

Docket: 2010-1216(IT)I

BETWEEN:

ANGELE M. WATERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 29, 2010, at Saskatoon, Saskatchewan

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jamie Hammersmith

JUDGMENT

The appeal from the redetermination of the Minister of National Revenue for the Appellant's 2008 Base Taxation Year is dismissed, in accordance with the attached Reasons for Judgment.

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

“G. A. Sheridan”

Sheridan J.

Citation: 2010TCC631
Date: 20101206
Docket: 2010-1216(IT)I

BETWEEN:

ANGELE M. WATERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant, Angele Waters, is appealing the determination of the Minister of National Revenue that she was not eligible to receive the Canada Child Tax Benefit for the 2008 base taxation year (July 2009 to June 2010) in respect of her daughter, C., born October 5, 1992.

[2] In her Notice of Appeal, the Appellant also refers to her entitlement to the Canada Child Tax Benefit during the 2004, 2005, 2006 and 2007 taxation years. The Respondent's position is that only the period July 2009 to June 2010 can properly be appealed because the Appellant did not file any notices of objection in respect of any of the other years mentioned in her Notice of Appeal¹ and the time for doing so has now expired. The Appellant did not take issue with this and I accept her explanation that she referred to the other years by way of background and that her appeal is of the 2008 base taxation year only.

[3] The Appellant's claim of entitlement to the Canada Child Tax Benefit is based on what she considers to be the "kidnapping" or, at very least, her former spouse's wrongful taking of her daughter out of her custody on December 15, 2005. But for

¹ Affidavit of Yvonne Provost.

that, she argued, she would have been resident with her daughter and continued to be her primary care giver.

[4] The Respondent's position in respect of the Canada Child Tax Benefit is that there is insufficient evidence to support a finding that any kidnapping occurred. The Crown further asserts that the evidence is clear that from July 2009 to June 2010 the Appellant's daughter was resident with her former spouse, Donald Waters and that he was the parent who fulfilled the primary responsibility for C.'s care and upbringing as required under section 122.6 of the *Income Tax Act*. Accordingly, the Appellant is unable to satisfy the eligibility criteria for the Canada Child Tax Benefit.

[5] The Appellant testified that following their divorce in 1999, she was awarded the custody, care and control of C. pursuant to an Order of the Court of Queen's Bench of Saskatchewan dated September 22, 1999² ("Custody Order"). C. lived with the Appellant until December 15, 2005. On that date Mr. Waters caused her to be taken to live at his farm where she remained until she was no longer a "qualified dependant" under the *Act*. The Appellant said that although she contacted the local RCMP immediately after her daughter's departure and provided them with a copy of the Custody Order, nothing came of it. As she was without the means to hire a lawyer and unsure of how to proceed on her own, she took no further action to recover custody of her daughter.

[6] According to Mr. Waters, on December 15, 2005 his daughter called him to say that she and her mother were living in an interval house facility. As he considered such living accommodations to be unsuitable for his daughter, Mr. Waters asked his sister to go and get C. and bring her to his home. He admitted that he knew the Appellant had been awarded custody of their daughter but he believed that at age 13, C. was capable of choosing where she wanted to live. He consulted his lawyer and on March 10, 2006, he obtained an Interim Order³ ("Permanent Residency Order") which stated at paragraph 2 that C.'s primary residence "shall be with [him], until this matter is further dealt with by the Court". The Appellant admitted she took no action to contest the Permanent Residency Order and it remained in effect during the period July 2009 to June 2010.

² Exhibit A-1.

³ Exhibit R-1.

[7] While I am sympathetic to the Appellant's circumstances, I must decide her entitlement to the Canada Child Tax Benefit based on the criteria under section 122.6; namely, that C. was resident with her from July 2009 to June 2010 and that the Appellant provided primarily for her care and upbringing. The Appellant has the onus of proving the facts to support these findings.

[8] In my view, the evidence shows that C. resided with her father during the period under appeal. While taking his daughter from her mother's custody was contrary to the Custody Order, Mr. Waters' uncontradicted evidence was that C. was old enough to decide and did decide that she wanted to live at her father's home. Furthermore, shortly thereafter the Custody Order was varied by the Permanent Residency Order and it remained in effect during the period July 2009 to June 2010. The fact is that C. remained in her father's residence during that period. As for which parent provided for the care and upbringing of C. during that time, the Appellant did not challenge Mr. Waters' evidence that it was he who saw to her schooling, medical care and so on as contemplated by section 6302 of the *Income Tax Regulations*.

[9] The intention of Parliament is that the Canada Child Tax Benefit should follow the child; this goal is accomplished by placing funding for the support for the child in the hands of the parent actually looking after her. In the present circumstances, the Appellant has failed to show that the Minister was wrong in denying her eligibility for the Canada Child Tax Benefit. For the reasons set out above, the appeal is dismissed.

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

“G. A. Sheridan”

Sheridan J.

CITATION: 2010TCC631

COURT FILE NO.: 2010-1216(IT)I

STYLE OF CAUSE: ANGELE M. WATERS AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: November 29, 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:	Jamie Hammersmith

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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