Docket: 2016-5449(IT)I

BETWEEN:

AIME RUEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 12, 2017 at Saskatoon, Saskatchewan

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Bryn Frape

JUDGMENT

In accordance with the attached Reasons for Judgment:

The appeal with respect to a reassessment made under the *Income Tax Act* for the 2014 taxation year is allowed in part, without costs, and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to deduct $2,284 in respect of legal fees incurred in 2014.

Signed at Antigonish, Nova Scotia, this 25th day of May 2017.

"S. D'Arcy"

D'Arcy J.

Citation: 2017 TCC 93
Date: 20170525
Docket: 2016-5449(IT)I

BETWEEN:

AIME RUEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D'Arcy J.

[1] The Appellant has appealed a reassessment in respect of his 2014 taxation year. In his return for that year, the Appellant claimed, in respect of his son P, non-refundable tax credits under paragraph 118(1)(b) for a wholly dependent person and under paragraph 118(1)(b.1) for a child.

[2] The Appellant also claimed $6,915 in respect of legal fees that he asserts were incurred to collect support payments from his former spouse.

[3] The Minister, when reassessing the Appellant, denied the non-refundable credits and the $6,915 of claimed legal fees.

[4] The Appellant has appealed the reassessment to this Court. The Court heard the appeal under its informal procedure.

[5] Ms. Sherry Turanich, the Appellant's fiancée, testified on behalf of the Appellant.

I. Summary of Facts

[6] The Appellant and his former spouse, Ms. Bobbi Dawn Ruel (to whom I will refer as the "former spouse"), have two children, P and R. Both children lived with the former spouse prior to late May 2014. In late May, P began living with the Appellant.

[7] P lived with the Appellant until mid-December of 2014. He then moved back into his mother's home.

[8] The Court of Queen's Bench for Saskatchewan recognized the change in P's living arrangements in an order issued by the Court on August 15, 2014 (the "August 15 Court Order"). This order states that:

- P shall reside with the Appellant.
- R shall reside with the former spouse.
- The former spouse shall pay child support to the Appellant for P in the amount of $246 per month.
- The Appellant shall pay child support to the former spouse for R in the amount of $1,251 per month.
- P and R resided with the former spouse from September 2013 through to June 2014. For this period, the Appellant is required to pay child support for P and R to the former spouse in the amount of $19,989.60.

[9] The August 15 Court Order notes that the Appellant is to pay the $19,989.60 of child support he owes in respect of the period from September 2013 to June 2014 by making a lump sum payment of $9,405.45 and by setting off the remaining amount of the obligation against the amounts the former spouse is required to pay the Appellant, beginning in June 2014, in respect of child support for P.

[10] Ms. Turanich testified that the Appellant made the $9,405.45 lump sum payment and that the former spouse's support payments for the period after June 2014 were set off against the Appellant's remaining outstanding support payments for the period prior to June 2014.

[11] The Respondent provided the Court with a number of legal bills issued to the Appellant by the law firm Miller Thomson in respect of a matter referred to as "Bobbi Johnstone (Family Matter)". My understanding is that the bills relate to various discussions between the Appellant and his lawyer with respect to the support payments provided for in the August 15 Court Order.

II. The Law

[12] The Respondent's primary argument is that, as a result of the application of subsection 118(5), the Appellant is not entitled to claim the credits provided for under paragraphs 118(1)(b) and (b.1).

[13] Her alternative argument is that if, as a result of the application of subsection 118(5.1), subsection 118(5) does not apply, then the Appellant is still not entitled to claim the credits as a result of the application of paragraphs 118(4)(b) and (b.1).

[14] Subsection 118(5) provides, in part, that an individual may not deduct an amount under paragraphs 118 (1)(b) and (b.1) in respect of a person where the individual is required to pay a support amount to the individual's former spouse in respect of the person.

[15] Subsection 56.1(4) defines support amount, in part, to mean an amount payable or receivable as an allowance on a periodic basis for the maintenance of the children of the recipient, if the recipient has discretion with respect to the use of the amount and is the former spouse of the payer. In addition, the payer and the recipient must be living separate and apart because of the breakdown of their marriage, and the amount must be receivable under an order of a competent tribunal or under a written agreement.

[16] The effect of subsection 118(5) is that a person making support payments under a court order or written agreement to his/her former spouse in respect of a child cannot claim the credits under paragraphs 118 (1)(b) and (b.1) in respect of the child.

[17] However, subsection 118(5.1) provides that subsection 118(5) does not apply if neither the taxpayer nor his former spouse is entitled to deduct an amount under paragraphs 118(1)(b) or (b.1). In other words, subsection 118(5) does not apply if each party is required, under a court order or written agreement, to pay a support amount to the other party.

[18] The final provisions to consider are paragraphs 118(4)(b) and (b.1). These paragraphs provide that only one person is entitled to claim the paragraph 118(1)(b) and (b.1) credits in respect of a particular child. If two or more individuals are entitled to claim the credits, then the parties must agree which individual will claim them. If the individuals cannot agree, then no one is entitled to claim the paragraph 118(1)(b) and (b.1) credits.

III. Application of the Law to the Facts

[19] The parties agree that, pursuant to the August 15 Court Order, the Appellant was required to pay a support amount to the former spouse for P and R for the period from January to June 2014.

[20] The Appellant argues that, pursuant to the August 15 Court Order, the former spouse was required to pay an amount to the Appellant between June 2014 and December 2014 as a periodic allowance for the maintenance of P.

[21] I agree with the Appellant. Paragraphs 1 and 3a) of the August 15 Court Order read as follows:

> 1. The child of the marriage, namely [P], born May 23, 1997, shall reside with the Respondent, Aime Ruel.
>
> . . .
>
> 3. . . .
>
> a) The Petitioner's [Bobbi Ruel's] 2013 income was $32,242.75, rendering a child support quantum payable to the Respondent for [P] in the amount of $246.00 per month.

[22] Similarly, paragraphs 2 and 3b) of the August 15 Court Order provide that the former spouse shall have custody of R and that the child support quantum payable to the former spouse by the Appellant for R was an amount of $1,251 per month based on the Appellant's 2013 income of $150,722.

[23] The order clearly states that the Appellant shall have custody of P and that, as a result, the former spouse shall pay support amounts to the Appellant for P. It also states that the former spouse shall have custody of R and that as a result, the Appellant shall pay support amounts to the former spouse for R.

[24] The Respondent argues that the former spouse did not pay support amounts to the Appellant. She relies on paragraph 3e) of the August 15 Court Order, which provides that the parties shall set off the child support payable by the former spouse to the Appellant under paragraph 3a) against any child support arrears the Appellant owes the former spouse in respect of P and R for the period prior to June 2014.

[25] Counsel for the Respondent argued, relying on the Federal Court of Appeal's decision in *Verones v. The Queen*, ("*Verones*")[1] that, as a result of this set-off, the former spouse was not required to pay a support amount to the Appellant. I do not agree with the Respondent's application of the Federal Court of Appeal's decision in *Verones*.

[26] *Verones* involved a situation where the appellant and his former spouse, who were living separate and apart, were the parents of two children. The children resided 50% of the time with each parent in a shared custody arrangement.

[27] The Federal Court of Appeal found that only one support payment was required to be made under the order of the Court of Queen's Bench of Alberta: a payment by the appellant to his former spouse. The Court noted, at paragraph 3:

> . . . This amount represents a set-off between the total amount the appellant is required to contribute to his children's needs ($2,202), and the amount his former spouse is required to contribute ($439), as set out in the *Federal Child Support Guidelines*, SOR/97-175 (the "Federal Guidelines").

[28] In reaching this finding, the Federal Court of Appeal noted (at paragraph 6) that the appellant's focus on the fact that the Alberta Court of Queen's Bench had determined the amount of the single child support payment by setting off the amount of each parent's obligation under the Federal Guidelines was a distraction. The real issue was "whether or not the appellant is the only parent making a 'child support payment' in virtue of an 'order of a competent tribunal or an agreement', as defined under the Act."

[29] In the current appeal, the August 15 Court Order clearly provides that, effective June 2014, the Appellant and the former spouse were each required to make support payments. The former spouse was required to make support payments to the Appellant in respect of P and the Appellant was required to make support payments to the former spouse in respect of R.

[30] The set-off provided for in paragraph 3e) of the August 15 Court Order represents a method by which the former spouse can pay a portion of the child support she is required to pay in respect of P under the August 15 Court Order. That support payment is effected by the set-off. This is different from the situation

[1] 2013 FCA 69, DTC 5061.

in *Verones* where the Court used the Federal Guidelines to calculate a single support payment in respect of two children.

[31] In summary, each of the Appellant and the former spouse was required, during 2014, to make support payments in respect of P. Therefore, as a result of the application of subsection 118(5.1), subsection 118(5) did not apply to deny the Appellant the ability to claim the paragraph 118(1)(b) and (b.1) credits.

[32] The evidence before me is that the Appellant and the former spouse have not reached an agreement with respect to who should claim the credits under subsection 118(1)(b) and (b.1) for 2014 in respect of P. As a result, the credits are denied under paragraphs 118(4)(b) and (b.1). This is the result since both the Appellant and the former spouse are entitled to claim the paragraph 118(1)(b) and (b.1) credits in respect of P and the two cannot agree on who, between the two of them, should claim the credits.

[33] I will now turn to the legal fees. The Federal Court of Appeal found in *Nadeau v. M.N.R.*[2] that support payments received by a person constitute income from property, and thus, expenses incurred to earn such income, such as legal fees, may be deductible. However, the Federal Court of Appeal also found that, "expenses incurred by the payer of support (either to prevent it from being established or increased, or to decrease or terminate it) cannot be considered to have been incurred for the purpose of earning income, and the courts have never recognized any right to the deduction of these expenditures".[3]

[34] After reviewing the legal bills and the various correspondence between the Appellant and his lawyer, I have concluded that the Appellant paid the legal fees with respect to the following three separate issues: the payment of child support by the Appellant to the former spouse for P and R for the period ending in June 2014, the payment of child support by the Appellant to the former spouse for R for the period beginning in June 2014, and the payment of child support by the former spouse to the Appellant for P for the period beginning in June 2014.

[35] It is my view that it is reasonable to allocate the legal fees equally among the three issues. Therefore, only one-third of the legal fees incurred in 2014 related to the payment of child support by the former spouse to the Appellant. The invoices

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[2] 2003 FCA 400, [2004] 1 F.C.R. 587.

[3] *Ibid*., paragraph 18.

for all services rendered total $6,853. The Appellant is entitled to a deduction for one-third of this amount or $2,284.

[36] For the foregoing reasons, the appeal is allowed in part, without costs. The reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to deduct $2,284 in respect of legal fees incurred in 2014.

Signed at Antigonish, Nova Scotia, this 25th day of May 2017.

"S. D'Arcy"

D'Arcy J.

CITATION:	2017 TCC 93
COURT FILE NO.:	2016-5449(IT)I
STYLE OF CAUSE:	AIME RUEL v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Saskatoon, Saskatchewan
DATE OF HEARING:	April 12, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice Steven K. D'Arcy
DATE OF JUDGMENT:	May 25, 2017

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Bryn Frape

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	n/a

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