

Citation: **2007TCC660**
Date: 20071116
Docket: **2006-2929(IT)I**

BETWEEN:

JAISH PARMAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

(Delivered orally from the Bench on October 5, 2007 at Toronto, Ontario)

V.A. Miller, J.

[1] The issues in this appeal are whether the Appellant is entitled to deduct child care expenses in the amount \$6,015 and claim an equivalent to spouse credit in the amount of \$6,586 for the 2003 taxation year.

[2] The Appellant and his former spouse, Poonan Singh, were married on July 18, 1999. There were two children of the marriage, Simrym born December 8, 1997 and Arjyn born May 13, 2001. There were difficulties in the marriage and the Appellant moved out of the marital home on April 29, 2003. He stated that from April until October 2003, he and his former spouse were working at reconciliation and there was no issue with respect to custody of the children. The Appellant and his former spouse had joint custody of the children and there was a temporary Court Order dated June 24, 2003 which reflected this.

[3] The Appellant testified that the children resided with him on many occasions after April 29, 2003. He described in detail the numerous times he cared for the children and the various times they resided with him during 2003. Sometime prior to October 28, 2003 the relationship between the Appellant and his former spouse became acrimonious. On October 28, 2003, they returned to the Ontario Court of Justice and another temporary Order was issued which granted custody of the children to the former spouse and access to the Appellant. The Court also ordered

that the Appellant had to pay support in the amount of \$784 per month for the children and special expenses in the amount of \$500 per month. The Appellant testified that the special expense was for the day care expenses for the children.

[4] The Appellant submitted sufficient evidence to establish that he paid for at least one-half of the child care expenses that were incurred each month during 2003. He was unable to get these documents when his file was at the objection stage with Canada Revenue Agency (“CRA”). I find that he is entitled to a deduction of \$6,015 for child care expenses in 2003.

[5] The Appellant also claims a non-refundable tax credit under paragraph 118(1)(b) for one of his children. This is the credit for a wholly dependent person, commonly referred to as the equivalent-to-spouse credit.

[6] Both counsel for the Appellant and counsel for the Respondent presented submissions only with respect to subparagraph 118(1)(b)(ii) of the *Act*. Subparagraph 118(1)(b)(ii) of the *Income Tax Act* reads as follows:

(b) **wholly dependent person ["equivalent to spouse" credit]** -- in the case of an individual who does not claim a deduction for the year because of paragraph (a) and who, at any time in the year,

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

[7] The Appellant and his former spouse and the children lived together from January to the end of April in 2003. The Appellant’s evidence is that after he and his former spouse separated, he lived with his sister and he had a self-contained unit within her home. From the end of April until the end of June he shared custody of the children with his former spouse. During July and August the couple lived together in an attempt to reconcile. Again, from September to October 28 the children resided with the Appellant on many occasions as his former spouse had resumed her teaching duties. During November and December the Appellant only had access to the children and they resided with him on weekends.

[8] At intermittent times during the 2003 taxation year the Appellant was responsible for his children. Counsel for the Appellant has argued that the phrase “at

any time in the year” should be interpreted to mean that the children can be wholly dependent on the Appellant for support at intermittent times during the year and not necessarily during the entire year. She relied on the Reasons for Judgment in *Isaac v. The Queen*, 95 DTC 859 and *Geddes v. The Queen*, [2000] 2 C.T.C. 2577. I disagree that these decisions apply to the facts in this case. We must also consider subparagraph 118(1)(b)(i) of the *Act* which reads:

(b) in the case of an individual who does not claim a deduction for the year because of paragraph 118(1)(a) and who, at any time in the year,

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common law-partner and who is not supported by that spouse or common-law partner, and

[9] Clause B of subparagraph 118(1)(b)(i) states that “at any time in the year” the “person who is married ...” “who neither supported nor lived with their spouse ...” is, if the other criteria are fulfilled, eligible to claim the equivalent-to-spouse credit. In the present situation, the Appellant and his former spouse resided together for approximately six months during 2003. It is my opinion that the Appellant is not eligible to claim the equivalent-to-spouse credit.

[10] The appeal is allowed on the basis that the Appellant is entitled to deduct child care expenses in the amount of \$6,015.

This Amended Reasons for Judgment is issued in substitution for the Reasons for Judgment dated November 7, 2007.

Signed at Ottawa, Canada this 16th day of November, 2007.

“V.A. Miller”

V.A. Miller, J.

CITATION: 2006-2929(IT)I
COURT FILE NO.: 2007TCC660
STYLE OF CAUSE: Jaish Parmar v. The Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: October 5, 2007

AMENDED REASONS FOR JUDGEMENT BY: **The Honourable Justice Valerie A. Miller**

DATE OF AMENDED REASONS FOR JUDGMENT: November 16, 2007

APPEARANCES:

Counsel for the Appellant: M. Judith Sheppard
Counsel for the Respondent: Brandon Siegal

COUNSEL OF RECORD:

For the Appellant:

Name: M. Judith Sheppard

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada