



Civil Resolution Tribunal

Date Issued: May 31, 2018

File: SC-2017-005085

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eggberry v. Horn et al*, 2018 BCCRT 224

B E T W E E N :

George Eggberry

APPLICANT

A N D :

Jillian Horn, Jennifer Bresciani and Jacob Bresciani

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Maureen E. Baird

INTRODUCTION

1. This is a dispute about the ownership of a Golden Retriever dog, Ruby Star (Ruby), which the applicant, George Eggberry, says he left with the respondent Jillian Horn to mind for one day on August 26, 2017 and which has not been returned to him. He asks the tribunal to return the dog to him, reimburse him for expenses, and to award him damages for mental distress.

2. The respondent, Jillian Horn, disputes that the applicant owns the dog and says that she was entitled to keep the dog not only because she is also an owner, but also because she believes that Mr. Eggberry was not properly caring for the dog.
3. The respondents, Jennifer Bresciani and Jacob Bresciani, also claim ownership of the dog by virtue of having been given it by Jillian Horn.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is the applicant entitled to Ruby's return?
 - b. Is the applicant entitled to damages for mental distress?
 - c. Is the applicant entitled to reimbursement for expenses in the amount of \$65.00?
 - d. Who should be responsible for a veterinary bill in the amount of \$379.80 for services provided on August 26, 2017?

EVIDENCE AND POSITION OF THE PARTIES

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. The parties provided considerable evidence, factual and visual. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Eggberry and Ms. Horn had been in a long term relationship, starting in about 2012. They separated in 2016. There are children of the relationship. Mr. Eggberry and Ms. Horn both engage in parenting the children. There was evidence presented about the nature of the relationship between Mr. Eggberry and Ms. Horn, in particular, whether it was a common law relationship at the time that Ruby was adopted. Mr. Eggberry and Ms. Horn disagree on this point. As Mr. Eggberry and Ms. Horn addressed this issue, I first considered whether this case fell within the tribunal's personal property jurisdiction under section 3.1 (1) of the Act, or whether the dog is family property as defined in section 84 of the *Family Law Act*. Given the findings of fact and determinations I have made as set out in this decision, I find that the dog is property within the jurisdiction of the tribunal.
11. Ruby was adopted from the Saskatoon SPCA on September 20, 2012. The Adoption Contract was signed by Mr. Eggberry as the person adopting the dog

and accepting the contractual obligations as the adopter. At the time, Mr. Eggberry and Ms. Horn were residing together in Calgary. Mr. Eggberry admits that Ms. Horn was considered part of the process to adopt Ruby as they were co-habiting at that time.

12. Mr. Eggberry and Ms. Horn lived together until mid-2016 when they separated. The reasons for their separation are not relevant to this decision and are unrelated to Ruby.
13. Ruby was the family pet. There is no question, on the evidence, that Mr. Eggberry, Ms. Horn and the children all care deeply for the dog. I also accept that the respondents Jennifer Bresciani and Jacob Bresciani care for Ruby.
14. Immediately after the separation, Ruby remained with Mr. Eggberry who continued to live on the farm in Nova Scotia where the couple had been residing. In October, 2016, Mr. Eggberry was required to move from the farm and Ms. Horn moved back in. Ruby stayed with Ms. Horn on the farm.
15. In January 2017, Ms. Horn relocated to British Columbia. It was determined that Ruby would travel by air with Ms. Horn to British Columbia rather than by truck with Mr. Eggberry, who had also decided to relocate to British Columbia. Mr. Eggberry says that this was an interim arrangement in the best interests of Ruby.
16. When Ms. Horn arrived in British Columbia she stayed with her sister, the second respondent, Jennifer Bresciani, and her sister's husband, Jacob Bresciani. She had Ruby with her.
17. By April 2017, Mr. Eggberry had also relocated to British Columbia. He took a pet-friendly accommodation so that Ruby could live with him.
18. Ms. Horn admits that in May, 2017 she decided to "find a new home" for Ruby. She had determined that due to other obligations she could not properly care for the dog, including providing the exercise it required. She says that she asked Mr. Eggberry if he would be willing to look after Ruby and he agreed. Ms. Horn says

that she considered giving the dog to Jennifer Bresciani to look after, but decided that it was in the best interests of Ruby to first offer it to Mr. Eggberry. Ms. Horn provided him with the bedding, toys, medicine and grooming aids that she had for Ruby. Mr. Eggberry says that from this time forward, Ruby was living exclusively with him. Because of their ongoing contact as a result of their parenting arrangements and the affection of Ms. Horn and the children for the dog, Ruby would stay with Ms. Horn if Mr. Eggberry travelled, for example for 4 days in May, 2017. This is not disputed by Ms. Horn.

19. In or about August, 2017, Ruby had a flea infestation. Mr. Eggberry went online to find a solution other than the chemical flea collars that had been used in the past with mixed results. The treatment that he tried was the application of a diluted vinegar solution. To facilitate the application he cut some or all of the dog's coat short. Mr. Eggberry says that in the beginning this treatment appeared to be working both on Ruby and on his home, which also needed to be rid of the fleas. He admits that ultimately this remedy was not effective and that he would not use it again to cure a flea problem.
20. On August 26, 2017, Mr. Eggberry noticed that Ruby was exhibiting some pain behaviour. Later that day, Ms. Horn arrived at his home to drop off the children for a scheduled visit. Mr. Eggberry asked Ms. Horn to look after Ruby for the day and told her of the pain behaviour he had observed. Together they checked Ruby for the source of the exhibited pain and discovered a scab under her collar. Ms. Horn felt that Ruby needed to see a veterinarian. Mr. Eggberry disagreed. He felt that rest was what Ruby required. Ms. Horn agreed to care for the dog for the day. She took Ruby to a veterinarian for emergency treatment.
21. Ms. Horn arrived at Mr. Eggberry's home later on August 26, 2017, to pick up the children. Ruby was not with her. She said that the dog was resting comfortably at her home. Mr. Eggberry suspected that Ms. Horn did not intend to return the dog and made a report of stolen property to the police. Later that evening he received by email an account from the veterinary hospital that had treated Ruby on August

26, 2017. The invoice indicates that an antibiotic had been prescribed as well as pain control medication and flea medication. Mr. Eggberry has not paid the \$379.80 veterinary bill. Mrs. Bresciani says that she has paid for additional veterinary care since she has had possession of Ruby.

22. The notes of the treating veterinarian on August 26, 2017 confirm the flea infestation. The skin irritation was said to be caused by either hypersensitivity to the flea bites, self-trauma from the itch or irritation from the use of the vinegar which the veterinarian noted was "...not helping and potentially hurting by being [sic] topical irritant". Discontinuance of vinegar baths was advised. In addition, there was a tentative diagnosis of Cervical Intervertebral Disc Disease. The treatment plan was that advanced imaging to confirm the diagnosis should be done if there was a worsening or no improvement to the presenting symptoms. In the meantime strict rest was prescribed.
23. Ms. Horn decided that it was no longer appropriate for Mr. Eggberry to care for Ruby. Over Mr. Eggberry's objections she kept Ruby. In or about September, 2017 Ms. Horn asked Jennifer Bresciani and her husband to take Ruby, which they did. Ms. Horn is not seeking ownership of Ruby. Her position is that the dog should remain with the Bresciani family. She says that the flea treatment tried by Mr. Eggberry combined with the fact that Ruby was unwell on August 26, 2017 amounts to animal abuse disqualifying Mr. Eggberry from owning Ruby. She says that the SPCA have confirmed this view, however, no independent evidence of this was provided.
24. Mrs. Bresciani says that having received Ruby, she followed up with the veterinary care and that the dog has fully recovered. She says that while she and her husband have had Ruby, Mr. Eggberry has not offered to pay vet bills or enquired about her health. She and her husband both express concern that Mr. Eggberry has not expressed remorse for Ruby's condition on August 26, 2017. Mr. and Mrs. Bresciani wish to keep Ruby.

25. Mr. Eggberry confirms that he would not use the vinegar wash in the future for flea management.
26. Mr. Eggberry makes a claim for reimbursement for gas and telephone expenses totaling \$65.00 which he says are related to obtaining witness statements. There is no independent evidence of the damages that he claims for pain and suffering, and in particular no medical evidence.
27. Both the applicant and the respondents provided letters from third parties to support their respective positions.
28. I asked all parties to provide written submissions on who should be responsible for the \$379.80 veterinary bill from the August 26, 2017 visit to the emergency clinic which had been paid by Ms. Horn. Mr. Eggberry took the position that he would agree that the amount of the veterinary bill could be deducted from the \$5,000 damages he claimed. He said the balance of any damage award, after payment of the veterinary bill, would be donated to animal service groups.
29. Ms. Horn said that she paid the veterinary bill because she considered herself to be the owner at the time and that therefore Ruby's care was her responsibility. She is not seeking reimbursement. Mr. and Mrs. Bresciani did not make any claim for reimbursement for the veterinary costs they say they have incurred.

ANALYSIS

30. This case raises the issue of the legal nature of pet ownership. Because pets become part of family life, it is tempting to consider them as family members. However, in *Henderson v. Henderson*, 2016 SKQB 282, the court made it clear that this was not the correct analysis. This was a case where a divorcing couple fought over custody of their two dogs. In the Henderson decision, the court held that dogs should not be considered the same as children, but rather as property.

31. The Henderson decision was recently followed in British Columbia in *Brown v. Larochelle*, [2017] B.C.J. No. 758. The court set out the following principles:
- (a) pets will not be treated in a manner such as children;
 - (b) pets are a variant of personal property;
 - (c) there is a legal requirement that animals (and in particular dogs and cats) be treated “humanely”.
32. In the present case, Mr. Eggberry alone signed the adoption papers for Ruby, taking contractual responsibility for the dog. I do not find that fact determinative of ownership since the parties jointly took responsibility Ruby’s care until the time of their separation in September, 2016. I accept that the dog became a much loved family pet. Mr. Eggberry and Ms. Horn considered the best interests of Ruby in their decision making, including when they separated.
33. On the basis of the above evidence, I find that in May 2017 when Ms. Horn determined that she could no longer look after Ruby and that she would find a new home for the dog, that she relinquished her rights of the dog’s ownership to Mr. Eggberry. Up until that time, she was a co-owner of Ruby, but, on her own evidence, it was her intention in May 2017 to find Ruby a new home. She did so by giving up her rights and interest in ownership of Ruby to Mr. Eggberry. After that time, I find that she retained no property interest in the dog.
34. Given these conclusions, I find the *Family Law Act’s* provisions about division of property do not apply and therefore the tribunal has jurisdiction rather than the B.C. Supreme Court having exclusive jurisdiction. Further, Ms. Horn is not asserting any ownership in Ruby as a family asset.
35. Ms. Horn does not dispute that on August 26, 2017 she was asked and agreed to mind Ruby for the day while Mr. Eggberry was visiting with their children. On

August 26, 2017, Mr. Eggberry was the sole owner of Ruby. Ms. Horn was simply minding the dog for a day.

36. I accept that the approach Mr. Eggberry had taken to flea remediation for Ruby was a failure and that it likely also caused the skin irritation problems. However, in the absence of clear evidence from a third party, I am unable to find that this amounts to neglect or abuse. On August 26, 2017 Ruby required medical treatment for a skin condition and for fleas. The neck problem remains unexplained on the evidence and it is not disputed that Mr. Eggberry's assessment that Ruby needed rest was, at least in part, the same as the recommendation from the veterinarian. The statement that Ruby had to be removed from her present environment is equally consistent with the need for her to be removed from anywhere where the fleas continued to live and could re-infest her and is not support for Ms. Horn's position of neglect and abuse.
37. The cases make it clear that a dog is a special type of property and that I can consider whether returning it to Mr. Eggberry would result in abuse or neglect. On the evidence, I cannot find that Mr. Eggberry is either abusive or neglectful. I also understand from the evidence that Mr. Eggberry appreciates that the vinegar was not an appropriate flea treatment and it will not be used in the future.
38. I find that Ms. Horn had no interest in Ruby to transfer to her sister, Mrs. Bresciani. Therefore, Mr. and Mrs. Bresciani never became owners of Ruby. From all of the evidence I am satisfied that at the time Ms. Horn purported to give Ruby to her, all parties knew that Mr. Eggberry had become the owner in May 2017 when Ms. Horn decided that the dog needed a new home.
39. Therefore, I find that on the evidence Mr. Eggberry has established his ownership of Ruby and that Ruby should be returned to him. As Ms. Horn does not claim reimbursement of the \$379.80 veterinarian bill, I do not make any order for her reimbursement.

40. That leaves the issue of damages for mental distress. The authorities are clear that to establish such a claim there must be independent evidence of the harm asserted. While I accept that this situation might have been stressful and unpleasant, that is not enough to support a claim for damages for mental distress. In this case there is no medical evidence establishing that Mr. Eggberry has suffered any mental consequences of the events described above. In short, there is no evidence to support Mr. Eggberry's claim for damages for mental distress, and I dismiss this aspect of the claim.
41. Similarly, I dismiss Mr. Eggberry's claim for reimbursement of \$65.00 in expenses. First, his documentary support for this claim is not sufficient. It is admittedly an estimate or guess. Second, I am not satisfied that he has proved that these expenses were either necessary or related solely to pursuing his claim.
42. I have also turned my mind to the mechanics of Ruby's return to Mr. Eggberry. Ruby is currently in the possession of Mr. and Mrs. Bresciani where she has been for several months. I believe that the best method of transfer is for Mr. and Mrs. Bresciani, or either of them, to return Ruby to Mr. Eggberry at a mutually agreeable time and place, such as a local park, if Mr. Eggberry's home is not acceptable. Any current medications being taken by Ruby should be transferred at the same time.
43. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Mr. Eggberry did not pay any tribunal fees.

ORDERS

44. Ruby is to be returned to Mr. Eggberry within 5 days of the delivery of this decision to the parties. Mr. and Mrs. Bresciani, or either of them, will return Ruby to Mr. Eggberry at a mutually agreeable time and place, such as a local park, if Mr. Eggberry's home is not acceptable. Any current medications being taken by Ruby should be transferred at the same time.

45. I dismiss the applicant's remaining claims.
46. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
47. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Maureen E. Baird, Tribunal Member