



Civil Resolution Tribunal

Date Issued: July 22, 2019

File: SC-2018-009470

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Seper v. Travers*, 2019 BCCRT 888

B E T W E E N :

JENNIFER SEPER

APPLICANT

A N D :

SAMANTHA TRAVERS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. In this dispute, the applicant, Jennifer Seper, says her Border Collie dog, Abby, was attacked by the respondent Samantha Travers' dog in the applicant's unfenced yard. The applicant says the respondent is responsible for \$1,411.23, the cost of veterinary care.

2. The respondent says her dog, an American Bulldog (bulldog), was defending itself and her son because Abby ran unleashed from the applicant's property onto city property and aggressively confronted them. The respondent says the applicant is responsible for the incident, which she says occurred on the public sidewalk. The respondent's dog's name is not indicated in the evidence.
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*. 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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "she said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
6. 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.

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.

ISSUE

8. The issue in this dispute is whether the respondent is responsible for the injury to the applicant's dog and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. The parties disagree on the facts as to what occurred. The applicant says the respondent's son, M, was walking the bulldog and that he was too young to control the animal. The evidence is not clear on the age of M. She says she was in her car pulling out of the driveway when she saw M and the bulldog standing in her yard. There is no fence or enclosure separating the applicant's yard from the public sidewalk. Abby was unleashed and came out of the applicant's open front door and walked towards the bulldog. The applicant says that Abby was not barking or growling and, when Abby got close, she walked around the bulldog's side as if she was going to sniff it when the bulldog lunged at Abby and grabbed her by the back of the neck.
12. According to the applicant, M started to scream and pull on the bulldog's leash. The applicant honked the car horn but this had no effect so she left her car in the middle of the street and ran towards the dogs, yelling for help. The applicant says the

bulldog was tossing Abby from side to side while holding onto the back of her neck. The applicant grabbed the leash from M and began pulling as hard as she could and yelling at the bulldog. She also kicked the bulldog forcefully in the side, but the dog did not react.

13. The applicant says that M then ran up to the dogs and it looked like he was trying to grab the bulldog by the face to pull it away from Abby, but the bulldog quickly turned its head and snapped at M's hand. The bulldog then turned back and bit Abby on the throat, flipped her onto her back, and pinned her on the grass. At that point a neighbour from across the street, K1, came running up and punched the bulldog in the head. The bulldog let go of Abby who ran into the applicant's open car for shelter.
14. The applicant says that at the point M began yelling for her not to tell his mother as she would put the bulldog down. The applicant told him it was a serious situation and that he (M) had been bitten. She went up the street and met the respondent who was on her way as she had been alerted to the situation.
15. The respondent provided a dispute response and submissions. I note that her submissions are in the first person however it is undisputed that the respondent did not witness the event and therefore I infer she got her account as to what occurred from third parties, and mostly from her son M. There are inconsistencies in the respondent's submissions from what the applicant and the witnesses say about what occurred and what they say M said at the scene.
16. The respondent says that the incident did not take place in the applicant's yard. The applicant says she saw it and it did. Witnesses K2 and MS said they did not see the very beginning of the incident but the parts they saw were occurring in the yard. Witness L lives across the street from the applicant and says they looked out when they heard screaming and saw M laying on the applicant's front lawn holding on to the bulldog's leash while the bulldog attacked Abby.

17. The respondent says that Abby rushed out of the house and ran by the applicant's husband. The husband says he was downstairs fixing a faucet when the incident happened. The respondent says that the applicant's dog is prone to biting and this is why her son was afraid and the bulldog picked up on this fear and acted to protect him. There is no supporting evidence which indicates that Abby is an aggressive dog.
18. The respondent also says it was Abby who bit her son. Witnesses D and MS, say that at the scene M said that he was bit by the bulldog. Further, the respondent says that Abby hurt the bulldog, including putting a hole in the bulldog's ear, several bitemarks on her face, and breaking her dewclaw off. The respondent says that this where all the blood at the scene came from. The respondent did not provide any pictures of the injury to her dog or any veterinary invoices. The witnesses agree that M was afraid of his parents finding out what happened and begged them not to tell. None of the witnesses said that the bulldog was hurt or that M indicated that the bulldog was.
19. The applicant has provided a picture of Abby which shows a very significant injury to the top of her neck. The respondent says this is because Abby developed necrosis because the applicant could not care for her. There is no proof of the claim that Abby developed necrosis. The picture clearly shows multiple stitches around Abby's neck suturing deep wounds.
20. According to the respondent's own evidence, after the incident a bylaw officer went to the respondent's house and gave the bulldog a vicious dog label because of the damage done to Abby. The bulldog must now wear a muzzle.
21. Based on all of the evidence, I find on the balance of probabilities that the bulldog attacked Abby in her front yard. The weight of the witnesses' statements indicate that what they saw was occurring in the front yard and this supports the applicant's statement that the event happened in her front yard. I find Abby was unleashed, but according to the Nanaimo bylaws, Abby need not be leashed when in her yard. I

also accept the applicant's evidence that the bulldog started the fight as the witnesses' statements support that it was the bulldog who was the aggressor.

22. The evidence also supports a finding that the bulldog bit M and Abby did not. M's account as presented by the respondent is not an accurate depiction of what occurred as it is not supported by the witnesses' statements. I discount M's evidence because he is not disinterested, he is a minor, and it is out of harmony with the balance of the evidence. Additionally, the respondent did not provide any witnesses' statements to support her version of events.
23. Having determined the facts, I turn now to the applicable law. I first note that the applicant says the respondent accepted liability and paid some money toward the veterinary costs but then changed her mind when she realized how much it was going to cost. The respondent says she was willing to pay some costs but that the applicant refused to accept any responsibility for what occurred, so she decided not to pay more. I find that the respondent's partial payment does not amount to an admission of 100% liability for what occurred.
24. 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 applicant bears the burden of proof. Therefore, in British Columbia there are currently 3 ways a pet owner may be liable for their pet's actions: occupier's liability, the legal concept of 'scienter,' and negligence. I find that occupier's liability does not apply to this dispute because it is undisputed that the attack did not take place on land the respondent controls.
25. For 'scienter' to apply, the applicant must prove that the bulldog had a tendency to cause the type of harm that occurred, and that the respondent knew about that tendency. Although the bulldog has now shown herself as capable of the type of harm that occurred, there is no evidence before me that she had revealed this before the attack on Abby.

26. Witness K1 says because M was concerned that the dog would be put down if his mother found out that this meant the bulldog had a history of aggressive behavior. I do not accept this speculation. I find that M, having witnessed this bloody and brutal attack, would have thought that it alone would be enough to lead to the possibility of the bulldog being put down.
27. The applicant said in her submission that she watched Abby interact with the bulldog because she did not know the dog. I infer from this that the bulldog did not have a reputation in the neighbourhood. The respondent says that she never had any concern about the bulldog and it was always well-behaved. She says that her son has been walking the bulldog since it was 8 weeks old, which she estimates to be more than 500 times without incident. I find that the applicant has not proved on a balance of probabilities that the respondent knew that the bulldog had a tendency to cause this type of harm. Therefore, I find the applicant has not proven liability in scienter.
28. I turn now to negligence. To prove negligence, the applicant must prove the respondent knew or ought to have known that her dog was likely to create a risk of injury and that the respondent failed to take reasonable care to prevent such injury. The applicant has not proven either of these things.
29. As noted above, the evidence does not establish that the bulldog acted aggressively in the past. I find that the fact the respondent allowed her young son to walk the dog suggests that she thought the dog would be well-behaved. I find that the respondent would not have put her young son in danger by allowing him to walk alone a dog she knew to be aggressive and capable of the attack that took place, in which I note M got bit as well.
30. The applicant says that M was too young to be able to control the dog. I accept the respondent's evidence that M had been walking the dog and was able to control it over many previous incidents. I also note that the bulldog was leashed. Relying on what had occurred on past experiences, I find that the respondent took reasonable care to prevent the injury which occurred. I also note that when the bulldog decided

to attack it made no difference whether it was M or an adult who held the leash. The applicant got control of the leash at one point and she too was unable to restrain the bulldog until K1 punched it in the head. I find that the unexpected attack could not have been reasonably stopped, even if it was an adult rather than M who had control of the leash.

31. Based on this, I find that the respondent did not know prior to the event that her bulldog was likely to create a risk of injury, nor did the respondent fail to take reasonable care to prevent such injury. Therefore, negligence is not proved on a balance of probabilities.
32. None of this is to say that Abby did not suffer a horrible attack and that her wounds are not significant. However, the evidence does not establish that the respondent knew beforehand that her bulldog had a tendency toward this behavior or that she failed to take reasonable care to prevent such injury.
33. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful in her claim she is not entitled to have her tribunal fees or expenses reimbursed.

ORDER

34. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member