Docket: 2014-234(IT)I

BETWEEN:

LINDA CORKUM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 27 and on November 4, 2014
at Halifax, Nova Scotia

Before: The Honourable Eugene P. Rossiter, Chief Justice

Appearances:

Counsel for the Appellant:	**Owen H.C. Thomas** Benjamin Carver
Counsel for the Respondent:	Jan Jensen

AMENDED JUDGMENT

The appeals from the determinations made under the *Income Tax Act* in respect of the Canadian Child Tax Benefit, the National Child Benefit Supplement and the Goods and Services Tax Credit for the 2009, 2010 and 2011 base taxation years, are dismissed in accordance with the attached Reasons for Judgment.

This Amended Judgment is issued in substitution for the Judgment dated February 23, 2015.

Signed at Ottawa, Canada, this 11th day of July, 2016.

"E.P. Rossiter"

Rossiter C.J.

Citation: 2015 TCC 38
Date: 20150223
Docket: 2014-234(IT)I

BETWEEN:

LINDA D. CORKUM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rossiter C.J.

Background:

[1] This appeal relates to the Canada Child Tax Benefit ("CCTB") and the National Child Benefit Supplement ("NCBS") and the Goods and Services Tax Credit ("GSTC") for the Appellant, Linda Corkum.

[2] In 2001, the Appellant's husband travelled to Egypt to work as an assistant lecturer for the National Institute of Oceanography and Fisheries ("Institution") and to complete his Ph.D. research. The Appellant accompanied her husband to Egypt and did not return to Canada until October of 2013. In 2009, 2010 and 2011 the Appellant received the CCTB, the NCBS and the GSTC.

[3] For the years in issue, the Appellant asserts she was a resident of Canada while the Minister of National Revenue ("Minister") asserts to the contrary.

Facts:

[4] The Appellant was married to a Dr. Khalid Abaza. She left Canada in 2001 to be with her husband as he was pursuing a Ph.D. in Oceanography and Fisheries at the Institution in Egypt, as well as working as a lecturer assistant at the Institution a position which he had accepted prior to leaving Canada. The only

possessions taken with her to Egypt at the time were her personal clothing. Any furnishings she had were stored in her sister's basement in Canada at no charge.

[5] The Appellant lived in Egypt with her husband for twelve years, 2001 to 2013. Her first child was two years old when they went to Egypt and had been born in Egypt. Her second child had just been born prior to leaving Canada and her third child was born in Egypt. On the application of her husband, the Appellant had an Egyptian visa which entitled her to stay in Egypt from one to three years and was renewed. She received the CCTB, NCBS and GSTC benefits for a period of nine years.

[6] The CCTB, NCBS and GSTC benefits were automatically deposited into the Appellant's bank account. She only accessed her bank account through the internet, never accessing her account through ATM machines. At all times she used only Egyptian currency, never using credit cards. Her husband controlled all financial matters and family money. The husband also controlled all external aspects of their life, including basic shopping. He made all decisions in all matters, including education and health issues. Apparently it is part of the Muslim religion that these decisions be made by the head of the household which is the husband. Entertainment was little if anything, except for if they would go for a walk in the park, or they might take the children for ice cream. The Appellant could not take the children out by herself without her husband. If visitors came from Canada, the Appellant might show them around the neighbourhood. The Appellant learned how the Egyptian society operated, speaking some Arabic, but she cannot read or write Arabic. She had only some passing acquaintances in Egypt, mostly people who were parents of friends of her children. She is a Muslim and practiced the Muslim faith since 1991 and as such, would not normally come and go to the mosque with her husband. She had very little interaction with others. During what she described as the troubles, in 2009 and 2010, the Appellant lived with her in-laws for security purposes as she did not feel safe.

[7] The Appellant and her family lived like a typical Egyptian family in an apartment which was much like any apartment in Canada. The Appellant acted as a housewife doing the cleaning, dishes and the laundry. She had no intention to work in Egypt, her children were small, and she did not want to work, she wanted to care for her children and also, she did not have a work visa for Egypt. She was entitled to become an Egyptian citizen because her husband had Egyptian citizenship but she never did. If she had become a citizen, she could have worked, voted, and received medical coverage but it was her decision not become a citizen of Egypt.

She did not pay Egyptian taxes and was only in Egypt to accommodate her husband's schooling and teaching.

[8] The Appellant did have some emails and communications with a friend in Ottawa and a friend in Nova Scotia, in 2009, for the purpose of job prospects for her husband.

[9] According to the Appellant, there was political unrest in Egypt in 2009 and 2010 and troubles flared up again in 2013 and the return of turmoil was part of her decision to return to Canada. She asserted it was very difficult to get the paperwork to return to Canada.

[10] The Appellant's husband finished the defence of his Ph.D. in 2004 and he received his Ph.D. in 2005. He had his credentials assessed in Canada, and all his degrees were found to be equivalent to degrees in Canada. This credential assessment was apparently a requirement to obtain a job in Canada. The husband made inquiries with respect to employment in Canada, looked at franchise opportunities and jobs, obtained appropriate letters of recommendation, and the appropriate certified copies of his Ph.D. certificate. He felt that at the end of 2010 there was no way they could stay in Egypt and that he had to renew the passports needed for his wife and children. The Appellant's husband asserted he was intending to leaving Egypt sooner rather than later. One of his children had ADD, which necessitated her to be exempted from certain school subjects to accommodate her disability, but because of this she would be barred from registering in university education in Egypt.

[11] The Appellant's husband was an assistant lecturer at the Institution from 2001 to 2005 and a full time lecturer from 2005 to 2013. Post his Ph.D. in 2005, the husband continued to work at the Institution and became involved in a multi year project which qualified as post doctoral experience until 2013. The husband concluded that they would stay in Egypt unless he got a job in Canada.

Issue:

[12] Was the Appellant a resident for the purpose of the CCTB, the NCBS and GSTC for the 2009, 2010, 2011 base taxation years? (The credits, CCTB, NCBS and GSTC require that the taxpayer be a resident in Canada during the periods for which the credits are claimed.)

Analysis:

[13] Section 122.6 of the *Income Tax Act* ("*ITA*") provides the definition of an eligible individual for the CCTB and the NCBS. Section 122.5 of the *ITA* which deals with GSTC, provides as to what persons are not eligible individuals, qualified relations or qualified dependents. Section 250(1) of the *ITA* is a deeming resident provision.

[14] In *Hasin v. The Queen, 2013 TCC*, Justice Campbell summarized the analysis to be performed with respect to the CCTB, NCBS the Child Disability Benefit claim as follows:

> [9] I believe K. Sharlow J.A. of the Federal Court of Appeal in *Laurin v. The Queen*, 2008 FCA 58, 2008 D.T.C. 6175, at paragraph 2, succinctly summarizes the Crown's position on residency in that case and the Court's agreement with that position:
>
> > [2] The Crown submits that a person is resident in the country where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays. We agree.
>
> [10] Jurisprudence has enumerated a number of factors that, while not exhaustive, will be material to the determination of residence and ultimately the payment of benefits under section 122.61. At paragraph 13 of *The Queen v. Reeder*, [1975] C.T.C. 256, 75 D.T.C. 5160, Mahoney J. stated the following:
>
> > [13] … While the list does not purport to be exhaustive, material factors include:
> >
> > (a) past and present habits of life;
> >
> > (b) regularity and length of visits in the jurisdiction asserting residence;
> >
> > (c) ties within that jurisdiction;
> >
> > (d) ties elsewhere;
> >
> > (e) permanence or otherwise of purposes of stay abroad.
>
> The matter of ties within the jurisdiction asserting residence and elsewhere runs the gamut of an individual's connections and commitments: property and investment, employment, family, business, cultural and social are examples, again not purporting to be exhaustive. Not all factors will necessarily be material to every case. They must be considered in the light of the basic premises that everyone must have a fiscal residence somewhere and that it is quite possible for

> an individual to be simultaneously resident in more than one place for tax purposes.

[15] In *Snow v. The Queen*, 2012 TCC 78, reference was made to *Thomson v. M.N.R.*, [1946] S.C.R. 209, which explained in detail the differences between residence and sojourning. At paragraph 47 of *Thomson*, Rand J. stated:

> 47. The gradation of degrees of time, object, intention, continuity and other relevant circumstances, shows, I think, that in common parlance "residing" is not a term of invariable elements, all of which must be satisfied in each instance. It is quite impossible to give it a precise and inclusive definition. It is highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new.
>
> 48. The expression "ordinarily resident" carries a restricted signification, and although the first impression seems to be that of preponderance in time, the decisions on the English Act reject that view. It is held to mean residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to a question of its application.
>
> 49. For the purposes of income tax legislation, it must be assumed that every person has at all times a residence. It is not necessary to this that he should have a home or a particular place of abode or even a shelter. He may sleep in the open. It is important only to ascertain the spatial bounds within which he spends his life or to which his ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return.

[16] In *Snow v. The Queen*, *supra*, the appeal was allowed for the period when the Appellant's spouse was pursuing a Master's degree. During those few years, the Appellant did not have customary mode of living in New Zealand; her stay there had a "sense of transitoriness". When her spouse decided to start doctoral studies, the nature of her stay changed:

> 23 When Dr. Lewis took up his doctoral studies, however, I am not satisfied that Ms. Snow's stay remained transitory. This longer term commitment, coming after the family was in New Zealand for three years, suggests that the family was likely settled into life in New Zealand as their customary mode of living. Ms. Snow had few residential connections to Canada at this point and ceased to be a Canadian resident at that time.

[17] In that particular case, the Appellant had relied upon *Perlman v. The Queen*, 2010 TCC 658. The *Perlman* case turned on the burden of proof. In *Perlman*, the Appellant was found to be a resident in Canada for the purpose of claiming a credit. The evidence provided by the Appellant, apparently showed that he always intended to return to Canada once he completed his education. The initial plan was to be pursuing studies for at least two years, but at the end of the two years, given his interest, aptitudes, and success, he decided to pursue further related advanced studies outside Canada. While he was gone he received an offer of a faculty position at a Canadian school which he deferred until he completed his sought after designation. Also in *Perlman*, he apparently had maintained Canadian bank accounts, Canadian registered retirement education savings plans for his children, a significant investment account by a Canadian brokerage. He also did not have a non Canadian credit card. He was a Canadian citizen and only a Canadian citizen. He left all his worldly possessions in Toronto and maintained a strong spiritual religious relationship with his Toronto synagogue. He continued to vote in Canadian elections. He joined a Canadian political party. He consistently filed a Canadian income tax return and reported his worldwide income.

[18] Contrary to the *Perlman* decision is *Bower v. R.*, 2013 TCC 183, where the Appellant was living in Indonesia with her spouse and her children. At paragraph 17, Bocock J. stated:

> [17] This particular finding is consistent with Perlman since the ratio in that much more equivocal case was related to the clearly uninterrupted intention of the taxpayer to return to Canada, not as a worst case scenario, but rather as a long-term consistently expressed career goal and life plan. By contrast, although Mr. Bower says he will return to Canada at some future date, the Court finds that this would require him to alter his present intention, to sever or transplant his most meaningful relationships and to transfer the trappings of daily living from Indonesia such that his ordinary and primary residence reverts to Canada. Until that time, Mr. Bower remains a non-resident of Canada.

[19] On the evidence before me, this appeal is clear. The ordinary, settled routine of the Appellant's life, where she regularly resided, normally and customarily for years, was Egypt. There were no visits to Canada for the entire time she was in Egypt which included the base taxation years. The ties to Canada were limited at best. The Appellant had some personal furnishings stored at no cost in her sister's basement; she had some family in Canada but little contact with them – her ties were in Egypt. Her life was totally around her husband's life. They were of the Muslim religion and as per that religion, the husband made all of the decisions,

handled all financial issues. She could not go anywhere without his presence. She was tied to the husband's family and even lived with the husband's family for a period of time.

[20] Although the purpose of the initial stay was for the education of the Appellant's husband, once he received his Ph.D. in 2005 it turned into basically permanent employment which lasted until 2013. The past and present habits of life of the Appellant were in Egypt. She had been in Egypt living her life with her family for many years before the base taxation years, and continued on through the base taxation years. Her life was an Egyptian life as a spouse of an Egyptian citizen who was fully employed, and as a mother of her three young children. She did not want either employment or citizenship in Egypt; she wanted to care for her children and her husband and she did so.

[21] The Appellant was integrated into the local society as much as she could be – she was a Muslim, cared for her children, practised her faith strictly which led to her integration with the local society and celebrated that society's way of life. Her connection with her society was through her husband and her husband's family.

[22] In terms of property and investments, she had no property or investments in Canada, nor business interests, nor any cultural or social interests in Canada, nor did she have a family home in Canada. Her children attended school in Egypt, her family home developed over a long period of time in Egypt. Her mailing address was in Egypt. She had some personal furnishings stored with her sister on a free basis but this went on for almost twelve years. She had no loans outstanding in Canada. She had no credit card for Canada. She had a Canadian bank account which was set up through the internet, not on a personal basis, and all her banking was done through the internet. She had no Registered Education Savings Plans for her children, nothing of that nature. It does not appear that she had a Canadian driver's license, nor any business or economic interests, including property in Canada.

[23] There had been an expressed intention to return upon completion of the Ph.D. That was several years before the base taxation years and it never occurred. There was no travel to Canada in the meantime.

[24] It is evident to me that the reason for the long term stay in Egypt was that they had become settled to the way of life in Egypt. This was where her husband received his education and once he received his education, for years thereafter from 2005 through 2013, he remained employed full-time in Egypt. Her children

were raised in Egypt in the customary Egyptian society ways and her children received their education in Egypt. It was quite evident to me that their long-term commitment was to Egypt. The children were raised there and in fact two of the children were born in Egypt, and the one born in Canada was almost two years of age when they moved to Egypt.

[25] I believe the intention of the Appellant can only be discerned from the facts which are presented before the Court. If the intention of the Appellant was to return to Canada, I see little basis for this and most certainly, the intention to return to Canada was not present during the latter years of their stay in Egypt after the Appellant's husband had obtained his Ph.D. in 2005. His education was purportedly the reason they were living in Egypt in the first place. Once he received his Ph.D. it was hardly a sojourn. It appears that there was a haphazard attempt to look for some employment in Canada, but it takes more than these efforts in my mind to establish residency and an intent required to be a resident of Canada for the relevant period of time. It is my view that the meaningful relationships and trappings of the daily life of the Appellant in Egypt were so strong over such a long period of time, that the Appellant's ordinary and primary residence was in Egypt and most certainly not Canada. The appeal is dismissed.

Signed at Ottawa, Canada, this 23rd day of February, 2015.

"E.P. Rossiter"

Rossiter C.J.

CITATION:	2015 TCC 38
COURT FILE NO.:	2014-234(IT)I
STYLE OF CAUSE:	LINDA CORKUM v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	June 27, 2014
REASONS FOR JUDGMENT BY:	The Honourable Eugene P. Rossiter, Chief Justice
DATE OF JUDGMENT:	February 23, 2015

APPEARANCES:

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