

Docket: 2010-1566(IT)I

BETWEEN:

LAURA L. DEMERAIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 1, 2010, at Saskatoon, Saskatchewan

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Sarah Bird, Student-at-law Brooke Sittler, Counsel

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from the determination of the Minister of National Revenue for the Appellant's 2006 and 2007 Base Taxation Years are dismissed.

Signed at Ottawa, Canada, this 6th day of December, 2010.

“G. A. Sheridan”

Sheridan J.

Citation: 2010TCC628
Date: 20101206
Docket: 2010-1566(IT)I

BETWEEN:

LAURA L. DEMERAIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant, Laura Demerais, is appealing the decision of the Minister of National Revenue that she was not eligible to receive the Canada Child Tax Benefit or the Goods and Services Tax Credit for the 2006 and 2007 Base Taxation Years (June to October 2007, referred to herein as the “Period”). The basis for the Minister’s decision was that during the Period the Appellant’s three children were not “resident” with her, a requirement of eligibility for the Canada Child Tax Benefit and the Goods and Services Tax Credit under sections 122.5 and 122.6 of the *Income Tax Act*, respectively.

[2] The Appellant represented herself and testified at the hearing; also called as a witness was her new partner, James Nelson.

[3] The Respondent subpoenaed the Appellant’s former spouse, Daryl Demerais to testify for the Crown.

[4] The evidence is clear that the Demerais’ marital breakdown was an acrimonious one¹. Having waged their respective campaigns against each other in police stations and courtrooms, by the time of this hearing both the Appellant and her

¹ *Demerais v. Demerais*, 2010 SKQB 149; Exhibit A-9; Respondent’s Book of Authorities, Tab 4.

former spouse were quite adept at painting themselves as the unwitting victim of the other. Their matrimonial battles have left them so entrenched in their respective positions that it was difficult to give much weight to their testimony.

[5] The basic facts are these: there is no dispute that until June 15, 2007 the Appellant, Mr. Demerais and their children were living in the matrimonial home at 118 Short Place, Saskatoon (the “Family Home”). On that day, as a result of a complaint laid by Mr. Demerais, the Appellant was arrested and charged with uttering threats against him. (At some earlier point, the Appellant had laid a complaint of criminal harassment² against Mr. Demerais.) In any event, the Appellant signed an undertaking³ to the Justice of the Peace the effect of which was to bar her from returning to live in the Family Home. As a result, the Appellant spent the last two weeks of June 2007 at the apartment of Mr. Nelson. While I accept that during that time the children moved freely between the Family Home and Mr. Nelson’s apartment and that the Appellant continued to be involved in their day-to-day care, I am not persuaded that the children ever “lived” with her at Mr. Nelson’s apartment. The Appellant’s evidence was that the apartment was essentially a studio; under his tenancy agreement, Mr. Nelson could have no more than one guest in the apartment. In these circumstances it is hard to imagine how the three children, who were still attending school near the Family Home, could have been accommodated there.

[6] As soon as school was out, the Appellant took the children to stay with Mr. Nelson’s parents at their cottage at Dore Lake. However, I accept Mr. Demerais’ evidence that one or more of the children were at the Family Home from time to time during the month of July. In mid-August, the Appellant and Mr. Nelson took the children, without Mr. Demerais’ consent, to visit her parents in Minnesota.

[7] They all returned to Saskatoon on August 29, 2007 just before school started. As she had nowhere else to go, the Appellant moved into the Motel 6 where she and Mr. Nelson stayed until October 13, 2007 when pursuant to an Interim Order of the Court of Court of Queen's Bench dated September 26, 2007⁴ (“Nesting Order”), she was permitted to return to the Family Home under certain conditions. More will be said about this below. While I have no reason to doubt that the children (and possibly their friends) were frequent visitors at the motel, I do not believe that they were living there. There were no receipts documenting their stay or the number of rooms rented.

² Exhibit A-1.

³ Exhibit R-1.

⁴ Exhibit R-2.

Mr. Demerais, on the other hand, was still in the Family Home where, according to his uncontradicted evidence, the children had their own bedrooms and their older brother was present to provide childcare until Mr. Demerais returned from work. Throughout the Period, Mr. Demerais continued to pay all the mortgage and utility costs of the Family Home. The children's school was near the Family Home. In all of the circumstances, it strikes me as highly unlikely that the children were installed as residents of the Motel 6 for the six-week period following their return to school in September 2007. Similarly, while on vacation with their mother in July and August, the children were simply away from their residence; they were holidaying at various locations with their mother, not residing with her⁵.

[8] Further support for the conclusion that the children were resident at the Family Home during the Period lies in the wording of the Nesting Order which dealt with interim custody, access, child and spousal support:

3. the children ... shall remain in the family home and continue to attend the school they now attend but that the [Appellant] and [Mr. Demerais], exercising joint custody and joint parenting, shall occupy the family home in consecutive months as hereafter set out and during that party's month of occupation of the family home shall have the day-to-day care of the children.

...

5. [Mr. Demerais] shall have possession of the family home and day-to-day care of the children until noon on Saturday, October 13, 2007, at which time he will vacate the premises until Saturday, November 17, 2007 at noon.

6. The [Appellant], in turn, shall take over possession of the family home and day-to-day care of the children commencing at noon on October 13, 2007 until Saturday, November 17, 2007 at noon.

7. The said rotation shall continue from month to month thereafter.

...

[Emphasis added.]

[9] In ordering that the children would "remain" in the Family Home, the Family Court judge obviously considered the children to have been residing there during the Period. The Appellant, on the other hand, had no right to be in the Family Home from June to October 13, 2007 by virtue of her undertaking to the Justice of the Peace. Even after that time, under the Nesting Order she was granted only a limited

⁵ *R.(S.) v. R.*, [2004] 1 C.T.C. 2386. (T.C.C.); *Burton v. R.*, [2000] 1 C.T.C. 2727. (T.C.C.).

right to occupy the Family Home for the purpose of complying with the rotational custody provisions.

[10] In all the circumstances, the Appellant has failed to rebut the Minister's assumption that she was not resident with her children during the Period; as the first requirement of section 122.6 has not been satisfied, it is not necessary for me to determine whether the Appellant was the parent who primarily fulfilled the responsibility for the children's care and upbringing. There being no justification for this Court to interfere with the Minister's decision regarding the Appellant's entitlement to either the Canada Child Tax Benefit or the Goods and Services Tax Credit, the appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of December, 2010.

“G. A. Sheridan”

Sheridan J.

CITATION: 2010TCC628

COURT FILE NO.: 2010-1566(IT)I

STYLE OF CAUSE: LAURA L. DEMERAIS AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: December 1, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: December 6, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Sarah Bird, Student-at-law Brooke Sittler, Counsel

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada