Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Montgomery v. Speed,* 2019 BCCRT 458

B E T W E E N :

Rheannon Montgomery

APPLICANT

A N D :

Ashley Speed

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about ownership of a snake, a ball python named Seven. The parties used to be friends. It is undisputed that the applicant, Rheannon Montgomery, bought the snake and took care of it for about 18 years.

2. It is also undisputed that sometime between February and September 2014 the respondent, Ashley Speed, agreed to take possession of Seven and care for it, and did so. The respondent says it was a verbal agreement that Seven would become her property. In contrast, the applicant says the ongoing understanding was always that Seven belonged to the applicant who could take him back on request.

3. On April 11, 2018, for the first time the applicant asked for Seven back during a heated argument. The respondent agreed but then an hour later said she was keeping Seven.

4. The applicant wants a declaration that Seven is her property and an order for its return to her. The applicant values Seven at $800. The applicant also wants returned Seven's tank and related accessories, which the applicant values at $200.

5. The parties are each self-represented. For the reasons that follow, I find the applicant's claim must be dismissed.

JURISDICTION AND PROCEDURE

6. These are the tribunal's formal written reasons. 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. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. 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.

9. 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.

ISSUE

10. The issue in this dispute is whether the applicant has proved she is the snake Seven's owner, and if so, what are the appropriate remedies.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. I accept that the parties all love Seven. However, the law is clear that pets should not be treated in law as family members but rather as personal property (see *Henderson v. Henderson*, 2016 SKQB 282, and *Brown v. Larochelle*, [2017] B.C.J. No. 758).

13. This dispute turns on whether in 2014 the parties' verbal agreement was that the respondent would temporarily (and indefinitely) look after Seven, or, whether the applicant gave Seven to the respondent to own. There is no allegation that either party has mistreated Seven. There is also no evidence that the applicant ever contributed to Seven's care expenses after 2014, or even offered to do so.

14. It is undisputed that in 2014 the applicant was unable to continue caring for Seven at that time. The applicant says this was because she had noisy neighbours that caused Seven to become afraid and timid.

15. The applicant says she gave Seven to the respondent temporarily, "for a finite period of time" in late summer of 2014. She says this was so the respondent could take Seven to her students' classroom. Yet, the applicant also says that the length of time for the respondent to care for Seven was never discussed, which is not consistent with a "finite period of time".

16. The applicant says she moved in June 2014 and the issue of noisy neighbours ended. However, she adopted a 2nd cat and her 2 cats were disruptive as they did not get along. The applicant says she hoped the cats would eventually get along so she could bring Seven home.

17. In early 2015, the applicant says she was told she might be evicted, and due to that housing insecurity and the cats problem, she did not reclaim Seven at that time.

18. The applicant says from time to time the respondent asked her for help with Seven by text. The applicant provided one example, a December 20, 2014 text where the respondent asked for advice about how to deal with Seven's flaking skin. The applicant responded with a suggestion the respondent take Seven in the bath with her. Contrary to the applicant's suggestion, I find the tenor of this discussion does not support a conclusion that the parties understood Seven remained the applicant's property. The respondent provided a series of text exchanges between the parties in 2015 and 2016, and in none of those occasions did the applicant ask after Seven.

19. While the applicant says there were other occasions she verbally asked after Seven, I find the evidence shows they likely were infrequent. It is undisputed that the applicant only saw Seven a few times in the 4 years before this dispute began.

20. In the circumstances here, I find nothing turns on the fact that the respondent may have occasionally asked the applicant for advice about Seven's care. The parties were friends then and the applicant had cared for Seven for 18 years. Such requests do not mean Seven was still the applicant's pet.

21. The respondent provided screenshots of FaceBook posts from April 2014 and May 2016. In the first, she described Seven as "my little water snake" and how Seven was behaving in the tank. In the second, she stated "our growing girl Seven needed a bigger tank! …". I find these contemporaneous posts show the respondent at the time believed Seven was her snake.

22. I have included below a fair amount of detail from the parties' April 11, 2018 text exchanges. I have done so because I find they are helpful in assessing whether the applicant has proved she did not transfer ownership of Seven to the respondent in 2014. I find that on balance the applicant has not proved that in 2014 the parties agreed that Seven was only on loan to the respondent.

23. In particular, on April 11, 2018, the applicant texted the respondent and asked "How's Seven? I've been thinking about you a lot lately". Ultimately, the applicant texted that she had been thinking about Seven a lot lately and that Seven's life expectancy was nearly at its end. The applicant said "I want to be with her when she passes … I know how much you love her but I need to be with her when she passes. Is that ok?". The respondent texted back "Are you asking for her back? She's in perfect health right now". The applicant responded, "I would like to have her again, yes." The respondent replied, "Ummm. I'm a bit shocked. I don't really know what to say. I've had her for years now. I don't know what to say. …" The applicant wrote, "it's been 4 good years for me too." The respondent went on to express surprise, that she had spent money on a vet and a new tank, stating, "Are you serious? Now? After four years? When you gave her up because you couldn't

give her the attention she needed?" The parties continued to text back and forth in a heated exchange that referred to the demise of their friendship. Ultimately, the respondent wrote "If you're determined, fine. I'm furious. I'm out of town next weekend, you can get her then. … You don't see me for nearly two years, and even that was less than a handful of times in four years". The same day, and the respondent says an hour later, the respondent wrote "I am not comfortable giving seven back to you. … She is my snake and you yourself told me that."

24. I accept the applicant's evidence that in early 2018 she had emotional reasons to cause her to want Seven back, given the snake had been her pet for 18 years before she gave Seven to the respondent in 2014. However, that desire alone is not sufficient. I find the tenor of the applicant's comments at the outset of the April 2018 exchange shows she felt she needed to ask for Seven's return, rather than her having a right to it. This suggests the applicant understood Seven had become the respondent's property.

25. I find nothing turns on the respondent's agreement to return Seven in the April 11, 2018 exchange, which I find she reversed within about an hour. I find her agreement does not establish the applicant's ownership of Seven. Rather, it was clearly part of a broader statement about her anger with the applicant who had been her friend. There was no consideration (payment or anything of value) passed for the return of Seven, and so that short-lived agreement I find is not enforceable.

26. What about the original agreement when the applicant gave Seven to the respondent? The applicant submits that the passage of time is irrelevant and that the respondent must prove the applicant gave Seven as a gift, citing the Ontario case of *Massalin v. Garcia*, 2016 ONSC 5945 (see *also Lundy v. Lundy*, 2010 BCSC 1004). For there to be a legally effective gift, 3 things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The applicant denies any intention to donate Seven to the respondent. The case law is clear that the evidence should show that the intention of gift was inconsistent with any other intention or purpose (see *Lundy*, paragraph 20).

27. While I find it likely that the applicant intended to relinquish ownership of Seven in 2014, I find I do not need to determine whether the transfer of Seven was a gift in law. I say this because I find the likely scenario was that the parties' verbal agreement was a contract: the applicant transferred ownership of Seven to the respondent, which the respondent accepted. As consideration, in return the respondent relieved the applicant of the responsibility, financial and otherwise, of caring for Seven. The fact that the applicant never paid for any of Seven's care or offered to do so, in the 4 years in question, is support for this conclusion. I say the same about the applicant's April 11, 2018 request for Seven's return, which I have found above indicates the applicant understood the respondent owned Seven.

28. Even if I am incorrect in my conclusion about the parties' agreement in 2014, I find the applicant abandoned Seven.

29. The applicants' claim against the respondent is in essence the tort of conversion or what is known in law as detinue. The tort of conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. Detinue refers to continuous wrongful detention of personal property, with the general remedy being the return of the asset or market value damages. For the purposes of this decision nothing turns on the difference. Here, the respondent refuses to return Seven, claiming she owns Seven with the alternative argument that the applicant abandoned the snake.

30. The tort of conversion and detinue is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights: see *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at para. 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58; *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para. 15.

31. The law is clear that the applicants must prove:

    a. a wrongful act by the respondent involving the applicant's personal property;

b. the act must involve handling, disposing, or destroying the goods; and

c. the respondent's actions must have either the effect or intention of interfering with (or denying) the applicant's right or title to the goods.

32. In this case, the focus is on whether the respondent's action in refusing to return Seven, on the basis the applicant abandoned the snake, was wrongful. I find that if the applicant effectively abandoned Seven, the respondent is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256 at paragraph 30). As set out in *Bangle*, if the applicant abandoned Seven, the respondent's continued possession of Seven is not conversion because in so doing, the respondent was not interfering with the applicant's right of possession. In other words, if the applicant abandoned Seven, the respondent does not have to return the snake to the applicant.

33. In using the word 'abandonment', I am not suggesting the applicant was heartless or negligent in handling Seven. Rather, 'abandonment' is a legal term which may apply to the applicant's decision to leave Seven in the respondent's care.

34. Similar to my conclusion in *Vogt v. Koene,* 2018 BCCRT 389, I find the applicant abandoned Seven. I say this given the extraordinary amount time (almost 4 years) that the applicant left Seven with the respondent, with no end-date in sight. I find that in that 4-year period the applicant never asked for Seven's return or discussed that possibility. In *Bangle*, it was roughly a 2-year period where the applicant was found to have abandoned their property. Here, it is undisputed that the applicant made no effort to look after Seven after 2014 and entirely left its care to the respondent. All of these facts support a conclusion of abandonment.

35. In accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

36. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair