

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240918

Docket: A-320-23

Citation: 2024 FCA 149

**CORAM: LOCKE J.A.
GOYETTE J.A.
WALKER J.A.**

BETWEEN:

BOBBIE MANN

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on September 18, 2024.
Judgment delivered from the Bench at Toronto, Ontario, on September 18, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 18, 2024).

LOCKE J.A.

[1] The appellant, Bobbie Mann, appeals a decision of the Tax Court of Canada (2023 TCC 151, *per* Justice Bruce Russell) that denied some of the relief sought in her appeals of reassessments of several taxation years. Ms. Mann also moves to adduce new evidence in the event that her principal arguments against the reassessments are not accepted.

[2] With regard to the proposed new evidence, we have concluded that Ms. Mann’s motion should be dismissed. Ms. Mann seeks to introduce evidence of unclaimed expenses related to some of the income whose taxability was in issue before the Tax Court. She states that, at the Tax Court, she was focused on arguing that the income in question was not taxable, and that she “inadvertently” failed to seek deductions in relation thereto.

[3] Ms. Mann acknowledges that she does not meet the general test for the introduction of new evidence on appeal. We agree, given that the evidence could, with due diligence, have been presented before the Tax Court. Ms. Mann seeks the exercise of this Court’s residual discretion to admit new evidence where it is in the interest of justice to do so. Ms. Mann acknowledges that this residual discretion should be exercised only in the clearest of cases and with great care: *Shire Canada Inc. v. Apotex Inc.*, 2011 FCA 10, 414 N.R. 270 at para. 17; *Coady v. Canada (Royal Mounted Police)*, 2019 FCA 102, [2019] F.C.J. No. 488 at para. 3.

[4] This is not such a case. Ms. Mann was represented by counsel before the Tax Court, and so she knew or should have known of the possibility that she might be unsuccessful on her principal arguments, and that evidence of the expenses she now seeks to claim could be relevant. We do not agree that it is in the interest of justice to permit Ms. Mann to raise expenses before this Court that she could have claimed before the Tax Court.

[5] We are likewise of the view that Ms. Mann’s appeal cannot succeed on its merits. The issue before the Tax Court was the correctness of the reassessments, and Ms. Mann’s complaints concerning the propriety of the conduct of the Canada Revenue Agency (CRA) in relation

thereto were not relevant: *Ereiser v. Canada*, 2013 FCA 20, 444 N.R. 64 at para. 31; *Hud v. Canada*, 2024 FCA 82 at para. 39. This jurisprudence cannot be distinguished on the basis of any alleged abuse of process.

[6] Many of Ms. Mann's arguments in this appeal effectively ask this Court to reweigh the evidence that the Tax Court already considered. That is not our role. We will intervene on a factually suffused issue only if we are convinced that the Tax Court made a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. A palpable error is one that is obvious, plainly seen. An overriding error is one that goes to the very core of the outcome of the case.

[7] The Tax Court explained why it concluded that the use of the net worth method to determine her income was appropriate, and we see no reviewable error therein. We do not agree that the Tax Court ignored evidence on this issue. Any error that may have been made by the Tax Court in summarizing the facts or the steps taken within CRA is neither palpable nor overriding.

[8] We reach the same conclusion with regard to the Tax Court's factual findings in respect of the various properties at issue, and the other monetary amounts Ms. Mann received. The Tax Court discussed the relevant evidence at length, and reached conclusions that were open to it. We do not agree that the question of bare trust was inadequately pleaded. Even without explicit reference in the pleadings to a bare trust, the question of income from property held in the name of Ms. Mann's daughter being imputable to Ms. Mann was clearly in issue.

[9] Finally, we find no reviewable error in the Tax Court's conclusions that (i) it was appropriate to issue the reassessment of Ms. Mann's 2008 taxation year after the normal reassessment period, and (ii) gross negligence penalties were appropriate. On both issues, the Tax Court correctly stated the applicable law, and applied its factual findings thereto without palpable and overriding error.

[10] Accordingly, we will dismiss the motion to adduce new evidence and the appeal itself, with costs of both in the all-inclusive amount of \$2610.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-320-23

STYLE OF CAUSE: BOBBIE MANN v. HIS
MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 18, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** LOCKE J.A.
GOYETTE J.A.
WALKER J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

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