

Docket: 2007-3330(IT)I

BETWEEN:

BRIGITTE DeREPENTIGNY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Vlad Zolia

JUDGMENT

The Appellant's appeal from the notice of redetermination dated February 20, 2007, for the period from July 2005 to June 2006, and the notice of redetermination dated December 13, 2006, for the period from July to November 2006, under which notices the Appellant's child tax benefits were revised; and against the notice of redetermination dated January 26, 2007, for the period from October 2005 to April 2006, and the notice of redetermination dated December 1, 2006, for the period from July to October 2006, under which notices the amounts of the Appellant's Goods and Services Tax Credit were revised, is allowed, and the matters are referred back to the Minister of National Revenue for reconsideration and for new notices of redetermination to be issued in order to give effect to this Judgment.

Signed at Ottawa, Canada, this 14th day of May 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 9th day of July 2008.

Brian McCordick, Translator

Citation: 2008TCC304
Date: 20080514
Docket: 2007-3330(IT)I

BETWEEN:

BRIGITTE DeREPENTIGNY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] By notice of redetermination dated February 20, 2007, for the period from July 2005 to June 2006, and by notice of redetermination dated December 13, 2006, for the period from July to November 2006, the Minister of National Revenue ("the Minister") revised the Appellant's child tax benefits and determined that she had been overpaid \$4,258.91 for the 2004 base year, and \$3,031.30 for the 2005 base year.

[2] By notice of redetermination dated January 26, 2007, for the period from October 2005 to April 2006, and by notice of redetermination dated December 1, 2006, for the period from July to October 2006, the Minister revised the Goods and Services Tax credit amounts paid to the Appellant, and determined that she was overpaid \$461.40 for the 2004 taxation year and \$476.00 for the 2005 taxation year.

[3] The only question to be decided in the instant appeal is whether the Appellant and Igal Ravimi lived separately during the periods contemplated by the notices of determination referred to above at paragraphs 1 and 2 ("the periods in issue").

[4] The Appellant is the mother of four children: David Lauzon, born on August 26, 1991; Raphaël Lauzon, born on July 5, 1993; Frédérick Lauzon, born on February 17, 1996; and Eden Ravimi, born on February 6, 2001.

[5] The Appellant had custody of her children during the periods in issue.

[6] According to the Appellant's testimony, she began living with Igal Ravimi in February 1999, and they married in May 2000. They were a couple until August 2005, at which time they separated.

[7] Mr. Ravimi is of Israeli origin, and, upon arriving in Canada, he had only a temporary resident permit that had been granted to him as a tourist. In order to help him regularize his situation with the Department of Immigration and enable him to remain in Canada, the Appellant sponsored him. At the hearing of the appeal, the Appellant still had three years left as a sponsor. In the weeks preceding the hearing of the appeal, Mr. Ravimi obtained his Canadian permanent resident permit.

[8] During the periods in issue, the Appellant lived at 75 Saint-Lambert Street in Salaberry-de-Valleyfield. On September 5, 2006, the Appellant signed a solemn affirmation, before a Commissioner for Oaths, stating that she had signed the lease of a dwelling at that address and that Igal Ravimi lived there. During her testimony, the Appellant explained that she signed this solemn affirmation to enable the father of her daughter to obtain his Canadian immigration papers, and that he continued to use that address following their separation, and refused to provide the Appellant with any other address. In his testimony, Igal Ravimi said that he was still married and that he lived with his wife at that address.

[9] According to the Appellant's testimony, the couple's problems began when her spouse's brother came to live with them in July 2002. From then onward, the Appellant's spouse was increasingly absent, without giving information about his comings and goings or place of employment. In order to reach her spouse, she had to call him on his cell phone. As of 2002, Mr. Ravimi no longer contributed to the household expenses, except occasionally for groceries and certain expenses related to their daughter. In August 2005, the Appellant demanded that her spouse and his brother leave and take all their personal effects with them (clothes, tools, bicycles, etc.). The Appellant's testimony concerning the couple's separation was confirmed by a letter dated February 22, 2008 by Andrée Bédard, a friend who knew the family well (Exhibit A-1). The Appellant also explained that she had not commenced divorce proceedings because of the cost and in order not to interfere with her ex-spouse's immigration process. Despite their separation, the Appellant has ended their relationship, because she does not want to deprive the father of access to his daughter. She preferred to have the father come to see his daughter at the house, rather than have him leave with the daughter and not tell the Appellant where he was taking her. The Appellant also admits that she had conjugal relations with Mr. Ravimi on occasions where he came to see his daughter at her home.

[10] As stated above, the only question to be decided in the instant case is whether the spouses lived separately owing to a breakdown in their marriage. According to the case law, each case must be assessed having regard to its particular objective facts.

[11] In my opinion, the Appellant has established on a balance of probabilities that she has been living separately from her spouse since August 2005. Among the relevant factors that have been taken into consideration, the following are worth mentioning:

- (a) The ex-husband was seeing another woman without telling the Appellant; this was confirmed by Ms. Bédard in her letter dated February 22, 2008.
- (b) The Appellant looked after her children's medical care alone (pediatrician's visits, medication purchases, etc.)
- (c) The Appellant looked after her children's education alone (registration, transportation, parent-teacher meetings, etc.)
- (d) The Appellant took care of household maintenance and expenses alone (rent, power, telephone) and also looked after laundry, while her ex-spouse looked after meal preparation when he was at the residence)

- (e) The Appellant has not seen her ex-spouse's relatives for more than three years, and they no longer call the residence when they wish to speak with her ex-spouse.
- (f) The Appellant has had her ex-spouse's mail held at the local post office.
- (g) The Appellant uses her own bank account but was unable to close her end of the joint bank account that she had opened with her ex-spouse because she had signed for his car.

[12] In light of the foregoing, I find that the Appellant has met her burden of proof. The appeal is therefore allowed.

Signed at Ottawa, Canada, this 14th day of May 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 9th day of July 2008.

Brian McCordick, Translator

CITATION: 2008TCC304
COURT FILE NO.: 2007-3330(IT)I
STYLE OF CAUSE: Brigitte DeRepentigny and Her Majesty the Queen
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: February 25, 2008
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: May 14, 2008
APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Vlad Zolia

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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