

Citation: 2008 TCC 417  
Date: 20080808  
Docket: 2007-4337(IT)I

BETWEEN:

DEBORAH ANN NEDELCO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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For the Appellant: The Appellant herself  
Counsel for the Respondent: G. Boyd Aitken

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**REASONS FOR JUDGMENT**

(Delivered orally from the Bench  
on April 17, 2008, in London, Ontario.)

McArthur J.

[1] The Appellant appeals the Minister of National Revenue's redetermination to the effect that she is not entitled to receive \$23,406 in child tax benefit ("CTB") payments covering the period from July 2004 to August 2007, applicable to the 2003, 2004 and 2005 base taxation years.

[2] The issue is whether the Appellant was a resident of Canada during the base years under appeal. If she does not meet one of the deeming provisions in subsection 250(1) of the *Income Tax Act*, such as sojourning in Canada for 183 days or more in a taxation year; or coming within subsection 253(3), she is not ordinarily resident in Canada during the relevant years.

[3] She was born in South Africa, Zimbabwe, in 1964. When she was 15 years old, she came to Canada and resided in London, Ontario. In 1987, she moved to Toronto where she worked for the University of Toronto, and for the financial institution of Burns Fry. She married in 1988, residing in Toronto until she moved to Bucharest, Romania in 1993 with her husband and three children who were born in Toronto in August 1990, September 1991 and January 1993. She had a fourth child born in Romania in April 1994.

[4] They moved to Romania to care for her husband's elderly parents and to establish a business in that country. The parents passed away, I believe, over three years ago.

[5] During the hearing, she stated that her husband was establishing a transportation business in Romania and in a letter to Canada Revenue Agency from that country, in about September 2006, she stated:

We are trying to establish a business in Romania which would enable us to provide services to foreign nationals visiting Romania while living in Canada.

We were given no details of these businesses other than that her husband has been trying to establish one of them since 1993.

[6] We do know that she and her family have been living in Romania since 1993 in the home of her husband's parents or grandparents, which was repossessed after the fall of the Communist Regime.

[7] Up to the relevant years she had been receiving CTB for her four children since 1993. The Minister had advised the Appellant by letter in August 2000 that she and her family would be considered factual residents of Canada. There lies, I believe, the central submission of the Appellant. She states that her and her family's factual situation did not change, yet the Minister reversed itself by notice of redetermination dated September 20, 2006. I have no doubt that the Canada Revenue Agency was entitled to reverse the earlier decision and there is no question of estoppel.

[8] The Appellant's reasons for appeal state:

In 2000, my family's residency status was reviewed by Revenue Canada and were found to be "factual residents of Canada for taxation purposes". We were living in Romania but continued to maintain our ties with Canada.

As a result of the response we received for the 2000 assessment (August 16, 2000) and a letter from Revenue Canada dated April 8, 2002, both stating that we were factual residents of Canada, I continued to file my annual tax returns for 2002, 2003, 2004 and 2005. Nothing has been deleted from the list of ties we had with Canada in 2000 and which were accepted by Revenue Canada as sufficient evidence of residency.

...

Taking into consideration a number of previous decisions by the Tax Court of Canada in the past, I feel the assessment by Revenue Canada has been superficial.

...

Although I live in Romania, I have always been a non-resident in Romania and have only a temporary residency visa which is valid for only one year and requires renewal annually.

I do not own a permanent home or property in Romania or anywhere else. The building I live in belongs to my husband and was acquired as an inheritance after restitution by the courts from the Government of Romania following the downfall of the Communist Regime.

...

I am the mother of four school-aged children (all Canadian citizens with valid Canadian passports) and am not employed outside of my home.

...

Canadian bank accounts enable me to make payments for various insurance policies.

[9] I believe she uses the proceeds of the CTB for these payments and I believe that is the only amounts that go into those accounts.

[10] Under the heading of "Visits and Families Ties" in the Notice of Appeal, the Appellant states:

We have encouraged the family's ties and contact with Canada by arranging annual visits to Canada. The children have great grandparents, grandparents, aunts, uncles and cousins in many parts of Canada. My family has a long heritage in Ontario and we do not wish to permanently sever those roots for our family. The cost of traveling as a family of six are prohibitive and the compromise we have reached is that we send two children each year with the family visiting every third year. We returned to Canada in the years 2000, 2001, 2003-2004, 2005.

[11] The Minister concludes in his Reply, that the Appellant is not entitled to receive CTB payments. In the Reply, it is stated:

25 ... The Appellant is not eligible to receive GSTC payments in the amount of \$602. ...

26 ...the Appellant is not entitled to receive CTB payments ... as the Appellant was not an 'eligible individual' as stated in paragraph (c) under the definition of said term in section 122.6 ... because she was not a resident.

[12] During the relevant years, the Appellant had been living for over 10 years in Romania where she was and is a full-time wife and mother. She visited Canada, particularly London, Ontario, at best a total of 50 days during the three relevant years. She did have relatives here with whom she stayed, but no business or residence. Her immediate family was well established in Romania where she still lives. She does not know when she might return to Canada, if at all, with any permanency.

[13] The assumptions of fact relied on by the Minister are of little assistance. They are contained in paragraph 22 of the Reply. Paragraph (a) sets out the dates of birth of the Appellant's children. Paragraphs (b), (c) and (d) read:

- (b) prior to November 1, 1993, the Appellant resided in Toronto, Ontario;
- (c) on November 1, 1993, the Appellant moved to Bucharest, Romania with her spouse and children; and
- (d) at all material times, the Appellant was not a resident of Canada.

[14] In the case of *Thomson v. The Minister of National Revenue*<sup>1</sup>, Rand, J. stated:

For the purposes of income tax legislation, it must be assumed that every person has at all times a residence. It is not necessary to this that he should have a home or a particular place of abode or even a shelter. He may sleep in the open. It is important only to ascertain the spatial bounds within which he spends his life or to which his ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return.

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<sup>1</sup> [1946] S.C.R. 209.

But in the different situations of so-called “permanent residence”, “temporary residence”, “ordinary residence”, “principal residence” and the like, the adjectives do not affect the fact that there is in all cases residence; and that quality is chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences...

This reasoning applies to the present case and, in particular, Justice Rand’s following sentence:

...It is important only to ascertain the spatial bounds within which he -- and I will say "he or she" -- spends his or her life or to which his or her ordered or customary living is related. ...

[15] Here we have an Appellant who packed up all she owned but for a few unneeded items from her mother, and moved with her husband and children to Romania more than 10 years before the period in question. She had her fourth child in Romania.

[16] All the children are enrolled, and during the relevant years were enrolled, in school there as they still are. They all live as a family in her husband's home which obviously is the family home. He has a business in Romania with little or no known ties to Canada. Surely, Romania is the spatial bounds within which she spends her life to which her ordered or customary living is related.

[17] To continue with Rand, J.'s criteria, considering the antithesis to Romania, which is Canada, I find she visits here occasionally, perhaps 50 days over a 1,000-day period being the relevant one before us. She has relatives here but no residence, property or means of support other than the CTB. She stated that she did not know when she would return to Canada although she would like her children to attend university here.

[18] In *Laurin v. Her Majesty the Queen*,<sup>2</sup> the Appellant was a pilot with Air Canada, retired in 2000 and was a Canadian citizen. He purchased annual residency permits in a foreign island and leased an apartment. He used Florida as a mailing address. He and his common-law spouse built a home in Quebec which the Minister claimed remained available to him. This relationship ended in 1993. He opened bank accounts in islands in 1996 and he closed all but one in Canada in 1993. He never spent more than 183 days in any taxation year in Canada. He filed

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<sup>2</sup> 2007 DTC 236.

and was assessed as a non-resident of Canada. It was held that he had severed his residential ties in Canada. He did not sojourn in Canada more than 183 days. He was not ordinarily a resident in Canada.

[19] In the case of *Laurin*, the Appellant was an employee of a Canadian company, Air Canada, and had three children all over the age of 20 years, living in Canada. He also used Canadian medical services. Judge Bowman found the Appellant had neither a mailing address in Montreal, nor did he establish a sense of permanency at any one of the homes of his three hosts during his stays in Montreal. Furthermore, the evidence adduced demonstrated that he did not have any investments or business activities in Canada. On two occasions when he stayed in Montreal, such cases were for medical reasons. The Crown's position presently is much stronger than in the case of *Laurin*.

[20] Without hesitation, I conclude that in the present case the Appellant was not a resident in Canada in the 2003, 2004 and 2005 taxation years, and the appeals are dismissed.

Signed at Ottawa, Canada, this 8<sup>th</sup> day of August 2008.

“C.H. McArthur”

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McArthur J.

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COURT FILE NO.: 2007-4337(IT)I

STYLE OF CAUSE: DEBORAH ANN NEDELCO AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: April 17, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: April 24, 2008

APPEARANCES:

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