



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jeffrey et al v. Anderson*, 2018 BCCRT 272

BETWEEN:

Kalei Jeffrey and Michael Wright

APPLICANTS

AND:

Dawn Anderson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about neighbours and a fight between their dogs. The applicants, Kalei Jeffrey and Michael Wright, claim damages for injuries sustained by their two Chihuahuas, Romeo and Cara. The applicants say that the respondent Dawn Anderson's pit-bull cross dog named Gracie attacked Romeo and Cara. The

applicants also say Ms. Jeffrey sustained injuries to her hand when she tried to stop the dog fight. Ms. Anderson says that Cara charged at Gracie and that it is unknown which dog bit Ms. Jeffrey's hand.

2. The applicants claim reimbursement of the \$768.45 veterinarian bill for Romeo and Cara. They also claim \$3,000 in lost wages for Ms. Jeffrey, due to her hand injury, and \$198.70 in lost wages for Mr. Wright, due to his taking time off work to deal with the veterinarian. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, and I note that no one requested an oral hearing.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. To what extent are the applicants entitled to: a) reimbursement of their veterinary bill for their dogs, and b) lost wages, due to Ms. Jeffrey's hand injury and Mr. Wright's time off to care for the dogs?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. It is undisputed that in the late evening of May 16, 2017 the respondent's pit-bull dog Gracie was involved in a fight with the applicants' dogs Romeo and Cara. At the time of the dog fight, all dogs were off leash and in a common parking lot that was part of the dog-friendly condominium complex. The dog fight did not occur on any party's private property.
10. I accept that all parties love their pets. As discussed further below, I find that this dispute is not about pit-bulls versus Chihuahuas and which breed may be more aggressive. Rather, I find that this dispute is about negligence and which dog caused the injuries.

Liability

11. In BC, there is no legislation presuming pit bulls are dangerous dogs. There is also no relevant bylaw in Courtenay, where the dog fight occurred. Since the repeal of the *Animals Act* in 1981 there is no legislation in BC reversing the onus so as to require the respondent dog owner to prove her dog was not dangerous. As noted above, the applicants bear the burden of proof.
12. Therefore, in BC, there are currently 3 ways for a pet owner to be liable for the action of their pet: a) occupier's liability, b) the legal maxim known as 'scienter', and c) negligence.

13. Occupier's liability is where damage happens on property controlled by the occupier, which is not applicable in this dispute as the dog fight occurred in a parking lot.
14. Scienter means knowledge of the animal's poor behaviour or propensity to be aggressive. The applicants bear the burden of proving scienter, meaning they must prove the respondent knew her dog Gracie was likely to be aggressive. For scienter to apply, the applicants must prove: a) the respondent was the dog's owner, b) the dog had manifested a propensity or tendency to cause the type of harm that happened, and c) the dog's owner knew of that propensity (see *Xu v. Chen & Yates*, 2008 BCPC 0234, citing *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
15. The respondent submitted a handwritten note from a neighbour, who did not state their name but gave an address. This neighbour wrote that he and his wife and dog live on the same block as the people "with the two Chihuahuas", which I infer refers to the applicants. The neighbour writes that every time they met outside, the applicants' dogs would attack their dog and that Romeo and Cara were "aggressive" every time. The respondent produced another handwritten statement from another neighbour who said sometime in the middle of 2016 the applicants' dogs aggressively attacked her dog. Contrary to the applicants' submission, I find this evidence supports the conclusion that Cara provoked the dog fight, and that Romeo contributed to it also.
16. I find the above evidence suggests Romeo and Cara were known to be aggressive. However, the respondent did not file a counterclaim and she said Gracie's injuries were minor.
17. In contrast, I find the applicants have failed to prove the respondent knew her dog was likely to bite or engage in a dog fight. The applicants say the respondent had previously been issued warnings by the by-law officer to leash her dogs and that Gracie had previously attacked 2 other small dogs. The applicants say they confirmed the City of Courtenay has issued prior warnings about Gracie, but there

is no such evidence before me. If the applicants had obtained such confirmation, I would have expected them to provide it in evidence. The respondent denies she was ever issued a warning before the May 16, 2017 incident before me, verbal or otherwise, by a by-law officer or any other person. The respondent produced an email from the City of Courtenay that it had no record of any written warning about her dogs, prior to the May 16, 2017 incident, at least not after April which is how far back the city employee's log book went. I do not accept the applicants' unsupported assertion that Gracie had prior by-law warnings. I find the applicants have failed to prove scienter.

18. I turn then to negligence.
19. As cited in *Xu*, in *Martin v. Lowe*, 1980 CanLII 546 (BCSC), [1980] 19 B.C.L.R. 46, the Court observed that the duty is on the respondent to ensure its property, which includes a dog, was so under their control that it would not escape to injure someone or their property on the public road. In *Martin*, the dog was not leashed and the court concluded it was so out of control that he did not avoid pedestrians and instead ran over one of them.
20. In the dispute before me, all dogs were off-leash. I find the respondent was negligent and the applicants were each contributorily negligent. Had the dogs been leashed, the dog fight could have been avoided. I note the respondent acknowledges all dogs should have been leashed, although as set out in the evidence before me she argues that the applicants' dogs were the ones with the aggressive reputation, not Gracie.
21. The applicants say that Gracie attacked their dogs, first Cara and then Romeo, as they were on their way out. They say the dogs had been in their arms, but that Ms. Jeffrey put Cara down "for a second" so Cara could go to the bathroom, and that this is when Gracie went after Cara. Mr. Wright says he was inside when he heard Ms. Jeffrey scream and that Romeo followed him when he ran out. However, the applicants do not explain why they did not have Cara or Romeo leashed, even if

Cara needed to go to the bathroom. Again, I find the applicants should have had their dogs leashed, just as the respondent should have had Gracie leashed.

22. In contrast to the applicants' submission, the respondent says she heard dogs barking aggressively and saw Cara charged and barked aggressively at Gracie and that **Gracie then ran towards Cara** (my bold emphasis added). The respondent says that Gracie did not bark at all. I accept the respondent's evidence as I find it most consistent with the totality of the evidence before me.
23. The police report in evidence, taken a few hours after the dog fight, states that Romeo and Cara got small scratches and bites when "they ran up to the pit bull", and that Romeo and Cara sustained minor superficial injuries. The applicants do not deny that Cara barked and charged at Gracie, before the dog fight. I find that this is what occurred, given the totality of the evidence before me. I find Cara provoked the fight and was in a position to do so because she was not leashed. At the same time, the respondent does not dispute Gracie bit Romeo and Cara, although she questions which dog bit Ms. Jeffrey.
24. The respondent says it is unknown which dog bit Ms. Jeffrey. The respondent says her father separated Cara and Gracie by pulling Gracie by the collar into the house. The applicants say they tried their best to release the dogs, and in doing so Ms. Jeffrey's dominant right hand was bitten severely by Gracie. The applicants say the respondent made no effort to call Gracie off or to try and intervene. The respondent says she called out to the applicants, but was herself unable to intervene as she is disabled and was knocked over by the dogs. She was also trying to hold onto her other dog so it did not get involved in the dog fight. Ms. Jeffrey does not explain why she chose to put her hand into the dog fight, rather than using a stick, her purse, kicking or some other method that would be less likely to cause injury to herself.
25. Nothing turns on Gracie's lack of bite or attack history, given I have concluded the respondent was negligent in Gracie being off-leash. I do find that Gracie likely bit Ms. Jeffrey, rather than one of her own dogs doing so.

26. However, I also find Ms. Jeffrey was contributorily negligent in causing her own hand injury to stop the dog fight, particularly bearing in mind that she should have had her dog leashed.
27. I find that Gracie bit first. Gracie's ability to do so was because she was not properly restrained. I also find on the evidence that Gracie caused Romeo's injuries, which the respondent did not particularly dispute. However, I find the dog fight would not have occurred if Cara had not charged at Gracie in the first place, and that Cara was able to do so because she was off leash. Romeo would not have been injured either, had he been leashed.
28. Bearing in mind the provisions of section 1 of the *Negligence Act*, I find the parties equally at fault for the dog fight and equally at fault for the applicants' damages. The amount of damages awarded is discussed below.

Damages

29. The May 17, 2017 emergency veterinary bill for May 16, 2017 treatment on both Cara and Romeo is for \$768.45, which the applicants paid. I find the respondent must reimburse the applicants half of the \$768.45, namely \$384.23.
30. I turn then to the more contentious claims for lost wages. Mr. Wright took Romeo home later on May 16, 2017 and brought him to their regular veterinary clinic on May 17, 2017. Mr. Wright again took Romeo home and brought him back again for a check-up on May 18, 2017 and to have the catheter removed. On May 25, 2017, they brought Romeo back to have his sutures and staples removed.
31. I agree with the respondent that Mr. Wright has not proved it was necessary to take 2 days off work due to the dogs' injuries. Further, Mr. Wright did not provide any supporting evidence about his income. I dismiss Mr. Wright's claim for lost wages.
32. Ms. Jeffrey claims \$3,000 in lost wages, which the applicants say relates to 3 months of lost work.

33. The medical evidence before me shows Ms. Jeffrey attended at the hospital emergency room for the dog bite injury. There was no fracture or significant injury noted. Ms. Jeffrey is self-employed (the applicants do not say at what occupation) and the applicants say she suffered significant nerve damage and has not had full function of her right dominant hand since the incident. There is no medical evidence before me to support that assertion. Instead, the applicants submitted two medical notes dated May 21 and 25, 2017 noting Ms. Jeffrey was off work due to the dog bite and infection, with the first note saying she would be re-assessed in 2 to 3 days. The second note noted mild improvement in range of motion and referred Ms. Jeffrey to physiotherapy. Yet, there is no evidence before me that Ms. Jeffrey took physiotherapy. The second note also made no mention of Ms. Jeffrey being off work.
34. I find there is nothing in these 2 brief medical notes to indicate a significant absence from work occurred or was expected.
35. The applicants produced employment insurance (EI) statements for Ms. Jeffrey indicating she had been paid “sickness benefits” between May 14 and August 19, 2017. I cannot find on the basis of the EI statements that Ms. Jeffrey was reasonably off work for 3 months because of the dog bite. The dog bite incident occurred on May 16, 2017, not May 14, 2017. In reply, the applicants acknowledge that the EI claim was activated due to shortage of work, 6 months before the incident, and that Ms. Jeffrey re-activated it once again after the dog bite. On balance, I do not find the EI statements helpful to the applicants. The EI statements do not address the reason for her “sickness”.
36. I would expect more in the way of medical evidence to substantiate the claim that Ms. Jeffrey missed an extensive period away from work due to the dog bite to her hand. I find Ms. Jeffrey has not proved she needed to be off work for 3 months due to the dog bite. On a judgment basis, I find that based on the 2 medical notes before me Ms. Jeffrey has proved she missed 2 weeks of work due to the dog bite.

37. Ms. Jeffrey produced redacted banking statements that show deposits of \$375 every 2 weeks, which the applicants provided with the title “Income”. Based on her “income” evidence, I therefore find Ms. Jeffrey suffered \$375 in lost wages, and is entitled to half that amount, \$187.50. Based on the tribunal decision plan before me that sets out the applicants’ claims, the applicants did not make a claim for Ms. Jeffrey’s pain and suffering, and so I make no order about that.
38. There is no claim before me for tribunal fees or dispute-related expenses, and so I make no order about them. The applicants are entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), calculated from May 17, 2017 on the \$384.23 and from May 30, 2017 on the \$187.50.

ORDERS

39. I order the respondent to immediately pay a total of \$577.43, broken down as follows:
 - a. \$384.23 in damages to the respondents, plus \$3.86 in pre-judgment interest under the COIA, and
 - b. \$187.50 in damages to the respondent Ms. Jeffrey, plus \$1.84 in pre-judgment interest under the COIA.
40. The applicants are also entitled to post-judgment interest, as applicable. The applicants’ remaining claims are dismissed.
41. 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.
42. 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.

Shelley Lopez, Vice Chair