

Docket: 2004-2968(IT)I

BETWEEN:

LOUISE BÉLISLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 15, 2005, at Sherbrooke, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Michel Tessier

Counsel for the Respondent: Marie-Claude Landry

JUDGMENT

The appeal from the Minister of National Revenue's determinations denying the Appellant Canada Child Tax Benefits for the period from July 2001 to June 2002 for the 2000 base taxation year, and for the period from July 2002 to June 2003 for the 2001 base taxation year, under the *Income Tax Act*, is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 7th day of March 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this day 19th day of August 2005.

Aveta Graham, Translator

Docket: 2004-2969(IT)I

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Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Michel Tessier

Counsel for the Respondent: Marie-Claude Landry

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the specified months of January and April 2003 for the 2001 taxation year, and for the specified months of July 2003, October 2003, January 2004 and April 2004 for the 2002 taxation year, is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 7th day of March 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this day 19th day of August 2005.

Aveta Graham, Translator

Citation: 2005TCC158
Date: 20050307
Dockets: 2004-2968(IT)I
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BETWEEN:

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Appellant,

and

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[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This case involves two appeals. The first appeal concerns the redeterminations regarding the Canada Child Tax Benefit (the "CCTB") and the second appeal concerns the redeterminations regarding the Goods and Services Tax Credit (the "GSTC"). The appeals were heard on common evidence.

[2] The issues are:

Docket 2004-2968(IT)I:

The issues are whether, for the 2000 and 2001 base taxation years,

- (a) the Appellant was the individual eligible to receive the CCTB for her daughter, Marilyn, for the period from July 2001 to June 2002, for the 2000 base taxation year, and from July 2002 to June 2003, for the 2001 base taxation year;
- (b) the Minister was justified in determining that the Appellant had received an overpayment of \$2,372.00 and \$203.67 for the 2000 and 2001 base taxation years, respectively.

Docket 2004-2969(IT)I:

The issues are whether, for the 2001 and 2002 base taxation years,

- (a) the Appellant was the individual eligible to receive the GSTC for her daughter, Marilyn, for the specified months of July and October 2002, as well as the specified months of January and April 2003 for the 2001 taxation year, and for the specified months of July and October 2003, as well as the specified months of January and April 2004 for the 2002 taxation year;
- (b) the Minister was justified in determining that the Appellant received an overpayment of \$325.00 and \$80.14, for the 2001 and 2002 taxation years, respectively.

[3] To make and justify the assessments under appeal, the Minister of National Revenue (the "Minister") assumed the following facts:

Docket 2004-2968(IT)I :

- (a) The Appellant has a daughter, Marilyn, born on July 7, 1984; (**admitted**)
- (b) The Appellant has always been eligible to receive the CCTB for her daughter, Marilyn; (**admitted**)
- (c) On May 29, 2001, Marilyn applied for the CCTB for her child, born on May 12, 2001; (**no knowledge**)
- (d) On the form "Canada Child Tax Benefit Application" Marilyn indicated that she had moved on June 30, 2000; (**admitted**)
- (e) Marilyn's CCTB Application was processed according to the normal procedures and her child was entered in to the computer system on June 13, 2001; (**no knowledge**)
- (f) No change was made to the Appellant's file regarding the CCTB at that time; (**no knowledge**)
- (g) The Appellant's file does not mention any communication between her and a representative of the Minister regarding the effect of the changes mentioned in subparagraph (e) above; (**denied**)

- (h) Further to a project of the Validations and Controls Section, Headquarters, the Minister's representative noted that since Marilyn had become a parent on May 1, 2001, and had moved out, the Appellant was no longer eligible to receive the CCTB for her daughter, Marilyn, as of that date;
- (i) A letter to that effect, dated August 18, 2003, was sent to the Appellant; **(admitted)**
- (j) On September 19, 2003, the Minister determined that the Appellant was no longer the individual eligible to receive the CCTB for her daughter, Marilyn, for the period from July 2001 to June 2002 for the 2000 base taxation year, and the period from July 2002 to June 2003 for the 2001 base taxation year, and determined that the Appellant had received an overpayment of \$2,372.00 and \$203.67 for the 2000 and 2001 base taxation years, respectively.

Docket 2004-2969(IT)I :

- (a) The Appellant has a daughter, Marilyn, born on July 7, 1984; **(admitted)**
- (b) The Appellant has always been eligible to receive the GSTC for her daughter, Marilyn; **(admitted)**
- (c) On May 29, 2001, Marilyn applied for the CCTB for her child, born on May 12, 2001; **(admitted)**
- (d) On the form "Canada Child Tax Benefit Application" Marilyn indicated that she had moved on June 30, 2000; **(admitted)**
- (e) Marilyn's CCTB Application was processed according to the normal procedures and her child was entered in to the computer system on June 13, 2001; **(no knowledge)**
- (f) No change was made to the Appellant's file regarding the GSTC at that time; **(no knowledge)**
- (g) The Appellant's file does not mention any communication between her and a representative of the Minister regarding the effect of the changes mentioned in subparagraph (e) above; **(denied)**
- (h) Further to a project of the Validations and Controls Section, Headquarters, the Minister's representative noted that since **(no knowledge)**

- (i) Marilyn moved on June 20, 2001;
- (ii) Marilyn was an eligible individual for the specified months of July and October 2002, as well as the specified months of January and April 2003 for the 2001 taxation year, and for the specified months of July and October 2003 as well as the specified months of January and April 2004 for the 2002 taxation year;

The Appellant was no longer eligible to receive the GSTC for her daughter, Marilyn, for the subsequent taxation years;

- (i) On August 29, 2003, the Minister determined that the Appellant was no longer the individual eligible to receive the GSTC for her daughter, Marilyn, for the specified months of July and October 2002, as well as the specified months of January and April 2003 for the 2001 taxation year, and for the specified months of July and October 2003 as well as the specified months of January and April 2004 for the 2002 taxation year, and determined that the Appellant had received an overpayment of \$325.00 and \$80.14 for the 2001 and 2002 taxation years, respectively.

[4] The Appellant, whose financial means were very limited, lived with her daughter, Marilyn, who was then 16 years old; Marilyn gave birth to Maxime on May 12, 2001; she then decided move in with her common law spouse, the child's father.

[5] The relationship with her mother was and remained excellent. The mother and daughter regularly spoke and visited each other.

[6] The Appellant testified that she had made every effort to inform the competent authorities of the change of address. According to her, a person in authority representing the Minister told her at the time that she was entitled to the CCTB and the GSTC and could continue to receive them. She thus continued to receive the CCTB and the GSTC.

[7] She stated that all the money received was used to buy clothing, medication, food, the essentials for her daughter, Marilyn. Marilyn confirmed, in her testimony, her mother's statements, adding that it was often for the essentials that should could not pay for given her young family's difficult financial situation; her spouse worked, but earned minimum wage.

[8] Those are roughly the relevant facts submitted in support of the two appeals.

[9] I have no doubt that the money in question, following the redeterminations, was wisely spent and that the expenses were incurred in the interest and for the well-being of her daughter and her grandson, Maxime.

[10] The nature of the expenses, as well as the way in which the money was spent, makes the Appellant's case sympathetic. Unfortunately, I do not believe that this is enough to get around the residence criteria and this is certainly not enough to meet the numerous conditions required to determine the validity of the Appellant's appeals, namely that, during the periods at issue, she assumed responsibility for the care and upbringing of Marilyn.

[11] After the move, despite her young age, Marilyn henceforth had her own family home. As of that moment, she absolutely no longer resided at her mother's home, even though the emotional connections were very strong.

[12] Although the Appellant was very concerned with the well-being of her daughter and her grandson, and although she offered her moral support, advice and financial support, the requirements regarding care and upbringing set out in section 122.6 are much more rigid and restrictive conditions than that which existed between the Appellant and her daughter.

[13] One thing is certain, it is clearly not possible to determine that the following two conditions were met, namely that the Appellant

- (a) resides with the qualified dependant;
- (b) is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of the qualified dependant;

[14] First, there is no ambiguity as to the residence. Second, although a minor, Marilyn, through the birth of Maxime and the choice of living with her spouse, the child's father, showed her capacity to be independent, which is not to say that she no longer needed the advice and support of her mother.

[15] The criteria set out in section 6302 of the Regulations for determining what constitutes the care and upbringing of a qualified dependant are numerous, but also very specific. They are the following:

- (a) the supervision of the daily activities and needs of the qualified dependant;

- (b) the maintenance of a secure environment in which the qualified dependant resides;
- (c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;
- (d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;
- (e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;
- (f) the attendance to the hygienic needs of the qualified dependant on a regular basis;
- (g) the provision, generally, of guidance and companionship to the qualified dependant; and
- (h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

[16] Furthermore, Marilyn chose, with or without her mother's consent, to live her own life, according to her own expectations and especially according to her own notions, and all that in a context where the relationship with her mother remained harmonious and very respectful.

[17] The Appellant submitted that she had informed the tax authorities of her change of address and the change of address of her daughter, Marilyn. In light of the testimony of the person responsible for the Appellant's files during the objection, there was reason to believe that she contacted the wrong place or confused certain steps.

[18] Although the Appellant's case evokes compassion, unfortunately I cannot allow the appeal solely because of a possible error or the fact that it is a touching case.

[19] I have no doubt that the money paid to the Appellant without her being entitled to it was useful and necessary with regard to the circumstances. I also have no doubt that the money was used to subsidize the numerous specific, costly and

essential needs of a new mother breast feeding her child and who wanted to feed it well by consuming food that is healthy, but unfortunately often more expensive.

[20] However, there is not doubt that she no longer lived with her mother. Even though the relationship was excellent, even though the evidence showed that Marilyn still had a significant need for her mother and that her mother was not only receptive but highly cooperative, I still cannot find that she lived with her mother.

[21] The Appellant's daughter lived with her spouse and their child, Maxime, and thus lived in an independent family unit even though it is clear that she needed both material and human assistance from her mother and got it. Even though part of the money received, maybe even all of it, was invested in the numerous needs of her daughter, a young mother, that does not straighten out the situation.

[22] Unfortunately, those facts do not make it possible to allow the Appellant's appeals because the conditions set out by the legislator have not been met.

[23] Although my jurisdiction is limited to determining whether the assessment was valid, I strongly suggest that those who will be responsible for recovering the money at issue take into consideration the fact that the evidence clearly establishes that the Appellant did not have the ability to repay the money that was plainly used to meet essential needs.

[24] The Appellant submitted that my judgment in *Desbiens v. Canada*, 2004 T.C.C. 162, [2004] T.C.J. No. 116 (Q.L.), was relevant and made it possible to allow her appeal.

[25] I do not believe that this interpretation is admissible because it is a very special case.

[26] The young girl showed a lot of maturity, giving herself the mission of protecting and supporting her father who at the time had multiple problems that concerned her. She thought that her presence had healing effects on her father. Lastly, the evidence indicated that it could not be determined that she lived continuously and exclusively with her father.

[8] The appellant has never hidden the fact that Laurie lived partly with her father, yet the appellant has not cut her ties with her daughter. On the contrary, she has shown considerable flexibility and maturity by respecting her daughter's

decision to maintain a presence with her father, who is not very reliable and is somewhat irresponsible.

...

[11] The evidence showed that the minor child, Laurie, resided as much with the appellant as with her father. Furthermore, this is not just a simple statement by the appellant; this fact is supported by the various documents, which clearly indicate that Laurie had the same address as her mother, the appellant.

[12] The appellant testified in a completely flawless manner. She explained the context and the specific circumstances that had led to Laurie living occasionally with her father. Although she had been only 15 years of age, a number of evidentiary elements seemed to show that she had acted as her father's guardian rather than the reverse.

[13] One thing is certain: throughout the entire reference period, the appellant demonstrated a nearly daily presence and a completely unquestionable interest in her daughter's well-being.

[27] In the instant case, the situation is totally different. The evidence not only shows that there was a disruption, but also a sort of reorientation of Marilyn's life in the sense that she decided to make a new home with her child and spouse, the father of that child.

[28] Clearly, that was a radical change in relation to her young age. Marilyn undoubtedly needed the advice, support and cooperation of her mother, who seemed very receptive to those new needs.

[29] As to the Appellant's argument that an employee had told her that she was entitled to the income tax credits, the evidence in that regard is deficient, even somewhat unlikely given the explanations of Jean-Marc Jacob, who explained that the information service on that subject deals with specific files hence the fact that it was very unlikely that a person in that service misinformed the Appellant on that matter, even more so because it was a very simple and unambiguous, even basic, question.

[30] It is not necessary to pursue the analysis of that argument of bad advice or the possible error because even if that had been shown, it would not have had any effect on the validity of the appeal.

[31] The Honourable Justice Bowie of this Court, in *Kennedy v. Canada*, [2001] T.C.J. No. 486 (Q.L.), clearly expressed the state of the law on that matter:

17 . . . Putting this argument at its highest, I am prepared to assume that the Minister's officials in fact advised the Appellant through this document, that her pension income entitled her to the credit that she claims. Such advice, if given, would have been patently wrong, but erroneous advice whether it comes from officials of the Minister, the Minister himself, or some private source, simply cannot change the law as written by Parliament and raise an entitlement to tax credits which in reality is not found in the words of the Act: see: *M.N.R. v. Inland Industries Limited*.

[32] In conclusion, I would like to reiterate my recommendation that the very special facts of this case with regard to the potential recovery measures be taken into account, even though the appeals must be dismissed.

[33] For all of those reasons, the appeals must be dismissed.

Signed at Ottawa, Canada, this 7th day of March 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this day 19th day of August 2005.

Aveta Graham, Translator

CITATION: 2005TCC158

COURT FILE NOS.: 2004-2968(IT)I
2004-2969(IT)I

STYLE OF CAUSE: Louise Bélisle v. Her Majesty the Queen

PLACE OF HEARING: Sherbrooke, Quebec

DATE OF HEARING: February 15, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: March 7, 2005

APPEARANCES:

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