

Docket: 2007-4296(IT)I

BETWEEN:

MAUREEN STUART,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 25, 2008 at Regina, Saskatchewan

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Brooke Sittler

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2005 taxation year is dismissed in accordance with the attached Reasons for Judgment.

The filing fee of \$100 shall be refunded to the Appellant.

Signed at Ottawa, Canada, this 21st day of May, 2009.

“G. A. Sheridan”

Sheridan J.

Citation: 2009TCC265
Date: 20090521
Docket: 2007-4296(IT)I

BETWEEN:

MAUREEN STUART,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant, Maureen Stuart, is appealing the reassessment by the Minister of National Revenue which included child support arrears of \$13,500 in her 2005 income. The Appellant is challenging the reassessment on the basis that the amount was a lump sum payment and as such, was not “receivable as an allowance on a periodic basis” as contemplated by the definition of “support amount” under subsection 56.1(4) of the *Income Tax Act*. The Appellant was the only witness to testify. She gave her evidence in a clear and credible fashion.

[2] As a preliminary matter, the Appellant had originally challenged the manner in which the Minister had calculated the tax owing on the arrears. However, at the hearing, the Appellant advised the Court that she accepted the explanation of counsel for the Respondent that it would not have been to her benefit to have the tax payable calculated under the section 120.31 formula¹.

[3] Turning, then, to the matter in dispute, the Appellant’s son was born March 31, 1986. In 1988, she and the father of the child (the “Father”) separated. By written agreement dated July 13, 1988² (the “Written Agreement”), the Father effectively left

¹ Exhibit R-1.

² Exhibit R-2.

their son to the Appellant's care and agreed to pay \$100 on the first day of each month until he was 16 years old. Because of the Father's chronic failure to pay the amounts due under the Written Agreement in a timely fashion, on March 7, 1991, the Appellant filed it with the Saskatchewan Court of Queen's Bench pursuant to *The Family Maintenance Act*³. Throughout the term of the Written Agreement and beyond, the Father continued to be behind in his support obligations: as of November 1994, he owed arrears of \$4,400⁴. By August 2005 he owed \$13,500⁵.

[4] That amount was ultimately recovered from the Father when the Appellant's son (by that time, 19 years old) happened to learn through a relative that the Father was living in Alberta. Somehow, the appropriate authorities were notified and, as a result of their efforts, the Appellant received a payment from Maintenance Enforcement for \$13,500. That amount was included in her income for 2005, in all likelihood, the result of the Father having claimed a deduction in that year for the amount he had to be forced to pay.

[5] On cross-examination, the Appellant was candid in her admissions that no other agreements or court orders had been made since the Written Agreement; that no part of the \$13,500 represented the payment of interest; that she did not have to use the \$13,500 in any particular way; and that if the Father had paid the amounts due under the Written Agreement, by August 2005 they would have totalled \$13,500.

[6] Unfortunately for the Appellant, this is sufficient to bring the arrears she received in 2005 within the meaning of the term "support amount" making it necessary for her to include it in her income for that year. The case law has established that "[s]o long as the agreement provides that the moneys are payable on a periodic basis, the requirement of the subsection is met. The payments do not change in character merely because they are not made on time."⁶ The Father's default in his payments under the Written Agreement does not alter the fact that the legislation required the Appellant to include in her income the arrears he finally paid in 2005. Accordingly, the Appellant's appeal must be dismissed.

³ Exhibit R-3.

⁴ Exhibit R-4.

⁵ Exhibit R-5.

⁶ *Sills v. Minister of National Revenue*, [1985] 1 C.T.C 49 at paragraph 9 (F.C.A.); referred to in *Peterson v. R.*, [2005] 3 C.T.C 277 at paragraphs 32 to 34. (F.C.A.).

[7] As a final matter, in view of the Appellant's evidence at the hearing regarding her financial difficulties (which information she omitted to put before the Court when requesting that the filing fee of \$100 in respect of her appeal be waived), my Order of October 24, 2007 is hereby amended pursuant to paragraph 172(1)(a) of the *Tax Court of Canada Rules (General Procedure)* to grant her request. The filing fee of \$100 shall be refunded to the Appellant.

Signed at Ottawa, Canada, this 21st day of May, 2009.

"G. A. Sheridan"

Sheridan J.

CITATION: 2009TCC265

COURT FILE NO.: 2007-4296(IT)I

STYLE OF CAUSE: MAUREEN STUART AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: November 25, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: May 21, 2009

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Brooke Sittler

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada