

Docket: 2006-1430(IT)I

BETWEEN:

MARJOLAINE VERPAELST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 27, 2007, at Sherbrooke, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Julie Bourque

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal from the notice of redetermination dated April 20, 2005, by which the Minister of National Revenue changed the Appellant's Canada Child Tax Benefit to \$5,085.94 for the period from July 2003 to June 2004, in respect of the 2002 base year, and against the notice of redetermination dated April 5, 2005, in respect of the Goods and Services Tax credit for the 2001 and 2002 taxation years, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 19th day of July 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 15th day of August 2007.

Brian McCordick, Translator

Citation: 2007TCC396
Date: 20070719
Docket: 2006-1430(IT)I

BETWEEN:

MARJOLAINE VERPAELST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from a Notice of Canada Child Tax Benefit Redetermination for the 2002 base year and from a Notice of Redetermination concerning the Goods and Services Tax credit ("the GST credit") for the 2001 and 2002 taxation years.

[2] The issues to be determined are

- whether the Appellant was Alain Audet's common-law partner on December 31, 2002;
- if applicable, whether the Minister of National Revenue ("the Minister") correctly calculated the Appellant's tax benefit in respect of the 2002 base year;
- if applicable, whether the Minister correctly calculated the Appellant's GST credit in respect of the 2001 and 2002 taxation years; and

- if applicable, whether the Appellant was entitled to claim, in computing her non-refundable tax credits for the 2002 taxation year, the sum of \$1,037 as a credit for a wholly dependent person.

[3] The Appellant's Notice of Appeal states as follows:

[TRANSLATION]

The allegation that Marjolaine Verpaelst had a cohabiting spouse during the years 2001 and 2002 is wrong.

Ms. Verpaelst has always lived with her children on her own.

The person who appears to have been designated as the Appellant's spouse never lived with her. The two people have separate residential addresses. The only ties between them are that the alleged "cohabiting spouse" is the father of a child whose mother is the Appellant, and that he rents a house to the Appellant in which she lives with her family. Each of the two people is financially independent, and each looks after his or her own expenses.

Thus, the officer erred in fact and in law when he stated that the spouse in question was a qualified relation within the meaning of sections 122.5(1) and 122.6 of the Act and when he stated that the Appellant did not qualify for the credit for an eligible dependant within the meaning of section 118.

The Court must therefore reverse the decision made on March 10, 2006.

May 12, 2006

Michèle Beaupré

[4] In order to make and confirm the Canada Child Tax Benefit redetermination dated April 20, 2005, in respect of the 2002 base year, and the redetermination of April 5, 2005, in respect of the GST credit for the 2001 and 2002 taxation years, the Minister relied on the following assumptions of fact:

- (a) The Appellant and Alain Audet are the parents of a child named Tommy.
- (b) On January 26, 2005, the Minister sent the Appellant and Alain Audet a questionnaire to fill out and a request for documents in order to determine their civil status for the 2002 and 2003 taxation years, because, in their respective tax returns for the 2002 taxation year, they stated that they lived at

the same residential address, but did not consider themselves married or common-law partners.

- (c) On March 10, 2005, the Minister notified the Appellant in writing that he considered her a common-law partner for the 2002 taxation year, and that, among other things, Notices of Canada Child Tax Benefit Redetermination, Notices of GST Credit (GSTC) Redetermination and notices of reassessment would be issued forthwith in order to reflect the change to her civil status.
- (d) In his letter of March 10, 2005, the Minister told the Appellant that she had not provided enough documents to support her contention that she was not a common-law partner in 2002.
- (e) At the objection stage, the Appellant submitted photocopies of life insurance, home insurance and auto insurance policies that did not pertain to the 2002 year.
- (f) The Appellant was unable to satisfy the Minister that Alain Audet lived separate from her in the year 2002.
- (g) The Minister was of the opinion that the Appellant was Alain Audet's common-law partner on December 31, 2002, and this caused the following changes to be made:
 - (i) Alain Audet's net income was now taken into account in computing the Appellant's net family income for the purposes of calculating the child tax benefit for the 2002 base year and the GST credit for the 2001 and 2002 taxation years; and
 - (ii) with respect to the 2002 income tax return, in calculating the non-refundable tax credits, the amount claimed each year as a credit for a wholly dependent person was disallowed.

[5] The Appellant essentially stated that she was not Alain Audet's common-law partner during the periods in issue. She acknowledges having had regular meetings with Mr. Audet, the father of the son of whom she had custody.

[6] She said that Alain Audet paid no support and that he saw his son regularly. She explained that she lived in a building that belonged to Alain Audet, and that she paid him roughly \$500 monthly, in cash, as rent.

[7] At the Respondent's request, Alain Audet also testified. He, too, said that he was not the Appellant's partner during the periods in issue. However, he admitted

that he made regular visits to the Appellant's place of residence for various reasons, which included seeing and visiting his child, but also picking up and dropping off various personal effects, since he used the basement and garage of his building, the building in which the Appellant resided, as storage spaces for the used appliances that he sold as his business.

[8] However, a detailed analysis of Alain Audet's income tax return disclosed certain facts that are very important to the instant appeal.

[9] For one thing, although the Appellant said that she paid rent of \$500 per month for the building in which she lived and which was owned by Alain Audet, Mr. Audet did not report any of this income, despite the fact that he owns several rental buildings from which he reported income on his return.

[10] With respect to a question that was not answered accurately, Alain Audet essentially attributed it to a mistake by the accountant. He also testified that the accountant who looked after his business had been doing so for a long time — more than twenty, years, in fact — and that he knew the accountant very well.

[11] Thus, it is possible that the accountant answered certain questions based on his personal knowledge of the relationship between Alain Audet and the Appellant.

[12] Alain Audet's income tax return for the 2002 taxation year gives the same residential address as the Appellant's, namely 405 9th Avenue South, Sherbrooke.

[13] The building in which the Appellant lives, and which Alain Audet owns, is not on the list of rental buildings attached to his income tax return. Moreover, the rental income, which, according to the Appellant's testimony, was \$500 per month, is not stated on the return either.

[14] All of these elements are contained in Alain Audet's duly signed income tax return.

[15] In addition, Alain Audet said that the accountant with whom he did business knew him very well; thus, one can reasonably assume that certain information was provided with Mr. Audet's assent, while other information came from the accountant's personal knowledge of Alain Audet's lifestyle.

[16] The question whether two people form a couple is a difficult one to decide because it concerns intimate bonds between individuals. However, since being part

of a couple entitles people to tax advantages, it is up to those involved, and, in this instance, the Appellant, to provide convincing evidence in support of their allegations.

[17] One thing that must be done is to elicit the testimony of at least one neighbour. In the case at bar, had the Respondent not called Alain Audet to the stand, the Appellant would have adduced only her own testimony to the effect that she was not in a common-law relationship, despite the fact that she lived in one of his buildings, for which she paid rent in cash. She saw him regularly. She received no support payments, even though he was by no means impecunious.

[18] In the absence of adequate evidence, the Court will have to rely on elements that offer some degree of reliability, notably where the appeal essentially turns on the testimony of a single person.

[19] In the case at bar, the admission that dealings between the Appellant and Alain Audet were harmonious; the fact that he paid no child support for his son even though he was clearly able to pay such support and the son was in the Appellant's custody; the fact that the rent was always paid in cash; the unambiguous contents of Alain Audet's tax return, where the building in which the Appellant lived was not listed as one of his rental buildings; and the fact that he clearly did not report the amounts that the Appellant allegedly paid him as rent, are all factors that discredit the Appellant's poor evidence. In other words, the Appellant has in no way met her burden of proof.

[20] The Appellant essentially stated that she was not Alain Audet's common-law partner, and Mr. Audet confirmed her testimony, but the Court has serious doubts about the credibility of both persons.

[21] Alain Audet acknowledged, among other things, that he received an assessment for a significant amount of unreported income; moreover, he blamed his accountant, who knew him very well, for three major errors in the preparation of the income tax return that he signed.

[22] For all these reasons, the Court will rely on the elements contained in Alain Audet's income tax return. Moreover, I will accord him no credibility because of his past experience with the Canada Revenue Agency, and, above all, because he blamed the accountant for three egregious errors even though he signed returns that reported facts which totally contradicted the essentially oral allegations made by the Appellant.

[23] Accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 19th day of July 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 15th day of August 2007.

Brian McCordick, Translator

CITATION: 2007TCC396

COURT FILE NO.: 2006-1430(IT)I

STYLE OF CAUSE: MARJOLAINE VERPAELST AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Sherbrooke, Quebec

DATE OF HEARING: June 27, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: July 19, 2007

APPEARANCES:

For the Appellant: Julie Bourque

Counsel for the Respondent: Simon-Nicolas Crépin

COUNSEL OF RECORD:

For the Appellant:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada