

Docket: 2004-3588(IT)I

BETWEEN:

MARY CONROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 14, 2005 at Halifax, Nova Scotia

Before: The Honourable Justice Gerald J. Rip

Appearances

Counsel for the Appellant: Shawn Scott

Counsel for the Respondent: Martin Hickey

JUDGMENT

The appeal from the determination of the Minister of National Revenue for the period July 2001 to October 2003, with respect to the Child Tax Benefits for the 2000, 2001 and 2002 base taxation years, is allowed, and the matter is referred back to The Minister of National Revenue for redetermination on the basis that the appellant was the eligible individual for the qualified dependants

The appellant is entitled to costs, if any.

Signed at Ottawa, Canada, this 4th day of March 2005.

" Gerald J. Rip"

Rip J.

Citation: 2005TCC177
Date: 20050304
Docket: 2004-3588(IT)I

BETWEEN:

MARY CONROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rip J.

[1] Mary Conroy appeals from an assessment of tax in which the Minister of National Revenue determined that she was not the eligible individual, within the meaning of section 122.6 of the *Income Tax Act*, ("Act") during base years 2000, 2001 and 2002 and assessed an amount of \$12,119.62 for the recovery and overpayment of benefits received for the said base years.

[2] The facts are not in issue. In 1986 Mary Conroy married David Conroy. There were two children born of the marriage, a daughter born in 1986 and a son born in 1990. In July 1997 the Conroys separated. After the separation and until February 2004 the two children resided with their father.

[3] Before the separation Mrs. Conroy received Child Tax Benefits. These Child Tax Benefits were deposited directly into a Canadian Imperial Bank of Commerce ("CIBC") bank account under the name of David Conroy and Mary Conroy. In July 1997, Mrs. Conroy had her name removed from the bank account and had no further access to any funds from this account. Child Tax Benefits continued to be deposited into the CIBC bank account.

[4] In July 1998, Mrs. Conroy and David Conroy signed a Corollary Relief Judgment and Agreement and Minutes of Settlement issued on July 11, 2000. Paragraph 10 of the Agreement provided that:

The parties agree that the Husband shall claim for income tax purposes whatever deduction or credit in respect of the children of the marriage that may be available pursuant to the Income Tax Act (including child dependency, or marriage equivalent) and shall be entitled to receive child tax credit.

[5] Based on this Agreement, Mrs. Conroy stated that she assumed that David Conroy was claiming and receiving the Child Tax Benefits with respect to the children.

[6] Mrs. Conroy never notified the Minister that she ceased to be an eligible individual in respect of the children pursuant to subsection 122.62(4) of the *Act*. However in each of the relevant taxation years, she filed an income tax return which included an application for a Goods and Services Tax/Harmonized Sales Tax credit ("GST-HST") on which she marked a box that she had no children; she did not claim any dependants in her income tax return for 1998. When she was laid off from her job in 2002, she claimed employment insurance as a single person without dependants. In her view the Minister had knowledge that she did not have custody of the children; her entries on her income tax returns constituted notice to the Minister of the fact that she ceased to be an eligible individual in accordance with subsection 122.62(4).

[7] Mrs. Conroy acknowledged she did receive regular Child Tax Benefit Notices informing her that money was, or would be, deposited into the CIBC bank account for the particular period. She said since she separated from David Conroy, Mr. Conroy has not given her any money for the children. She also acknowledged that in October 2003 she received a cheque related to the Child Tax Benefit credit in the amount of \$447.31. She testified that she reported to Mr. Conroy that she received the cheque and, the basis of her conversation with Mr. Conroy, she

understood that she was to return the money to him since the money belonged to him. She did so in October 2003.

[8] Mr. Kirk Fagan, an employee of the Child Tax Benefit Division of the Canada Customs and Revenue Agency ("CCRA"), explained that when the CCRA made a direct deposit to a designated bank account the name of the beneficiary does not appear on any material sent to the bank. All that is sent to the bank is the number of the bank, the transit number and the client's account number. The names of the payor and payee or beneficiary of account are "not necessary". The CCRA does not confirm the name of any beneficiaries. Until the CCRA is notified to the contrary all Child Tax Benefits go directly to the designated bank account, even if the beneficiary (payee) of the payment has no access to the account.

[9] In the case at bar, the tax authority started making direct deposits to the CIBC bank account in August 1996 and continued making payments until September 2003.

[10] The administrators in charge of the Child Tax Benefits program refused to acknowledge notice that Mrs. Conroy was no longer the eligible person notwithstanding her income tax returns suggested that she was not primarily fulfilling the responsibility for the care and upbringing of her children. Mr. Fagon declared that the CCRA does not recognize that part on the first page of a tax return concerning a claim for GST-HST credits since "the client may or may not apply for GST". Or, he added, only one spouse may apply for GST. And up to 2001, he stated, both parents who are separated could have applied for GST for different children.

[11] Two things are clear. Firstly, Mrs. Conroy did not give specific notice to the Minister that she had ceased to be an eligible individual, as proposed by subsection 122.62(4) of the *Act*, and secondly, except for the cheque in the amount of \$447.31 which she received in October 2003 and which she immediately forwarded to Mr. Conroy, Mrs. Conroy received no payment of Child Tax Benefits. All the payments were made to the CIBC bank account, the sole owner of which was Mr. Conroy.

[12] As far as the notice contemplated by section 122.62(4) is concerned, the Minister of National Revenue did have notice of several facts and, had he considered them, he probably would have concluded that Mrs. Conroy was no longer the eligible individual. These facts include that she did not claim any dependants in filing her income tax, that she did not claim any children with respect to her GST-HST credit and the Minister did adopt information from her tax return; namely, her new address, to communicate with Mrs. Conroy. In this computer age, when the Minister may compare payments and receipts between various persons, he had information available to him, had he taken the time and opportunity, to record in his books and records that the eligible individual was the person actually receiving the Child Tax Benefits, namely Mr. Conroy.

[13] As I have already concluded, Mrs. Conroy never received payments of Child Tax Benefits and never had access to the money. It was Mr. Conroy who was the eligible individual and it was he who actually received the Child Tax Benefits to which he was entitled.

[14] It would be intolerable if Mrs. Conroy had to return money she never received and, at the same time, the tax authority would pay Mr. Conroy a second time Child Tax Benefits he already received for the period in issue.

[15] In these circumstances it is best for the appeal to be allowed, with costs.

Signed at Ottawa, Canada, this 4th day of March 2005.

"Gerald J. Rip"

Rip J.

CITATION: 2005TCC177
COURT FILE NO.: 2004-3588(IT)I
STYLE OF CAUSE: MARY CONROY AND THE QUEEN
PLACE OF HEARING: Halifax, Nova Scotia
DATE OF HEARING: January 14, 2005
REASONS FOR JUDGMENT BY: Gerald J. Rip
DATE OF JUDGMENT: March 4th, 2005

APPEARANCES:

Counsel for the Appellant: Shawn Scott
Counsel for the Respondent: Martin Hickey

COUNSEL OF RECORD:

For the Appellant:

Name: Shawn Scott
Firm: Teryl Scott, Lawyers Inc.

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario