

Docket: 2017-3726(IT)I

BETWEEN:

IAN STEVENSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 26, 2018, at Calgary, Alberta

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Aminollah Sabzevari

JUDGMENT

IN ACCORDANCE with the Reasons for Judgment attached, the appeal from the Notice of Confirmation dated June 20, 2017 made under the *Income Tax Act*, RSC 1985, c.1, as amended, for the taxation year 2014 is hereby dismissed without costs.

Signed at Toronto, Ontario, this 29th day of August 2018.

“R.S. Boccock”

Boccock J.

Citation: 2018 TCC 176

Date: 20180829

Docket: 2017-3726(IT)I

BETWEEN:

IAN STEVENSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. Introduction and Facts

[1] The Appellant, Ian Stevenson, appeals the Minister of National Revenue's (the "Minister") disallowance of claimed non-refundable tax credits claimed in taxation year 2014. These related to his child in respect of whom Mr. Stevenson claimed the amount of \$11,138.00 as a wholly dependant person and the amount of \$2,255.00 as an eligible dependent (the "dependent deductions") under the *Income Tax Act*, RSC 1985, c.1, as amended (the "Act").

[2] The undisputed facts are as follows:

- (1) Mr. Stevenson and his wife received judgment of divorce on September 4, 2014;
- (2) they had one child of the marriage under 18 years;
- (3) they resolved all the outstanding issues concerning support, joint custody (joint parenting), child-rearing and care, all of which were reflected in a matrimonial settlement agreement dated March 27, 2012 (the "Agreement");

- (4) the Agreement was referenced and utilized by the Court in its divorce judgment and, based upon the yearly income of both spouses, Mr. Stevenson was required to pay his spouse child support in the relevant months of 2014 of \$387.00 each month;
- (5) specifically, relevant excerpts from the Agreement provide as follows (underscoring and anonymity added):

PART III – CHILD SUPPORT

10. Current Guideline Incomes

10.1. Spouse and Ian agree that, for the purposes of calculating child support and at the time of the signing of this Agreement, Ian's guideline income is \$52,660.00, and Spouse's guideline income is \$87,714.00.

11. Base Child Support

11.1. Ian shall pay to Spouse the sum of \$321.00 per month for the support of Child, on the 1st day of each month commencing in May 1, 2011.

11.2. The parties acknowledge and agree that the above amount of child support is based upon the difference in their respective Section 3 child support amounts, and that this is a reasonable method of determining the amount of child support given their shared parenting schedule.

[...]

14. Terms for Income Tax

14.1. The parties shall share the tax benefits attributable to the child equally, including but not limited to the Child Tax Benefit, Universal Child Care Benefit, Eligible Dependent Credit, deduction for child care expenses, and any other tax benefit or advantage for the care of the child, in such a fashion as permitted by the Canada Revenue Agency.

14.2. For clarity, and for so long as permitted by the Canada Revenue Agency:

14.2.1. Eligible Dependent Deduction: Ian shall claim Child for all even numbered years and Spouse shall claim Child for all odd numbered years,

14.2.2. Amount for child born after 1990: Ian shall claim Child for all even numbered years and Spouse shall claim Child for all odd numbered years,

14.2.3. Fitness tax credit: Ian shall claim Child for all even numbered years and Spouse shall claim Child for all odd numbered years,

14.2.4. Day home expenses/Child care expenses: each party shall pay for their own child care costs, and claim their child care costs for their own benefit, and

14.2.5. Universal Child Care Benefit: Spouse shall claim this benefit, with the funds to be used for Child's Section 7 expenses prior to the parties' contributions.

(6) The relevant sections of the judgment of divorce provide as follow:

The Court has reviewed the Statement of Claim for Divorce and the Affidavit of Applicant and has been advised of the following:

THE PARTIES have entered into a Matrimonial Settlement Agreement dated March 27, 2012, which sets out the parties' agreed upon terms of custody, parenting, child support and spousal support;

THE DEFENDANT [IAN] has a guideline income of \$109,067.00;

THE PLANTIFF has a guideline income of \$66,530.00;

[...]

Child Support

15. As Section 9 of the Federal Child Guidelines applies, child support shall be paid as follows:

a. The Defendant shall pay to the Plaintiff the sum of \$949.00 per month for the support of Child;

b. The Plaintiff shall pay the Defendant the sum of \$562.00 per month for the support of Child, and

c. The Defendant may deduct the amount of child support payable by the Plaintiff from his child support payment, for a net amount of child support payable by the Defendant to the Plaintiff of \$387.00 per month.

16. The Defendant shall pay the above noted child support on the 1st day of each month, commencing July 1, 2014, until the issue of child support is reviewed or Child no longer fits the definition of child of the marriage.

[...]

Tax Deductions for Child of the Marriage

23. The parties shall share the tax benefits attributable to the child of the marriage equally, including but not limited to the Child Tax Benefit, Eligible Dependent Credit, deduction for child care expenses, and any other tax benefit or advantage for the care of the child of the marriage, in such fashion permitted by the Canada Revenue Agency.

II. The Parties' Submissions

[3] Mr. Stevenson indicated that, while stressful, he and his ex-wife settled all outstanding marital issues amicably. Lawyers were retained to prepare all documents, undertake court proceedings and ensure all details complied with the parties' wishes and the law. Mr. Stevenson candidly testified that only he made payments in 2014 and that those payments were calculated by "netting" his Federal Child Support Guidelines ("Guidelines") payment against his ex-wife's Guidelines payment.

Appellant

[4] Mr. Stevenson argues he should succeed in this appeal on the following grounds:

1. the system is complex and the utilizing of a "net" payment to simplify the process should not deny the clearly intended object of the parties and joint benefit conveyed by the *Act*;

2. the Canada Revenue Agency's (the "CRA") own guidelines provide his exact example:

Example 1:

Ryan and Chloe share the custody of their child Faith. Faith spends 50% of her time with Ryan and 50% of her time with Chloe. The court order states that Ryan has to pay Chloe \$200 a month and that Chloe has to pay Ryan \$100 a month. For convenience, Ryan agrees that Chloe does not have to write him a monthly cheque and he will simply pay her \$100 a month, which will fulfill both their support obligations.

Ryan and Chloe agree that Ryan will claim the amount for an eligible dependant on line 305 of his income tax and benefit return. If they did not agree, neither of them could claim the amount on line 305 for Faith.

3. the lawyers used by both spouses followed the CRA guideline in drafting the Agreement and soliciting the divorce judgment, both of which cumulatively obligated both to pay, but afforded the convenience of one single payment; and,

4. the case of *Lawson v HMQ*, 2017 TCC 131 stands for the proposition that mutual obligations to pay will be sufficient to engage the deductibility under subsection 118(5.1) despite only a single one-way payment.

Respondent

[5] The Respondent argues that the cases of *Harder v HMQ*, 2016 TCC 197 and more proximately *Leinweber v HMQ*, 2016 TCC 253 provide authority to dismiss the appeal. Firstly, *Lawson* is not applicable since the evidence before the Court was factually different from being mere obligations payable under the Guidelines. This is distinct from the other authorities where the net payment was the mathematical surplus owed by one party to the other after subtracting the larger unadjusted guideline payment from the other. These are two obligations, but one payment: *Harder* at paragraph 8. Secondly, there was no discretion on the part of Mr. Stevenson to utilize the alleged support payment as he saw fit. The discretion in this appeal solely resided with the ex-wife: *Leinweber* at paragraph 18.

III. Analysis and Decision

[6] The sole issue in this appeal is whether Mr. Stevenson is factually the only spouse to pay a “support amount” referable to the Guidelines within the meaning of subsection 118(5). If he is, his situation fails to engage the exception contained in subsection 118(5.1). He would not be entitled to the dependent deductions.

[7] The relevant excerpts of the provisions from the *Act* provide as follows [underscoring added]:

Support

118(5) No amount may be deducted under subsection (1) in computing an individual’s tax payable under this Part for a taxation year in respect of a person where the individual is required to pay a support amount (within the meaning assigned by subsection 56.1(4)) to the individual’s spouse or common-law partner or former spouse or common-law partner in respect of the person and the individual

(a) lives separate and apart from the spouse or common-law partner or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership; or

Where subsection (5) does not apply

118(5.1) Where, if this Act were read without reference to this subsection, solely because of the application of subsection (5), no individual is entitled to a deduction under paragraph (b) or (b.1) of the description of B in subsection (1) for a taxation year in respect of a child, subsection (5) shall not apply in respect of that child for that taxation year.

[8] In terms of overall jurisprudence, both this Court and the Federal Court of Appeal have interpreted the above subsections without much variance. The baseline logic is that utilization of the Guidelines constitutes a commencement point which evolves, through further considerations, to an agreement between the spouses regarding conclusive “support amount(s)”. Simple set-off does not make each distinct value a support amount under the *Act*: *Contino v Leonelli-Contino*, 2005 SCC 63 at paragraph 32. In this appeal, the calculations contained in sections 10 and 11 of the Agreement and sections 15 and 16 of the divorce judgment show a mathematical function entirely reflective of a set-off of two obligations resulting in one payment.

[9] In *Lawson*, such was not factually the case. Justice Miller outlined three factual factors present which allowed him to accept oral testimony in aid of

interpreting the parties' oral agreement. Specifically, paragraph 28 summarizes the process undertaken (underscoring added):

[28] I find this interpretation is not an alteration of the contract, but is indeed a clarification by the very two parties to the contract, who wrote the contract. I further accept Mr. Lawson's testimony that a strict adherence to the Guidelines would not simply yield \$100 difference, but something further was at play, and that was the consequence of Ms. Lawson's recognition of Mr. Lawson's travel expenses. Finally, I also accept that the wording in the minutes of settlement, found acceptable by the CRA, does reflect the understanding of the Lawsons from the outset. In summary, where a separated couple rely on CRA commentary suggesting there can be one cheque for convenience sake, where the couple draft their agreement with the intention to create mutual requirements to pay, where the net payment is not based solely on the Guidelines but represents an obligation of one side to make payments towards travel expenses of the other and where a subsequent written agreement is accepted by the CRA while not altering the prior agreed-upon arrangement, I am prepared to interpret the separation agreement as creating two obligations and not simply a means of calculating one support payment. I am prepared, therefore, to allow the Appeal on the basis that there were two requirements to pay pursuant to their written separation agreement, which brings into effect section 118(5.1) of the Act and allows Mr. Lawson to claim the Tax Credits.

[10] Mr. Stevenson's spouse was not required under the Agreement, or otherwise, to pay support payments in the form of a support amount to Mr. Stevenson: *Cunningham v Her Majesty the Queen*, 2012 TCC 279 at paragraph 14. There was no unilateral payment by Mrs. Stevenson to Mr. Stevenson on account of any other factor or input beyond or in variance of the Guidelines. As well, the support solely and unilaterally paid by Mr. Stevenson is not obfuscated by the two Guideline inputs to the mathematical functions: *Verones v R.*, 2013 FCA 69 at paragraph 6. Similarly, subsection 118(5.1) stops and prevents the loss of the eligible amount, but only where both parents factually pay to the other an amount of child support: *Verones, supra* at paragraph 9.

[11] A mandatory requirement for each parent to pay an amount reflected in a court order or formal agreement together with conclusive evidence of actual payment being made are necessary. The exception is where supplementary amounts are paid or expenses are credited by the recipient spouse which affect the amount paid beyond the Guideline inputs. As stated, this is factually not the case in Mr. Stevenson's appeals. There was no payment by Mrs. Stevenson during split custody: *Rabb v R.*, 2006 TCC 140. Actual payments in both directions did not occur: *Ochitwa v HMQ*, 2014 TCC 263. Lastly, there was no departure from the Guidelines values: *Lawson, supra*, at paragraph 28.

[12] Although the CRA's now retired bulletin may have directed the parties' lawyers, the absence of some diversion from the Guideline amounts will not create two actual or factual payments from two input values. On that basis, the appeal is dismissed without costs.

Signed at Toronto, Ontario, this 29th day of August 2018.

“R.S. Boccock”

Boccock J.

CITATION: 2018 TCC 176

COURT FILE NO.: 2017-3726(IT)I

STYLE OF CAUSE: IAN STEVENSON AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: June 26, 2018

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.
Bocock

DATE OF JUDGMENT: 29 August, 2018

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Aminollah Sabzevari

COUNSEL OF RECORD:

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Firm:

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