

Docket: 2008-938(IT)I

BETWEEN:

CHANTALE MONIQUE MOÏSE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 30, 2009 at Ottawa, Canada

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Julian Malone

JUDGMENT

The appeal from the redetermination made under the *Income Tax Act* with respect to the Child Tax Benefit and the Goods and Services Tax Credit for the period July 2006 to June 2008, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of April, 2009.

“G. A. Sheridan”

Sheridan, J.

Citation: 2009TCC187

Date: 20090409

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BETWEEN:

CHANTALE MONIQUE MOÏSE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The issue in this appeal is whether the Appellant, Chantale Moïse, was entitled to receive the Child Tax Benefit and the Goods and Services Tax Credit for the period July 2006 to June 2008. The Appellant conceded that she was not entitled to the Child Tax Benefit for the period July 2007 to June 2008.

[2] The Minister of National Revenue determined that she was not the “eligible individual” as defined in section 122.6 of the *Income Tax Act* because her son did not reside with her and she did not primarily fulfill the responsibility for his care during the periods in dispute.

[3] At the hearing, counsel for the Respondent correctly raised a preliminary objection to the Appellant’s having included in her appeal a request for relief in respect of her claim under the *Universal Child Care Benefit Act* on the basis that this Court does not have jurisdiction over such appeals. Upon understanding this, the Appellant effectively withdrew that aspect of her appeal.

[4] Turning then, to the issue of her entitlement to the Child Tax Benefit and the GST Tax Credit, the Appellant has the onus of proving wrong the assumptions upon which the Minister based his decision. She testified at hearing; the father of the child, Kristoffer Howes, was called by the Respondent.

[5] My impression in listening to their evidence is that they both care very much for their little boy and that all three of them have had their difficulties since the breakdown of the marriage. Their evidence was consistent that they had agreed to joint custody of their son and that, in ideal circumstances, each was to have him in his or her care 50% of the time. The Appellant testified that during the period in question, she was overwhelmed with problems that limited her ability to live up to this ideal. In June 2006, she asked Mr. Howes to take their son into his care until she was able to resume a full share of her responsibility. Mr. Howes' evidence was to the same effect. Their evidence was that, depending in whose care their son was at any given moment, they were both more or less equally involved in seeing to his medical needs, taking him to day care, providing a room for him in their respective homes and buying him clothes and toys.

[6] Given that the child was more often with his father than the Appellant during the period in dispute, the Appellant has not satisfied me that the Minister was wrong in making his redetermination; accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 9th day of April, 2009.

“G. A. Sheridan”

Sheridan, J.

CITATION: 2009TCC187
COURT FILE NO.: 2008-938(IT)I
STYLE OF CAUSE: CHANTALE MONIQUE MOÏSE AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Ottawa, Canada
DATE OF HEARING: March 30, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan
DATE OF JUDGMENT: April 9, 2009

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Julian Malone

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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