Docket: 2016-1744(IT)I

BETWEEN:

CHANTAL PERRON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 27, 2017, at Edmonton, Alberta

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Aminollah Sabzevari

JUDGMENT

The appeal from the redeterminations made under the *Income Tax Act* February 19, 2016 and March 4, 2016 regarding the Canada Child Tax Benefit and the Goods and Service Tax/Harmonized Sales Tax Credit for the period July 2013 to and including June 2016 is dismissed without costs in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 1st day of November 2017.

"B. Russell"

Russell J.

Citation: 2017TCC220
Date: 20171101
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CHANTAL PERRON,

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and

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Respondent.

REASONS FOR JUDGMENT

Russell J.

INTRODUCTION

[1] Ms. Chantal Perron is appealing redeterminations that the Minister of National Revenue (Minister) made February 19, 2016 and March 4, 2016 under the federal *Income Tax Act* as amended to July 1, 2016 (Act). These redeterminations denied a portion of the Appellant's claim for the Canada Child Tax Benefit (CCTB) and the Goods and Service Tax/Harmonized Sales Tax Credit (GST/HST Credit), per sections 122.6 and 122.5 respectively of the Act, for the benefit period of July 2013 to June 2016 for the CCTB and for the GST/HST Credit the periods of July 2013 to April 2014, July 2014 to April 2015 and July 2015 to January 2016.

[2] The effect of the appealed redeterminations was that for the applicable periods Ms. Perron's entitlement to each of the CCTB and GST/HST Credit basically was halved. This result flowed from the Minister's assumption that during the benefit period Ms. Perron was a "shared-custody parent" per section 122.6 for CCTB purposes and per subsection 122.5(3.01) for GST/HST Credit purposes.

[3] On motion heard at the commencement of the hearing the Respondent was permitted to file an Amended Reply. The amendments were all to the effect of denying the jurisdiction of this Court insofar as Ms. Perron, through statements in

the Notice of Appeal has sought to appeal also the Minister's denial of the Universal Child Care Benefit (UCCB) and the Alberta Family Employment Tax Credit (AFETC). Notice of the motion and a copy of the proposed Amended Reply had been served upon Ms. Perron several days earlier. Of course, whether or not an issue as to jurisdiction has been pleaded or otherwise raised by either of the parties does not affect the actual jurisdiction of this Court in any case.

[4] I concur with the Respondent that this Court does not have jurisdiction to hear any appeal from denial of UCCBs and AFETCs. The UCCB is provided for in the federal *Universal Child Care Benefit Act*, but neither that statute nor any other legislation gives jurisdiction over the UCCB to this Court. *Goldstein v Her Majesty*, 2013 TCC 165 (Inf.) confirms this conclusion. As for the AFETC, it is provided for in the *Alberta Personal Income Tax Act* (Alberta), being provincial legislation. This Court does not have jurisdiction in respect of provincial legislation. Additionally the stated Alberta statute provides the Alberta Court of Queen's Bench with the jurisdiction to hear appeals respecting AFETC determinations.

SUMMARY OF FACTS

[5] Ms. Perron had been married to Mr. H. but they permanently separated in June 2003 and divorced in April 2007. There are three children of their marriage, being triplets (two girls, one boy) born in December 2001 (the Children). The parties herein are understood to agree that at all relevant times the Children were "qualified dependants" per subsection 122.5(1) and section 122.6 of the Act for GST/HST Credit and CCTB purposes respectively.

[6] A Divorce Order pertaining to these ex-spouses was issued April 2007 by the Alberta Court of Queen's Bench, which provided that they had shared custody of and joint access to the Children.

[7] As reflected in the Respondent's Reply, the Minister made certain assumptions in respect of these appealed redeterminations, primarily including that throughout the benefit period the Children resided with both Ms. Perron and Mr. H. at their parents' respective residences; Ms. Perron and Mr. H. were equally involved in the care and upbringing of the Children; the Children resided on an equal or near equal basis with, in turn, Ms. Perron and Mr. H.; the Children depended upon both Ms. Perron and Mr. H. for support; Mr. H. was primarily responsible for the Children's care and upbringing when the Children were living with him.

[8] In the opening portion of the Divorce Order issued April 2007 appears the following statement:

> Whereas the parties acknowledge that either party could rightly claim primary residency of the children for the purposes of the Child Tax Benefit but the Plaintiff [the herein Appellant] shall claim all three (3) the children [sic] for the purposes of the Child Tax Credit and the Plaintiff shall receive the Child Tax Benefit;

[9] The Notice of Appeal and Ms. Perron's statements and focus during the hearing made clear that her issue was that her former husband Mr. H. had now applied for what was referred to in the Divorce Order as the Child Tax Credit, despite that she and he had agreed he would not, as the Divorce Order extract above appears to confirm. Consistently throughout the hearing Ms. Perron stated that her and Mr. H.'s shared intention was that references in the Divorce Order and elsewhere to "Child Tax Credit" and "Child Tax Benefit" were meant to include such credits as the then and subsequent versions of what are now the CCTB and the GST/HST Credit.

[10] Ms. Perron did not dispute that Mr. H. was entitled to such credits on the merits. But she testified that he had agreed not to claim such credits. He, having a considerably greater income than her, had been left able to claim in respect of other expenses, in particular a disability tax credit in respect of one of the Children that was greater in amount than would have been his portion of a Child Tax Credit, as referenced in the 2007 Divorce Order.

[11] Ms. Perron objected to the redeterminations by notice of objection dated March 15, 2016. The Minister confirmed the redeterminations by notice dated April 21, 2016, leading to the herein appeal.

ISSUES

[12] The issue in this appeal is whether the appealed redeterminations are in error because the Minister did not take into account the existence of an alleged agreement between Ms. Perron and Mr. H. that solely Ms. Perron would claim for such credits as the CCTB and GST/HST Credit in respect of the Children.

Appellant's position:

[13] Ms. Perron submits that the appealed redeterminations are wrong as in raising them the Minister failed to take into account her agreement with Mr. H. as

expressed in the 2007 Divorce Order to the effect that she alone would claim for the CCTB and GST/HST Credit in respect of the Children.

[14] Further, Ms. Perron invites the Court to consider section 20 of the *Federal Child Support Guidelines* (SOR/97-175) and section 10 of the *Alberta Child Support Guidelines* (Alta Reg 147/2005), thus to allow the appeal because she would suffer undue hardship absent the denied tax credits.

[15] I must decline this invitation. Consideration of these provisions is not within the jurisdiction of this Court. The jurisdiction of this Court, in the context of this case, simply extends to deciding whether the Minister's redeterminations as to the CCTB and GSTC/HSTC are or are not correct. No provision in the Act enables the Minister or this Court to consider the factor of undue hardship should this appeal as to the said tax credits not otherwise be allowed. Rather, consideration of that factor would be for the Alberta Court of Queen's Bench in its exercise of its comprehensive jurisdiction to establish appropriate support payments in a full family law context for Ms. Perron.

Respondent's position:

[16] The Respondent submits that during the benefit periods Ms. Perron was a shared-custody parent per subsection 122.5(3.01) and section 122.6 in respect of the Children. The Minister's appealed redeterminations thus correctly denied Ms. Perron the full amounts of CCTB and GST/HST Credit, pursuant to subsections 122.61(1.1) and 122.5(3.01) of the Act. The Minister maintains further that if there were an agreement between Ms. Perron and her former spouse allowing solely her to claim CCTB and GST/HST Credit was not of relevance in ascertaining her entitlement to these credits.

LAW AND ANALYSIS

[17] It appears clear that as between ex-spouses, both qualified to apply for a CCTB in respect of a particular child, an agreement that only one of them will seek that credit, does not bear on the determination of entitlement for CCTB under the Act. CCTB entitlement instead is determined strictly on the basis of the factors specified in the Act, including whether a CCTB applicant is a "shared-custody parent".

[18] In *Ross v Her Majesty*, 2011 TCC 515 (Inf.), this Court per Jorré, J. stated at footnote 6 that,

> I note that it is well established that the provisions of an agreement between the parties as to who shall receive the Canada Child Tax Benefit cannot override the statutory provisions of the Act; one must apply the provisions of the Act to the actual facts. With respect to the GST Credit, different rules apply.

[19] To similar effect, in *Demarais v Her Majesty*, 2013 TCC 83 (Inf.), this Court per V. Miller, J., stated at paragraph 24 of the reasons for judgment that,

> It is also my view that there was an agreement between the Appellant and Mr. Demarais that the Appellant would receive the CCTB and GSTC in place of spousal support. Nevertheless, there is no provision in section 122.6 which would allow the parties to make an agreement which would override a finding of who is entitled to receive the CCTB.

[20] I add to this the statutory interpretation point that while Parliament was silent in section 122.6 *re* the role of any agreement between former spouses as being a factor in CCTB determinations, in paragraph 122.5(6)(a) Parliament explicitly referred to such agreements in the context of the GST/HST Credit determinations. Subsection 122.5(6) provides as follows:

> Exception re qualified dependant
>
> (6) If a person would, if this Act were read without reference to this subsection, be the qualified dependant of two or more individuals, in relation to a month specified for a taxation year,
>
> > (a) the person is deemed to be a qualified dependant, in relation to that month, of the one of those individuals on whom those individuals agree;
> >
> > (b) in the absence of an agreement referred to in paragraph (a), the person is deemed to be, in relation to that month, a qualified dependant of the individuals, if any, who are, at the beginning of that month, eligible individuals (within the meaning assigned by section 122.6, but with the words qualified dependant in that section having the meaning assigned by subsection (1)) in respect of that person; and
> >
> > (c) in any other case, the person is deemed to be, in relation to that month, a qualified dependant only of the individual that the Minister designates.

[21] If such agreements were intended to be relevant for CCTBs, Parliament surely would have said so in section 122.6, just as it has in nearby paragraph 122.5(6)(a) in the context of GST/HST Credits.

[22] Otherwise for the CCTB element of this appeal, there appears to be no further issue. At the hearing and in her pleadings, Ms. Perron essentially declined to contest the Minister's conclusion that she was a shared-custody parent – which was the basis for the Minister's CCTB redeterminations.

[23] I now turn to the GST/HST Credit claim. There are two issues here - whether Ms. Perron's position that references in the 2007 Divorce Order to Child Tax Benefit and Child Tax Credit include the GST/HST Credit, and if so whether an agreement between the ex-spouses that only Ms. Perron should claim or receive the GST/HST Credit is relevant in determining quantum of the applicable GST/HST Credit.

[24] In this matter I have difficulty in finding that the above-noted references in the Divorce Order do embrace the GST/HST Credit. The terms "Child Tax Benefit" and "Child Tax Credit" used in the Divorce Order are relatively specific.

[25] I refer to *Ross* (*supra*) at para. 76 wherein this Court observed:

> In the present appeal, the parties had agreed that the appellant would receive "any child tax credits" in the separation agreement. I am satisfied that the words '*any* child tax credits' (emphasis added) include any portion of the GST Credit arising in respect of the children.

[26] The Divorce Order language in the case at bar is less inclusive than even the *Ross* language of "any child tax credits".

[27] Accordingly, and not without some regret, I am unable to conclude that the GST/HST Credit was intended to be included in the terms "Child Tax Credit" and "Child Tax Benefit".

[28] In the event I may be found wrong on this point, I address also the further GST/HST Credit issue which actually arises only had I found there was an agreement between the ex-spouses that only Ms. Perron should claim for the GST/HST Credit.

[29] That issue is whether such an agreement would have any effect as a matter of law in determining Ms. Perron's GST/HST Credit entitlement.

[30] Such an agreement did have application in *Fraser v The Queen*, 2010 TCC 23. In *Fraser*, this Court per Woods, J., noted at paragraph 49 of her reasons for

judgment subsection 122.5(6) of the Act, set out above. She continued, at paragraphs 50 and 51 as follows:

> [50] The legislative scheme that is contemplated by clause (a) of s. 122.5(6) enables a dual residence situation to be resolved by the agreement of the parties. It is only where there is no agreement that the caregiver test applies by virtue of clause (b).
>
> [51] In this case, the caregiver test has no application because Ms. Fraser and Mr. Cardin have agreed that Ms. Fraser should receive the benefit for the relevant period (Ex. A-1).

[31] But *Fraser* is of limited assistance. It pre-dates the "shared-custody parent" amendments introduced in December 2010 and effective in 2011. The Respondent submits that as a matter of statutory interpretation this legislative addition of the "shared-custody parent" concept negated the applicability of paragraph 122.5(6)(a) in the context of determining GST/HST Credit entitlement for a "shared-custody parent".

[32] Again, albeit reluctantly, I concur with the Respondent. The language of the section 122.6 definition of "shared-custody parent" does appear to capture Ms. Perron regardless that per paragraph 122.5(6)(a) she is deemed the sole "individual" in relation to each of the qualified dependents, being the Children.

[33] In conclusion, therefore, I must dismiss Ms. Perron's appeal, although without costs.

Signed at Ottawa, Canada, this 1st day of November 2017.

"B. Russell"

Russell J.

CITATION:	2017TCC220
COURT FILE NO.:	2016-1744(IT)I
STYLE OF CAUSE:	CHANTAL PERRON AND HER MAJESTY THE QUEEN
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APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Aminollah Sabzevari

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada