



Civil Resolution Tribunal

Date Issued: August 16, 2019

File: SC-2019-002477

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MP v. TP et al*, 2019 BCCRT 981

BETWEEN:

MP

APPLICANT

AND:

TP and OS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over possession and ownership of a French Bulldog.
2. In the published version of this decision, I have anonymized the parties' names to protect the identity of the applicant, MP, who is a minor. The applicant is represented by SP, her litigation guardian, who is also her father.

3. The applicant claims that the respondent, TP, is “withholding” a French Bulldog from her. TP is the applicant’s mother. The applicant says that her mother’s former boyfriend, DM, gave her the Bulldog as a puppy for her birthday. The applicant asks for an order that TP deliver the Bulldog to her at her father’s house, which I infer is her primary residence.
4. TP says that she and the applicant’s father are going through a divorce. She claims that the applicant’s father is improperly using the Civil Resolution Tribunal (tribunal) dispute process as the applicant’s litigation guardian to “bully” her. TP says the Bulldog does not belong to either herself or to the applicant.
5. The respondent, OS, says that he is the Bulldog’s owner. He says that he is the Bulldog’s breeder and he sold the Bulldog to DM. He says the contract terms and conditions of sale are not fulfilled until the Bulldog is spayed. He says the Bulldog is unspayed and remains his property. There is no dispute that the Bulldog remains unspayed.
6. The respondents are each self-represented.

JURISDICTION AND PROCEDURE

7. 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 (CRTA)*. 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.
8. As a preliminary issue, OS says that under the contract of sale with DM, any and all disputes over the Bulldog are to be settled in the Province of Alberta. He argues that the claim cannot be settled in British Columbia by the tribunal.
9. I have no copy of the contract of sale. However, it is undisputed that the contract is between OS and DM and not the applicant. Since the applicant is not a party to the

contract, she cannot be bound to its terms about the appropriate forum for dispute. She also cannot be bound by the contract under the Infants Act because she is a child. Therefore, I find the jurisdictional term in the contract does not apply to limit the applicant from bringing this claim in British Columbia.

10. I am mindful that this claim arises in the context of a custody dispute between the applicant's parents. Under the law, pets are considered personal property (see *Brown v. Larochelle*, 2017 BCPC 115). There are rules around property rights of children under Part 8 of the *Family Law Act* (FLA). The FLA gives parents authority to manage certain property in trust on their child's behalf. However, this dispute is not about parental rights to manage property. This dispute is about whether the applicant owns the dog at all, as opposed to a non-family member. In other words, there is no assertion of a parental right to manage the dog. The applicant says the dog is hers and her mother, TP says it belongs to a third party, and there is no "withholding". I find I have jurisdiction to decide her property claim over the Bulldog.
11. 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.
12. 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.

13. 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.
14. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.
15. The order sought by the applicant is for recovery of personal property under section 118(1)(b) of the CRTA.

ISSUE

16. The issue in this dispute is whether the applicant should be granted ownership and possession of the Bulldog.

EVIDENCE AND ANALYSIS

17. 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.
18. There is no dispute that DM purchased the Bulldog from the breeder, OS on May 13, 2018. The applicant traveled with DM and her mother, TP to pick up the Bulldog from OS in Alberta.
19. The applicant says she lived with the Bulldog until about February 15, 2019 while she lived in her mother, TP's home. The applicant says her mother then lost custody of her to her father. She says her mother has refused to allow her to have

the Bulldog at her father's house. The parties do not say where the Bulldog is presently located or who has possession of the Bulldog.

20. I find the applicant does not have a valid claim against her mother, TP. I find the applicant's own evidence establishes that TP has no right of ownership over the dog. There is also no evidence that TP currently possesses the Bulldog. Even if I were to grant the applicant ownership and possession of the Bulldog, I would not order TP to deliver a Bulldog that she neither owns nor possesses.
21. The applicant says the Bulldog's ownership registration was meant to be in DM's name until the dog was spayed. She says that once the Bulldog was spayed, DM intended to transfer the ownership registration into her name. The transfer of ownership registration never happened. I note that the applicant chose not to name DM as a party in this dispute and DM provided no evidence.
22. As mentioned above, OS says the Bulldog is his property until the dog is spayed. OS says that the contract also provides that if DM decides not to keep the Bulldog for any reason, he has the first right of refusal to buy the dog back. Since I have no direct evidence from DM, I find the contract terms are as described by OS and that the Bulldog remains registered in OS's name.
23. I find the applicant has not established that she has a legal claim for ownership and possession of the Bulldog. Even if DM promised to gift her the Bulldog, she has not established that DM had the right to gift the dog or that he effected the gift by transferring the dog's registration into her name.
24. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since applicant was unsuccessful, I find she is not entitled to reimbursement of her tribunal fees or dispute-related expenses.

ORDER

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

Trisha Apland, Tribunal Member