

Docket: 2007-2706(IT)I

BETWEEN:

TERESE LAVERNE ROBERTSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 7, 2008 at Saskatoon, Saskatchewan

Before: The Honourable Justice D.W. Beaubier, Deputy Judge

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Lyle Bouvier

JUDGMENT

The appeal is allowed and the Canada Child Tax Benefit (“CCTB”), the Goods and Service Tax Credit (“GSTC”) and the Saskatchewan Child Benefit (“SCB”) assessments and determinations are referred to the Minister for reconsideration, reassessment and redetermination in accordance with the attached Reasons for Judgment.

Signed at Saskatoon, Saskatchewan this 17th day of March, 2008.

“D.W. Beaubier”

Beaubier, D.J.

Citation: 2008TCC154
Date: 20080317
Docket: 2007-2706(IT)I

BETWEEN:

TERESE LAVERNE ROBERTSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Beaubier, D.J.

[1] This appeal pursuant to the Informal Procedure was heard at Saskatoon, Saskatchewan on March 7, 2008. The Appellant was the only witness and her testimony is believed in its entirety. All matters described herein occurred in Saskatoon, Saskatchewan.

[2] The Appellant was disallowed the Canada Child Tax Benefit (“CCTB”), the Goods and Services Tax Credit (“GSTC”) and the Saskatchewan Child Benefit (“SCB”) on the basis that she was living common-law with the father of her children, Cody Bear, at various times, all as described in the assumptions in paragraph 12 of the Reply to the Notice of Appeal which reads as follows:

12. In so redetermining the Appellant’s CCTB for the 2003 and 2004 base taxation years and the GSTC for the 2001, 2002, 2003 and 2004 base taxation years and in so confirming those determinations, the Minister assumed the same facts, as follows:

- a) the Appellant and Cody were common-law partners for the period of July 2002 to April 2006;

- b) the Appellant and Cody are the natural parents of two children (hereinafter the “Children”):

<u>Name of Child</u>	<u>Date of Birth</u>
Coden Bear	March 24, 2004
Breydan Bear	September 19, 2005

- c) the Appellant and Cody resided at 1109, 121 Clancy Drive, Saskatoon, since at least July 2003;
- d) the Appellant resided at 326, 3170 Laurier Drive, Saskatoon, since at least April 2004;
- e) Cody resided at 326, 3170 Laurier Drive, Saskatoon, since at least July 2004;
- f) the Appellant resided at 253 Meighen Crescent, Saskatoon since at least August 29, 2005;
- g) the Children resided with the Appellant and Cody during the period of July 2002 to April 2006;
- h) Cody filed his 2001, 2002 and 2003 income tax returns and applied for the GSTC for himself, the Appellant and the Children for the 2001, 2002 and 2003 base taxation years as follows:

<u>Taxation Year</u>	<u>Date Filed</u>
2001	July 9, 2003
2002	July 9, 2003
2003	June 18, 2004

- i) Cody has not filed an income tax return for the 2004 taxation year;
- j) Cody’s 2001, 2002 and 2003 income tax returns were assessed on the following dates:

<u>Taxation Year</u>	<u>Assessment Date</u>
2001	July 24, 2003
2002	July 24, 2003
2003	June 29, 2004

- k) the Appellant filed her 2001, 2002, 2003 and 2004 income tax returns as follows:

<u>Taxation Year</u>	<u>Date Filed</u>
2001	July 9, 2003
2002	July 9, 2003
2003	August 24, 2004
2004	April 29, 2005

- l) the Appellant's 2001, 2002, 2003 and 2004 income tax returns were assessed on the following dates:

<u>Taxation Year</u>	<u>Assessment Date</u>
2001	July 24, 2003
2002	July 24, 2003
2003	September 30, 2004
2004	May 9, 2005

- m) the Minister designated Cody as the eligible individual for the GSTC for himself, the Appellant and the Children for the 2001, 2002 and 2003 base taxation years;

- n) the Appellant filed her 2005 income tax return on or before April 30, 2006 indicating her marital status as of December 31, 2005 as single;

- o) the Appellant did not elect, in a form that is acceptable to the Minister, pursuant to subsection 122.62(6) of the *Income Tax Act* (hereinafter the "*Act*");

- p) for the CCTB, the 2003 and 2004 base taxation years covers the months of:

<u>Base Taxation Year</u>	<u>Months Covered</u>
2003	July 2004 to June 2005
2004	July 2005 to June 2006

- q) for the months of July 2004 to April 2006, the Appellant was in receipt of CCTB and SCB in the amounts of \$3,378.00 and \$4,573.38 for the 2003 and 2004 base taxation years, respectively, as detailed in Schedule A, attached to and forming part of the Reply to the Notice of Appeal (hereinafter "Schedule A");

- r) for the months of July 2004 to April 2006, the Appellant was entitled to CCTB in the amount of \$2,958.00 for the 2003 base taxation year only, as detailed in Schedule A;
- s) for the months of July 2004 to April 2006, the Appellant was overpaid the CCTB and SCB in the amounts of \$420.00 and \$4,573.38 for the 2003 and 2004 base taxation years, respectively, as detailed in Schedule A;
- t) for the GSTC, the 2001, 2002, 2003 and 2004 base taxation years covers the quarters beginning:

<u>Base Taxation Year</u>	<u>Quarters Beginning</u>
2001	July 2002, Oct 2002, Jan 2003, April 2003
2002	July 2003, Oct 2003, Jan 2004, April 2004
2003	July 2004, Oct 2004, Jan 2005, April 2005
2004	July 2005, Oct 2005, Jan 2006, April 2006

- u) for the quarters beginning July 2002 to October 2005, the Appellant was in receipt of GSTC in the amounts of \$239.88, \$383.19, \$727.89 and \$438.00 for the 2001, 2002, 2003 and 2004 base taxation years, respectively, as detailed in Schedule B, attached to and forming part of the Reply to the Notice of Appeal (hereinafter “Schedule B”);
- v) for the quarters beginning July 2002 to October 2005, the Appellant was not entitled to the GSTC for the 2001, 2002, 2003 and 2004 base taxation years, as detailed in Schedule B; and
- w) for the quarters beginning July 2002 to October 2005, the Appellant was overpaid GSTC in the amounts of \$239.88, \$383.19, \$727.89 and \$438.00 for the 2001, 2002, 2003 and 2004 base taxation years, respectively, as detailed in Schedule B.

[3] The children are both boys.

[4] The Court accepts the Appellant’s evidence respecting her living arrangements at the times in question, which is as follows:

- (1) From 2001 to May 31, 2002, the Appellant lived common-law with Cody Bear on Pendency Road. They broke up on May 31, 2002.

- (2) June 1, 2002, the Appellant was living alone on Pendencygrasse Road and moved next door and lived with her cousin, Lindsay Burns, at 3243 – 373 Pendencygrasse Road in December, 2002 for three or four months.
- (3) From about March to September, 2003, the Appellant, still living singly, moved from there to her mother's residence at 1109 – 121 Clancy Drive.
- (4) The Appellant became pregnant with Coden and reconciled with Cody Bear in September, 2003 and in October, 2003, they moved to 326 – 3170 Laurier Drive, whereupon Cody moved out in November, 2003. (The Court does not regard this as the resumption of the common-law relationship which terminated on May 31, 2002 because it accepts the *Divorce Act's* reconciliation 90 day rule, which allows a 90 day period for attempted reconciliations.)
- (5) After Cody moved out, the Appellant remained alone at 326 – 3170 Laurier Drive and Coden was born.
- (6) In December, 2004, Cody and the Appellant attempted to reconcile at Laurier Drive for three weeks and she became pregnant with Breydan. Cody left at the end of three weeks. The Appellant was working at Freeway Gas at this time.
- (7) Mid-August, 2005, the Appellant moved from Laurier Drive to 253 Meighen Crescent. In September, Breydan was born; she returned to work in January, 2006. In August, 2006, the Appellant was accepted into an upgrade program and she is now in training to become a nurse.

[5] The Appellant has been living as a single person since May 31, 2002. She does not know Cody's address and he apparently has no permanent residence. The Appellant informed the Court that the police have contacted her about Cody because he has falsely described her address as Cody's from time to time; she is believed about this.

[6] Based on these facts, the Court finds that the Appellant has not lived common-law with Cody Bear, but has lived singly since May 31, 2002, with the children after they were born.

[7] Thus, the Court finds that since the base date of May 31, 2002, and for the appropriate quarters after that date, (a) Cody's income should not be included in the

calculation of an adjusted income within the meaning of section 122.6 of the *Income Tax Act* for the months of July, 2004 to April, 2006 of the 2003 and 2004 base taxation years; and (b) after the base date of May 31, 2002, Cody was not the Appellant's common-law partner or qualified relation within the meaning of section 122.5 of the *Income Tax Act* for the appropriate quarters from July, 2002 to October, 2005, respecting the appropriate base taxation years.

[8] The appeal is allowed and the CCTB, the GSTC and the SCB are to be adjusted by the Minister in accordance with these findings.

Signed at Saskatoon, Saskatchewan this 17th day of March, 2008.

“D.W. Beaubier”

Beaubier, D.J.

CITATION: 2008TCC154

COURT FILE NO.: 2007-2706(IT)I

STYLE OF CAUSE: Terese Laverne Robertson v. The Queen

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: March 7, 2008

REASONS FOR JUDGMENT BY: The Honourable D.W. Beaubier,
Deputy Judge

DATE OF JUDGMENT: March 17, 2008

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Lyle Bouvier

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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