

BETWEEN:

LINDA MURPHY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 12, 2010, at Yarmouth, Nova Scotia.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Melanie Petrunia

JUDGMENT

The appeal from the determination made under the *Income Tax Act*, notice of which is dated November 20, 2008, for the period from February 2008 to October 2008, is dismissed without costs in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada, this 23rd day of August 2010.

"Patrick Boyle"

Boyle J.

Citation: 2010 TCC 411
Date: 20100823
Docket: 2009-2843(IT)I

BETWEEN:

LINDA MURPHY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The appellant, Mrs. Murphy, has appealed the respondent's determination that she was not entitled to the Canada Child Tax Benefit ("CCTB") in respect of her teenaged stepdaughter for the period from February to October 2008.

[2] It is Mrs. Murphy's position that her stepdaughter Melanie Murphy chose to live with her father and her for six or seven months beginning in February 2008. Before that time Melanie lived with her mother, Ms. Spinney, during the week and stayed with her father on weekends. In February 2008 Melanie's boyfriend became a boarder at the home of her father and stepmother. Melanie was 16 years old at the time in question. According to Mrs. Murphy, Melanie also began living with them at the time although she was still in regular contact with her mother.

[3] In support of her position Mrs. Murphy brought to Court a letter from her landlord's property manager confirming that Melanie resided with her and her husband in the period. She also brought a copy of Melanie's resumé from the period which showed her address as that of her father and stepmother. She also provided a copy of one of Melanie's payslips from her part-time job at a grocery store which listed the same address. Neither the resumé nor the payslip also listed the address of Melanie's mother.

[4] This was most helpful evidence for Mrs. Murphy to bring to Court. Indeed, it is remarkably similar in type to the documents that Melanie's mother provided to the Canada Revenue Agency ("CRA") and upon which the CRA based its decision that Ms. Spinney was entitled to the CCTB in respect of Melanie during the period in question. While Ms. Spinney provided similar type evidence to the CRA at the verification stage, she did not bring them to Court with her when she was subpoenaed to attend nor did the respondent make them available to her.

[5] Ms. Spinney testified that Melanie continued to live with her throughout although Melanie did spend more time at her father's house once her boyfriend began living there.

[6] Melanie Murphy also testified that she had continued to live with her mother throughout. She acknowledged that she spent more time at her father's once her boyfriend started living at his house but she returned home to her mother's every evening, absent bad weather or the like, except for those weekends she normally spent at her father's.

[7] She said that she kept her personal belongings such as books, music and computer at her mother's house throughout. She explained that she had used her father's address for her resumé and her part-time job with his permission because her mother was talking about moving (and has since moved). Melanie said her doctor, dentist, health and hygiene matters were taken care of with her mother and that she generally ate at her mother's house. Her mother provided her with lunch money and with dinners although she did sometimes eat dinners during the week at her father's house. Melanie testified that she was fortunate to have lots of supportive family and that her stepmother does provide helpful family support for her. However, she considers her mother to have been her primary caregiver throughout.

[8] All three witnesses testified in a clear and forthright manner and I have no doubts as to the credibility of each of their versions of the events.

[9] In order to qualify for the CCTB in respect of Melanie, section 122.6 of the *Income Tax Act* (the "Act") requires that Mrs. Murphy be able to satisfy the Court that:

- (i) Melanie resided with her and her husband in the period in question; and
- (ii) Mrs. Murphy primarily fulfilled the responsibility for Melanie's care and upbringing during the period.

[10] For this purpose, care and upbringing require consideration of the factors listed in Regulation 6302 which include, amongst other things, health and hygiene, guidance and companionship, arranging school and other activities, and supervision of daily needs and activities.

[11] It is Mrs. Murphy's position that Melanie changed which parent she lived with in February 2008 with the result that Mrs. Murphy became the person entitled to the CCTB until Melanie went back to live with her mother. It is clear that the parent entitled to receive the CCTB from month to month can change: *Matte v. The Queen*, 2003 DTC 5075 (FCA).

[12] The evidence presented is consistent with Melanie living during those six or seven months at times with her father and stepmother and at times at her mother's. It may be that it is possible for CCTB purposes that a child can reside with more than one parent at a time. It is not clear that the child can have only one residence. Nor am I sure that the income tax concept of "residence" of a taxpayer in a country is readily applicable to deciding with which parent a child "resides". I certainly do not think it can be as easily applied as the reasons in *S.R. v. The Queen*, 2003 TCC 649, [2004] 1 C.T.C. 2386, *Grimard v. The Queen*, 2008 TCC 98, 2008 DTC 4484, and *Lapierre v. The Queen*, 2005 TCC 720, 2008 DTC 4248, appear to suggest.

[13] While it may be that the CCTB provisions permit a child to reside with more than one parent at a time, and that Melanie may have lived with and therefore resided with both her parents, the CCTB provisions provide that, in addition to residing together, the CCTB is payable only to the parent who is the child's primary caregiver as described above. It is clear that only one parent can be the "primary" caregiver.

[14] Even though Melanie may have lived with her father and stepmother, Mrs. Murphy's appeal cannot succeed because she was not also the parent who primarily fulfilled the responsibility for Melanie's care and upbringing. The evidence satisfies me that Melanie's mother continued to be primarily responsible for Melanie's overall care and upbringing notwithstanding the change in Melanie's living arrangements in the six or seven-month period in question.

[15] The appeal is dismissed.

Signed at Ottawa, Canada, this 23rd day of August 2010.

"Patrick Boyle"

Boyle J.

CITATION: 2010 TCC 411

COURT FILE NO.: 2009-2843(IT)I

STYLE OF CAUSE: LINDA MURPHY v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Yarmouth, Nova Scotia

DATE OF HEARING: July 12, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: August 23, 2010

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Melanie Petrunia

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada