

Citation: 2005TCC27  
Date: 20050106  
Docket: 2004-1165(IT)I

BETWEEN:

JOSÉE ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

(Delivered orally on December 3, 2004, at Québec, Quebec.)

**Lamarre Proulx J.**

[1] This is an appeal from a determination of child tax benefit with regard to the Appellant's son André.

[2] The Minister of National Revenue (the "Minister") determined that, for the period from February to June 2003, the Appellant was not the eligible individual with regard to her son André.

[3] The facts relied on by the Minister to make that determination are described in paragraph 5 of the Reply to Notice of Appeal (the "Reply") as follows:

[TRANSLATION]

- (a) The Appellant is the mother of André born on July 9, 1986;
- (b) During the period at issue, André lived with his father, Guy Marcoux, whose residence was located near the school attended by André;
- (c) During the period at issue, André visited his mother on weekends and pedagogical days;

- (d) The Minister determined that the Appellant was not the eligible individual with regard to her son André for the period beginning in February 2003 for the 2001 base taxation year, in accordance with section 122.6 of the *Income Tax Act* (the "Act");
- (e) Subsequently, at the end of the school year, André went back to live with the Appellant and the Minister determined that the Appellant was the eligible individual from July 2003 for the 2002 base taxation year.

[4] The Appellant denies paragraphs 5(b) and 5(c).

[5] The Appellant submitted, as Exhibit A-1, a divorce decree and an agreement on corollary relief. That agreement states that the Appellant has custody of her two minor children André and Jessica.

[6] She submitted certain documents as Exhibit A-2. One of those documents shows that during the period at issue, she paid \$60.07 in tuition fees. The other documents are outside the period. She explained that André came to her home every weekend, that it was because André's school was much closer to his father's home, that both parents thought it was a good idea that he live with his father during the school year. She testified that André left on Sunday with the frozen food she had prepared, that she was the one who washed his clothes and that, when all is said and done, she continued to be primarily responsible for his care.

[7] She admitted having signed a settlement agreement on January 27, 2003, in which the parties agreed that André would live with his father during the week. That agreement was filed as Exhibit I-1. With respect to meals, she indicated that from February 2003, André left her place with less food.

[8] André's father, Guy Marcoux, testified. He stated that he prepared his son's meals during the week, that they went for walks, bike rides, and sometimes went to the movies or to a restaurant. He also stated that he often drove his son to the Canadian army reserve centre on weekends.

[9] He bought him work boots and some other items. He admits that André's clothes were at Ms. Roy's place and that André only brought with him what he would need for the week. He also admits that André liked going back to his Mother's place on the weekends because his friends lived in that neighbourhood.

[10] The father went at least twice to meet with school officials concerning some problems that André was having.

Analysis and conclusion

[11] The definition of "eligible individual" in section 122.6 of the *Income Tax Act* (the "Act") requires that the individual reside with the dependant and that the individual is the person who primarily fulfils the responsibility for the care and upbringing of the dependant.

[12] Counsel for the Appellant stressed that the Appellant's son André had not stopped living with the Appellant. He kept his room, his personal effects were there and he had his friends all around him. His staying with his father was merely an arrangement like if André had a been boarder at his father's place during the week.

[13] That is an interesting argument. In some ways, André could be considered to have continued residing with his mother. It may be a case of dual residence.

[14] In those circumstances, it is necessary to determine which individual primarily fulfils the responsibility for the care and upbringing of the dependant. Accordingly, it is necessary to consider the factors set out in section 6302 of the *Income Tax Regulations*, which reads as follows:

6302 **Factors** — For the purposes of paragraph (h) of the definition "eligible individual" in section 122.6 of the Act, the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:

- (a) the supervision of the daily activities and needs of the qualified dependant;
- (b) the maintenance of a secure environment in which the qualified dependant resides;
- (c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;
- (d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;

- (e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;
- (f) the attendance to the hygienic needs of the qualified dependant on a regular basis;
- (g) the provision, generally, of guidance and companionship to the qualified dependant; and
- (h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

[15] The fact that a child lives with one of his or her parents five out of seven days is usually an indicator that, with respect to daily activities, it is that parent who is most responsible for the child's care. It is the father who, from February to June 2003, had that role.

[16] During those five days, it was the father who at his own expense provided housing and food. Therefore, that cannot be compared to a boarding school.

[17] During the week the father provided companionship to his son. They ate their meals together, they took walks, went to the movies and to restaurants.

[18] Even on the weekends, he often drove André to his reserve activities.

[19] He arranged for a claim slip for André for health purposes.

[20] As a result, I find, based on the evidence submitted, that during the period at issue, from February to June 2003, the father was primarily responsible for the care of his son André.

[21] Accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of January 2005.

"Louise Lamarre Proulx"

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Lamarre Proulx J.

Translation certified true  
on this 8th day of April 2005

Aveta Graham, Translator

CITATION: 2005TCC27

COURT FILE NO.: 2004-1165(IT)I

STYLE OF CAUSE: Josée Roy v. Her Majesty the Queen

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: December 2, 2004

REASONS FOR JUDGMENT BY: The Hon. Justice Louise Lamarre  
Proulx

DATE OF JUDGMENT: December 8, 2004

DECISION DELIVERED  
ORALLY: December 3, 2004

REASONS FOR JUDGMENT: January 6, 2005

APPEARANCES:

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