning the scope of the divorce agreement, based on the respondent’s assertion that the agreement only applies to property in China. Because neither party filed proper expert evidence on Chinese law, the motion judge concluded that the record before him was insufficient and referred the issue to trial.

[37] In my view, this matter was resolvable on the motion and, indeed, was all but resolved on the factual findings of the motion judge. According to him, the only

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<sup>1</sup> The motion judge’s order provides that the respondent “is free to proceed with the equalization claim” but contains no mention of the ownership claim. Nevertheless, for the sake of finality, I will assume that the motion judge intended the order to reflect his conclusion that the ownership claim should be left to trial.

remaining question was whether the divorce agreement deals with property in Ontario. Coming back to paragraph III of the divorce agreement, the parties agreed as follows:

### III. Handling of Pre-Marital Property

Both parties mutually confirm that all fixed assets, deposits, equities, investments, and all other assets owned by each party prior to marriage belong solely to that individual. Neither party shall raise objections or assert rights for any reason.

[38] The agreement contains no language limiting its scope to pre-marital property in China. Instead, the broad wording of paragraph III refers to “all fixed assets ... and all other assets owned by each party prior to marriage” (emphasis added). Again, there is no dispute about the legitimacy or the binding nature of the agreement, and the parties accept that the English translation is accurate.

[39] On the other hand, there is the respondent’s position “that Ontario property could not be dealt with in a Chinese agreement”. On the record before the motion judge, this was little more than a bald assertion. As the motion judge recognized, the parties did not provide expert reports on Chinese law in compliance with r. 20.2(15) of the *Rules*. This means that the respondent, who brought the motion as well as the underlying application, filed no admissible evidence to support his position that a geographical limitation should be read into the divorce agreement. While the appellant also filed an opinion letter which does not meet the

requirements for expert evidence, that letter is a retort to the submissions on Chinese law from the respondent's opinion letter. The appellant's main argument, relying on the divorce agreement itself, did not require her to supplement the record.

[40] Accepting that this court owes deference to the motion judge's finding, I am satisfied that it was clearly wrong. In concluding that he was unable to answer the question before him and sending it to trial, the motion judge effectively gave the respondent a second chance to advance the same argument and to produce the expert opinion evidence he ought to have filed for the motion hearing. As with the first ground of appeal, it is difficult to understand this indulgence considering the respondent's non-compliance with prior court orders.

[41] In short, the plain language of the divorce agreement precluded the ownership claim and the respondent's failure to file proper evidence to the contrary could not justify deferring that issue to trial. The motion judge erred in finding otherwise.

### **Conclusion**

[42] I would allow the appeal, set aside the order below and dismiss the motion for an extension of time. The equalization claim is statute barred and shall not proceed. The ownership claim is dismissed.

[43] The appellant is entitled to costs in the amount of \$8,000.

Released: February 26, 2026 "J.M.F."

"Fairburn A.C.J.O."

"I agree. Grant Huscroft J.A."

"I agree. B. Zarnett J.A."