



Civil Resolution Tribunal

Date Issued: June 19, 2019

File: SC-2018-009473

Type: Small Claims

Civil Resolution Tribunal

Indexed as: Johnston v. Arnott, 2019 BCCRT 748

BETWEEN:

KRISTINA JOHNSTON

APPLICANT

AND:

ROBERT ARNOTT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about ownership of a dog named Jack. The applicant, Kristina Johnston, seeks an order granting her “full custody” of Jack. Alternatively, she seeks shared custody with the respondent, Robert Arnott, along with reimbursement for half of Jack’s expenses from July to November 2018. The respondent says that

he has always been Jack's sole owner and is entitled to keep him. Jack is currently with the respondent.

2. 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 118 of the *Civil Resolution Tribunal 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. In this case I am persuaded that an oral hearing is not necessary as there are no significant issues of credibility or other reasons that might require 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. The parties had been in a long-term romantic relationship, but the parties agree they never lived together. As such, there is no issue that the dog is family property under the *Family Law Act* (as if it were, the tribunal would not have jurisdiction over it).
7. Under tribunal rule 9.3(2), 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 issue in this dispute is whether the applicant should be granted full or partial ownership and possession of the dog Jack.

EVIDENCE AND ANALYSIS

Ownership of the Dog Jack

- 9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. Under the law, pets are considered personal property: *Brown v. Larochelle*, 2017 BCPC 115. Although it may seem harsh, disputes about what happens to pets after breakups are about ownership rather than “custody”.
- 10. In *Brown*, the court said that joint ownership of pets should generally not be ordered. Similarly, in *Gardiner-Simpson v. Cross*, 2008 NSSM 78, the Nova Scotia court wrote that, although slightly distasteful as it may be in the case of two loving and devoted pet owners, the court must determine which one has the better property claim, and award ownership of the pet to that party. The court added that the worst result would be to conclude that the dog at issue was joint property.
- 11. I must therefore determine who has the best property claim to Jack. The applicant submits that in December 2013 the parties took joint ownership of Jack from the respondent’s sister, GW. The respondent submits that GW gave Jack to him alone and that the registration papers and castration certificates support his claim. I was not provided these documents. However, in his submissions, the respondent provided the text of an undated letter from GW. She wrote that she adopted Jack in 2012 and gave him to the respondent in 2013. She added that the respondent has taken great care of Jack.

12. There appears to be a third option as well. In an undated social media post, GW's husband wrote that he was Jack's registered owner and left Jack in the respondent's care.
13. Although there is some disagreement over the surrounding circumstances and some contradictory evidence, the parties agree that GW previously owned Jack. I find it likely that GW gave ownership of Jack to the respondent, rather than to the parties jointly. GW and the respondent are siblings. There is no suggestion in the evidence that GW and the applicant were close. Although not presented in an ideal form (such as an entire dated copy), GW's letter also provides some evidence to support my conclusion. In other words, while GW is not disinterested as she is the respondent's sister, I find the weight of the evidence supports a conclusion that GW likely gave the dog only to her brother, bearing in mind the parties never lived together.
14. The applicant submits, and I accept, that during the relationship the parties each contributed to the care and expenses of Jack in different ways. The applicant looked after Jack in the daytime. The respondent took Jack home in the evening. The respondent paid for Jack's food. The applicant paid for other various expenses such as bedding and medicine. She also agreed to share medical expenses with the respondent.
15. On March 14, 2018 the parties' relationship ended. The applicant submits that on that date the respondent took Jack to his home. There was a physical altercation, the details of which are not relevant to the issue at hand. Subsequently, Jack was passed back and forth between the parties' homes for some time. The applicant submits that during this time the parties agreed to share the cost of dog food.
16. From July to November 27, 2018, Jack stayed predominantly with the applicant. She submits that she sought to negotiate a "shared custody arrangement" while Jack was in her possession, but the respondent refused to do so. The applicant in turn refused to return Jack.

17. The applicant submits that on November 27, 2018, the respondent came to her residence and forcefully removed Jack. Although this incident featured prominently in the applicant's submissions and evidence, the details are not relevant to determining Jack's ownership. I decline to make any findings beyond the fact that an altercation occurred resulting in the respondent taking Jack.
18. In *Brown*, the court stated at paragraph 16 that in personal property law terms, if someone owns a pet and brings that pet into a relationship or if someone is gifted or acquires *prima facie* sole possession of a pet during a relationship, then absent exceptional circumstances, that pet remains their property when they leave the relationship. In my view, this passage applies to this case. I have found that GW gifted sole possession of Jack to the respondent. The parties' relationship has now ended. It follows that Jack should remain the respondent's property.
19. I considered whether exceptional circumstances might apply. The applicant submits that she is the better caretaker for Jack as she has greater availability throughout the day. She says that the respondent needed frequent reminders about Jack's care. The applicant also submits that she has trained Jack to be responsive to her medical needs, including emotional support. She provided letters dated November 4 (two of them) and 5, 2018, and one dated April 19, 2019, from friends and family. These letters support the applicant's submission that she is the better caregiver for Jack, and that Jack serves a therapeutic role for the applicant.
20. The court in *Brown* did not describe what would be considered exceptional circumstances. However, I did not find any of the described circumstances to be exceptional in the sense that they were atypical or extraordinary. The evidence does not show that the respondent would be exceptionally inadequate as a caretaker. Further, as noted by the court in *Gardiner-Simpson* at paragraph 4, although there are laws prohibiting cruelty to animals, there are no laws that dictate that an animal should be raised by the person who loves it more or would provide a better home environment. The applicant also referred to needing an animal for

emotional support. However, the evidence did not show that only Jack could fulfill this role.

21. In summary, I find the dog Jack is the respondent's personal property. I therefore dismiss the applicant's claim for an order for ownership and possession of the dog Jack.

Reimbursement for Half of Jack's Expenses from July to November 2018

22. The applicant claims \$1,958.54 as reimbursement for dog-related expenses from July to November 2018, "pro-rated to reflect ownership". The applicant provided receipts for expenses incurred during the July to November 2018 time frame. The largest expense was an October 3, 2018 dental surgery bill for \$976.40.
23. Having considered the matter, I find that the applicant is not entitled to any reimbursement of any of her claimed expenses. The applicant submits that she denied the respondent access to Jack as part of her plan to negotiate a "shared custody arrangement" with the respondent. The applicant's submissions show the severity of the situation. In September 2018, GW and the respondent's mother visited the applicant's property to see about Jack. The described interaction was not pleasant. In the undated social media post, GW's husband said the dog was "kidnapped".
24. Although the parties had informally agreed to share Jack's expenses in the past, the parties had also shared possession. I find that by July 2018 the applicant had begun to deny the respondent access to Jack. The respondent was deprived of the benefit of what is his personal property under the law. The respondent also submits, and I accept, that he did not know of or consent to these expenses. In these circumstances, I find the respondent is not obliged to share the expenses incurred from July to November 2018.
25. I dismiss this portion of the applicant's claim.

TRIBUNAL FEES AND EXPENSES

26. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I dismiss her claims for reimbursement of tribunal fees.

ORDER

27. I dismiss the applicant's claims and this dispute.

David Jiang, Tribunal Member