



Civil Resolution Tribunal

Date Issued: January 18, 2019

File: SC-2018-002888

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Black v. Holtz*, 2019 BCCRT 80

B E T W E E N :

Meagan Black

APPLICANT

A N D :

Katherine Holtz

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a summary decision about whether the Civil Resolution Tribunal (tribunal) should refuse to resolve this dispute under section 10 of the *Civil Resolution Tribunal Act* (Act), due to lack of jurisdiction.

2. For the reasons set out below, I refuse to resolve this dispute.
3. Only the evidence and submissions relevant to this decision are referenced below.
This is not a final decision as to the substance or merits of the dispute.

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 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUES

6. The issue is whether I must refuse to resolve this dispute because the tribunal does not have jurisdiction over the applicant's claims.

EVIDENCE AND ANALYSIS

7. 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.
8. This dispute is about the ownership/possession of a dog named Nahla, which the applicant says she owned jointly with the respondent. The applicant seeks enforcement of the parties' agreement to share the dog, or alternatively sole possession of the dog.

9. According to the tribunal decision plan (TDP), the parties agree that they lived together as a couple from at least 2011 until their relationship ended in August 2017. This is confirmed by a written statement from the applicant's mother, who says the parties lived together from 2011 until August 2017. This means that they were spouses, as defined in section 3 of the *Family Law Act* (FLA).
10. Dogs are considered property under the law. Thus, ownership of a dog generally falls within the tribunal's personal property jurisdiction under section 118 Act (or section 31.1(1) prior to January 1, 2019). However, the tribunal does not have jurisdiction over the division of "family property", as defined in the FLA.
11. Section 10 of the Act says that the tribunal must refuse to resolve a dispute that it considers is not within the tribunal's jurisdiction. Thus, if the dog Nahla was "family property", then the tribunal must refuse to resolve this dispute.
12. "Family property" is defined in sections 84 and 85 of the FLA. Section 84 of the FLA says that family property includes all personal property owned by at least one spouse on the date of separation. Section 85(1)(a) of the FLA says that property acquired by a spouse before the relationship between the spouses began is excluded from family property.
13. Agreements about division of family property are governed by section 92(a) of the FLA, which is part of Division 4 of the FLA. Section 94(1) of the FLA says the BC Supreme Court may make an order under Division 4 of the FLA about dividing family property. This means that the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property, and the tribunal therefore cannot take jurisdiction over such orders.
14. Through the tribunal facilitator, I invited the parties to provide submissions or evidence about whether the tribunal had jurisdiction over this dispute, and particularly whether Nahla was family property, as defined in the FLA. The applicant provided detailed submissions, which I reviewed but will not detail in full. In effect, she says the dispute does not involve dividing family property, but rather is about

enforcing an agreement the parties made to share Nahla after their relationship ended. She says by that point, she and the respondent had already agreed about how to divide all their family property.

15. Based on the evidence before me, I find that Nahla was family property, as defined in the FLA. According to the evidence before me, the respondent acquired Nahla while the parties were in a relationship, and the parties lived together for more than 2 years. I accept the respondent's evidence that her father provided the money to pay for Nahla at the time of the initial adoption, but I do not agree that Nahla was a gift, as contemplated in section 85(1)(b.1) of the FLA. I make this finding because the respondent signed the adoption contract directly with the humane society at the time of the adoption, and the receipt was issued directly to her.
16. While the applicant cited 3 other "dog sharing" decisions from the tribunal as precedents, I find those cases all have different facts than those before me in this dispute, and can therefore be distinguished. In particular, the applicant cites *Eggberry v. Horn et al*, 2018 BCCRT 224, which she says sets a new precedent that the tribunal does have jurisdiction over family property. I do not agree. In *Eggberry*, the tribunal member found the tribunal had jurisdiction over a family dog based on the specific facts of that case, which were that before the facts giving rise to the dispute occurred, the respondent had relinquished her property rights to the dog, and the applicant was the dog's sole owner. In the dispute before me, the applicant was never Nahla's sole owner, so the reasoning in *Eggberry* does not apply. I also note other tribunal decisions are not binding upon me, in any event.
17. I also find that the reasoning in the other decisions cited by the applicant, both of which I wrote, does not apply to this dispute. In *Lowe v. Lowe*, 2018 BCCRT 677, the evidence did not show that the parties were spouses, as defined in the FLA. In the dispute before me, the parties were spouses as they lived together for more than 2 years.
18. The other decision cited by the applicant, *Schroeder et al v. van Zyl*, 2018 BCCRT 525, involved a breach of contract between an ex-husband and his former parents-

in-law. That is not applicable here, contrary to the applicant's submissions, because the breached contract in *Schroeder* did not involve the division of family property. Rather, the contract involved the disposition of that property to a third party after the spouses had already divided it.

19. The applicant says the real substance of this dispute is enforcement of the agreement the parties made to share Nahla after their breakup. The parties agree they broke up around August 2017. The applicant provided copies of calendar pages from September to November 2017 that she says set out their agreement to share Nahla. A September 23, 2017 email from the respondent indicates that she agreed to this sharing schedule.
20. Because this dog sharing agreement was entered into by the parties less than 2 years after their relationship ended, it was an agreement about property division, as contemplated in section 92(a) of the FLA. Section 92(a) of the FLA is part of Division 4 of the FLA, and as previously stated, section 94(1) of the FLA says the BC Supreme Court may make an order under Division 4 of the FLA about dividing family property. This means that the BC Supreme Court's exclusive jurisdiction to make orders about the division of family property includes the enforcement of agreements to share or divide family property. While the applicant submits that the dispute fits within the tribunal's general mandate of fair, flexible and economical dispute resolution, that does not mean the tribunal can decide matters assigned by the FLA to the sole jurisdiction of the Supreme Court.

21. For these reasons, I find I must refuse to resolve this dispute under section 10(1) of the Act, as the tribunal does not have jurisdiction over the applicant's claim for ownership of Nahla, and also has no jurisdiction to enforce the parties' agreement to share Nahla.
22. In conclusion, the tribunal refuses to resolve this dispute. In the particular circumstances of this dispute, I find it is appropriate to refund the applicant's tribunal fees.

Kate Campbell, Tribunal Member