

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151116

Docket: A-290-14

Citation: 2015 FCA 255

**CORAM: DAWSON J.A.
RYER J.A.
WEBB J.A.**

BETWEEN:

NICHOLAS MILLS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 16, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on November 16, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on November 16, 2015)

DAWSON J.A.

[1] The Minister of National Revenue reassessed the appellant in relation to the 2011 taxation year to disallow the deduction from income of legal expenses incurred by the appellant in the amount of \$42,283.24. The appellant incurred the legal expenses in an effort to have his former spouse contribute towards child support.

[2] For reasons cited as 2014 TCC 153 a deputy judge of the Tax Court of Canada dismissed the appellant's appeal from the reassessment. This is an appeal from the judgment of the Tax Court.

[3] Paragraph 18(1)(a) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) provides that when computing the income of a taxpayer from a business or property, no deduction shall be made in respect of an expense, except to the extent the expense was made or incurred by the taxpayer for the purpose of gaining or producing income from business or property.

[4] The case law is well-settled that expenses incurred by the payer of child support to prevent the support from being established or increased, or to decrease or terminate the support, are not incurred for the purpose of earning income. Such expenses cannot, therefore, be deducted from income (see, for example, *Nadeau v. Minister of National Revenue*, 2003 FCA 400, [2004] 1 F.C.R. 587).

[5] The Deputy Judge made no error in the application of the law to the facts before him. Nor did the Judge make any palpable and overriding error in his appreciation of the evidence.

[6] The appellant argues that he incurred the legal expenses not for the purpose of reducing his child support obligations, but rather to establish his right to receive child support from his former spouse. However, at paragraph 22 of his reasons, the deputy Judge rejected this characterization of the purpose of the legal proceeding, finding that the effect of the appellant's application, if successful, would have been to reduce the appellant's child support obligations.

The deputy Judge's characterization of the second proceeding before the Ontario Superior Court of Justice was supported by the following evidence given by the appellant in cross-examination:

Q. And from what we have heard so far today, you were seeking to vary the terms of the 2008 order, is that correct?

A. That's correct. Because there's no other way to -- this is the Court's language, right, this is the law's language. You have to -- it's a motion to vary.

Q. That's right.

A. You can't have a motion to show the Court that the ex-spouse has an obligation to pay you child support. It's a motion to vary.

Q. Right. And as we have just heard from you, the only support obligations set out in the 2008 order were owed by you, were they not?

A. That's correct.

[7] If follows that the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-290-14

STYLE OF CAUSE: NICHOLAS MILLS v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: NOVEMBER 16, 2015

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
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DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

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(on his own behalf)

Andrea Jackett FOR THE RESPONDENT

SOLICITORS OF RECORD:

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