

Docket: 2023-2277(IT)I

BETWEEN:

ARASH JANFADA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on November 21, 2024, at Nanaimo, British Columbia; oral submissions delivered by virtual hearing on December 20, 2024 at Ottawa, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nikhil Pandey

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**JUDGMENT**

The appeals of the assessments made under the *Income Tax Act* for the Appellant's 2020 and 2021 taxation years are dismissed, without costs.

Signed this 10th day of March 2025.

“J. Scott Bodie”

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Bodie J.

Citation: 2025 TCC 42  
Date: 20250310  
Docket: 2023-2277(IT)I

BETWEEN:

ARASH JANFADA,

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Respondent.

### **REASONS FOR JUDGMENT**

Bodie J.

#### **I. OVERVIEW**

[1] This is an appeal governed by the Court’s informal procedure.

[2] Mr. Janfada and his former spouse, Erin Allbright, separated in 2016 and divorced in 2019. On August 17, 2017, Mr. Janfada and Ms. Allbright entered into an Interim Without Prejudice Spousal Support Agreement/Child Support Agreement (the “Agreement”) which, among other things, sets out the terms under which Mr. Janfada is to pay both spousal support and child support to Ms. Allbright. These terms were continued pursuant to an Order granted by the Supreme Court of British Columbia on September 6, 2018, following a Judicial Case Conference (the “Order”).

[3] In the 2020 and 2021 taxation years, Mr. Janfada deviated from the Order. In his view, he continued to make spousal support payments in accordance with the Order to Ms. Allbright. However, he ceased paying Ms. Allbright child support amounts as, in his view, there had been a change in circumstances since the time of the Order. Amongst other things, the children of the marriage were no longer living with Ms. Allbright.

[4] Mr. Janfada claimed spousal support deductions with respect to the amounts he paid to Ms. Allbright in the 2020 and 2021 taxation years. The Minister of

National Revenue (the “Minister”) disallowed these spousal support deductions, on the basis that the total support amounts paid by Mr. Janfada were less than the child support amounts payable under the Order. Mr. Janfada appeals this decision.

[5] Accordingly, the issue in this appeal is whether the amounts which Mr. Janfada paid to Ms. Allbright in the 2020 and 2021 taxation years could be deducted from his income under paragraph 60(b) of the *Income Tax Act* (the “Act”). All statutory references herein are to the Act.

## II. PARTIES’ POSITIONS

### A. Mr. Janfada’s Position

[6] It is Mr. Janfada’s position that he and Ms. Allbright made an agreement with respect to the 2020 and 2021 taxation years to reduce the child support amount payable to Ms. Allbright to zero. Consequently, the total amounts he paid to Ms. Allbright in the 2020 and 2021 taxation years were properly characterized as spousal support amounts, which he could deduct under paragraph 60(b).

[7] Mr. Janfada testified and submitted evidence in this appeal. I found him to be a credible witness. He did not call any other witnesses. The Respondent did not call any witnesses.

[8] By way of background, Mr. Janfada and Ms. Allbright married on August 14, 1998, in Prince Albert, Saskatchewan. They have two children:

(a) V.J., born June 7, 2001; and

(b) K.J., born December 22, 2003.

[9] When Mr. Janfada and Ms. Allbright separated on June 29, 2016, Ms. Allbright and the children lived in the basement suite of a house in Maple Ridge, British Columbia, which was owned by Mr. Janfada’s parents (the “Basement Suite”).

[10] Under the terms of the Agreement, Mr. Janfada agreed to pay:

(a) Commencing August 1, 2017, and on the first day of each month thereafter to Ms. Allbright, \$1,204 per month as child support for the two children;

(b) Commencing August 1, 2017, and payable on the first day of each month thereafter to Ms. Allbright, \$1,227 per month as spousal support. Of this amount, \$1,000 was to be paid directly towards the rent of the Basement Suite.

[11] These terms were then continued under the Order.

[12] Mr. Janfada testified that he complied with the terms of the Order throughout 2017 and part of 2018. However, in 2018, Ms. Allbright and the children moved out of the Basement Suite. Mr. Janfada thereafter paid the full amount designated as spousal support under the Agreement directly to Ms. Allbright.

[13] After the family moved out of the Basement Suite, Ms. Allbright remarried and in June 2019 moved to Calgary, Alberta. The two children stayed in the Vancouver area, often living an itinerant lifestyle, staying with family and friends, where possible. By this point, Mr. Janfada was living on Vancouver Island. He testified that he stayed in regular contact with the children and that he would help them out financially where he could, although he did not provide evidence of the amount of any financial assistance he may have provided to the children during this period.

[14] Mr. Janfada testified that in 2020 he stopped paying Ms. Allbright child support. In his view he continued to pay Ms. Allbright most of the spousal support payable under the Order. He testified that he paid her a total of \$10,825 in the 2020 taxation year and a total of \$11,196 in the 2021 taxation year. It should be noted that if he had continued to pay the full amount of child support and spousal support payable under the Order, he would have paid a total of \$29,172 to Ms. Allbright in each of the 2020 and 2021 taxation years.

[15] In computing his taxable income for the 2020 and 2021 taxation years, Mr. Janfada claimed spousal support deductions of \$10,825 and \$11,196 respectively, which deductions were ultimately disallowed by the Minister.

[16] Mr. Janfada testified that after Ms. Allbright moved to Calgary, communication between the two of them became difficult and, therefore, they were unable to agree to a formal alteration to the arrangements between them. Further, Mr. Janfada testified that he did not seek an amendment to or cancellation of the Order because he feared that the process to do so would be complex, timely and costly. Accordingly, the Order remained intact.

[17] Mr. Janfada testified that because of the difficulties in communicating between the two of them, he and Ms. Allbright did not have any direct discussions with respect to varying the terms of the Order. He did, however, point to the following as evidence of an agreement reached between him and Ms. Allbright's legal counsel, South Coast Law Group, to reduce the child support amounts to zero:

(a) Ms. Allbright signed a Statutory Declaration dated March 17, 2022 (the "Statutory Declaration"), in which she attested, among other things, that for the 2020 and 2021 taxation years she received support payments from Mr. Janfada in the total amount of \$10,825.50 and \$11,196 respectively. In the Statutory Declaration, Ms. Allbright labelled these payments as the "Spousal Portion". She also attested that sometime after relocating to Calgary, she agreed to pay Mr. Janfada "a certain monthly amount to assist him in supporting our children in British Columbia". No further details were provided.

There are two matters which should be noted with respect to this Statutory Declaration. First, Ms. Allbright did not appear at the hearing to testify or to be cross-examined on the Statutory Declaration. Secondly, although Ms. Allbright seems to suggest that, in her view, the amounts she received from Mr. Janfada during this period were received by her as spousal support, she does not attest to there being an agreement between her and Mr. Janfada with respect to child support amounts.

(b) It appears from the evidence that there was a period in early 2020 when Mr. Janfada stopped making any support payments to Ms. Allbright. Mr. Janfada pointed to a series of letters written by Ms. Allbright's legal counsel between January 14 and March 9, 2020, which indicated, in his view, that there had been an agreement that he was no longer required to pay child support amounts to Ms. Allbright. In such letters Ms. Allbright's counsel indicates that Mr. Janfada must pay Ms. Allbright spousal support in accordance with the Order but as pointed out by Mr. Janfada, does not indicate that it is necessary for him to resume paying Ms. Allbright child support amounts.

It is Mr. Janfada's position that these two matters combined, together with the fact that neither of the children were living with Ms. Allbright after she moved to Calgary, indicate that is an agreement to vary the terms of the Order.

## **B. Respondent's Position**

[18] It is the Respondent's position that Mr. Janfada cannot claim a deduction for spousal support for the 2020 and 2021 taxation years, as the total support payments he paid to Ms. Allbright in such years were less than the child support payments payable in such years under the Order. The Order can only be varied by a court order or agreement. Mr. Janfada was unable to produce evidence of either.

### III. LAW AND ANALYSIS

[19] I agree with the position of the Respondent.

[20] Paragraph 60(b) is very specific in setting out the requirements to claim a deduction of a support amount. It provides that there may be deducted in computing income for a taxation year, the total of all amounts each of which is an amount determined by the following formula:

$$A-(B+C)$$

[21] Element A is the total of all amounts each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time that the amount was paid.

[22] By virtue of subsection 60.1(4) the definitions in subsection 56.1(4) apply to section 60.

[23] In subsection 56.1(4), the term "support amount" is defined to include an amount payable or receivable that meets each of the following requirements:

(a) it is an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children;

(b) the recipient has discretion as to the use of the amount;

(c) the recipient is the spouse or former spouse of the payer;

(d) the recipient and the payer are living separate and apart because of a breakdown of their marriage; and

(e) the amount is receivable under an order of a competent tribunal or under a written agreement.

[24] Accordingly, all amounts paid under a court order or a written agreement, which meet these requirements, whether they are for the maintenance of a former spouse, the children or both, may be included in Element A of the formula.

[25] Element B is the total of all amounts, each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after the date of the agreement or order.

[26] Under subsection 56.1(4), the term “child support amount” is defined to mean any support amount that that is not defined in the agreement or order as being solely for the support of the recipient. So, each amount of support payable under an agreement or order that is not specifically identified as being solely for spousal support, is considered to be child support.

[27] Element C is the total amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and is deductible in computing the taxpayer’s income for a preceding taxation year. Element C is not at issue for purposes of deciding this matter.

[28] In this case, under the Order, there were two support amounts payable by Mr. Janfada to Ms. Allbright:

(a) A child support amount in the amount of \$1,204 per month; and

(b) A spousal support amount in the amount of \$1,227 per month.

[29] Therefore, in the absence of another court order or an agreement altering or cancelling the Order, under the formula all amounts paid by Mr. Janfada to Ms. Allbright, including all amounts paid in the 2020 and 2021 taxation years must be added to Element A for purposes of determining any amount which Mr. Janfada may be entitled to deduct pursuant to paragraph 60(b).

[30] Further, in the absence of another court order or an agreement altering or cancelling the Order, all child support amounts which become payable under the Order, including the child support payments which became payable in the 2020 and 2021 taxation years, must be added to Element B of the formula and must therefore be subtracted from Element A. Unless the amounts added to Element A exceed the amounts added to Element B, Mr. Janfada will not be entitled to deduct any amount under paragraph 60(b) in computing his income for a taxation year.

[31] Justice Bédard wrote in *Berty v Her Majesty the Queen* 2013 TCC 202 at paragraph 14 the following:

Where a payer must make spousal and child support payments, the presumption is that the payments are first deemed to be child support, and then spousal support (by virtue of the formula in paragraph 60(b) of the Act. See also Interpretation Bulletin IT-530). Thus, in the event that the payer defaults, the recipient receives the payment first on a non-taxable basis. The payer cannot deduct any portion on account of spousal support until the child support obligations are fully satisfied.

[32] To characterize the support payments made by Mr. Janfada in 2020 and 2021 for purposes of applying the formula in paragraph 60(b), the definitions of the terms “support amount” and “child support amount” discussed above, require this Court to look to the Order. There was not a mechanism within the Order itself to bring the payment of child support to an end. Therefore, in the absence of an order or agreement amending or cancelling the Order, \$1,204 in child support continued to become payable throughout the 2020 and 2021 taxation years for purposes of applying the formula contained in paragraph 60(b), regardless of where the children lived, how Mr. Janfada and Ms. Allbright may have characterized the payments as between themselves, and whether or not Ms. Allbright sought to enforce the payment of child support amounts.

[33] I would like to emphasize that in coming to this conclusion, the only consideration for this Court is what must be looked at for purposes of determining whether Mr. Janfada is entitled to a deduction from income under the Act. I am not making any ruling with respect to whether Mr. Janfada should have been required to continue making child support payments to Ms. Allbright after the children were no longer living with her under the applicable family law. Such a matter is beyond the jurisdiction of this Court.

[34] The evidence showed there was no court order that either amended or cancelled the Order. In my view, neither was there an agreement to either amend or cancel the Order. In his testimony, Mr. Janfada acknowledged that there was no written or even a verbal amending agreement between himself and Ms. Allbright, as there was little, if any, communication between the two in the aftermath of her moving to Calgary. Instead, he pointed to the Statutory Declaration as an indicator of what she believed to be the proper characterization of the payments she received in the 2020 and 2021 taxation years. However, the Statutory Declaration did not mention the child support amounts at all. Therefore, the Statutory Declaration cannot be viewed as evidence of any agreement with respect to child support.



[35] For similar reasons the correspondence between Mr. Janfada and Ms. Allbright's legal counsel cannot be viewed as evidence of an agreement with respect to child support. Such correspondence only referred to Mr. Janfada's continuing obligation to make spousal payments to Ms. Allbright. There was no indication of any agreement with respect to child support obligations.

[36] In the absence of an order or agreement to amend the terms of the Order, for the purpose of determining the amount deductible under paragraph 60(b), the full amount of the child support amount payable to Ms. Allbright under the Order must continue to be added to Element B for the 2020 and 2021 taxation years, which must then be subtracted from Element A. Since the evidence showed that in the 2020 and 2021 taxation years, the amounts which Mr. Janfada paid to Ms. Allbright and which were therefore added to Element A never exceeded the child support amounts which continued to become payable under the Order, and therefore must continue to be added to Element B, Mr. Janfada is not entitled to a deduction in either year under paragraph 60(b).

[37] Accordingly, the appeal is dismissed, without costs.

Signed this 10th day of March 2025.

“J. Scott Bodie”

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Bodie J.

CITATION: 2025 TCC 42

COURT FILE NO.: 2023-2277(IT)I

STYLE OF CAUSE: ARASH JANFADA v. HIS MAJESTY  
THE KING

PLACES OF HEARING: Nanaimo, British Columbia;  
Ottawa, Ontario (by virtual attendance)

DATES OF HEARING: November 21, 2024;  
December 20, 2024 (virtually)

REASONS FOR JUDGMENT BY: The Honourable Justice J. Scott Bodie

DATE OF JUDGMENT: March 10, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nikhil Pandey

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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