

Docket: 2008-647(IT)I

BETWEEN:

TAMMIE E. DAIGNEAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 22, 2008 at London, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Suzanie Chua

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed.

Signed at Toronto, Ontario this 5th day of November 2008.

“J. Woods”

Woods J.

Citation: 2008TCC602
Date: 20081105
Docket: 2008-647(IT)I

BETWEEN:

TAMMIE E. DAIGNEAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on October 30, 2008)

Woods J.

[1] Let the record show that these are reasons delivered orally in the matter of Tammie Daigneault and Her Majesty the Queen.

[2] Mrs. Daigneault appeals in respect of a reassessment made under the *Income Tax Act* for the 2005 taxation year.

[3] What is under dispute is the inclusion by the Minister in Mrs. Daigneault's income of an amount of \$5,600 which the Minister determined was received by Mrs. Daigneault in 2005 as child support payments.

[4] The notice of appeal raises two issues.

[5] The first is whether an understanding between Mrs. Daigneault and her former husband that the payments would not be taken into account for tax purposes, either as an inclusion or deduction, should be respected for purposes of determining the income tax liability.

[6] It is not necessary for me to go into any of the testimony on this point because spouses cannot agree to alter a tax liability which is imposed by Parliament.

[7] Whether child support payments are taxable or not depends on the specific provisions of the *Income Tax Act*. The *Act* does contain procedures for former spouses to make an election for a different tax treatment, but these election procedures were not followed in this case. In these circumstances, any child support payments received by Mrs. Daigneault in 2005 must be included in her income.

[8] The second issue concerns how much was actually received in 2005. Mrs. Daigneault's former husband claims to have paid to her \$5,600 but Mrs. Daigneault submitted that she thinks he paid only \$4,400.

[9] Both spouses were assessed on the basis of the former husband's position, namely that what was received was \$5,600. The Canada Revenue Agency based the assessments on a letter written by the former husband and signed by Mrs. Daigneault in which she acknowledges that she received cheques totaling \$5,600.

[10] Mrs. Daigneault suggests that this document is not the end of the story because she signed it without verifying its accuracy. She testified that her former husband came to her place of work to have the document signed and she felt pressured to sign the document on the spot so as to avoid a confrontation in the workplace.

[11] The Crown introduced the former husband as a witness to try to establish that Mrs. Daigneault's explanation should not be accepted.

[12] It is not necessary for me to go into the details of the signing of the letter. I accept Mrs. Daigneault's evidence that she signed the letter without verifying its accuracy because she wished to avoid a confrontation in her workplace.

[13] Individuals generally have good reasons to avoid any personal meetings at their workplace, and this is especially true with respect to meeting with a former spouse.

[14] It is necessary, then, to look at all the evidence which was introduced to try to determine how much Mrs. Daigneault likely received.

[15] Mrs. Daigneault testified that her former husband did not have a general history of defaulting on support obligations but she stated that she thought that

payments were not made for October, November and December in 2005 because her son was not at home during that period.

[16] I will consider the October, November and December situation separately.

[17] First November. It appears there is no disagreement about the November payment. The former husband did not claim to make a payment during that month. That leaves October and December.

[18] Mrs. Daigneault introduced in support of her position a copy of her bank deposits and also a copy of her boyfriend's bank account because she said that she also received assistance from him.

[19] I have reviewed these statements, and I have also reviewed the former husband's summary of cheques in his letter.

[20] Unfortunately for Mrs. Daigneault, my conclusion from the evidence is that her former husband likely did pay her for October and December.

[21] In October, Mrs. Daigneault's bank account shows a deposit of \$468.99 on October 17. This is generally consistent with the former husband's claim that a cheque in the amount of \$400 was posted by his bank on October 17. Accordingly I conclude that Mrs. Daigneault received \$400 from her former husband in October.

[22] As for December, the former husband claims that a cheque in the amount of \$400 was posted to his bank on December 5. Mrs. Daigneault's bank account shows a deposit on November 30 of \$700. This deposit likely takes into account a payment from the boyfriend of \$300 and a payment from the former husband of \$400. The dates of the transactions are off by a few days but I think there could be explanations for this.

[23] I would conclude from all the evidence that it is more likely than not that the former husband did pay \$5,600 to Mrs. Daigneault in the 2005 taxation year and the appeal will be dismissed on this basis.

[24] Before concluding, I wish to comment that although I was not able to give Mrs. Daigneault the relief that she is seeking, I truly do compliment her for bringing this appeal to the Court and I wish her every success in the future.

Signed at Toronto, Ontario this 5th day of November 2008.

“J. Woods”

Woods J.

CITATION: 2008TCC602

COURT FILE NO.: 2008-647(IT)I

STYLE OF CAUSE: TAMMIE E. DAIGNEAULT AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: October 22, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice J. Woods

DATE OF JUDGMENT: November 5, 2008

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Suzanie Chua

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: John H. Sims, Q.C.
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