



# Civil Resolution Tribunal

Date Issued: July 5, 2019

File: SC-2019-002253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Delloch v. Piche*, 2019 BCCRT 813

**B E T W E E N :**

JOSEPH DELLOCH

**APPLICANT**

**A N D :**

SYDNEE PICHE

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

### **INTRODUCTION**

1. This is a dispute over ownership of a dog named Bailey.
2. The applicant, JOSEPH DELLOCH, says the respondent, SYDNEE PICHE, took Bailey without his consent. He asks for an order that the respondent return Bailey

because she is his dog. The respondent disagrees. She says she did not take Bailey without consent because Bailey is hers.

3. The parties are each self-represented.

## **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. 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. At a preliminary hearing, the parties submitted evidence as to whether the tribunal should refuse to resolve their dispute under section 10 of the Act on the basis that it was a family law matter outside the tribunal's jurisdiction. Under the common law, pets are considered personal property (see *Brown v. Larochelle*, 2017 BCPC 115). Ownership of a dog generally falls within the tribunal's personal property jurisdiction. Where parties were in a common law relationship, pets are considered "family property" and the dispute would fall under the family law jurisdiction of the courts. The tribunal determined based on the evidence that the parties were not in a common-law relationship and that the claim falls under the tribunal's small claims jurisdiction, though noted the preliminary decision was not a final determination of the tribunal's jurisdiction.
6. After reviewing the parties' further submissions and arguments in the context of this hearing, I find they do not establish that Bailey is "family property", because I find the weight of the evidence is that the parties did not live together in a marriage-like relationship for 2 years. As such, I find I have jurisdiction to hear the dispute.

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 “he 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.
8. 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.
9. 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.
10. 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.

## **ISSUE**

11. The issue in this dispute is whether the applicant should be granted full or partial ownership and possession of the dog Bailey.

## EVIDENCE AND ANALYSIS

12. After a romantic relationship breaks up, in law, pets are treated as property rather than family. The issue for me to decide is who has the best property claim to Bailey.
13. The parties agree that in August 2016, the applicant purchased Bailey from the breeder for \$500. The respondent did not contribute to the purchase price. The parties broke up about two years later. The applicant claims that the respondent asked to have Bailey for “one last night” and then failed to return her after that night. The exact date the respondent took possession is unclear. The parties agree Bailey has lived with the respondent since February 2019. The parties agree the applicant reported Bailey stolen to the police. The applicant says he received a police file number, but the police refused to deal with it further because it was a civil matter.
14. The respondent does not deny taking Bailey. She says Bailey is the only thing she took when they broke up. She says she tried to share Bailey with the applicant, but he refused.
15. The respondent argues that the applicant bought Bailey for her as a gift. Under the law of gifts, the burden of proof is on the person alleging the property is a gift, which in this case is the respondent. (see *Pecore v. Pecore*, 2017 SCC 17 and *Lundy v. Lundy*, 2010 BCSC 1004).
16. To establish Bailey was gifted, the respondent needs to prove that three conditions are met: the applicant intended to gift Bailey to her, that she accepted, and that there was a sufficient act of delivery. To support her claim that Bailey was a gift, the respondent refers to a text message she sent the breeder in August 2016 saying she was interested in picking up a female puppy. I find that neither this text nor the rest of the evidence shows any intention on the part of the applicant to gift Bailey to the respondent. Since the respondent needs to meet all three conditions of the test, I find she has not established that Bailey was a gift.
17. Both parties submitted witness statements to support their respective claim that they were Bailey’s main caregiver during their relationship. I accept that both parties

took care of Bailey over the period they were in a relationship together and that until about February 2019, Bailey lived in the applicant's home.

18. Based on the parties' evidence, I find that Bailey is the applicant's personal property. In addition to purchasing Bailey, the applicant's evidence shows he paid for her care. He submitted his dog food purchase history with a pet store. It shows he made regular food purchases from December 13, 2016 to March 5, 2019. The respondent's evidence shows she did not pay any amount for Bailey's care except a license fee and some flea medication after the start of these proceedings. If the respondent owned Bailey by gift or otherwise, I would have expected her to pay for Bailey's care all along. I would also have expected her to bring Bailey for medical treatment. However, Bailey's veterinary records from 2016 to 2019 only list the applicant as the client. The respondent is not mentioned in the records. Bailey's spray and vaccination certificates also identify the applicant as Bailey's "owner". I am satisfied the evidence establishes that the applicant owns Bailey and never gifted her to the respondent.
19. The respondent argues that she should keep Bailey. She alleges the applicant abused Bailey, which the applicant specifically denies. The respondent provided no evidence to support her allegation of abuse, such as photos, veterinary records, contemporaneous messages or witness statements. I find there is no evidence that the applicant was abusive. I find the evidence shows the applicant took good care of Bailey. In any event, even though it may seem harsh, dogs at law, are personal property. I find the appropriate order is for the respondent to return Bailey to the applicant. Such an order falls within the tribunal's jurisdiction under section 118 of the Act over relief from opposing claims over personal property.
20. I must consider the mechanics of Bailey's return to the applicant. Bailey is currently in the respondent's possession. I believe the best method of transfer is for the applicant to pick-up Bailey from the respondent at a mutually agreeable time and place, such as her veterinary clinic, if the respondent's home is not acceptable. The

applicant may do this himself personally or arrange in writing for someone else to pick up Bailey on his behalf.

21. In accordance with the tribunal's rules, I find the applicant, as the successful party, is entitled to reimbursement of the \$175 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.

## **ORDERS**

22. Within 10 days of the date of this decision, I order the respondent make Bailey available for pick-up by the applicant or someone the applicant has designated in writing to pick-up Bailey on his behalf, according to one of the following options chosen by the applicant: a) from the respondent's home, with 3 days' written notice, or b) at Bailey's veterinary clinic, or some other mutually agreeable location, on 3 days' written notice.
23. Within 15 days of the date of this decision, the respondent must pay the applicant a total of \$175 for tribunal fees.
24. The respondent must pay the applicant post-judgment interest under the *Court Order Interest Act*, as appropriate.
25. 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.

26. 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.

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Trisha Apland, Tribunal Member