

Docket: 2008-685(IT)I

BETWEEN:

MARIE-JOSÉE MILLIARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 13, 2009, at Québec, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: François Drouin

Counsel for the Respondent: Christina Ham

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23rd day of February 2009.

"Paul Bédard"

Bédard J.

Translation certified true
On this 6th day of April 2009
Monica Chamberlain, Reviser

Citation: 2009 TCC 41
Date: 20090223
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BETWEEN:

MARIE-JOSÉE MILLIARD,

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and

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REASONS FOR JUDGMENT

Bédard J.

[1] This is an appeal from a notice of child tax benefit (CTB) redetermination for the 2004 base year.

Background

[2] The Appellant and Yves Lévesque were common-law partners for several years. They had two children during that time: Jennifer Lévesque and Véronique Lévesque.

[3] The Appellant separated from her partner in February 2006 and left the family residence on February 12, 2006. Following the separation, the father had custody of the couple's children.

[4] The Appellant had been receiving CTB payments since October 2000, and continued to receive them even after leaving the family residence located in Québec. In this regard, the evidence disclosed that the benefit payments were directly deposited by the Minister of National Revenue (the Minister) into a bank account (the joint account) that she held jointly with Mr. Lévesque. The evidence also disclosed that the payments had been deposited into the joint account further to a direct deposit request that the Appellant filed with the Minister.

[5] In August 2006, Mr. Lévesque filed a CTB claim which stated that his two children Jennifer and Véronique had been residing with him since February 2006. Since the Appellant never sent the Minister a notice, as required by subsection 122.62(4) of the *Income Tax Act* (the Act), that she had ceased to be an eligible individual, the Minister, without conducting an audit, and in accordance with regular procedure, made the adjustment on August 18, 2006, determining that the Appellant was not the eligible individual in respect of the children Jennifer and Véronique for the period from March 2006 to June 2006 exclusively for the 2004 base year.

[6] The issue in the instant matter is whether the Minister correctly revised the Child Tax Benefit amount when he determined that the overpayments amounted to \$1,772.11 for the period from March 2006 to June 2006, inclusive, for the 2004 base year.

[7] The Appellant testified that, as of February 12, 2006, she no longer withdrew any money or otherwise benefitted from the joint account. She explained that she was unable to withdraw funds from the joint account because she had lost her ATM card, which had enabled her to withdraw cash amounts from the joint account. She added that she never made any attempts to obtain a new ATM card. It should be noted that the Appellant's testimony was silent with respect to the cheques that she might have been able to cash using the joint account, or the pre-authorized withdrawals that she might have been able to make from that account. It should also be noted that the Appellant provided no documentary evidence that she received no benefit from the joint account starting in February 2006.

The Appellant's position

[8] In his oral argument, counsel for the Appellant essentially restated the arguments made in the Notice of Appeal, which read as follows:

[TRANSLATION]

24. This decision of December 3, 2007, is unfounded in fact and in law.
25. The Canada Revenue Agency never ruled on the administrative error described above.
26. The Appellant was no longer the eligible individual as defined by section 122.6 of the *Income Tax Act* for the period in respect of which the claim was made.
27. Yves Lévesque was the eligible individual.
28. In fact, he asked that the tax benefit be paid to him personally.
29. Once this change was made, the Canada Revenue Agency had a duty to cancel the child benefit payments to the Appellant.
30. Yves Lévesque illegally received double child tax benefits.
31. The Canada Revenue Agency is unlawfully claiming child tax benefit overpayments from the Appellant following its own administrative error.
32. Only Yves Lévesque is responsible for paying back the overpaid tax benefits.
33. The Appellant asks that this Honourable Court cancel the Canada Revenue Agency's claim from her.
34. The Appellant asks that this Honourable Court order the Canada Revenue Agency to pay back all amounts collected from her in partial payment of that claim.
35. All of which is respectfully submitted.

Analysis and determination

[9] Essentially, the Appellant is arguing that the CTB was paid to Mr. Lévesque, not to her, because all payments as of February 12, 2006 were deposited into the joint account to which she no longer had access from that date onward, and thus, he was the only person who benefitted from the payments.

[10] In the case at bar, the Appellant does not dispute the fact that she was not the eligible individual within the meaning of section 122.6 of the Act, nor does she dispute the fact that she did not send the Minister a notice that she had ceased to be eligible, which was required by subsection 122.62(4) of the Act. I should also note that the evidence disclosed that all the benefits were paid into the joint account further to a direct deposit request that the Appellant sent to the Minister. The Appellant must understand that a direct deposit request is a kind of direction to pay funds, and that the benefits deposited directly into the joint account by the Minister were payments to the Appellant. In my opinion, Mr. Lévesque's supposed appropriation of the CTB money does not cause the money thereby deposited to be characterized as payments to Mr. Lévesque. This means that the Appellant received benefit payments when she was not entitled to them, because she was not the eligible individual within the meaning of section 122.6 of the Act. Thus, the Appellant unjustly enriched herself. Consequently, she must reimburse the Minister for the amounts that she received without entitlement starting in February 2006.

[11] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 23rd day of February 2009.

"Paul Bédard"

Bédard J.

Translation certified true
On this 6th day of April 2009
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CITATION: 2009 TCC 41

COURT FILE NO.: 2008-685(IT)I

STYLE OF CAUSE: MARIE-JOSÉE MILLIARD AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: January 13, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: February 23, 2009

APPEARANCES:

Counsel for the Appellant: François Drouin

Counsel for the Respondent: Christina Ham

COUNSEL OF RECORD:

For the Appellant:

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Attorney

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