

Docket: 2007-1530(IT)I

BETWEEN:

DIANE DUFOUR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on October 30, 2007, at Montréal, Quebec  
Before: The Honourable Justice Alain Tardif

Appearances:

Appellant's Representative: Michel Morin  
Counsel for the Respondent: Annick Provencher

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**JUDGMENT**

The appeal from the notice of redetermination whereby the Minister of National Revenue denied the appellant the Canada Child Tax Benefit for the periods from February to June 2005 and July to October 2005, in respect of the 2003 and 2004 base taxation years, is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment, taking into account the fact that the appellant was indeed the eligible parent for the period at issue, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 7th day of December 2007.

“Alain Tardif”

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Tardif J.

Citation: 2007TCC701  
Date: 20071207  
Docket: 2007-1530(IT)I

BETWEEN:

DIANE DUFOUR,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Tardif J.

[1] This is an appeal from a decision wherein the respondent determined that the appellant was not the eligible individual for the period from February to June 2005 and from July to October 2005, thereby generating overpayments of \$383.37 for the 2003 base taxation year and \$301.57 for the 2004 base taxation year.

[2] The respondent's decision was based upon the following assumptions of fact:

- a) The appellant is the spouse of Michel Morin;
- b) Michel Morin is the father of Marie-Pier Morin, born November 11, 1989;
- c) Marie-Pier Morin's mother is Chantal Perreault;
- d) During the periods at issue, Marie-Pier Morin was living in her mother's home;
- e) During the periods at issue, the Minister determined that Ms. Perreault was primarily fulfilling the responsibility for the care and upbringing of Marie-Pier Morin.

[3] The appeal raises the following issue:

Did the Minister correctly revise the Appellant's child tax benefit amounts and correctly determine that the overpayments were \$383.37 for the 2003 base taxation year and \$301.57 for the 2004 base taxation year?

[4] Only an eligible individual within the meaning of section 122.6 of the *Income Tax Act* (the Act) may apply for the Canada Child Tax Benefit. An eligible individual is defined as follows in section 122.6 of the Act:

"eligible individual" in respect of a qualified dependant at any time means a person who at that time

- (a) resides with the qualified dependant,
- (b) is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of the qualified dependant,
- (c) is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,
- (d) is not described in paragraph 149(1)(a) or 149(1)(b), and
- (e) is, or whose cohabiting spouse or common-law partner is, a Canadian citizen or a person who
  - (i) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act,
  - (ii) is a temporary resident within the meaning of the Immigration and Refugee Protection Act, who was resident in Canada throughout the 18 month period preceding that time,
  - (iii) is a protected person within the meaning of the Immigration and Refugee Protection Act,
  - (iv) was determined before that time to be a member of a class defined in the Humanitarian Designated Classes Regulations made under the Immigration Act,

and for the purposes of this definition,

- (f) where the qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and

upbringing of the qualified dependant is presumed to be the female parent,

(g) the presumption referred to in paragraph 122.6 eligible individual (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

252(1). In this Act, words referring to a child of a taxpayer include

...

(c) a child of the taxpayer's spouse or common-law partner.

[5] The criteria for determining what constitutes care and upbringing of the child are set out in section 6302 of the *Income Tax Regulations* (the Regulations):

**6302.** For the purposes of paragraph (h) of the definition of "eligible individual" in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:

(a) the supervision of the daily activities and needs of the qualified dependant;

(b) the maintenance of a secure environment in which the qualified dependant resides;

(c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;

(d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;

(e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;

(f) the attendance to the hygienic needs of the qualified dependant on a regular basis;

(g) the provision, generally, of guidance and companionship to the qualified dependant; and

(h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides

[6] The appellant was represented by her spouse, the father of the minor child in question in this appeal. He began by admitting the facts set out in paragraphs a), b) and c), which I shall reproduce hereunder:

- a) The appellant is the spouse of Michel Morin;
- b) Michel Morin is the father of Marie-Pier Morin, born November 11, 1989;
- c) Marie-Pier Morin's mother is Chantal Perreault;

[7] From the outset, the appellant's position was delicate—precarious even—because two rather important facts supported the respondent's decision, namely, that the father was making support payments to the child's mother and that he was doing so for the period covered by the appeal.

[8] The appellant herself, the child's father acting as appellant's representative, Mr. Denis Grégoire and the mother of the mother of the teenage girl, or, in other words, the girl's maternal grandmother, all testified in support of the appellant's case.

[9] The respondent's witness was the teenage girl's mother, defined by the respondent as the eligible parent. She stated that the teenage girl had resided with her at all times during the period from February to June 2005 and from July to October 2005.

[10] In support of her testimony, the mother emphasized the fact that the address for her daughter appearing in various school documents and others was the same as her address. She spoke of her feelings for her daughter.

[11] Meanwhile, the father, who, as stated above, was acting as the representative of his common-law wife, the subject of the overpayment claim, asserted very firmly but clearly that the teenage girl had resided with him and his wife during the period in question. He explained that this was, in fact, his daughter's choice—a choice he had always respected. On several occasions, he expressed his frustration towards the child's mother and her audacity in disputing the indisputable fact of the child's place of residence.

[12] The appellant also testified. Forthcoming and reasonable in her testimony, she explained plainly and clearly that, indeed, the child had resided with her and her husband. She further stated that she herself had taken the initiative of informing the office responsible for determining eligible-individual status that the child had decided to return to her mother.

[13] I do not think it possible to have a more absolute and total contradiction: each parent claims that the teenager resided with them over a clearly defined period. However, as it happens, this obvious contradiction does not pose a serious problem because the mother's testimony simply does not measure up to the appellant's. The former was vague, confused and unspecific, and the mother was manifestly uncomfortable, whereas the appellant testified plainly, precisely and calmly. I have no doubts about the sincerity of the appellant's testimony. The effect of this, of course, is that the mother's substandard testimony will be rejected.

[14] Whom to believe? Which version to accept? Which version to reject? I have no hesitation in rejecting the mother's version and accepting the version of the father's spouse, namely the appellant in this case.

[15] Why do I reject the mother's version? I do not deny that the mother is someone who had the best interests and welfare of her daughter at heart. I am even persuaded that she did what she considered needful to enable her daughter to become a mature, responsible adult. Is that sufficient reason to conclude that her daughter resided in her home during the period in question? It actually could be sufficient, especially since she was receiving support payments and also had custody of the child.

[16] In the instant case, I question the veracity of her testimony relating to the child's place of residence for the period at issue. In this regard, she relied on documents indicating that her daughter's address was the same as hers, which was completely legitimate, given that she had custody. As an aside, I should say that if the evidence supporting the appellant's case had not been so clearly preponderant I would have dismissed the appeal.

[17] The appellant testified plainly, specifically and very reasonably, with neither malice nor frustration. She explained that when the teenager expressed the desire to reside in the appellant's home with her father, the appellant's spouse, she took her in.

[18] She also stated that, similarly, she respected the girl's wish to live in a different place at the end of the period. A few hours after her departure, the appellant, on her own initiative, went to the authorities responsible for determining the eligible parent to inform them that the child was no longer residing in their home.

[19] The appellant's representative called on a friend of the couple, Denis Grégoire, to testify. Mr. Grégoire stated that he went to the appellant's home on a regular basis and saw the teenager there quite often—regularly even. According to him, she was in fact living there.

[20] The appellant's representative, Mr. Morin, asked the maternal grandmother to testify against her own daughter. The grandmother acknowledged that her granddaughter had resided in the home of the appellant and her former son-in-law, but she was unable to provide the exact dates. As a result, the testimony has no effect on the evidence, other than to highlight the fact that this was a very bold move that might have just as easily backfired. Therefore, the effect of the testimony is neutral. However, the decision to have this witness testify is indicative of an unusual level of confidence on the part of the appellant and her husband as to the merit of the appeal.

[21] The appellant's husband recently initiated judicial proceedings, specifically an application to vary corollary relief signed on September 6, 2007 (Exhibit A-2). On its face, the application was made subsequent to the period at issue; however, paragraph 4 of the application states as follows:

[TRANSLATION]

4. Since the last order was made awarding custody of Marie-Pier and Jean-Michel to their mother, a number of changes have occurred, namely that:
  - a) Marie-Pierre lives in an apartment and has a job;
  - b) the child Marie-Pierre lived with the applicant from January 25, 2005 to October 1, 2005;
  - c) on July 30, 2007, Jean-Michel left his mother's residence and now lives full-time with his father;

[22] The application is supported by an affidavit. It was consented to and judgment followed.

[23] The facts set out in paragraph 4 of the application are clear and specific. If these were false allegations, the mother should have ensured that they were corrected. Furthermore, the Court cannot imagine why the father would have considered it a good idea to assert such things in his application if they were lies.

[24] These are not anodyne allegations that the mother could refute on the basis of a misinterpretation or a mistaken perception; they are significant assertions. On its own, this is not sufficient cause for finding that the appellant's case is valid; it does however validate the strong perception dictated by the evidence.

[25] And that perception lines up with the logic of the appellant's very credible testimony, confirmed by her husband's and a third party's testimony. Added to this, there was the appellant's bold move of calling the maternal grandmother to the witness box: clearly ill-at-ease, she confirmed that the teenager did in fact live with the appellant and her husband, for a period of time she was unable to specify.

[26] For all of these reasons, I am allowing the appeal. The preponderance of the evidence indicates that, during the periods February to June 2005 and July to October 2005, she was the eligible parent for the 2003 and 2004 base taxation years.



Signed at Ottawa, Canada, this 7th day of December 2007.

“Alain Tardif”

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Tardif J.

Translation certified true  
on this 28th day of January 2008.

Stefan Winfield, Translator

CITATION: 2007TCC701  
COURT FILE NO.: 2007-1530(IT)I  
STYLE OF CAUSE : Diane Dufour and Her Majesty the Queen  
PLACE OF HEARING: Montréal, Quebec  
DATE OF HEARING: October 30, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif  
DATE OF JUDGMENT: December 7, 2007

APPEARANCES:

Appellant's Representative: Michel Morin  
Counsel for the Respondent: Annick Provencher

COUNSEL OF RECORD:

For the Appellant:

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