

Docket: 2008-1410(IT)I

BETWEEN:

KIMBERLEY ANNE BRUNETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 22, 2009, at Hamilton, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Ricky Tang

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the appellant's 1999, 2000, 2001, 2002, 2003 and 2004 taxation years is dismissed in accordance with the reasons herein.

Signed at Ottawa, Canada, this 13th day of November 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 584
Date: 20091113
Docket: 2008-1410(IT)I

BETWEEN:

KIMBERLEY ANNE BRUNETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The issue in this informal income tax appeal is whether Ms. Brunette was in a common-law relationship with Marcel Vesely in the years in question. The determination by the Canada Revenue Agency (“CRA”) that she and Mr. Vesely were common-law partners has adversely impacted her GST credit and her Child Tax Benefit amounts. A further issue involving child support payments was raised at the hearing. The hearing was adjourned after hearing the common-law partnership evidence and argument to allow the CRA to consider the child support issue. I am advised that the CRA now agrees that it had wrongly characterized the taxpayer’s child support amounts as spousal support and has reassessed to correct this.

[2] I am wholly satisfied that Ms. Brunette and Mr. Vesely were in a common-law partnership in the years in question and I will be dismissing this appeal.

[3] The definition of common-law partner for these purposes in subsection 248(1) of the *Income Tax Act* (the “*Act*”) turns entirely upon whether Ms. Brunette and Mr. Vesely cohabited in a conjugal relationship at the relevant times.

[4] The term “cohabiting in a conjugal relationship” is not defined in the *Act* for these purposes. Nonetheless, its meaning is well-developed in the law. An extensive listing of considerations is set out in *Molodowich v. Penttinen*, 17 R.F.L. (2d) 376,

[1980] O.J. No. 1904 (QL). The role of the Molodowich characteristics in determining whether or not a conjugal relationship exists was addressed by the Supreme Court of Canada in *M. v. H.*, [1999] 2 S.C.R. 3. The Supreme Court said that the characteristics of shared shelter, sexual and personal behaviour, services, social activities, economic support, children and societal perception may be present in varying degrees and are not all necessary. Common-law couples cannot escape because they do not fit precisely the “traditional marital model”. Even sexual relationships are not a requirement, according to the Supreme Court. The weight to be given to each of the Molodowich factors will vary widely and almost infinitely. The approaches of the courts must be flexible and reflect the reality that couples’ relationships, whether married or common-law, will vary widely.

[5] I must approach determinations such as this with the recognition that Canadian family relationships and personal relationships change and reflect endless different choices that work for those involved. As courts have previously observed, we are clearly beyond the traditional marital model. Having heard the evidence of both Ms. Brunette and Mr. Vesely, it is clear that the relationship they shared was exactly what the concept of cohabiting in a conjugal relationship is trying to describe.

[6] The parties’ relationship began when Ms. Brunette and her son moved into the apartment across from Mr. Vesely. They became, in Mr. Vesely’s words, boyfriend and girlfriend. A short while thereafter, she and her son moved into his one-bedroom apartment. For some of this period Ms. Brunette and Mr. Vesely shared the same bed, although at some point Ms. Brunette bought a separate bed for herself which at times was in the bedroom and at times was in the living room. They regularly made meals for one another and did one another’s laundry. Ms. Brunette did such household tasks as dusting, cleaning and basic maintenance and minor improvements. They dined out together and went out to functions such as bowling, mini-golf and movies. They had sexual relations on occasion and neither was seeing anyone else. They exchanged gifts at Christmas and birthdays. This included him sending her roses on her birthday. They shared personal discussions. He assisted her with her considerable personal difficulties as well as her financial difficulties. He was named on her car insurance as a driver of her car even though they each owned a car. They shopped together, dined out and went out a couple of times each month. Mr. Vesely treated Ms. Brunette’s child as he thought a father should. Given their different financial circumstances, Mr. Vesely provided financial support to her although she clearly contributed her money when she had some for their joint benefit. Ms. Brunette said she assumed the neighbours would regard them as a couple. She attended a Christmas family gathering at his parents’ house. She sent letters to government authorities, and had him do so as well, indicating they had been a

common-law couple but had ceased to be so at some point in 2003. I note there is no basis in the evidence for treating their relationship as having ended in 2003 at the time specified.

[7] They were faithful to one another at the outset. However, the relationship began to deteriorate in April 2003. They continued to live together through the end of 2004. She moved out at some point in 2005.

[8] In these circumstances, I am satisfied that Ms. Brunette and Mr. Vesely were common-law partners living together in a conjugal relationship. People begin to live together, continue to do so, and stop doing so for any number of reasons. The fact that Ms. Brunette and Mr. Vesely say they did not intend their relationship to be treated as a common-law relationship is of little assistance given the actual circumstances of their relationship. Their relationship must be considered on its facts against the Molodowich characteristics of shared shelter, sexual and personal behaviour, services, social activities, economic support, children and societal perception. It is clear that, having regard to those characteristics, the Brunette-Vesely relationship was a common-law relationship.

[9] The taxpayer's appeal is dismissed.

Signed at Ottawa, Canada, this 13th day of November 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 584

COURT FILE NO.: 2008-1410(IT)I

STYLE OF CAUSE: KIMBERLEY ANNE BRUNETTE v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: July 22, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: November 13, 2009

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Ricky Tang

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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