

Docket: 2004-4696(IT)I

BETWEEN:

NATASHA ST. PETER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on July 27, 2005, at Fredericton, New Brunswick, by

the Honourable Justice E.A Bowie

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Marie-Claude Landry

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JUDGMENT

The appeals from redeterminations made under the *Income Tax Act* for the 2001 and 2002 base taxation years are dismissed.

Signed at Ottawa, Canada, this 8th day of August, 2005.

"E.A Bowie"

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Bowie J.

Citation: 2005TCC495  
Date: 20050808  
Docket: 2004-4696(IT)I

BETWEEN:

NATASHA ST. PETER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Bowie J.**

[1] Ms. St. Peter appeals from a redetermination by the Minister of National Revenue (the Minister) of her entitlement to child tax benefits under the *Income Tax Act* (the *Act*) for the period beginning in October 2002 and ending in July 2003. Her appeal was heard at Fredericton, New Brunswick, pursuant to the Court's informal procedure.

[2] The Appellant and Randy Drost are the parents of two children. Until the end of September 2002, the children both lived with the Appellant and she was the parent entitled to receive the benefit for them both. At the end of September the older child went to live with Randy Drost. The younger child remained with the Appellant until the end of June 2003. After that date, at least for so long as it is relevant here, both children lived with Randy Drost. As the parent with whom the child resides is the "eligible individual" for purposes of the entitlement to receive the benefit, it was Randy Drost and not Natasha St. Peter who was the one entitled to receive the benefit for the older child for the months of October to December 2002 and January to July 2003, and for the younger child for July 2003. That is not what happened, however.

[3] Some time before October, 2002 the Appellant and Randy Drost agreed between themselves that she would continue to receive the benefit for both

children until they were both living with him, and that until that time she would deposit the amount of the benefit for one child in his bank account each month. Once both children were in his care he would apply to have the benefit for both of them paid to him. The Appellant carried out her part of this bargain. Each month up until June 2003 she deposited the required amount in his account, subject only to three exceptions. She made no deposit in October 2002 as that month's payment went to pay for the child's fare from Alberta, where she was living, to New Brunswick. She kept \$100.00 in December to pay for gifts for the younger child. In April she kept \$80.00 as she had advanced that amount to Randy Drost in March to help to pay for a television set for the older child. These amounts, I understand, were withheld by agreement between them.

[4] Unfortunately for the Appellant, Randy Drost did not keep his part of the bargain. Once both children were living with him he applied for the child tax benefit for them both. It is not clear to me whether he applied for the benefits for the older child for the months between October and June, or if the Minister simply decided that that was when he became entitled and sent him a retroactive payment. In any event, the Minister has paid him those benefits retroactively, and at the same time has sent to the Appellant a notice of redetermination, along with a demand that she refund the amounts paid to her for one of the children during that period and for both children in July. The amount demanded is \$1,785.33 for the nine-month period, plus a further \$430.36 for the two children for the month of July 2003. The latter amount is presumably not in dispute as both children lived with Randy Drost by that time, and the Appellant did not make a deposit for that month. There would, of course, be no dispute if Randy Drost were willing to pay to the Appellant the amount demanded of her, but this he is not willing to do.

[5] It is with considerable regret that I find I must dismiss the appeal. The jurisdiction of this Court is fixed by statute, and it is limited to determining which parent is entitled under the provisions of the *Act* to receive the benefit payments. I cannot enforce a private agreement between the parents. Parents who enter into these kinds of agreements do so at their own risk. The Minister can only pay the benefit to the person who is entitled by the *Act* to receive it, and this Court can only decide whether he has properly determined pursuant to the *Act* who that person was, and if he has properly computed the amount of the benefit. The agreement between the Appellant and Randy can only be enforced by the appropriate Court of the province of New Brunswick. I should emphasize that while I consider the Appellant to have been a truthful witness, and her evidence is to a large extent corroborated by a letter signed by Randy and Noella Drost that was made Exhibit A-1 at the hearing before me, it will be for that Court to find the

facts as to the agreement, and to determine the issue as between the Appellant and Randy Drost. All that I can rule on is the validity of the Minister's redetermination. The appeal must be dismissed.

Signed at Ottawa, Canada, this 8th day of August, 2005.

"E.A. Bowie"

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Bowie J.

CITATION: 2005TCC495

COURT FILE NO.: 2004-4696(IT)I

STYLE OF CAUSE: Natasha St. Peter and Her Majesty the Queen

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: July 27, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice E.A. Bowie

DATE OF JUDGMENT: August 8, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Marie-Claude Landry

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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