

Docket: 2006-3607(IT)I

BETWEEN:

DALE TROYER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on May 7, 2007 at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Max Matas

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 7th day of August 2007.

“L.M. Little”

Little J.

Citation: 2007TCC439
Date: 20070807
Docket: 2006-3607(IT)I

BETWEEN:

DALE TROYER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A.FACTS

[1] The Appellant and Heather A. Troyer ("Heather") were married at Kelowna, British Columbia on December 15, 1984.

[2] The Appellant and Heather are the parents of a Daughter born on February 3, 1988 and a Son born on June 30, 1989 (collectively referred to as the "Children").

[3] The Appellant and Heather separated on or about May 18, 1994.

[4] On June 24, 1994 the Appellant and Heather entered into an Interim Maintenance Agreement (the "Agreement"). Pursuant to the Agreement the Appellant agreed to pay Heather maintenance payments totalling \$2,000.00 per month for herself and the Children effective May 15, 1994.

[5] By Order of the Supreme Court of British Columbia dated February 8, 1996 the Honourable Mr. Justice Curtis ordered (the "First Order"):

- i) the Appellant and Heather were divorced from each other, effective the thirty-first day after the date of the First Order;

...

- v) the Appellant was required to pay support payments in the amount of \$600.00 per month per child in respect to the Children commencing on the first day of February, 1996 and continuing on the first day of each and every month thereafter so long as the child was eligible for maintenance under the Divorce Act or otherwise by law; and
- vi) the Appellant was required to pay Heather spousal support payments of \$900.00 per month on the first day of each month, commencing February 1, 1996 until February 1, 1998. However, in any month during this period that Heather earned in excess of \$500.00 per month gross, her spousal support would be reduced for the subsequent month by an equivalent amount.

[6] By Order of the Supreme Court of British Columbia dated April 28, 2003, the Honourable Mr. Justice Grist ordered (the "Second Order"):

- i) the provision of the First Order requiring the Appellant to pay support totalling \$1,200.00 per month in respect of the Children was held in abeyance for the period from January 1, 2003 through September 30, 2003, but resumed on October 1, 2003;
 - ii) for the months of January, 2003 through September, 2003, inclusive, the Appellant was required to pay Heather \$320.00 per month for the support of the Children; and
 - iii) both the Appellant and Heather were at liberty to apply to that Court to vary the provisions of the Second Order upon a change of circumstances; and
- g) The "commencement day" resulting from the Second Order is January 1, 2003.

[7] When the Appellant filed his income tax return for the 2004 and 2005 taxation years he deducted the amount of \$14,400.00 for each year.

[8] On June 30, 2006 the Minister of National Revenue (the "Minister") reassessed the Appellant's 2004 and 2005 taxation years and disallowed the deduction of \$14,400.00 claimed by the Appellant for each taxation year.

B. ISSUE

[9] The issue to be decided is whether the Minister was correct in denying the deduction of \$14,400.00 claimed by the Appellant for the 2004 and 2005 taxation years.

A. CHILD SUPPORT PAYMENTS

[10] Subsection 56.1(4) of the *Income Tax Act* (the "Act") defines "child support amount", "commencement day" and "support amount". Subsection 56.1(4) reads as follows:

"child support amount" means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or former spouse of the payer or who is a parent of a child of whom the payer is a natural parent.

"commencement day" at any time of an agreement or order means

- (a) where the agreement or order is made after April 1997, the day it is made; and
- (b) where the agreement or order is made before May 1997, the day, if any, that is after April 1997 and is the earliest of
 - (i) the day specified as the commencement day of the agreement or order by the payer and recipient under the agreement or order in a joint election filed with the Minister in prescribed form and manner,
 - (ii) where the agreement or order is varied after April 1997 to change the child support amounts payable to the recipient, the day on which the first payment of the varied amount is required to be made,
 - (iii) where a subsequent agreement or order is made after April 1997, the effect of which is to change the total child support amounts payable to the recipient by the payer, the commencement day of the first such subsequent agreement or order, and
 - (iv) the day specified in the agreement or order, or any variation thereof, as the commencement day of the agreement or order for the purposes of this Act.

"support amount" means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(a) the recipient is the spouse or former spouse of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(b) the payer is a natural parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

[11] "Support" in paragraph 60(b) of the *Act* reads as follows:

(b) **Support** -- the total of all amounts each of which is an amount determined by the formula

$$A - (B + C)$$

where

A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year;

[12] Under the former rules in the *Act* (pre-May 1997) a spouse making support payments to the ex-spouse or for the support of children could deduct those payments and the recipient was required to include the payments as income. Following the decision of the Supreme Court of Canada in *Thibaudeau v. Canada*,

[1995] 2 S.C.R. 627, the legislation was amended. So long as a pre-May 1997 agreement remained unchanged the deduction/inclusion system under the former legislation applied.

[13] If a new agreement was entered into or an old agreement was changed in a particular way, the deduction/inclusion regime ceased and only payments made up to the "commencement day" as defined, were deductible by the payer and included in the income of the payee.

[14] It will be noted that the definition of "commencement day" quoted above is very broad and it would apply to "new agreements" or new Court Orders or variations of existing agreements where the child support amount payable to the recipient is changed. In this situation the Second Order clearly changed the child support amount payable to the ex-spouse for the two children.

[15] After carefully considering the evidence and the relevant case law, I have concluded that child support payments payable to Heather under the First Order were varied by the Second Order. This variation resulted in a "commencement day" of January 1, 2003. It therefore follows that the child support payments paid by the Appellant after the commencement day are not deductible by the Appellant.

[16] The Appellant acted as a fair and supportive father in this situation and I commend him for his support of the Children. However the wording contained in the *Act* regarding "commencement day" is very clear. It is my responsibility to interpret the *Act*. I do not have the authority to amend the *Act*.

[17] The appeals are dismissed without costs.

Signed at Vancouver, British Columbia, this 7th day of August 2007.

"L.M. Little"

Little J.

CITATION: 2007TCC439

COURT FILE NO.: 2006-3607(IT)I

STYLE OF CAUSE: Dale Troyer and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 7, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: August 7, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Max Matas

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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