

Docket: 2024-1079(IT)I

BETWEEN:

GARY MASUR,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on September 5, 2024, at Calgary, Alberta

Before: The Honourable Justice Bruce Russell

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Levi Smith

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**JUDGMENT**

In accordance with the accompanying reasons for judgment:

- (a) the appeal of the October 1, 2021 assessment of the Appellant's 2020 taxation year is allowed, and a deduction of \$531 pursuant to paragraph 60(b) of the *Income Tax Act* is permitted;
- (b) the appeal of the May 10, 2022 assessment of the Appellant's 2021 taxation year is dismissed; and

(c) the whole without costs.

Signed this 20<sup>th</sup> day of May 2025.

“B. Russell”

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Russell J.

Citation: 2025 TCC 75  
Date: 20250520  
Docket: 2024-1079(IT)I

BETWEEN:

GARY MASUR,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Russell J.

#### I. Introduction:

[1] The appellant, Gary Maser (GM) appeals assessments of his 2020 and 2021 taxation years, raised under the federal *Income Tax Act* (Act).

#### II. Issues:

[2] At issue regarding the appealed 2020 taxation year assessment is GM's claimed deduction for support payments made to his estranged spouse, Lorie Masur (LM).<sup>1</sup> The assessment denied the claimed \$27,600 deduction. The respondent Crown submits that GM is entitled to a \$531 deduction for support payments for his 2020 taxation year. The underlying issue is whether GM paid the required amount of child support per section 60 of the Act.

[3] The respondent Crown seeks dismissal of GM's 2021 taxation year assessment appeal in light of GM's acknowledgement that in that year he claimed no support payments deduction.<sup>2</sup>

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<sup>1</sup> Agreed Statement of Facts, para. 2.

<sup>2</sup> Agreed Statement of Facts, para. 4.

### III. Facts:

[4] The parties filed an Agreed Statement of Facts (ASF), which provides:

#### Procedure:

1. GM was assessed October 1, 2021 for the 2020 tax year (2020 assessment).
2. The 2020 assessment removed \$27,600 of spousal deductions claimed.
3. GM was assessed May 10, 2022 for the 2021 tax year (2021 assessment).
4. GM did not claim spousal support deductions for the 2021 taxation year.
5. GM submitted a letter to CRA on November 17, 2022 to support the deduction of spousal support obligations for 2020.<sup>3</sup>
6. GM submitted an electronic notice of objection on September 15, 2023 for the 2020 and 2021 tax years.<sup>4</sup>
7. On February 28, 2024, the Minister (a) confirmed the 2021 assessment and (b) deemed the notice of objection for 2020 as not being a valid objection.
8. GM appealed the 2020 and 2021 assessments on May 14, 2024.

#### Background:

9. GM is married to Lorie Masur (LM).
10. GM and LM live separate and apart and have since July 4, 2017.
11. GM and LM have four children together: (a) C.I.M. born in 1999; (b) P.A.M. born in 2001; (c) E.K.H.M. born in 2004; and (d) J.D.M. born in 2006.

#### Support Payments:

12. By Order in Alberta Court of Queen's Bench dated December 19, 2019 (Court Order) GM was required to pay LM, commencing July 1, 2019: (a) \$2,172 per month for net child support; and (b) \$1,305 per month for spousal support; and, by January 15, 2020, \$9,559.27 for retroactive support.

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<sup>3</sup> This letter was not entered in evidence.

<sup>4</sup> This notice of objection was not entered in evidence.

13. GM paid LM \$10,513 on January 16, 2020 (Retractive Payment) for: (a) \$9,559.27 was for arrears payments for 2019; (b) \$953.73 for shortfalls from December 2019 and January of 2020.
14. GM paid \$20,862 in support for LM for 2019, of which: (a) \$13,032 was for child support; and (b) \$7,830 was for spousal support.
15. Separate from the Retroactive [Payment], for the 2020 taxation year GM paid LM a total of \$26,118.
16. GM did not have a court order varying the terms of support payments for either the 2020 or 2021 taxation years.
17. GM paid LM total support amount of \$47,457 from July 2019 to December 2020. (end)

[5] The Court Order referenced in para. 12 of the ASF requires GM to pay LM monthly net child support of \$2,172. GM maintains that upon any of their four children identified in the Court Order ceasing to be a “child of the marriage” (e.g., due to ageing), the Court Order permits GM and LM to, upon agreement, alter the Court Order’s required amount of monthly child support payment. GM says that is what occurred here and that is why his net child support payments were less than as the Court Order specified.

[6] The respondent Crown disagrees, submitting that the Court Order does not permit this.

[7] GM and LM each signed a statement that in 2020 he ahead paid her a total of \$26,118, of which \$14,436 was for child support and \$11,682 was for spousal support.<sup>5</sup> The Court Order provision for monthly \$2,172 child support payments leads to expectation of total payment of \$26,064 (i.e., \$2,172 x 12) in GM’s 2020 taxation year.

#### IV. Analysis:

[8] The Court Order, issued December 19, 2019, refers to KM and LM’s four children as “children of the marriage”.

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<sup>5</sup> Exhibit A-6.

[9] The term “child of the marriage” is defined at subsection 2(1) of the federal *Divorce Act*, as follows:

2(1) a child of two spouses or former spouses who, at the material time,

(a) is under the age of majority and who has not withdrawn from their charge, or (b) is the age of majority or over and under their charge, but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[10] The fact that one or more of the four children of the marriage ceased to be such during the first half of 2020 was not challenged by the respondent Crown. There is indication of this in an email dated July 9, 2020, from GM’s lawyer to LM’s lawyer (Ex. A-5) and as well in an email dated March 16, 2020, from GM to his lawyer (Ex. A-6).

[11] Clause 1 of the Court Order provides for child support payment. It states:

[1] Commencing July 1, 2019 and continuing the first day of every month thereafter for so long as support for each child is payable or until further Order of this Honourable Court, [GM] shall pay [\$2,172 (i.e., \$4,114 less \$1,942)] to [LM] in [net] child support. (underlining added)

[12] GM’s aforementioned argument is based on the wording in the Court Order’s clause 1. He submits that the “or” in that phrase recognizes two routes for altering child support payment amounts. One route is through obtaining a “further order of this Honourable Court”.

[13] He says that the other route is when “support for each child is... [no longer]... payable”, and that that allows alteration of the Court Order’s specified child support monthly payment by agreement of the estranged parents.

[14] GM cites this latter option in claiming that the child support payment terms specified by the Court Order can be altered through agreement of himself and LM. He says that it cannot have been intended that altering the Court Order child support payment must be sanctioned by a revised Court order.

[15] I do not accept GM’s position. The clause 1 language of the Court Order does not at all mention any agreement between the parents, let alone any such agreement able to put aside terms of the Court Order respecting quantum of child support payments.

[16] I understand the clause 1 language to mean that, barring in the meantime any subsequent court order, the Court Order's child support amount is to remain as specified for so long as the four children remain children of the marriage. Upon one ceasing to be a child of the marriage, a new court order would be required.

[17] Of course, a new court order could be by a consent order, i.e. sought to endorse a parental agreement regarding future terms of child support payments. In fact the 2019 Court Order was itself a consent order, reciting on its face that it is, "[o]n the application of the Defendant [i.e., GM)]... and noting the consent of the Plaintiff [i.e., LM] endorsed hereon through her counsel".

[18] It does not really make sense that the 2019 Court Order provision as to child support payments would only be applicable pending the first of the children of the marriage ceasing to be so, upon which the estranged parents could thereafter assume the ability to specify the quantum of child support payments. Language saying this does not appear in clause 1 of the Court Order.

[19] Respondent Crown's counsel cited *Foreman v. R.*, 2012 TCC 36, para. 11, a decision of this Court, addressing a somewhat similar situation:

[11] The Appellant's argument is that he was no longer *required* to pay child support in 2009 under the 2004 Order as the child had started to reside with him prior to 2009. He also stated that Jo-Ann Nadahn agreed that he was no longer required to pay child support but she denied that there was any such agreement. However, it is clear that the 2004 Order has not been changed in relation to the provision that required the Appellant to pay child support. While the Appellant may have a basis upon which he could have the requirement to pay child support removed, until this requirement to pay child support is removed by another Order of the Provincial Court of British Columbia (or by a higher Court with the authority to remove such requirement) the Appellant is still *required* to pay child support. The Appellant (even if he had Jo-Ann Nadahn's consent) cannot change or rescind an Order of the Provincial Court of British Columbia by himself. Only the Provincial Court of British Columbia (or a higher Court with the authority to change an Order of the Provincial Court of British Columbia) can change an Order of that Court. This Court [i.e., the Tax Court] does not have the authority to change an Order of the Provincial Court of British Columbia. (underlining added)

[20] Finally, even were an agreement between GM and LM sufficient, no such agreement was entered in evidence to establish existence of same. What GM did enter in evidence (as Ex. A-5 and Ex. A-6 noted above) were copies of emails exchanged between his counsel and LM's counsel advising what payments GM

proposed to make. GM referenced them as exemplifying, “how we collaboratively worked” (transcript, pg. 46).

[21] As stated by respondent’s counsel in his post-hearing written submissions, these email exchanges “did not provide a conclusive agreement for variation for the 2020 taxation year between the parties, as it was only suggested amendments between the former spouses’ counsel.”<sup>6</sup>

[22] Turning now to consider how the Minister of National Revenue (Minister) ultimately determined that \$531 (rather than nil) was deductible by GM for his 2020 taxation year, the Minister began with paragraph 60(b) of the Act which provides the formula “ $A - (B + C)$ ” for determining deductibility regarding child and spousal support payments. The three variables are defined in paragraph 60(b) as follow:

“A” is the total of all amounts, each of which is a support amount paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid;

“B” is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day; and

“C” is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer’s income for the preceding taxation year.

[23] On the facts of this matter, “A” = \$47,457. That is confirmed by para. 17 of the ASF, which states that from July 2019 to December 2020, GM paid LM total support of \$47,457.

[24] Also, “B” = \$39,096. That is the total amount of child support payable pursuant to the Court Order (18 x \$2,172). As noted, GM’s net child support obligation was \$2,172 monthly, with a July 1, 2019 commencement date per the Court Order, and for 2020 taxation year purposes running to the end of that year.

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<sup>6</sup> Respondent’s written submissions, para. 36.



[25] “C” as described above is the deductible amount for the preceding year, i.e. 2019. Thus, the same formula is used to determine the 2019 deductible amount, which value will be “C” in utilizing the same formula for the 2020 year.

[26] The parties accept that in 2019 GM had paid LM child support totaling \$13,032 and spousal support totaling \$7,830, being total support of \$20,862. Applying the paragraph 60(b) formula for those agreed amounts yields \$7,830 for the 2019 year: i.e.,  $A/\$20,862 - (B/\$13,032 + C/\$0) = \$7,830$ ].

[27] Utilizing these three values for the paragraph 60(b) formula for the 2020 taxation year yields as follows:  $A/\$47,457 - (B/\$39,096 + C/\$7,830) = \$531$ .

#### V. Conclusion:

[28] Thus, I accept the respondent Crown’s revised position that GM’s deductible support amount for his 2020 taxation year is \$531, rather than nil as had been assessed.

[29] Finally, turning to GM’s appeal of assessment for his 2021 taxation year, which was not addressed at the hearing, I will dismiss that appeal noting GM’s admission that he claimed no spousal support deductions for his 2021 taxation year.<sup>7</sup>

Signed this 20<sup>th</sup> day of May 2025.

\_\_\_\_\_  
“B. Russell”

Russell J.

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<sup>7</sup> See footnote 2.

CITATION: 2025 TCC 75

COURT FILE NO.: 2024-1079(IT)I

STYLE OF CAUSE: GARY MASUR AND HIS MAJESTY  
THE KING

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 5, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Bruce Russell

DATE OF JUDGMENT: May 20, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Levi Smith

COUNSEL OF RECORD:

For the Respondent: Shalene Curtis-Micallef  
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