

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180323

Docket: A-135-17

Citation: 2018 FCA 59

[ENGLISH TRANSLATION]

**CORAM: NOËL C.J.
BOIVIN J.A.
GLEASON J.A.**

BETWEEN:

DIDIER KOMLAN YOVO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montreal, Quebec, on March 19, 2018.

Judgment delivered at Ottawa, Ontario, on March 23, 2018.

REASONS FOR JUDGMENT BY:

NOËL C.J.

CONCURRED IN BY:

BOIVIN J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

NOËL C.J.

[1] This is an appeal by Didier Komlan Yovo (Mr. Yovo or the appellant) from a decision rendered by Deputy Judge Masse of the Tax Court of Canada (the TCC Judge) in which he confirmed an assessment made by the Minister of National Revenue (the Minister) for the 2015 taxation year disallowing a deduction of \$6,265 for legal fees incurred in a dispute with his former spouse regarding the custody of their children and child support.

[2] The appellant, who is representing himself, claims that the TCC Judge improperly assessed the evidence presented before him regarding the nature of the dispute and of the legal fees incurred. He also allegedly misinterpreted paragraph 18(1)(a) of the *Income Tax Act*, R.S.C. 1995, c. 1 (5th Supp.) (the Act), and relied on case law that is not applicable in this case.

[3] The context in which the legal fees were incurred is as follows. The appellant separated from the mother of his two children in April 2014. They were never married. On April 8, the mother filed a motion to institute proceedings to establish custody of the children and obtain child support. On April 23, 2014, a safeguard order was issued requiring that Mr. Yovo make biweekly support payments of \$118. Shared custody of the children was also ordered at the same time.

[4] The order remained in place until February 11, 2015, at which time the parties reached a final agreement. That agreement was approved the next day. It reduced the support amount to \$87 and gave the appellant the right to claim a portion of the government benefits, including the Universal Child Care Benefit and the Canada Child Tax Benefit (the UCCB, the CCTB or the benefits). The agreement also recognized the shared responsibility to pay childcare costs.

[5] In computing his income for the 2015 taxation year, Mr. Yovo deducted the legal fees incurred to resolve the dispute. He explained that those expenses were incurred [TRANSLATION] “to determine the support” (Respondent’s Memorandum, at para. 12). That deduction was disallowed. The subsequent appeal to the TCC Judge was dismissed on the ground that, according to well-settled case law (*Nadeau v. M.N.R.*, 2003 FCA 400, [2004] 1 F.C.R. 587

(*Nadeau*); *Grenon v. Canada*, 2016 FCA 4 (*Grenon*); and *Mills v. Canada*, 2015 FCA 255 (*Mills*)), that type of expense was not incurred to earn income and therefore cannot be deducted under paragraph 18(1)(a) of the Act.

[6] In support of his appeal, the appellant argues that that finding is based on an incorrect assessment of the evidence. As he did not challenge the amount of the support or the custody of the children, the TCC Judge should have understood that *Nadeau* did not apply (Appellant's Memorandum, at para. 35).

[7] The appellant submits that the fees were instead incurred to entitle him to benefits, more specifically to earn income from the UCCB and CCTB (Appellant's Memorandum, at paras. 16–20 and 36). The right to those benefits is property as defined in subsection 248(1), and the fees incurred to obtain the resulting income are current expenses, the deduction of which is permitted under paragraph 18(1)(a).

ANALYSIS AND DECISION

[8] It is inaccurate to say that the TCC Judge did not understand why the legal fees were paid. Although he recognized that the establishment of a right to benefits was one of the issues, he also found that the fees were incurred to determine custody and the other elements dealt with in the final agreement (Transcript, page 55, lines 12–16). The Judge's finding is supported by the evidence. Although the appellant is of the view that the real issues were related to his entitlement to benefits, the final agreement resolved several others, including the terms of the shared custody

and the amount of the support, which was reduced. Under those circumstances, it is hard to claim that the fees were not incurred for that purpose.

[9] Moreover, even if we accept the appellant's argument that he incurred the fees to give rise to the payment of benefits, the appellant would not be successful.

[10] While it is true that the "other sources of income" set out in Subdivision D of the Act can go back to section 3 such that an expense incurred to earn income from any of those sources could be deducted under paragraph 18(1)(a), the deduction of an expense incurred to establish the existence of such a source remains prohibited under paragraph 18(1)(b) (*Nadeau*, at paragraphs 17 and 27).

[11] The appellant argued at the hearing that his entitlement to benefits was already established and that the fees were therefore not incurred to give rise to that right. In stating this, the appellant seems to have forgotten that, under the terms of the safeguard order, only his former spouse was recognized as the person responsible for paying the childcare costs, meaning that only she was entitled to claim the benefits.

[12] The final agreement resolved that situation by recognizing the appellant as the payor of the childcare costs for one of the two children (see paragraphs 56 to 60 of the Agreement), thus giving him the right to claim his share of the benefits. The record shows that once the final agreement was signed, the benefits were paid on request and no expenses needed to be incurred

to collect them. It follows that, if any portion of the fees was attributable to the benefits, it was only incurred to establish an entitlement to them.

[13] In closing, I note that only the UCCB lends itself to the analysis above, as the CCTB is not taxable under the Act (see subparagraph 56(1)(a)(vi) and section 5502 of the Regulations), and therefore could not entitle the appellant to a deduction, regardless of the circumstances surrounding the expense claimed.

[14] I would dismiss the appeal with costs.

“Marc Noël”

Chief Justice

“I agree.

Richard Boivin, J.A.”

“I agree.

Mary J.L. Gleason, J.A.”

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-135-17

STYLE OF CAUSE: DIDIER KOMLAN YOVO v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: MARCH 19, 2018

REASONS FOR JUDGMENT BY: NOËL C.J.

CONCURRED IN BY: BOIVIN J.A.
GLEASON J.A.

DATED: MARCH 23, 2018

APPEARANCES:

Didier Komlan Yovo

FOR THE APPELLANT
(representing himself)

Grégoire Cadieux

FOR THE RESPONDENT

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