

Docket: 2004-3343(IT)I

BETWEEN:

BENEDETTE CHIBULUZO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 10, 2005 at Ottawa, Canada

Before: The Honourable Justice G. Sheridan

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Nicolas Simard

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2000 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Ms. Chibuluzo was a married person living separate and apart from her spouse and is entitled to claim an "equivalent-to-spouse" amount of \$6,140 for her son, and child care expenses of \$2,250.

Signed at Sudbury, Ontario this 22nd day of March, 2005.

"G. Sheridan"

Sheridan, J.

Citation: 2005TCC195
Date: 20050322
Docket: 2004-3343(IT)I

BETWEEN:

BENEDETTE CHIBULUZO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT
(delivered orally from the Bench
at Ottawa, Canada
on March 10, 2005)

Sheridan, J.

[1] The Appellant, Ms. Benedette Chibuluzo, is appealing under the Informal Procedure the reassessment of the Minister of National Revenue of her 2000 taxation year. In confirming his decision to disallow her claim for child care expenses and an equivalent-to-spouse deduction in respect of her son, the Minister assumed that Ms. Chibuluzo was a married person who was not living separate and apart from her husband. At the hearing of the matter, Ms. Chibuluzo testified that she has been living under the same roof but separate and apart from her husband Mr. Francis Chibuluzo since July 5, 1995. In support of her testimony, she put in evidence a copy of a separation agreement¹ between her and Mr. Chibuluzo dated July 5, 1995. Counsel for the Crown had not seen this document prior to the hearing. Upon examination of Exhibit A-1, counsel advised the Court that in view of Ms. Chibuluzo's evidence, the Crown conceded that the assumptions upon which the Minister had based his decision were incorrect. He further advised that in these circumstances, it was the Crown's position that the appeal ought to be allowed.

[2] I find as a fact that Ms. Chibuluzo has been living separate and apart from Mr. Chibuluzo since July 5, 1995 and was continuing to do so as of the date of the

¹ Exhibit A-1.

hearing of this appeal. In view of her evidence and the concession of the Crown, the appeal is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Ms. Chibuluzo was a married person living separate and apart from her spouse and is entitled to claim an "equivalent-to-spouse" amount of \$6,140 for her son, and child care expenses of \$2,250.

Signed at Sudbury, Ontario this 22nd day of March, 2005.

"G. Sheridan"

Sheridan, J.

CITATION: 2005TCC195
COURT FILE NO.: 2004-3343(IT)I
STYLE OF CAUSE: Benedette Chibuluzo v. The Queen
PLACE OF HEARING: Ottawa, Canada
DATE OF HEARING: March 10, 2005
REASONS FOR JUDGEMENT BY: The Honourable Justice G. Sheridan
DATE OF REASONS FOR JUDGMENT: March 22, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Nicolas Simard

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario