

Docket: 2007-235(IT)I

BETWEEN:

RACHED BADIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 26, 2007, at Montréal, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Jean-Pierre Gagné

Counsel for the Respondent: Nadia Golmier, articling student

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of October 2007.

"Paul Bédard"

Bédard J.

Translation certified true
on this 1st day of November 2007.

Brian McCordick, Translator

Citation: 2007TCC570

Date: 20071011

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BETWEEN:

RACHED BADIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Bédard J.

[1] This is an appeal from child tax benefit redeterminations concerning the 2003 and 2004 base years.

[2] The Appellant is the mother of Aliaa, born January 5, 1993, and Ismail, born September 19, 1996. She separated from her spouse in April 2003 and left the family residence on May 25, 2005. Following the separation, the couple's children remained in the custody of the father, Salah El Khattas. The Appellant began to receive child tax benefits in October 2000 and continued to receive them even after leaving the family residence.

[3] The issue in the instant case is whether the Minister of National Revenue ("the Minister") correctly revised the child tax benefit amount by determining that the overpayments amounted to \$3,052.07 for the period from July 2004 to June 2005 for the 2003 base year, and \$946.67 for the period consisting of July and August 2005 for the 2004 base year.

[4] The Appellant's Notice of Appeal reads as follows:

Rached Badia
[Address and telephone number omitted.]

Montréal, November 17, 2006

Subject: Objection to the Canada Revenue Agency's
Notification of Confirmation in respect of Child Tax Benefits
(Base Years: 2003 and 2004)

Dear Madam or Sir:

Further to the Notification of Confirmation dated November 3, 2006, which I received from the Tax Centre In Shawinigan-Sud, QC G9N 7S6, I hereby lodge an appeal with the Tax Court of Canada, under the informal procedure, in order to maintain my objection to the notice dated May 19, 2006, in which the Canada Customs and Revenue Agency claimed an amount from me that was used by my ex-spouse, because all the amounts were deposited into a joint account, and it was my ex-husband who used those amounts at all times, and when I left the family residence, nothing changed because the children remain in his custody. In fact, that is why he never notified the Customs Agency that I had left. He is the one who looks after the children, because he always transferred his amounts from the joint account to his personal account using the Internet. However, I was the person who notified the Customs Agency of the change of situation.

In this regard, I have a document from the bank that proves that the last deposit of \$3,328.12 on December 13, 2005, was deposited into the account from which I removed my signature and name in October 2005, and which became a personal account of his.

With respect to the filing fee, I am currently receiving social solidarity benefits, and this will cause me financial hardship, so I hope that this fee will be repaid to me.

I look forward to hearing from you with respect to this matter.

Best regards,

[Signature]

[5] In the case at bar, the Appellant does not dispute the fact that she was not the eligible individual within the meaning of section 122.6 of the *Income Tax Act* ("the Act"), nor does she dispute the fact that she did not

send the Minister a notice that she ceased to be eligible, which was required by subsection 122.62(4) of the Act. Rather, the Appellant submits that the benefit payments, with the exception of one payment of \$3,328.12, were always deposited into a bank account ("the joint account") which she held jointly with Mr. Khattas, who transferred an amount equal to these payments into his personal account. With respect to the amount of \$3,328.12 which the Appellant says is a child tax benefit payment, she claims that, on December 13, 2005, it was deposited into the joint account, which had become Mr. Khattas's personal account on October 4, 2005. In this regard, the Appellant adduced documentary evidence (Exhibit A-1) which shows that the joint account became Mr. Khattas's personal account on October 4, 2005, and that the amount of \$3,300 was transferred into that bank account. In short, the Appellant submits that the child tax benefit payments were paid to Mr. Khattas, not to her, because all those payments were subsequently transferred into his personal bank account and he was therefore the only person who benefitted from them.

[6] The evidence in the instant case does not enable us to determine whether the child tax benefit payments were made by cheque issued to the Appellant or whether they were in the form of deposits.

[7] If the child tax benefit payments were made by cheques payable to the Appellant and were then deposited into the joint account, or the joint account that became Mr. Khattas's personal account on October 4, 2005, it seems clear to me that the payments cannot be characterized as payments made to Mr. Khattas. In my opinion, the fact that Mr. Khattas supposedly took possession of the funds paid as child tax benefits does not cause him to become the beneficiary of the child tax benefits.

[8] My finding would be the same even if the Minister directly deposited the child tax benefits into the joint account, or the account that became Mr. Khattas's personal account on October 4, 2005. Indeed, such a deposit could only have been made if the Appellant had submitted a direct deposit request to the Minister. It is important for the Appellant to understand that a direct deposit request is a kind of direction to pay funds, and thus, the benefits deposited directly into the joint account, or the account that became Mr. Khattas's personal account on October 4, 2005, constituted payments to the Appellant in any event.

[9] For these reasons, I am of the opinion that the child tax benefit payments were made to the Appellant, and that they cannot, in any way, be characterized as payments made to Mr. Khattas, regardless of the version of the facts that is accepted.

[10] The appeal is accordingly dismissed.

Signed at Ottawa, Canada, this 11th day of October 2007.

"Paul Bédard"

Bédard J.

Translation certified true
on this 1st day of November 2007.

Brian McCordick, Translator

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APPEARANCES:

Counsel for the Appellant: Jean-Pierre Gagné
Agent for the Respondent: Nadia Golmier, articling student

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