

Docket: 2006-1153(IT)I

BETWEEN:

LAURIE D. RANDALL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 3, 2006, at Victoria, British Columbia

Before: The Honourable Justice D.W. Beaubier

Appearances:

Counsel for the Appellant:

Trudi L. Brown, Q.C

Counsel for the Respondent:

Sara Fairbridge

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

The Appellant is awarded her party and party costs for the appeal.

Signed at Saskatoon, Saskatchewan, this 12th day of October, 2006.

"D.W. Beaubier"

Beaubier, J.

Citation: 2006TCC549
Date: 20061012
Docket: 2006-1153(IT)I

BETWEEN:

LAURIE D. RANDALL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Beaubier, J.

[1] This appeal pursuant to the Informal Procedure was heard at Victoria, British Columbia, on October 3, 2006. The Appellant was the only witness.

[2] The particulars in dispute are set out in paragraphs 6, and 10 to 15, inclusive, of the Amended Reply to the Notice of Appeal. They read:

6. By Notice dated July 21, 2005 the Minister reassessed the Appellant's 2003 taxation year to include \$9,000.00 of support payments.

...

10. In reassessing tax for the Appellant's 2003 taxation year, and in confirming the reassessment, the Minister assumed the same facts, as follows:

a) ~~the Appellant and James Broad ("Mr. Broad") cohabited from April 1, 1989 until July 1, 1990;~~

a) the Appellant is the former common-law partner of James Broad ("Mr. Broad");

- ~~b) during their relationship, the Appellant and Mr. Broad had a child, Matthew James Broad, (“Matthew”), who was born on October 1, 1989;~~
- ~~e)b) for the entire 2003 taxation year, the Appellant and Mr. Broad lived separate and apart;~~
- ~~d) between January 1, 2003 and December 31, 2003, Mr. Broad was required to pay the Appellant \$750.00 per month for the maintenance of Matthew on the 1st day of each month in accordance with a written agreement dated July 1, 1990;~~
- c) between January 1, 2003 and December 31, 2003, Mr. Broad was required to pay the appellant \$750.00 per month in accordance with a written agreement dated February 15, 1995 (the “1995 Agreement”);
- ~~e)d) the Appellant received from Mr. Broad a total of \$9,000.00 during the 2003 taxation year calculated at \$750.00 per month for twelve months;~~
- ~~f) the Minister determined that the Appellant was required to include the support payments received from Mr. Broad as a source of income on her 2003 T1 Tax Return; and~~
- ~~g) there were no other agreements dated after the July 1, 1990 agreement under which support payments were required to be made.~~

B. OTHER MATERIAL FACTS

- 11. a) the Appellant and Mr. Broad cohabited from April 1, 1989 until July 1, 1990;
- b) during their relationship, the Appellant and Mr. Broad had a child, Matthew James Broad, (“Matthew”), who was born on October 1, 1989;
- c) the Appellant and Mr. Broad entered into an agreement on July 1, 1990 (the “1990 Agreement”);
- d) between January 1, 2003 and December 31, 2003, Mr. Broad was required to pay the Appellant \$750.00 per month for the maintenance of Matthew, on the 1st

day of each month in accordance with the 1990 Agreement;

e) the 1995 Agreement did not specify whether the payments were for the maintenance of the Appellant or for the maintenance of Matthew; and

f) other than the 1995 Agreement, there were no agreements dated after the 1990 Agreement under which support payments were required to be made.

C. ISSUES TO BE DECIDED

11.12. The issue is whether the Appellant is required to include \$9,000.00 of support payments received from Mr. Broad as a source of income in the 2003 taxation year.

C.D. STATUTORY PROVISIONS RELIED ON

12.13. He relies on section 56.1 and paragraph 56(1)(b) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the “*Act*”).

D.E. GROUNDS RELIED ON AND RELIEF SOUGHT

13.14. He respectfully submits that the Minister properly included the support payments as income in the Appellant’s 2003 income in accordance with paragraph 56(1)(b) of the *Act*.

15. He further submits that whether the support payments were made in accordance with the 1990 Agreement or the 1995 Agreement they constitute support amounts pursuant to subsection 56.1(4) of the *Act*.

14.16. He further submits that there were no ~~other~~ agreements dated after the 1995 Agreement ~~July 1, 1990 agreement~~ under which support payments were required to be made, and as a result, there is no “commencement day” as defined in subsection 56.1(4) of the *Act*.

15.17. He requests that the appeal be dismissed.

[3] Assumptions 10 (a), (b), and (d) were not refuted. Assumption (c) is in dispute.

[4] The Appellant and James Broad lived together in Vancouver from April 1, 1989 until July 1, 1990 and had a son, Matthew, on October 1, 1989. After July 1, 1990 they signed a Separation Agreement drawn by Mr. Broad, a lawyer, (Exhibit A-1, Tab 3) dated July 1, 1990. Paragraph 3 of that Agreement agreed that Mr. Broad would pay the Appellant maintenance for Matthew of \$750 per month from July 1, 1990 until Matthew attained 19 years of age. Paragraph 1 stated that it would remain in effect until both parties agreed in writing to terminate the Agreement. The Appellant received and reported the \$750 per month for income tax purposes.

[5] The couple resumed cohabitation in Vancouver from August 1, 1993 until they separated in February, 1995, and Mr. Broad ceased paying the \$750 per month during that period. They did not sign any terminating Agreement and the Appellant has not claimed \$750 per month for that 18 months for Matthew.

[6] This Court finds that this cohabitation terminated the Separation Agreement dated July 1, 1990.

[7] On February 15, 1995, Mr. Broad's lawyer wrote the following letter (Exhibit A-1, Tab 4) to Ms. Randall's (then Laurie Bermingham) lawyer:

...
"February 15, 1995

File No. 66166

Cohen Fraser
211 – 7313 – 120th Street
Delta, BC
V4C 6P5

Attention I. Greer Gibson

Dear Sir:

Re: Bermingham v. Broad

Enclosed is a cheque in the amount of \$750.

For tax purposes, this must be made pursuant to a written agreement. I would propose the agreement simply provide that Mr. Broad pay \$750 on the 15th of each month, without prejudice to either parties rights, and that the agreement can be cancelled by either party on 15 days notice.

I would also ask that you sign this letter as your client's agent indicating your approval of this arrangement and that this letter so endorsed will constitute the written agreement.

You advised me that there may need to be some adjustment of the payment dates in the first 30 days due to moving expenses and the like. If so, please provide the details and I will obtain instructions.

Yours very truly,

BAUMGARTEL GOULD

(signature)

FRED D. BANNING"

...

The Appellant received and cashed the cheque. Adjacent to Mr. Banning's signature there is a horizontal hand-made line with a couple of vertical strokes; Ms. Randall had not seen that before and did not authorize any signature to this letter. She did not agree to the terms of this letter.

[8] A number of points arise respecting this letter:

1. The purpose of the \$750 is not specified. It may not be for any support of anyone.
2. The scribble on the right side of the letter was never identified as belonging to anyone. Ms. Randall did not authorize her lawyer to sign that letter and never saw this scribble; it is not on her copy of this letter.
3. No commencement or termination date is set.

[9] In view of the foregoing, this letter does not cause the \$750 to constitute a "support amount" as defined in subsection 56.1(4), which is "an amount ... receivable on a periodic basis for the maintenance of the recipient, children of the recipient or both ... and the amount is receivable under ... a written agreement."

[10] Mr. Broad paid that \$750 per month to Ms. Randall until June 18, 1999 when he sent Ms. Randall a copy of his 1988 Income Tax Return (Exhibit A-2) and

a copy of the Federal Child Support Amounts (Exhibit A-3). He attached 2 “stickies” to the Income Tax Return (Exhibit A-2) which read:

“Laurie

This is this year’s return which I filed on June 15th (i.e.) a few days ago. As I operate through a company I am able to defer my income one year, So this represents my income from two years ago. JB”

“Laurie

chqs June 18/99
July 1/99
Aug 1/99 @ \$750.⁰⁰

Can you please return the balance of post-dated cheques that you have @ \$750 to me by the end of the month. JB”

[11] In Exhibit A-2, Mr. Broad yellow panned \$40,000 income, monthly award for 1 child \$343, and from July 1, 1999 until December 1, 1999 he sent Ms. Randall cheques for \$343 per month, which she cashed. But on November 18, 1999, Mr. Broad’s lawyer sent Ms. Randall his “trust cheque in the amount of \$2,442 representing catch-up in the arrears of maintenance for your son, Matthew including the December, 1999 payment.” Appellant’s counsel calculated the \$2,442 to represent the following:

$$\begin{array}{r} \$ 750 \\ - 343 \\ \hline \$ 407 \\ \hline \times 6 \text{ months (July 1 – December 1)} \\ \hline \$2,442 \end{array}$$

and suggested that this represented Mr. Broad’s attempt to insert himself into deductibility under the *Income Tax Act*.

[12] At about the same time, Mr. Broad apparently began an action in Family Court for custody and access to Matthew (see Exhibits R-2 and R-3 of January, 2000). Ms. Randall counterclaimed for sole custody and child support. But apparently nothing came of the support counterclaim.

[13] In view of the foregoing, the Court finds:

1. The Agreement of July 1, 1990 (Exhibit A-1, Tab 3) terminated when the parties resumed cohabitation on August 1, 1993.
2. The letter of February 15, 1995 was never a written Agreement for the maintenance of the Appellant or Matthew.
3. The various cheques and stickies of 1999 did not constitute a written Agreement for the maintenance of the Appellant or Matthew.

[14] Therefore this matter is remitted to the Minister of National Revenue for reconsideration and reassessment on the basis that the Minister did not properly include support payments of \$9,000 as income of the Appellant in 2003 in accordance with paragraph 56(1)(b) of the *Act*.

[15] The Appellant is awarded her party and party costs for the appeal.

Signed at Saskatoon, Saskatchewan, this 12th day of October, 2006.

"D.W. Beaubier"

Beaubier, J.

CITATION: 2006TCC549

COURT FILE NO.: 2006-1153(IT)I

STYLE OF CAUSE: LAURIE D. RANDALL AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Victoria, British Columbia

DATE OF HEARING: October 3, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: October 12, 2006

APPEARANCES:

Counsel for the Appellant:	Trudi L. Brown, Q.C.
Counsel for the Respondent:	Sara Fairbridge

COUNSEL OF RECORD:

For the Appellant:

Name: Trudi L. Brown, Q.C.

Firm: Brown Henderson

For the Respondent:

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