Docket: 2012-233(IT)I

BETWEEN:

MATTHEW JANTZI,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

Appeal heard on April 8, 2013, at Hamilton, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Gregory B. King

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2009 taxation year is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 16th day of May 2013.

"Robert J. Hogan"

Hogan J.

Citation: 2013 TCC 119
Date: 20130516
Docket: 2012-233(IT)I

BETWEEN:

MATTHEW JANTZI,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

REASONS FOR JUDGMENT

Hogan J.

I. INTRODUCTION

[1] The appellant, Matthew Jantzi, has appealed the denial of claims made by him for a child tax credit in respect of each of his two children for the 2009 taxation year. The credits were disallowed by the Minister of National Revenue (the "Minister") on the grounds that the *Income Tax Act* of Canada (the "*ITA*") bars a taxpayer from claiming a child tax credit in respect of a child for whom a taxpayer is required to make child support payments to a former spouse or common-law partner.

[2] For the most part, the facts in this appeal are not in dispute. The appellant admitted under cross-examination that he agreed with the following assumptions of fact by the Minister set out in the reply to the notice of appeal:

> c) the appellant and the Former Spouse had 2 children namely, CJJ born in 1996, and MMJ born in 2000 (the "Children");
>
> d) the appellant and his Former Spouse were divorced 31 days after the date of the Superior Court of Justice, Divorce Order, (the "Court Order #1") dated June 13, 2008;

> e) in accordance with the Court Order #1 and the Superior Court of Justice's Minutes of Settlement dated June 13, 2008, the appellant was required to pay child support in the sum of $800 per month, and spousal support in the sum of $1,500 per month, commencing on July 1, 1998;
>
> f) under the terms of a temporary Superior Court of Justice, General Order (the "Court Order #2") dated October 15, 2009, the obligations detailed in Court Order #1 where [*sic*] modified and the appellant was required to pay spousal support in the amount of $1,125 for the month of October 2009, and spousal support in the amount of $550, per month, commencing November 1, 2009;
>
> g) pursuant to Court Order #2, the appellant was still required to pay child support in the amount of $800 per month;
>
> [. . .]
>
> i) at all material times, the appellant and the Former Spouse were living separate and apart [. . .] .

[3] The appellant took issue with the assumption of fact made by the Minister in paragraph h) of the reply, which reads as follows:

> h) no payments were made by the Former Spouse to the appellant with respect to the Children.

[4] According to the appellant, during their negotiations prior to reaching agreement on the amount of the child support payments to be made by him to his former spouse, the parties referred to the child support guidelines, under which both spouses' incomes are taken into account in determining child support payments.

[5] The guidelines provide an offset mechanism which results in the higher income earner paying the child support to the lower income earner in the case of joint custody arrangements. In substance, the appellant submits that this is tantamount to both parties being required to contribute to child support on the basis of their respective incomes.

[6] The appellant also pointed out that he and his former spouse had agreed that each of them would only claim an equivalent-to-spouse deduction for one child in his or her income tax return.

II. <u>ANALYSIS</u>

[7] Paragraph 118(1)(*b*) of the *ITA* provides for a so-called equivalent-to-spouse credit that may be claimed by a parent in respect of a child in prescribed circumstances.

[8] Paragraph 118(1)(*b*.1) provides for a similar tax credit in respect of an additional child.

[9] Subsection 118(5) provides that neither of these credits may be claimed if the taxpayer is required to pay child support to his former spouse in respect of the child for which a credit may otherwise be claimed. This limitation appears to be based on the policy rationale that the recipient of child support payments, generally the lower income parent, is in greater need of tax relief than the higher income parent.

[10] The limitation is based on a bright-line test: was the taxpayer required to pay a "support amount" as defined in subsection 56.1(4) of the *ITA* to his former spouse in respect of the child? If the answer is yes, the taxpayer is barred from claiming a child tax credit save in the circumstances specified in subsection 118(5.1).

[11] Subsection 118(5.1) operates as a restriction to the aforementioned limitation. This provision provides that the limitation in subsection 118(5) does not apply if, solely by virtue of that limitation, neither parent would be entitled to claim a child tax credit. For example, such would be the case if one parent was required to pay child support to the other parent during the year and, because of a loss of employment, succeeded in having the order varied such that that parent now became entitled to receive child support for the rest of the year. In that narrow case, but for the exception in subsection 118(5.1), by virtue of subsection 118(5) neither parent would be entitled to claim a child tax credit. In such a case, if both parents are otherwise entitled to claim the child tax credit, they must agree on who should claim it, failing which the credit will be denied altogether.

[12] The arguments put forward by the appellant in this appeal have been specifically considered by this Court in *Cunningham v. The Queen*[1] and *Perrin v. The Queen*[2]. In both cases it was held that two offsetting support payments are not being made when support payments have been calculated by reference to applicable guidelines or otherwise negotiated between the parties. Both decisions are based on the meaning of the term "support amount" defined in subsection 56.1(4) of the *ITA* and used in subsection 118(5) to trigger the limitation. That term is defined as follows:

> The definitions in this subsection apply in this section and section 56.

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[1] 2012 TCC 279

[2] 2010 TCC 331

“child support amount” means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or common-law partner or former spouse or common-law partner of the payer or who is a parent of a child of whom the payer is a legal parent.

“commencement day” at any time of an agreement or order means

(*a*) *where* the agreement or order is made after April 1997, the day it is made; and

(*b*) where the agreement or order is made before May 1997, the day, if any, that is after April 1997 and is the earliest of

(i) the day specified as the commencement day of the agreement or order by the payer and recipient under the agreement or order in a joint election filed with the Minister in prescribed form and manner,

(ii) where the agreement or order is varied after April 1997 to change the child support amounts payable to the recipient, the day on which the first payment of the varied amount is required to be made,

(iii) where a subsequent agreement or order is made after April 1997, the effect of which is to change the total child support amounts payable to the recipient by the payer, the commencement day of the first such subsequent agreement or order, and

(iv) the day specified in the agreement or order, or any variation thereof, as the commencement day of the agreement or order for the purposes of this Act.

“support amount” means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

(*a*) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or

(*b*) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by the competent tribunal in accordance with the laws of a province.

[13] There is nothing in the evidence to show that the appellant's former spouse was obligated under the minutes of settlement to pay him an allowance on a periodic basis for the maintenance of the children in the 2009 taxation year. As this requirement has not been met, subsection 118(5.1) relied on by the appellant does not apply. Therefore, I see no reason to depart from the Court's analysis and approach in the two cases cited above. For these reasons, the appellant's appeal is dismissed.

Signed at Ottawa, Canada, this 16th day of May 2013.

"Robert J. Hogan"

Hogan J.

CITATION:	2013 TCC 119
COURT FILE NO.:	2012-233(IT)I
STYLE OF CAUSE:	MATTHEW JANTZI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Hamilton, Ontario
DATE OF HEARING:	April 8, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice Robert J. Hogan
DATE OF JUDGMENT:	May 16, 2013

APPEARANCES:

For the appellant:	The appellant himself
Counsel for the respondent:	Gregory B. King

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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