

Marriage ends, but judge rules against dowry return

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Under Ontario law, is a dowry paid to a bride's family returnable to the groom's family should the couple's marriage break down?

In a ruling that offered guidance on how courts will treat dowry payments in the aftermath of divorce, the Ontario Court of Appeal recently said it all depends on the terms of the dowry and whether there is written evidence of those terms.

In *Abdollahpour v. Banifatemri*, Reza Abdollahpour and his parents, Sima and Hamid, sued Hamid's ex-wife Shakiba Banifatemri for the return of a dowry payment paid to her. Abdollahpour and his parents argued that the dowry, which was paid in the form of 50 per cent interest in an Ottawa home, was subject to a condition that Banifatemri stays in the marriage in accordance with Iranian culture and tradition. The Abdollahpours also said Banifatemri obtained the interest in the property and to be sponsored as a permanent resident in Canada.

But in a decision consistent with a lower court's finding, the court of appeal said there is no evidence Abdollahpour and his parents placed terms on the dowry. Neither the terms of the trans-



Laura Cardiff says the plaintiffs in a legal battle over a dowry gift had the evidence stacked against them.

fer, nor the marriage contract, indicate the dowry is revocable, the court found.

"That the property is referred to as part of the bride's dowry and the dowry is part of the marriage contract, and that there may be general Iranian cultural norms and traditions relating to such marriages, is not enough, in my opinion," Justice Robert Blair wrote.

Blair added: "If ambiguous references were enough to incorporate cultural practices and traditions into a real property transaction, as the appellants seek to do here, there would be a danger of underlying expectations and mo-

tivations arising from the cultural context easily becoming conflated with intention. It is the parties' intention and their actual agreement that must be ascertained."

But Evan Moore, counsel to the plaintiffs, says a dowry isn't he brought expert opinion to speak to that point.

"The court's findings are pretty clear that while cultural traditions and norms may inform parties' decisions and may even form parts of terms of contracts between parties, when it comes to interest in land, those cultural norms and traditions still have to be reduced to writing," Moore says.

Abdollahpour's parents in this case had signed a Deed of Gift that clearly stated the transfer was a gift. That's why Laura Cardiff, associate lawyer at Whaley Estate Litigation, says the plaintiffs had the evidence stacked against them.

"There was a written negotiation of this land transfer and it was specifically to be an unconditional gift. But if that didn't exist, then the evidence, which the groom's family tried to introduce before the court of appeal, which was the expert report on Iranian custom, might have played a role," Cardiff says.

Cardiff also says the case is an example of what happens when people have certain expectations when they give gifts but those expectations are not voiced, written down, or understood by everyone involved.

The court's finding in this case is a reminder that "once you have the intention to gift and you make a transfer, the gift is done, and it's unfortunate if you only realize later you only intended to give this gift in [certain] circumstances," Cardiff adds.

In *Abdollahpour*, the plaintiffs argued that Banifatemri's father had promised the dowry would be returned should the marriage break down. The lower court judge had found it was "unlikely" Banifatemri's father made that promise. Even if he had,

the judge said he would give no weight to that promise.

The lower court judge "concluded that even if the statement had been made, it did not affect the result for two reasons. First, Shakiba's father was not a party to the transaction (or to the proceedings) and such a representation could not bind Shakiba, who is an adult in control of her own decisions and who, on the evidence, had not been told of the representation, much less agreed to be bound by it," Blair said. "I agree."

The motion judge also said a verbal promise to transfer Banifatemri's interest in the land back to Abdollahpour's parents would be ineffective in any event because of the provisions under the Statute of Frauds.

Moore says Banifatemri herself had written an affidavit in which she indicated she had no part in the negotiation of the dowry, and that her father and brother had negotiated on her behalf.

"That, we said, is normal in these type of dowry situations, and her father's representations supports what the expert was saying about the conditions that were attached to the dowry," Moore says. "But at the end of the day, the court said, 'You signed a Deed of Gift clearly saying the transfer was a gift to the daughter-in-law notwithstanding the marriage contract.'"