

Docket: 2007-2284(IT)I

BETWEEN:

SERGE BEAUCHAMP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 4, 2007, at Montréal, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Chantal Roberge

JUDGMENT

The appeal from assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of December 2007.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 1st day of February 2008
Michael Palles, Reviser

Citation: 2007TCC747
Date: 20071213
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and

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Respondent.

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REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] This is an appeal for the 2005 taxation year concerning a claim for legal expenses. According to the appellant, these legal expenses were incurred for the purpose of claiming support for his children. According to the respondent, the appellant incurred these expenses to settle a dispute concerning the custody of the children and to defend against an application for support.

[2] As Exhibit A-1, the appellant submitted a motion dated November 8, 2005, in which he was the applicant and his former spouse was the respondent. This was a motion for custody of their two children in which he requested, among other things, that the amount of support the respondent was to pay for the two children be determined. The document filed contains an impressive number of paragraphs in which there are only ellipses. One can only wonder if this document is a photocopy of an authentic document. However, this is not the determinative reason for my decision.

[3] As evidence of the legal expenses incurred, two documents enclosed with the appellant's income tax return for the year 2005 were submitted as Exhibit I-1.

[4] The first document is a photocopy of a lawyer's invoice for the period from September 15, 2004, to October 31, 2005, in the amount of \$13,806.72.

[5] The second document is a letter dated February 20, 2006, from the lawyer who prepared the abovementioned motion, Exhibit A-1. It should be noted that the lawyer does not in any way indicate that the appellant had filed a motion for child support. The following statement appears in the letter:

[TRANSLATION]

We have represented the interests of Serge Beauchamp in defence against Manon Clair in the matter of a motion to modify and revise child support.

In 2005, Mr. Beauchamp had to pay \$6,187.53 for professional fees, judicial disbursements and taxes.

...

[6] The civil court ledger concerning matrimonial litigation between the appellant and his former spouse was filed as Exhibit I-3. It shows that the appellant's motion was apparently filed on November 23, 2005.

[7] The parties signed an agreement (Exhibit I-2) on December 7, 2006. On that same day, a judge of the Quebec Superior Court gave effect to that agreement and also ruled on the outstanding issues, including the question of making the support retroactive to October 2004. According to this decision endorsing an agreement, the appellant would continue to pay support for the children.

Analysis and conclusion

[8] The appellant relies on an excerpt from paragraph 17 of Interpretation Bulletin IT-99R5:

... However, since children have a pre-existing right, arising from legislation, to support or maintenance, legal costs to obtain an order for child support are deductible ...

[9] However, the court ledger and the exhibits filed show that the appellant's motion for child support lasted only one day in a series of proceedings in which the former spouse was the applicant seeking child support. If the appellant ever applied for child custody and support, he did not pursue it. The lawyer who allegedly drafted this motion did not mention it in her letter, nor did she indicate a specific amount for drafting and filing the motion. The appellant brought several motions, but these were to assert and regulate his access rights to his children. It seems that right

from the start, child custody had been granted to the mother of the children by mutual consent.

[10] The court ledger and the various proceedings filed concerning this family litigation clearly show that the appellant was always a respondent in connection with the claim for child support. He could have been the moving party with regard to access rights and the enforcement of the agreements, but not in connection with support.

[11] The case law of this Court is fully against the deduction of legal costs by the person who is a respondent in a claim for support. Under section 9 and paragraph 18(1)(a) of the *Income Tax Act*, legal expenses may be deducted by the person who applies for support which will be added to his or her income.

[12] It is to be noted that although child support paid under an agreement concluded after April 1997 is not included in the calculation of the income of the parent receiving child support, the deduction of legal costs by the person to whom child support is paid, is accepted. On this point, I quote paragraph 19 of Interpretation Bulletin IT-99R5:

19. The legal costs described in 18 above are deductible even though an amount received as a "child support amount," as described in subsection 56.1(4), is not included in the income of the recipient. While "exempt income" in subsection 248(1) is defined as property received or acquired that is not included in income, the definition excludes "support amounts"; therefore, the deduction of costs incurred in respect of support amounts is not denied by virtue of paragraph 18(1)(c) as being exempt income. For a discussion of "support amount" and "child support amount," see the current version of IT-530, Support Payments.

[13] I quote paragraphs 18, 28, 29, 32, 33 and 34 of the judgment of the Federal Court of Appeal in *Nadeau v. R.*, 2003 FCA 400, which explain the application of the Act, particularly paragraphs 18(1)(a) and 18(1)(c), to the deduction of legal expenses for support claims:

18 Conversely, the expenses incurred by the payer of support (either to prevent it from being established or increased, or to decrease or terminate it) cannot be considered to have been incurred for the purpose of earning income, and the courts have never recognized any right to the deduction of these expenditures (see, for example, *Bayer, supra*).

...

28 The income from support is a clear illustration of how two seemingly distinct sources may link up with one another. Although the taxation of support payments as income is explicitly provided for in subdivision d, which deals with "Other Sources", it remains that the right to support is "property" under the Act. If the right to support is "property", it is hard to dissociate this "property" from the income which flows from the exercise of this right. That is where lies the statutory authority invoked by the courts, over the years, to allow the deduction of costs pertaining to support in the circumstances we have seen by invoking subdivision b and in particular paragraph 18(1)(a).

29 . . . I have little difficulty in finding that income from a support payment is income from property and that as such the expenses incurred in obtaining the payment thereof may be deducted under the rules set out in subdivision b.

. . .

33 To maintain the right to the deduction, Parliament amended the definition of "exempt income" in subsection 248(1) to exclude the part of the support that is intended for children, even if it is now non-taxable. Clearly, this amendment would be pointless if Parliament was of the view that income from support was not income from property within the meaning of subdivision b.

34 It appears from this that not only has Parliament accepted the solution adopted by the courts over the years, it has intervened to preserve that solution when confronted with an amendment that effectively would have precluded it. This jurisprudential solution, I repeat, is a function of the fact that the income from a support payment is income from property, and as such the expenses incurred in order to earn this income may be deducted.

[14] In the case at bar, the appellant has not established that the legal expenses incurred by him, or even part of these expenses, were incurred for the purposes of claiming support for him or for his children. Therefore, these expenses were personal in nature, because they were not incurred for the purpose of earning income from property.

[15] Accordingly, the appeal must be dismissed.

Signed at Ottawa, Canada, this 13th day of December 2007.

"Louise Lamarre Proulx"

Lamarre Proulx J.

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COURT FILE NO.: 2007-2284(IT)I

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REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre
Proulx

DATE OF JUDGMENT: December 13, 2007

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Chantal Roberge

SOLICITOR OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
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