

COURT OF APPEAL FOR ONTARIO

CITATION: Buffa v. Giacomelli, 2026 ONCA 566

DATE: 20260806

DOCKET: COA-25-CV-0982

Zarnett, Monahan and Rahman JJ.A.

In the Estate of Giuliana Buffa, deceased

BETWEEN

Alexander Buffa

Applicant (Appellant)

and

Laura Giacomelli (aka Laura Remme) in her capacities as Attorney for Property
of Giuliana Buffa and as Estate Trustee of Giuliana Buffa, and in her personal
capacity

Respondent (Respondent)

David N. Delagran and Genevieve Madill, for the appellant

Doreen Lok Yin So and Mark Debono, for the respondent

Heard: March 24, 2026

On appeal from the judgment of Justice Marc Smith of the Superior Court of
Justice, dated July 8, 2025, with reasons reported at 2025 ONSC 4024.

Zarnett J.A.:

A. OVERVIEW

[1] The appellant, Alexander Buffa, brought an application seeking to set aside transfers totalling over \$1,700,000 that were made by his mother, Giuliana Buffa

(“Giuliana”) to his sister, the respondent Laura Giacomelli. The appellant sought to have the funds clawed back into Giuliana’s estate, of which he is a beneficiary. He alleged that the transfers were the product of undue influence on the part of the respondent, and in any event that the transfers were gratuitous and thus presumed not to be gifts but to have created a resulting trust in favour of Giuliana or her estate.

[2] The application judge dismissed the application, finding that the transfers were valid *inter vivos* gifts. He rejected the assertion that the respondent had unduly influenced Giuliana. He found that the respondent had established that Giuliana intended the transfers to be gifts and thus had rebutted the presumption that she held the transferred funds on resulting trust.

[3] The appellant argues that the application judge’s conclusion that there was no undue influence was tainted by legal error, as the application judge failed to properly consider whether a presumption of undue influence arose. I reject this argument. The application judge found that the respondent was not in a position to dominate Giuliana’s will, which is a precondition to the presumption of undue influence arising. He also found that Giuliana had acted freely and voluntarily and that there was no undue influence in fact. That finding was sufficient to rebut any presumption of undue influence, even if one arose. The application judge’s findings are entitled to deference on appeal.

[4] The appellant also argues that the finding that the presumption of resulting trust had been rebutted was legally flawed for two reasons. First, he submits that the application judge took into account the nature of Giuliana's relationship with her children, conflating motive—the reason why Giuliana might have given the respondent a gift—with whether she actually had the intention to do so. Second, he argues that the application judge failed to focus on whether Giuliana had an intention to make a gift when the transfers were made, rather than at some earlier point.

[5] I do not accept these arguments. The application judge was entitled to consider evidence relating to the quality of the relationships that Giuliana had with her children as one of several facts that led him to conclude that the transfers to the respondent were intended as gifts. He did not conflate motive with intention. Nor did he err in relying on Giuliana's clear written statements indicating her intention to make gifts to the respondent, even though they preceded some of the actual transfers. There was no evidence of a change in intention between the time of the statements and the time the transfers were completed.

[6] I would therefore dismiss the appeal.

B. BACKGROUND

[7] The appellant and respondent are the only children of Giuliana and her husband, Dr. Leonardo Buffa.

[8] Giuliana made a will dated November 8, 2018 (the “Will”), which provided that if her husband predeceased her, the respondent was to act as her estate trustee and her estate was to be divided into two parts, with 45% going to the appellant and 55% to the respondent. On the same date, she executed a Power of Attorney for Property, appointing her husband as attorney and the respondent as alternate attorney.

[9] Giuliana’s husband died in December 2019.

[10] The application judge made findings about the nature of the relationship Giuliana had with the appellant following her husband’s death. He noted that three days after his father’s death, the appellant had his lawyer write a letter that challenged Giuliana’s capacity and objected to her or the respondent acting as estate trustee. The challenge was rejected by Giuliana in a letter from her lawyer, who asserted that Giuliana had capacity, and pointed out that her husband’s assets had been owned jointly with her and passed to her by right of survivorship. The application judge found that Giuliana and the appellant did not see or speak to each other after that point.

[11] In contrast, the application judge found that at the time of her husband’s death, and until her own death in 2023, Giuliana’s relationship with the respondent was close.

[12] Giuliana was diagnosed with breast cancer in January 2020.

[13] On January 27, 2020, Giuliana directed Toronto Dominion Bank (“TD Bank”) in writing to transfer her investment account of approximately \$848,450.00 into a new account jointly held by her and the respondent (the “TD Investment Account”). In the same month, Giuliana and the respondent opened joint bank accounts at TD Bank and the Bank of Nova Scotia (“Scotiabank”).

[14] In March 2020, Giuliana designated in writing that the respondent was the beneficiary of her Registered Retirement Income Fund (“RRIF”) and her Tax-Free Savings Account (“TFSA”).

[15] In May 2020, Giuliana signed two “gift letters”. The first was a letter stating her desire that the respondent liquidate the TD Investment Account, RRIF, and TFSA and transfer the proceeds into one of their joint bank accounts, and her wish to gift the proceeds to the respondent:

I, Giuliana Buffa, hereby confirm my desire for my daughter, Laura Giacomelli, to begin liquidating my investment accounts and to transfer the proceeds from the investments into one of our joint bank accounts. I further confirm that I wish to gift all the money from these investments to Laura.

[16] The second was a letter expressing her desire that the respondent effect a sale of her condominium, deposit the proceeds into one of their joint accounts, and that the respondent keep the proceeds as a gift:

I, Giuliana Buffa, hereby confirm my desire for my daughter Laura Giacomelli, to sell my condo once I have

moved into a new residence. I further confirm my desire for Laura to move the proceeds from the condo sale into one of our joint accounts and for Laura to keep the proceeds from the sale as a gift from me.

[17] By April 2021, the RRIF, TFSA, and TD Investment Account had been liquidated. The proceeds, totalling about \$230,000 from the RRIF and TFSA and \$636,170 from the TD Investment Account, were deposited into the joint account at TD Bank.

[18] In May 2021, the condominium was sold and the net proceeds of \$875,750 were deposited into the joint account at Scotiabank.

[19] The respondent subsequently withdrew funds from the joint bank accounts.

[20] Giuliana experienced health challenges that resulted in a hospitalization in August 2020. She moved to a retirement community in October 2020. The application judge found that, despite these facts, Giuliana was active, enjoyed living independently, was capable, and made her own financial decisions.

[21] Giuliana started to show signs associated with dementia in the fall of 2021. She ultimately passed away on October 17, 2023.

[22] As noted, under the Will, Giuliana's estate was to be divided 45% to the appellant and 55% to the respondent. However, as a result of the transactions outlined above, the Will did not govern over \$1,700,000 that, although originating from assets once held in Giuliana's name alone, had been transferred prior to her

death into joint accounts with the respondent and had either been withdrawn by her or otherwise passed to the respondent outside of Giuliana's estate.

C. THE DECISION BELOW

[23] In his application, the appellant sought: 1) a declaration that the joint accounts from December 16, 2019 to October 17, 2023 are subject to a resulting trust and form part of Giuliana's estate, 2) an order that the respondent pay him his share of the estate withdrawn by her or, alternatively, a tracing order to ascertain assets for recovery, and 3) an order that the respondent distribute the remainder of the accounts in accordance with the Will.

[24] The application judge dismissed the application. I summarize his reasons to the extent they bear on the issues on appeal.

[25] The application judge began by reviewing the applicable legal principles for *inter vivos* gifts, the presumption of resulting trust and undue influence.¹ He noted that the respondent had the onus to rebut the presumption of resulting trust by proving Giuliana's intention to make a gift.² He also noted that, should the presumption of undue influence apply, the respondent would have the onus to prove that Giuliana had "full, free and informed thought" at the time of the transfer.

¹ In the court below, the appellant also claimed on the basis of the doctrine of unconscionable procurement. That claim was dismissed and the appellant does not pursue the issue in this court.

² The application judge noted that intention was the only contentious issue, as the other elements required for a valid *inter vivos* gift were met: the joint bank accounts were created and the funds transferred while Giuliana was alive.

He also stated that, as Giuliana is deceased, s. 13 of the *Evidence Act*, R.S.O. 1990, c. E.23 required corroborative evidence.

[26] While the transfers of wealth through the joint accounts appeared to contradict Giuliana's intentions as set out in the Will, the application judge found that the totality of the evidence demonstrated Giuliana's clear and unmistakable intention to make *inter vivos* gifts to the respondent. He relied on the following:

- (i) The fact that Giuliana signed forms in January 2020 creating the joint bank accounts, and signed the gift letters in May 2020 which outlined her desire to liquidate her investment accounts, sell her condominium, deposit the proceeds into the joint accounts, and gift the proceeds to the respondent;
- (ii) The strained relationship between Giuliana and the appellant;
- (iii) The close relationship between Giuliana and the respondent;
- (iv) The lack of evidence that Giuliana lacked capacity to manage her financial affairs when she expressed her intention to make the gifts; and
- (v) The fact that there was no evidence of dependency, no evidence that the respondent acted in any inappropriate manner to convince Giuliana to give her gifts, and no evidence to suggest that the transfers were done without her full approval and consent.

[27] In light of these findings, the application judge concluded that the respondent had adduced sufficient evidence of Giuliana's intention to make a gift to displace the presumption of resulting trust.

[28] The application judge also found "no evidence...that the relationship between mother and daughter was one of dependency or dominance", and that there was no evidence that Giuliana was unduly influenced by the respondent. He found that Giuliana freely and deliberately gave the gifts to the respondent.

D. THE ISSUES

[29] The appeal requires the following issues to be decided:

- (1) Did the application judge err in his approach to undue influence?
- (2) Did the application judge err in finding that the presumption of resulting trust was rebutted:
 - (a) by considering Giuliana's relationships with the parties and thus conflating evidence of motive with evidence of intent to make a gift? or
 - (b) by failing to focus on whether donative intent existed at the time of the transfers?³

³ The appellant's Notice of Appeal lists an additional ground: Did the application judge err by not considering that the respondent was the sole attorney for property for Giuliana and bound to administer that property in accordance with the Will, which had been executed only 15 months previously and gifted the appellant 45% of her estate? However, this ground of appeal was not addressed in the appellant's factum or in oral argument, and I treat it as effectively abandoned.

E. ANALYSIS

1. The Application Judge Did Not Err in His Approach to Undue Influence

[30] Ordinarily, the onus of proving undue influence is on the party who asserts it: *Vout v. Hay*, [1995] 2 S.C.R. 976, at p. 887; *Neuberger Estate v. York*, 2016 ONCA 191, 129 O.R. (3d) 721, at para. 78, leave to appeal refused, [2016] S.C.C.A. No. 207.

[31] However, a presumption of undue influence arises where an *inter vivos* transfer is made within a relationship in which there is an inherent “potential for domination”: *Goodman Estate v. Geffen*, [1991] 2 S.C.R. 353, at p. 378; *Morreale v. Romanino*, 2017 ONCA 359, 30 E.T.R. (4th) 21, at para. 22. Various relationships of dependency have been recognized as giving rise to the presumption, such as parent and child or solicitor and client: *Goodman Estate*, at p. 378.

[32] Where the presumption is found to exist, the recipient of the gift must establish, on a balance of probabilities, that the transfer was made with the donor’s “full, free and informed thought”: *Goodman Estate*, at p. 379; *Foley (Re)*, at para. 28.

[33] The appellant argues that the application judge misapplied the test for the presumption of undue influence. The application judge, he argues, did not make a

finding about whether there was a potential for domination in the relationship between Giuliana and the respondent.

[34] I disagree. The application judge made an explicit finding that there was “no evidence...that the relationship between mother and daughter was one of dependency or dominance”. The application judge thus effectively found that the presumption of undue influence could not apply, as the precondition for its application was not present. As La Forest J. stated in his concurring judgment in *Goodman Estate*, at p. 392, the “presumption will arise only when the parties are in a relationship of ‘influence’, where one person is in a position to dominate the will of another.”

[35] The appellant goes on to make a different argument. He maintains that, in making his finding that there was no domination in the relationship between Giuliana and the respondent, the application judge did not consider all the evidence available to him. He alleges that the application judge gave undue weight to the fact that Giuliana and the respondent lived in different cities, and should have given more weight to the fact that the impugned transfers took place when they were together or were implemented by the respondent alone acting under the Power of Attorney.

[36] This is not an assertion of legal error, but a complaint about the application judge’s fact finding. The complaint must be rejected. The application judge’s

findings of fact, inferences of fact, and mixed findings of fact and law not tainted by legal error are entitled to substantial deference on appeal: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 10, 19, and 28-29. The application judge was not obliged to recount all of the evidence, and there is no credible suggestion that he misapprehended any. The weight to be attributed to various aspects of the evidence was for him to decide.

[37] In any event, even where a trial judge fails to apply the proper presumption, there is no basis for appellate interference if the presumption would have been rebutted on the trial judge's findings of fact, leading to the same conclusion: see, for example, *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at para. 75, where Rothstein J. refused to interfere despite the trial judge's failure to apply the presumption of resulting trust because there was no effect on the result, given the trial judge's findings of an actual intention to give a gift.

[38] The presumption of undue influence is rebuttable. Here, the application judge found no evidence that the respondent acted in any inappropriate manner to convince Giuliana to give her gifts, that the transfers were made with the "full approval and consent" of Giuliana who "made her own decisions with respect to her finances", and that Giuliana freely and deliberately gave gifts to the respondent.

[39] These findings were available to the application judge on the record. Even if the presumption of undue influence arose, these findings rebut it. Accordingly, even if the application judge should have found the presumption to apply, the result would have been the same.

[40] I therefore reject this ground of appeal.

2. The Application Judge Did Not Err in Finding that the Presumption of Resulting Trust Was Rebutted

[41] Where a gratuitous transfer is made from a parent to an adult child, a presumption of resulting trust arises: it is presumed that the child holds the property in trust for the parent or their estate: *Pecore*, at para. 36. The onus is on the recipient of the transfer to prove, on a balance of probabilities, that the transferor intended the transfer to be a gift: *Pecore*, at paras. 24-25.

[42] The evidence required to rebut the presumption depends on the facts of the case: *Pecore*, at para. 55; *Foley (Re)*, 2015 ONCA 382, 125 O.R. (3d) 721, at para. 27. Where the donor is deceased, s. 13 of the *Evidence Act* requires corroborative evidence. This evidence can be direct or circumstantial and can consist of a single piece of evidence or multiple, cumulative pieces of evidence: *Foley (Re)*, at para. 29.

a. No Conflation of Motive and Intent

[43] The appellant argues that the application judge erroneously conflated evidence of motive with evidence of intention by relying on Giuliana’s asymmetrical relationships with her children. Specifically, the application judge noted that the appellant had, shortly after his father’s death, attempted to oust Giuliana as the estate trustee of his estate, straining the relationship to the extent that they had no further contact for the remainder of Giuliana’s life. In contrast, the application judge noted that Giuliana and the respondent shared a close relationship. He found that the transfers were consistent with “the type of relationship [Giuliana] shared with her daughter, as opposed to the non-existent relationship that she had with her son”. The appellant argues that these findings were indicative of motive, rather than intention and there was no corroborative evidence for these findings, as required by s. 13 of the *Evidence Act*.

[44] There can be a difference between an intention to make a gift and the “underlying motivation or purpose” for doing so: *McNamee v. McNamee*, 2011 ONCA 533, 106 O.R. (3d) 401: at para. 34. In *McNamee*, the trial judge had found that, despite evidence of the donor’s intention to gift shares to his sons, no gift had taken place because the donor’s motive for doing so was to protect his company from creditors. This court found that focusing on the donor’s motive to undermine his intention was an error.

[45] This case is nothing like *McNamee*. Here, the evidence of Giuliana's relationships with her children was considered by the application judge to be consistent with her stated intention to make gifts to the respondent as set out in the creation of the joint accounts, the 2020 letters, and the beneficiary designations that she signed.

[46] In other words, Giuliana's relationships with her children helped explain her stated, written intention to gift money to the respondent, rather than the appellant. There was no error in taking it into account. As Rothstein J. stated in *Pecore*, at para. 37, "I see no reason why courts cannot consider evidence relating to the quality of the relationship between the transferor and transferee in order to determine whether the presumption of resulting trust has been rebutted."

[47] The appellant's *Evidence Act* complaint is misconceived. Section 13 of the *Act* does not require each bit of evidence to be separately corroborated.⁴ It requires the factual contention on which the respondent could obtain judgment—that Giuliana intended to make a gift—to be corroborated beyond the respondent's own evidence: *Brisco Estate v. Canadian Premier Life Insurance Company*, 2012 ONCA 854, 113 O.R. (3d) 161, at para. 65, citing *Sands Estate v. Sonnwald* (1986), 9 C.P.C. (2d) 100 (Ont. H.C.J.), at p. 110. Here, the evidence went well

⁴ Section 13 provides: "In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence."

beyond the respondent's evidence: the 2020 letters, the beneficiary designations, and the creation of the joint accounts all served to corroborate that factual contention.

[48] In any event, the application judge's findings about Giuliana's relationships with the parties were based on both the evidence of the respondent and the parts of the appellant's evidence that he did not reject. The appellant admitted that around the time of his father's death in 2019, he was not particularly close to Giuliana, and that he last saw or spoke to her shortly before his father's death.

b. No error in respect of the timing of donative intent

[49] The appellant argues that the relevant time to determine the donor's intention to gift property is at the time of delivery of the gift. He submits that the application judge did not consistently determine Giuliana's intention at the appropriate time.

[50] The appellant concedes that the relevant time to determine the intention to gift the contents of the TD Investment Account was at the time the joint account was created in January 2020 and that the money contained in the account at that point—in excess of \$800,000—was gifted to the respondent. He additionally concedes that the relevant time to determine intention in respect of the beneficiary designations for the TFSA and RRIF was at the time the forms were signed in March 2020.

[51] However, he argues that Giuliana's intention with respect to the proceeds of sale of the condominium should have been assessed at the date the respondent withdrew, for her own use, funds from the joint bank account into which those proceeds had been deposited. He asserts these withdrawals occurred between September 2021 and May 2022. He argues that the application judge erred in solely focussing on Giuliana's intent in January 2020, when the joint bank accounts were created, and May 2020, when the letter relating to the sale of the condominium and the deposit and gift of the proceeds was signed. This time gap should have been significant to the analysis, according to the appellant, because in the period between September 2021 to May 2022, Giuliana's capacity came to be in doubt.

[52] I do not accept this argument.

[53] First, the argument is based on an incorrect premise—that delivery of the gift of the proceeds of the sale of the condominium occurred only when the respondent withdrew the funds from the joint bank account into which those proceeds had been deposited. The condominium was sold and proceeds deposited into the Scotiabank joint account in May 2021. It was the deposit of proceeds of the condominium sale into the joint account that constituted delivery of the gifted property to the respondent.

[54] Delivery of a gift occurs when the donor divests himself or herself of all power and control over the property and transfers it to the donee: *McNamee*, at para. 25. It is well established that the creation of a joint account may constitute a valid gift of the funds in the joint account in favour of the joint account holder, including rights to withdraw the funds during the donor's lifetime, if that is the intention of the donor: *Pecore*, at para. 45. It follows that the deposit of funds into such an account delivers those funds to the joint account holder who has the right to make a withdrawal. At that point, the donor has divested the right to control the funds in favour of the joint account holder who has the right to withdraw them.

[55] The respondent was one of the owners of the joint bank account, created in January 2020, into which the condominium proceeds were deposited. The May 2020 letter pertaining to the condominium sale, deposit of proceeds into the joint account, and Giuliana's wish to gift the proceeds to the respondent, is consistent only with a gift to the respondent of rights to withdraw the proceeds during Giuliana's lifetime as well as of any balance left in the account on Giuliana's death. There was no evidence that Giuliana had the intention of retaining exclusive—or indeed any—control of the account, or of any of the condominium proceeds in it, until her death: *Pecore*, at paras. 45-47.

[56] Given that the date of delivery of the gift is May 2021, the appellant's argument that something had changed regarding Giuliana's capacity to make the gift described in the May 2020 letter falls away. The application judge found as a

fact that Giuliana “first showed signs associated with dementia in fall of 2021”, well after the gift was delivered. This factual finding is owed deference on appeal. Giuliana’s capacity to make the gift is presumed absent suspicious circumstances (which the application judge did not find): Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution*, 2nd ed. (Toronto: LexisNexis Canada, 2022), at §8.02[2][c].

[57] Although the appellant is correct that a donor’s intention to make a gift must continue to the time of delivery, given that there is no change in capacity, nothing prevented an inference being drawn that the clear statement of intention to make the gift in May 2020 continued through the time of delivery. There is no requirement that the intention be expressly repeated. The appellant’s reliance on the suggestion in *Pecore*, at para. 36, that evidence of a transferor’s intention “ought to be contemporaneous, or nearly so” with the time of the transfer does not assist the appellant. The court in *Pecore* was commenting on evidence of intention arising after a transfer, which has the potential to be self-serving. In this case, there was evidence—the May 2020 gift letter—and no suggestion that Giuliana’s intention had changed.

[58] The May 2020 gift letter relating to the condominium clearly and explicitly established Giuliana’s intention to gift the proceeds of sale to the respondent and authorized the respondent to attend to the sale and deposit the proceeds into a joint account Giuliana had created. Giuliana had previously appointed the

respondent her attorney for property, The application judge found as a fact that Giuliana had capacity at the time of her actions. It was open to her to change her mind and modify these mechanisms, should she have desired to do so. She did not. The mechanisms she put in place allowed the sale of the condominium and the deposit of the proceeds into the joint account as she had explicitly intended, crystallizing the gift.

[59] The appellant makes the further argument that there was no evidence that Giuliana intended the respondent to have the right to withdraw the TFSA and RRIF funds prior to Giuliana's death. It is not clear how success on this contention could assist the appellant. Even if he were right, the respondent, not the appellant, had the sole right to these funds upon Giuliana's death, as they would pass pursuant to the beneficiary designations in the respondent's favour, rather than under the Will.

[60] In any event, I see no merit in this submission. The RRIF and TFSA were investment accounts and were thus referenced in the May 2020 gift letter concerning such accounts. That gift letter was clear: Giuliana wished to "gift all the money from these investments to Laura." That Giuliana had previously designated the respondent as the beneficiary of these accounts on Giuliana's death does not contradict her *inter vivos* transfer of the funds, delivered through the liquidation of the RRIF and TFSA accounts and transfer of the money into one of the joint

accounts. Nothing restricted the respondent from withdrawing the funds that were gifted to her from the joint account, of which she was an owner.

F. CONCLUSION

[61] I would dismiss the appeal, with costs to the respondent in the agreed upon amount of \$20,000.

Released: August 6, 2026 "B.Z."

"B. Zarnett J.A."

"I agree. P.J. Monahan J.A."

"I agree. M. Rahman J.A."