

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MARCIA A. PETTY,)	
)	
Plaintiff,)	TC-MD 040982E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s determination that she does not qualify for the Working Family Credit for 2003. A telephone trial in the matter was held October 28, 2004.¹ Marcia A. Petty appeared on her own behalf. Laurie Fery, Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff has provided full-time care to her granddaughter since her daughter was in an accident in July 1998. Subsequently, Plaintiff filed a petition with the Yamhill County Circuit Court and, in November of that year, was awarded “full legal and physical custody” of her granddaughter. The court stated that it was granting her “all the powers, rights, and duties of a legal custodial parent of the child.” (Ptf’s Compl, Judgment Establishing Custody of Minor Child (Custody Judgment) at 2.) Since 1998, Plaintiff has assumed the financial burden of raising her granddaughter, including daycare costs. On her 2003 income tax return, Plaintiff claimed \$1,200 for the Working Family Credit. Defendant notified Plaintiff that it was denying the credit and adjusting her return accordingly. Plaintiff submitted a written objection to Defendant’s denial of the credit. On July 9, 2004, Defendant affirmed its denial of the credit. Plaintiff appeals Defendant’s ruling. She claims child care expenses incurred for her

¹ The court converted the proceeding from a case management conference into a trial after both parties stated they were prepared to submit the case to the court for decision at that time.

granddaughter should qualify under the statute because she has been granted full legal and physical custody of her granddaughter and because she qualifies for all other tax credits regarding her granddaughter's care.

II. ANALYSIS

ORS 315.262² allows certain low-income taxpayers a refundable credit against their Oregon income taxes for the purpose of partially offsetting the taxpayer's child care costs. The statute provides, in pertinent part:

“A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses * * *.”

ORS 315.262(2).

The legislature provided definitions for the terms “qualified taxpayer” and “child care expenses.” *See* ORS 315.262(1). Broadly speaking, a “qualified taxpayer” is a taxpayer who meets the income requirements specified in ORS 315.262(1)(d). “Child care expenses” are defined as “costs associated with providing child care to a qualifying child of a qualified taxpayer.” ORS 315.262(1)(b).

From the text of the statute, it is clear that the legislature intended the Working Family Credit to be available only in limited circumstances. First, the credit is available only to a “qualified taxpayer.” If a taxpayer fails to satisfy the income requirements specified in ORS 315.262(1)(d), the Working Family Credit is unavailable. Second, the credit is available to offset only those child care costs specifically identified in the statute. Because the definition of the term “child care expenses” includes only those costs incurred in providing child care to a
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² All references to the Oregon Revised Statutes (ORS) are to 2001.

qualifying child, the costs of providing child care to a nonqualifying child are not creditable under ORS 315.262(2).

The key question is whether Plaintiff's granddaughter is a "qualifying child" for purposes of ORS 315.262(2). The statute defines the term "qualifying child" as "**a child of the taxpayer** who is under 13 years of age, or who is a disabled child, as that term is defined in ORS 316.099." ORS 315.262(1)(e) (emphasis added). Plaintiff acknowledges that she has not adopted her granddaughter. However, Plaintiff argues that, because she has been granted "full legal and physical custody" by the Yamhill County Circuit Court, she possesses all the rights and responsibilities of a parent. (*See Custody Judgment at 2.*) Grants of custody most often occur as a result of a divorce proceeding. Under ORS 107.105, whenever a court renders a judgment of marital annulment, dissolution or separation, the court may provide for the following in the judgment:

"For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during the marriage, and for minor children born to the parties prior to the marriage, as the court may deem just and proper under ORS 107.137 [identifying factors considered in determining custody of minor children]."

ORS 107.105(1)(a) (in relevant part). In a divorce, one or both of the parents may be awarded custody of the child. The grant of custody to one parent does not, however, terminate the parental rights of the other. Both parents' rights continue unabated, although the custodial parent retains greater decision-making authority than the noncustodial parent.

A grant of custody may also result from a finding that a parent is unfit or unable to care for his or her child. *See generally* ORS 109.119. In the case at hand, the circuit court awarded Plaintiff custody of her granddaughter under ORS 109.119(4) because the child's mother was unable to provide "adequate full-time care and custody" and the child had been in Plaintiff's care since the child's mother was in an accident. (*Custody Judgment.*) The circuit court found that

Plaintiff had established the requisite emotional ties with her granddaughter and that it was in her granddaughter's best interests that Plaintiff be granted legal custody. (*Id.*) It also provided for visitation between the child and her mother. (*Id.*)

The circuit court did not, however, terminate the parental rights of the child's mother or father, although it would have had the power to do so following appropriate proceedings. *See* ORS 419B.521 and 419B.812 (necessity of hearing and adequate notice before termination of parental rights). In light of that, the language of the Custody Judgment specifically grants Plaintiff limited powers, rights, and duties – those of a legal **custodial** parent – rather than all the powers and duties of a parent. In the instance of a divorce, the grant of custody to one parent does not remove parental rights from the other; likewise, in the instance of a disabled parent, the grant of custody to a third person does not terminate the parental rights of the child's parents.

Plaintiff further argues that, because her granddaughter qualifies as a dependent child for other tax purposes, she should similarly be viewed as her dependent for purposes of the Working Family Credit. Oregon allows the same number of personal dependency exemptions as “allowed under section 151 of the Internal Revenue Code” for federal purposes. ORS 316.085(1)(a). The Internal Revenue Code (IRC) generally allows an exemption credit for each “dependent” of a taxpayer. IRC § 151(c).³ A “dependent” is defined in IRC § 152(a)(1) and includes a “son or daughter of the taxpayer, **or a descendant of either**” (emphasis added). Therefore, for purposes of determining dependency exemptions, the statute specifically includes the descendants of a

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taxpayer's son or daughter. A grandchild falls within the definition of a dependent for purposes

³ All references to the Internal Revenue Code (IRC) are to 2003.

of the exemption credit.⁴

In contrast, Oregon’s statutory provisions for the Working Family Credit do not relate to any federal definitions of dependents or qualifying children. Instead, the legislature chose to specifically set forth its own definition of a “qualifying child.” By doing so, it limited the definition to **children** of a taxpayer. The legislature did not expand the definition to include descendants of those children.⁵

The court understands and appreciates Plaintiff’s assertion that she is, in essence, the “parent” of her granddaughter and should be allowed the benefit of the Working Family Credit. However, in deciding whether the legislature intended Plaintiff to qualify for the credit, this court is constrained by the words of the statute and the words of the statute are unambiguous. Unless the child is a child of a taxpayer, child care costs incurred in providing care for that child are not creditable under ORS 315.262. Plaintiff’s arguments related to equity are better presented to the legislature.

III. CONCLUSION

The court concludes a grant of “full legal and physical custody” of a grandchild to a grandparent does not entitle that grandparent to claim the Working Family Credit. The court further concludes that a grandchild does not meet the definition of a “qualifying child” under ORS 315.262(1)(e) because a grandchild is not a “child of the taxpayer.” As a result, Plaintiff’s

⁴ A similar situation occurs for the child care expense credit found in ORS 316.078(1). The Oregon statute allows a credit for a percentage of the child care expenses allowed under IRC § 21. IRC § 21 allows expenses for qualifying individuals and defines a “qualifying individual” as “a dependent of the taxpayer.” IRC § 21(b)(1)(A). The statute then refers to the dependency requirements contained in IRC § 151(c).

⁵ Although not at issue here, other plaintiffs have contended that legal guardians should qualify for the Working Family Credit. *See, e.g., Richmond v. Dept. of Rev.*, TC-MD 040802E (Sept 13, 2004) and *Radford v. Dept. of Rev.*, TC-MD 040864E (Sept 13, 2004). However, the result under that argument is no different – parental rights as a whole are not terminated by the establishment of a legal guardianship; the parental rights and duties not transferred to the legal guardian by ORS 125.315 continue contemporaneously with the guardianship. As a consequence, neither can a legal guardian obtain the benefits of the Working Family Credit by claiming the child is a “child of the taxpayer,” unless a termination of parental rights has also occurred.

claim that she is entitled to the Working Family Credit for child care expenses incurred for the care of her granddaughter must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of December 2004.

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER DECEMBER 14, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 14, 2004.