



Civil Resolution Tribunal

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File: SC-2023-002366

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Greig v. Thompson*, 2024 BCCRT 393

B E T W E E N :

SUSAN SHAW GREIG

APPLICANT

A N D :

JILL CHRISTINE THOMPSON and SHAYNE ALEXANDER
MARQUETTE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about property damage. Susan Shaw Greig has a pool in her backyard. Jill Christine Thompson lives next door, and Shayne Alexander Marquette is her son. There is a fence separating Mrs. Thompson's backyard from Ms. Greig's. In April 2022 Mrs. Thompson was taking care of Mr. Marquette's dog when it entered

Ms. Greig's backyard through a gap in the fence and fell into Ms. Greig's pool (the incident).

2. Ms. Greig says the dog damaged her pool when it fell in. She claims \$1,000 for her insurance deductible, \$2,329.89 for increased insurance premiums for 3 years, and \$600 for the loss of use of her pool for 3 months, for a total of \$3,929.89.
3. The respondents say there is no evidence the dog damaged Ms. Greig's pool. They also say Ms. Greig failed to properly maintain the fence around her pool in breach of municipal bylaws and the *Public Health Act*. They say they do not owe Ms. Greig anything.
4. Ms. Greig and Mr. Marquette are self-represented, and Mrs. Thompson is represented by a family member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would

be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Marquette's dog damage the pool?
 - b. If so, who is responsible for the incident?
 - c. Is Ms. Greig entitled to \$3,929.89 in damages?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Greig must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
11. On April 30, 2022, Mrs. Thompson was watching Mr. Marquette's dog. The dog was playing in Mrs. Thompson's backyard when it got through a gap in the fence, entered Ms. Greig's backyard, and fell into Ms. Greig's pool. Mrs. Thompson entered Ms. Greig's backyard through the same gap in the fence and pulled the dog out of the pool.

Did Mr. Marquette's dog damage the pool?

12. Before the incident, Ms. Greig's pool was partially filled with water and covered by a tarp that was secured with bricks around the pool's perimeter. The tarp had some water pooled on top of it. When the dog fell in the pool it pulled some of the bricks in with it, which Ms. Greig says damaged the pool liner and cover. She submitted video

surveillance footage of the incident which I find is consistent with her description of how the damage occurred. In May 2022 Ms. Greig made an insurance claim for the pool damage. Her insurer determined that the dog damaged the pool liner and cover when it fell in the pool on April 30, 2022, and paid approximately \$7,000, less a \$1,000 deductible, to replace these items.

13. The respondents deny that Mr. Marquette's dog damaged Ms. Greig's pool. They say there is no evidence of the pool's condition before the incident, and so the pool's liner or cover could have been torn before the incident. While this is possible, I find Ms. Greig's video footage of the incident and the evidence from her insurer persuasive. I find it is more likely than not that the dog damaged the pool as Ms. Greig claims.

Who is responsible for the incident?

14. There are 3 ways a dog owner may be liable for their dog's actions in British Columbia: occupier's liability under the *Occupier's Liability Act*, the legal concept of "scienter", and negligence. The incident did not occur on property owned or controlled by the respondents, so I find occupier's liability does not apply here. "Scienter" is when a dog has previously shown a tendency to cause the type of harm that happened, and the dog's owner knew of that tendency (see *Evans v. Berry*, 2024 BCCA 103). There is no evidence Mr. Marquette's dog previously caused or showed a tendency to cause property damage, so I find scienter does not apply.
15. I turn to negligence. To succeed, Ms. Greig must show that the respondents owed her a duty of care, they failed to meet the required standard of care, and the failure caused reasonably foreseeable damage. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC), the court said a dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone or damage their property. In that case, an unleashed dog knocked down a person on a sidewalk causing them injury.
16. I find the same duty of care applies here. I also note that the Regional District of Central Okanagan Bylaw No. 1343 (dog bylaw) applies to the City of West Kelowna, where the incident occurred. Section 21 of that bylaw prohibits an "Owner" from

allowing their dog outside of a house unless it is secured inside a fence. The exceptions to this are if the “Owner” has “custody and control” of the dog on their own property or on other private property with that property owner’s consent. Section 6 of the dog bylaw defines an “Owner” as “a person owning; or harbouring; or having custody, care and control of a dog; or being in possession of a dog.” While a breach of a municipal bylaw is not necessarily proof of negligence, in the circumstances here I find it is proof of the required standard of care.

17. Mr. Marquette owns the dog, but there is no evidence he was with his dog or Mrs. Thompson at the time of the incident. Mrs. Thompson has her own dog and there is no evidence she has any history of failing to control her own or others’ dogs. So, I find it was not negligent of Mr. Marquette to leave his dog with Mrs. Thompson. I dismiss Ms. Greig’s claims against him.
18. Although Mrs. Thompson does not own the dog, it was undisputedly in her custody and care at the time of the incident. So, I find she meets the definition of “Owner” in the municipal dog bylaw. Mrs. Thompson says her dog and Mr. Marquette’s dog were playing in her backyard when she noticed Mr. Marquette’s dog was missing from her yard. She also says the fence separating her backyard from Ms. Greig’s has always been in disrepair. So, I find Mrs. Thompson knew or should have known there was a gap in the fence, or that a dog could otherwise get through the fence. The video surveillance footage of the incident shows that the dog was in Ms. Greig’s backyard for at least 5 minutes, and in the pool for at least 3.5 minutes, before Mrs. Thompson entered Mrs. Greig’s backyard to retrieve it.
19. I find that by allowing Mr. Marquette’s dog in her backyard, which Mrs. Thompson knew or should have known was enclosed by an insufficient fence, and by allowing the dog to get far enough away from her that she could not see what it was doing for several minutes, Mrs. Thompson failed to maintain reasonable control of the dog. I find she breached the dog bylaw and breached the required standard of care, and so I find she was negligent. However, my analysis does not end there.

20. Neighbours owe each other a duty of care to take reasonable steps to avoid or alleviate foreseeable risks. If someone breaches the required standard of care, and the breach causes their neighbour to suffer a loss, they are negligent. The City of West Kelowna's Building Regulation Bylaw No. 0086 (building bylaw) applies to Ms. Greig's home. Section 12.1 of that bylaw requires a fence or equivalent barrier to prevent access to a swimming pool. It requires that all openings through the fence be equipped with self-closing and self-latching gates. Section 12.4 of that bylaw requires that the fence or barrier be in place before water is placed in the pool. As noted above, breach of a municipal bylaw is not necessarily proof of negligence, but here I find it is proof of the required standard of care of a homeowner with a pool.
21. Ms. Greig acknowledges, and her correspondence with her insurer shows, that she was aware of the gap in the fence at least 2 weeks before the incident. The parties disagree about whether Ms. Greig spoke with Mrs. Thompson's tenant about the gap in the fence before the incident, but I find nothing turns on this. Mr. Marquette's dog undisputedly entered Ms. Greig's backyard through the gap in the fence immediately before falling into the pool. So, I find Ms. Greig breached section 12 of the building bylaw by failing to repair the gap in the fence or install a sufficient gate around the gap. I find she breached the required standard of care and was negligent.
22. I note here, the respondents refer to Section 7(1) of the *Pool Regulation* under the *Public Health Act*, which requires an "operator" to build and maintain a fence or other barrier around a pool. However, section 2 of the *Pool Regulation* says it does not apply to a private residential pool installed for the use of the occupants and guests of a single family dwelling or duplex. I find Ms. Greig's pool meets this definition of a private residential pool, and so I find it is exempt from the *Pool Regulation's* requirements.
23. I have found that both Ms. Greig and Mrs. Thompson were negligent. I find there is insufficient evidence to determine whose property the fence is on, but both parties' negligence is founded on the fence's insufficiency. Section 1(2) of the *Negligence Act* says that if it is not possible to establish different degrees of fault in the circumstances,

liability must be apportioned equally. So, I find Ms. Greig and Mrs. Thompson are equally responsible for the incident.

Is Ms. Greig entitled to \$3,929.89 in damages?

24. Ms. Greig claims \$1,000 for reimbursement of her insurance deductible. Based on her correspondence with her insurer, I am satisfied that she paid her insurer this amount. She also provided evidence showing her insurer attempted to contact the respondents but was unable to do so. Her insurer told her it would not pursue a subrogated claim against the respondents. I am satisfied that Ms. Greig will not recover her deductible through a subrogated claim. Since I have found both Mrs. Thompson and Ms. Greig equally responsible for the incident, I find Mrs. Thompson must pay Ms. Greig \$500 as reimbursement for half her deductible.
25. Ms. Greig also claims \$2,329.89 for increased insurance premiums for the next 3 years, but she provided no evidence to support this claim. Specifically, she provided no evidence of the amount of her insurance premiums before or after the claim, or how she calculated the amount claimed. Without more, I find Ms. Greig has failed to prove this part of her claim.
26. Ms. Greig also claims \$600 for the loss of use of her pool for 3 months. She submitted a statement from her neighbour, MY, who said Ms. Greig uses her pool every year and that they swam in Ms. Greig's pool a year before the incident. However, she did not explain or provide evidence to show which months of the year she normally uses her pool, or when her pool was repaired after the incident. Without more, I find Ms. Greig has failed to prove this aspect of her claim.
27. The *Court Order Interest Act* applies to the CRT. Mrs. Greig is entitled to pre-judgment interest on the \$500 owing calculated from May 25, 2022, which is the date she started her insurance claim, to the date of this decision. This equals \$36.22.
28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

Since Ms. Greig was somewhat successful, I find she is entitled to reimbursement of half her CRT fees, which equals \$87.50. She claimed \$175 for dispute-related expenses to serve the respondents but did not submit any evidence showing she incurred these expenses, so I dismiss this claim. The respondents did not pay any CRT fees or claim any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order Mrs. Thompson to pay Ms. Greig a total of \$623.72, broken down as follows:
 - a. \$500 for half of Ms. Greig's insurance deductible,
 - b. \$36.22 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
30. Ms. Greig is entitled to post-judgment interest, as applicable.
31. I dismiss Ms. Greig's claims against Mr. Marquette.
32. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member