

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140203

Docket: A-216-13

Citation: 2014 FCA 27

**CORAM: DAWSON J.A.
STRATAS J.A.
NEAR J.A.**

BETWEEN:

GITA GOLDSTEIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on February 3, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on February 3, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario on February 3, 2014)

DAWSON J.A.

[1] A judge of the Tax Court of Canada determined that the appellant was not a resident of Canada during the 2000 to 2009 taxation years and base taxation years (2013 TCC 165). As a result, the appellant was not an eligible individual entitled to receive child tax benefits or goods and services tax credits under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] The parties agree that the Judge articulated the correct test for determining residency: a person is resident in the country where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays (*The Queen v. Laurin*, 2008 FCA 58, 2008 DTC 6175, at paragraph 2).

[3] The appellant asserts, however, that the Judge erred in her assessment of the reliability of the appellant's husband's testimony (he was the only witness to testify on the appellant's behalf) and further erred in the inferences she drew from the facts in evidence.

[4] Findings of credibility, findings of fact and inferences drawn from the facts are owed deference by an appeal court. They may be interfered with only if a palpable and overriding error is demonstrated (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraphs 10 to 15 and 19 to 25). A palpable error is one that is obvious. An overriding error is one that goes to the very core of the outcome of the case.

[5] Notwithstanding Mr. Levinson's submissions, we are all of the view that the appellant has failed to establish any palpable and overriding error made by the Judge in her findings of credibility or in her findings of fact and the inferences she drew from the facts.

[6] The Judge dealt with the evidence of residency proffered before her on the appellant's behalf. The Judge expressed concern about the reliability of the evidence and considered the weight to be given to the evidence. There was evidence to support each of her impugned findings and there

is no basis upon which to interfere with the Judge's assessment of the weight to be given to the evidence.

[7] While the Judge may have reached a different conclusion on this or another evidentiary record, we are confined to review her decision on the basis of palpable and overriding error. Since palpable and overriding error has not been established, the appeal will be dismissed with costs.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-216-13

APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE WOODS OF THE TAX COURT OF CANADA, DATED MAY 21, 2013, DOCKET NO. 2012-1320(IT)I.

STYLE OF CAUSE: GITA GOLDSTEIN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 3, 2014

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

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Kathleen Beahen FOR THE RESPONDENT
Carol Calabrese

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