

BETWEEN:

BERNARD SAVOY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 23, 2010, at Moncton, New Brunswick.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the Appellant: Doug Northrup

Counsel for the Respondent: Gregory B. King

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

The appeal from the assessment made under the *Income Tax Act* for the 2006 taxation year is dismissed.

In light of the divided result, no costs are awarded.

Signed at Ottawa, Canada, this 7th day of February 2011.

"Robert J. Hogan"

Hogan J.

Citation: 2011 TCC 73
Date: 20110207
Docket: 2010-186(IT)I

BETWEEN:

BERNARD SAVOY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Hogan J.

[1] The Appellant, Bernard Savoy, claimed a medical expense tax credit pursuant to subsection 118.2(1) of the *Income Tax Act* (the “*Act*”) in respect of the costs incurred for renovating his garage in 2005 and 2006 for the purpose of transforming it into a living unit for his brother who was quadriplegic. The Minister of National Revenue (the “Minister”) disallowed the credit.

[2] The Appellant’s brother was living at the Villa Providence residence in Shediac, New Brunswick. He had no mobility and required full-time attendant care. Apparently, the Appellant’s brother was frustrated with his medical condition and displayed aggressive behaviour towards the staff of the institution. The director of the Villa Providence suggested to the family that the Appellant’s brother be transferred to a different facility, far away from his family. The Appellant was not comfortable with this and transformed his garage into an open living space with a nursing station and the equipment necessary to provide the proper care to his brother. Prior to completion of the renovations, the Appellant’s brother passed away without ever having lived in the accommodation built for him by the Appellant.

[3] The Minister’s primary contention is that the Appellant’s brother was not a “dependant” of the Appellant within the meaning of subsection 118(6) of the *Act*. Subsection 118.2(1) makes it clear that a taxpayer can claim a medical expense credit in respect of expenses incurred for a person other than his/her spouse or children only

if the person is a dependant. The definition of “dependant” requires that the Appellant’s brother have been dependent on the Appellant for support in 2005 and 2006. The Respondent argues that this means that he had to be dependent on the Appellant for financial support, which involves the provision of the basic necessities of life, such as food, shelter and clothing. The evidence shows that the Appellant used both his own funds and borrowed money to complete the renovations. His brother did not provide any capital for that purpose. The renovations were done so that the Appellant’s brother would have suitable accommodation where he could be properly cared for near his family. In my opinion, this is precisely the type of support that is contemplated by the definition of dependant.

[4] The Respondent argues that the Appellant intended to charge his brother some rent to defray the costs of the renovations. In and of itself this does not mean that the Appellant was not providing support to his brother. The Appellant’s brother was seriously ill at that time and died not long afterwards. The Appellant incurred a significant capital expense with the real risk that he would never recover that expense or any part of it. I am convinced he did so only because he was motivated by providing adapted shelter for his brother. It is clear that the Appellant would not have incurred the capital expense for a stranger.

[5] The Respondent’s secondary contention is that the Appellant is precluded from claiming the expenses incurred after February 22, 2005 because paragraph 118.2(2)(l.2), the provision relied on by the Appellant, excludes expenses incurred after that date if they are of a type that would typically be expected to increase the value of the Appellant’s home.

[6] I note that the Appellant incurred at least \$15,000 of renovation costs prior to February 22, 2005. Clause D of subsection 118.2(1) limits the amount of medical costs in respect of a dependant to the lesser of the actual cost and \$10,000. The Appellant reached the allowable maximum before February 22, 2005. I therefore do not need to decide the Respondent’s second point as the expenses incurred after February 22, 2005 would have been inadmissible for the medical expense tax credit even if I had found that they met the new condition, because the \$10,000 limit for 2005 was attained by virtue of the \$15,000 in medical expenses incurred prior to February 22, 2005. The Appellant failed to provide any proof of the expenses he incurred in 2006 and for this reason alone his appeal must fail in respect of that year.

[7] For the reasons noted above, the assessment for the 2005 taxation year is referred back to the Minister for reconsideration and reassessment on the basis that the Appellant is entitled to a medical expense tax credit for \$10,000 in medical

expenses incurred with respect to his brother. The Appellant's appeal for the 2006 taxation year is dismissed. In light of the divided result, no costs are awarded.

Signed at Ottawa, Canada, this 7th day of February 2011.

"Robert J. Hogan"

Hogan J.

CITATION: 2011 TCC 73

COURT FILE NO.: 2010-186(IT)I

STYLE OF CAUSE: BERNARD SAVOY v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Moncton, New Brunswick

DATE OF HEARING: November 23, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: February 7, 2011

APPEARANCES:

Agent for the Appellant: Doug Northrup

Counsel for the Respondent: Gregory B. King

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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