

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180920

Docket: A-122-17

Citation: 2018 FCA 170

**CORAM: NEAR J.A.
DE MONTIGNY J.A.
WOODS J.A.**

BETWEEN:

GLADYS MILENA SEGURA MOSQUERA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on September 19, 2018.

Judgment delivered at Ottawa, Ontario, on September 20, 2018.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**NEAR J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] The appellant, Gladys Milena Segura Mosquera, appeals from a judgment of the Tax Court of Canada that quashed her appeal for the 2010 taxation year.

[2] In oral reasons by Justice Owen, the Tax Court concluded that the appeal should be quashed because no tax, interest or penalty was assessed for the 2010 taxation year under federal income tax law (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)).

[3] The appellant submits that the Tax Court erred in quashing her appeal. The questions she raises are subject to a correctness standard of review. I am of the view that there is no such error in this case.

[4] By way of background facts agreed to by the parties, the appellant received several nil assessments from the Minister of National Revenue for the 2010 taxation year. A nil assessment is not actually an assessment for purposes of the Act, but is a determination by the Minister that no tax is payable for a particular taxation year.

[5] The legal principle that the Tax Court applied in quashing the appeal from a nil assessment is well established. In an earlier decision of this Court, the principle was described as follows: "... unless the taxpayer challenges the taxes interest or penalties assessed for the year, there is nothing to appeal and indeed no relief which the Tax Court can provide. ..." (*Canada v. Interior Savings Credit Union*, 2007 FCA 151 at para. 15, 2007 D.T.C. 5342).

[6] This principle applies here, and it applies even if, as the appellant suggests, an amount is payable under provincial law for the same year. Accordingly, there was no relief that the Tax Court could provide in the appellant's particular circumstances.

[7] The appellant suggests that the appeal should not have been quashed because there may actually have been federal tax owing. Even if this were the case, this does not assist the appellant because an appeal to the Tax Court cannot result in an increase of tax (*Petro-Canada v. Canada*, 2004 FCA 158 at para. 68, 319 N.R. 261).

[8] The appellant also submits that the Tax Court breached principles of natural justice and procedural fairness by not allowing her to present evidence so that she could receive assistance on the substantive issues in the appeal. I have reviewed the transcript of the Tax Court hearing and see no basis for this complaint. The decision of the Court was based on a preliminary motion by the Crown and the appellant did speak to the Court concerning this issue. Justice Owen properly advised the appellant that it was not the role of the Court to provide the appellant with legal advice on other issues.

[9] At the hearing, the appellant expressed frustration in her attempt to understand the complex tax and social assistance regimes in Canada and in two provinces. Despite these sympathetic circumstances, the Tax Court is not able to provide any relief in these particular circumstances.

[10] Several other issues were raised by the appellant in this Court, but none of these overcome the fundamental problem that no relief can be provided by the Tax Court from a notification that no tax is payable.

[11] I would accordingly dismiss the appeal. The Crown seeks costs in this matter, and has left the quantum to the discretion of the Court. In the particular circumstances of this appeal, I would order that the parties each bear their own costs.

“Judith M. Woods”

J.A.

“I agree.

D. G. Near J.A.”

“I agree.

Yves de Montigny J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-122-17

**APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
JANUARY 13, 2017, DOCKET NO. 2016-3215 (IT)**

STYLE OF CAUSE: GLADYS MILENA SEGURA
MOSQUERA v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2018

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: NEAR J.A.
DE MONTIGNY J.A.

DATED: SEPTEMBER 20, 2018

APPEARANCES:

Gladys Milena Segura Mosquera

FOR THE APPELLANT
ON HER OWN BEHALF

Tanis Halpape

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT