

Citation: 2009 TCC 151

Docket: 2008-1269(IT)I

BETWEEN:

RON S. WARNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

ALICE WARNER,

Third Party.

CERTIFICATION OF TRANSCRIPT OF
REASONS FOR JUDGMENT

Let the attached certified transcript of my Reasons for Judgment delivered orally from the Bench at Toronto, Ontario on February 25, 2009, be filed.

“Diane Campbell”

Campbell J.

Signed in Ottawa, Canada, this 23rd day of March 2009.

TAX COURT OF CANADA

BETWEEN:

RON S. WARNER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

ALICE WARNER

Third Party

**ORAL REASONS AND DECISION
RENDERED BY THE HONOURABLE MADAM JUSTICE CAMPBELL**

at Courts Administration Service, Room 6B
180 Queen Street West, 6th Floor,
Toronto, Ontario
on Wednesday, February 25, 2009 at 2:00 p.m.

APPEARANCES

Mr. Ron S. Warner
Mr. Edward G. Spong

on his own behalf
for Alice Warner

Mr. Thang Trieu

for the Respondent

Also Present:

Ms Roberta Colombo
Ms Shirley Sereney

Court Registrar
Court Reporter

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1 Toronto, Ontario
2 --- Upon commencing the Oral Reasons and Decision
3 on Wednesday, February 25, 2009.

4 JUSTICE CAMPBELL: Let the record
5 show that I am delivering oral reasons in the appeal
6 of Ron Warner which I heard earlier today.

7 This appeal is in respect to
8 Mr. Warner's 2006 taxation year. He is seeking to
9 deduct from his income a lump sum payment of
10 \$5,000 paid to his former spouse, Alice Warner.
11 Ms. Warner did not include this amount in her income.

12 The parties separated in 2002 and
13 were divorced by Order dated October 4, 2004.
14 Subsequently on February 13, 2006, Minutes of
15 Settlement were signed by the Appellant, his former
16 spouse, and their respective solicitors. Although the
17 Minutes of Settlement were handwritten, they were
18 endorsed by the Court on February 13, 2006.

19 One of the terms of the Minutes of
20 Settlement was that Mr. Warner would pay spousal
21 support of \$271 per month commencing March 1, 2006 to
22 Alice Warner. Mr. Warner has been permitted the
23 deduction for those payments relating to the monthly
24 \$271 amount which he paid in 2006.

25 What is in dispute is the

1 \$5,000 payment. The clause respecting this, as
2 contained in the Minutes of Settlement, states:

3 "The Respondent shall pay the
4 sum of \$5,000 by bank draft or
5 certified cheque to the
6 Applicant within 45 days
7 hereof in full satisfaction of
8 all spousal support claims up
9 to and including February 28,
10 2006."

11 Mr. Warner on a number of occasions
12 throughout the hearing expressed concerns over the
13 manner in which the terms of the Minutes of
14 Settlement were dealt with. I understand his
15 frustration with the process and how it has affected
16 his life. I hear it many times from individuals
17 before me who have gone through family and divorce
18 proceedings. However, although Mr. Warner may be
19 unhappy with the agreement and his participation in
20 negotiating the terms (which he felt he was denied by
21 the process), the Minutes constitute a binding and
22 legally-enforceable document sanctioned by the Court.

23 The narrow issue before me is simply
24 whether I can permit Mr. Warner to deduct the
25 \$5,000 payment. The deduction has been denied by the

1 Minister of National Revenue because it does not
2 comply with the definition requirements of "support
3 amount", contained in subsection 56.1(4) of the
4 *Income Tax Act* (the "Act"), as it was not payable on
5 a periodic basis. The relevant portion of the
6 definition states:

7 "Support amount" means an
8 amount payable or receivable
9 as an allowance on a periodic
10 basis for the maintenance of
11 the recipient...

12 The Appellant can deduct under subsection 60(b) of
13 the *Act* only if he meets this definition.

14 I heard evidence from Mr. Warner,
15 Alice Warner being represented in Court by her
16 solicitor. Much of Mr. Warner's evidence related to
17 the frustration he has felt over the years in dealing
18 with the process. In respect of the actual issue, he
19 seemed to be saying that the \$5,000 figure was, as he
20 put it, a number "pulled out of the air".

21 From the time of separation in
22 2002 until the Minutes of Settlement were signed in
23 2006, he testified that he did not pay Alice Warner

1 as she was not co-operating with the process and he
2 did not believe she would be eligible for any support
3 from him. He stated that he only agreed to this
4 amount because, if he did not, he was told that his
5 pension could be garnisheed for a much higher amount
6 at a later date.

7 I have little else upon which to
8 characterize this payment except this evidence from
9 Mr. Warner and the actual provisions in the
10 Minutes of Settlement. Certainly there is nothing in
11 Mr. Warner's evidence that would indicate that the
12 payment was anything other than a lump sum payment
13 which will not be deductible. He did not relate the
14 payment to any type of periodic payment that he was
15 voluntarily making or paying pursuant to an Order of
16 the Court prior to the Minutes of Settlement in 2006.
17 In fact, he testified to quite the contrary: that in
18 fact he did not believe that Alice Warner was
19 entitled to any support from him prior to 2006.

20 The eight factors set out in
21 *The Queen v. McKimmon*, 90 DTC 6088, which, although
22 not exhaustive, are intended to assist the Court in
23 the determination of such a payment as deductible or

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1 were not payable prior to 2006 on a periodic basis or
2 any other basis because they were not ascertained.

3 Since they cannot be characterized
4 as arrears or as a catch-up of amounts otherwise
5 payable on a periodic basis, I must dismiss the
6 appeal without costs, Mr. Warner, because the
7 \$5,000 payment is a lump sum payment which, according
8 to the provisions of the Act, simply is not
9 deductible.

10 That concludes my reasons. Thank
11 you.

12 --- Whereupon the excerpt concluded.

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I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom,
the foregoing proceeding.

Shirley Sereney, Shorthand Reporter

CITATION: 2009 TCC 151

COURT FILE NO.: 2008-1269(IT)I

STYLE OF CAUSE: Ron S. Warner and
Her Majesty the Queen and
Alice Warner

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 25, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: February 25, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Thang Trieu

Counsel for the Third Party: Edward G. Spong

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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

