



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *HUGHES v. MICHELI*, 2019 BCCRT 1318

B E T W E E N :

GARY TREVOR HUGHES and JENNIFER HUGHES

APPLICANTS

A N D :

SYLVIE MICHELI

RESPONDENT

A N D :

GARY TREVOR HUGHES and JENNIFER HUGHES

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicants Gary Trevor Hughes and Jennifer Hughes say they prepaid the respondent Sylvie Micheli to provide daycare services for their son, S. Mr. and Ms. Hughes say Ms. Micheli breached the agreement to provide childcare services by failing to disclose that her facility was not licensed. When Mr. and Ms. Hughes discovered that the daycare was unlicensed, they withdrew S.
2. Mr. and Ms. Hughes claim \$1,001.80 for daycare days that were unused, government subsidies associated with those unused days and for a “fee reduction”, being an amount that they suggest should be refunded because the care provided was unlicensed.
3. Ms. Micheli counterclaims for \$535.00 for May 2019 daycare fees, which she says should have been paid because Mr. and Ms. Hughes failed to give one month’s written notice to withdraw S. Ms. Micheli also claims \$4,465.00 for “undue stress and mental anguish” she says is caused by Mr. and Ms. Hughes trying to lure other daycare families away from her business.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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* (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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

7. 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.
8. 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.

ISSUES

9. The issue in the Hughes' dispute is whether Ms. Micheli breached an agreement to provide licensed child care for S, such that she must pay Mr. and Ms. Hughes the claimed \$1,001.80, broken down as:
 - a. \$267.50 paid to Ms. Micheli for days S did not attend at daycare because he withdrew,
 - b. \$58.41 in provincial subsidy paid to Ms. Micheli for S's March 2019 attendance, but not credited against Mr. and Ms. Hughes's daycare fees,
 - c. \$233.64 in provincial subsidy paid to Ms. Micheli for S's April 2019 attendance, but not credited against Mr. and Ms. Hughes' daycare fees,
 - d. \$342.25 in "fee reduction" for the dates that S attended, but was unknowingly at an unlicensed facility, and

- e. \$100 deposit paid by Mr. and Ms. Hughes to apply for S to attend the daycare.
10. In the counterclaim, the issue is whether Ms. Micheli is entitled to payment of \$5,000.00, broken down as:
- a. \$535.00 for May 2019 daycare fees because Mr. and Ms. Hughes did not provide 30 days' written notice to withdraw S from the daycare, and
 - b. \$4,465.00 for what she describes as "undue stress and mental anguish."

EVIDENCE AND ANALYSIS

11. In this civil claim, Mr. and Ms. Hughes bear the burden of proof on a balance of probabilities. In the counterclaim, Ms. Micheli bears that same burden. I only refer to the evidence and submissions as I find necessary to provide context for my decision.
12. In March 2019, Mr. and Ms. Hughes enrolled their son at Ms. Micheli's daycare. Based on the whole of the evidence I find that Mr. and Ms. Hughes agreed to pay \$535 per month to Ms. Micheli, less any subsidy amounts Ms. Micheli received.
13. As part of the enrolment process, Mr. and Ms. Hughes signed a set of rules and regulations (agreement) prepared by Ms. Micheli about her day care. The agreement specified a \$100 non-refundable registration fee, and one month's written notice to withdraw a child from the daycare.
14. On March 18, 2019, Ms. Micheli signed an application for the Affordable Child Care Benefit (benefit) for S's attendance at her daycare. The application specified that Ms. Micheli was providing "Licensed family child care". Ms. Micheli says that she filled in the license number from her previous daycare because she thought this would be the same number used while she was "in the process of being re-licensed." While that may be, I find that Ms. Micheli provided a written

representation, that her day care as licensed, when she signed the benefit application.

15. I find that it was implied term of the agreement that the daycare was operating legally. Ms. Micheli suggested that she might be entitled to rely other parents to inform Mr. and Ms. Hughes that the daycare was unlicensed. I find it was her responsibility to disclose the daycare's unlicensed status.
16. Based on the benefit form, I find that Ms. Micheli indicated she was licensed when she was not. Mr. and Ms. Hughes entered the daycare contract on the reasonable understanding she was. I find that Ms. Micheli's failure to be licensed was a fundamental breach of the parties' contract. As such, there was no requirement for Mr. and Ms. Hughes to give one months' notice before withdrawing their son.
17. In BC, child care providers who are unlicensed can care for only 2 children or a sibling group, unrelated to them. If 3 or more children will be in care, a license is required under the *Community Care and Assisted Living Act* and its *Child Care Licensing Regulation*.
18. It is undisputed that, at some point in April 2019, Ms. Micheli had more than 3 children from different families in her care.
19. On April 18, 2019, Fraser Health Authority wrote to Mr. and Ms. Hughes to inform them that Ms. Micheli's daycare was "operating unlawfully". Fraser Health's Regional Manager – Childcare wrote that the care provider had been directed to immediately reduce the number of children in their care to 2 or less children. The letter explained that Mr. and Ms. Hughes may now need to seek alternate care for their child.
20. When Mr. and Ms. Hughes discovered that the daycare was operating illegally, they withdrew S.
21. Two other parents provided statements that they were happy with the care Ms. Micheli provided for their children. While that may be, I have found that Ms. Micheli

breached her obligations to Mr. and Ms. Hughes, under the agreement, to provide a licensed daycare facility.

22. Therefore, I find that Mr. and Ms. Hughes were entitled to remove their son from Ms. Micheli's care, without a penalty for providing less than 1 month's notice.
23. I find that Ms. Micheli must refund Mr. and Ms. Hughes \$267.50 for the April 2019 dates when S would have attended daycare but did not due to Ms. Micheli's breach of the agreement.
24. I also find that Ms. Micheli must refund Mr. and Ms. Hughes the \$100 registration deposit, because she did not make them aware that the daycare was unlicensed, before taking that payment.
25. Mr. and Ms. Hughes also claim what they call a "fee reduction" for having the child care provided S through an unlicensed facility. I do not allow this claim. While the daycare was unlicensed, there is no evidence that the care provided to S was otherwise unsafe or substandard. They had the benefit of childcare and in the circumstances here I find it would be unreasonable to grant them any fee reduction for it.
26. I now turn to the Hughes' claim to be refunded for subsidy payments that were made to Ms. Micheli. The Hughes' say that because they could not use all the daycare days that the subsidy applied to, they are entitled to a refund.
27. In March 2019, the BC government approved the benefit for \$233.64 being 8 days of attendance in April 2019, and 2 further days of attendance in March 2019 for \$58.41. The letter approving these benefits went to Mr. and Ms. Hughes.
28. The Hughes' claim is that Ms. Micheli should have reduced their childcare payments for March and April 2019 by \$292.05, being the benefit paid to her for S.
29. Ms. Micheli says she did not receive subsidy. Mr. and Ms. Hughes produced a letter from the BC government showing that a subsidy was approved. However, they did not prove that such a payment was made to Ms. Micheli. Given that I do not have

evidence before me that a direct payment was made, nor proof that such a payment would be made to Ms. Micheli upon approval, I dismiss this aspect of the claim.

30. The *Court Order Interest Act* applies to the tribunal. Mr. and Ms. Hughes are entitled to pre-judgement interest on the \$367.50 from April 18, 2019, the date that they withdrew S from daycare, to the date of this decision. This equals \$4.28.
31. I turn then to Ms. Micheli's counterclaim. The first aspect of Ms. Micheli's counterclaim is that Mr. and Ms. Hughes did not provide one month's notice of S's withdrawal. As a result, Ms. Micheli says she is entitled to be paid \$535 for daycare services for May 2019. I disagree. Given my finding that Ms. Micheli breached the agreement, I find the notice provision does not apply. I dismiss Ms. Micheli's claim to be paid \$535 in lieu of one months' notice.
32. Ms. Micheli claims a further \$4,465.00 for stress and mental anguish. It is unclear whether she is claiming in for the tort of defamation, but that is outside this tribunal's jurisdiction. Ms. Micheli may be arguing that she suffered interference with contractual relations or an intentional infliction of nervous shock. I will address these in turn, below.
33. To the extent that Ms. Micheli's claim is a claim in slander or defamation, I refuse to resolve it because it is outside the tribunal's jurisdiction.
34. I turn to Ms. Micheli's claim that S's early withdrawal from the daycare, together with the Hughes' alleged conduct, caused her undue stress or mental anguish. I infer that she is claiming for intentional infliction of nervous shock.
35. To succeed in this claim, Ms. Micheli must prove that wrongful conduct by Mr. and Ms. Hughes caused something more serious and prolonged than the usual annoyances, anxieties and fears that arise in society (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9).

36. Ms. Micheli filed a medical note from a treating physician who wrote that she is undergoing unrelated medical treatment, and that “external stressors” were negatively impacting her health and treatment.
37. While I accept that conflict about a daycare withdrawal is stressful and unpleasant for all parties, it is not enough to support a claim in damages for mental distress. I dismiss the claim that Mr. and Ms. Hughes have wrongly caused an undue degree of stress or mental anguish to Ms. Micheli.
38. Turning to intentional interference with contractual relations, Ms. Micheli must prove 1) the existence of a validly enforceable contract, 2) the respondents’ awareness of the contract’s existence, 3) wrongful interference, and 4) that she suffered damages as a result. (See *Hayes Heli-Log Services Ltd. v. Siller Bros. Inc.*, 1999 BCCA 451 and *I.A.T.S.E. v. United Brotherhood of Carpenters et al.*, 2004 BCSC 432).
39. Ms. Micheli says Mr. and Ms. Hughes tried to lure other parents away from her daycare, resulting in financial hardship. Ms. Hughes sent a private online message to one parent, AG, recommending an available space at another daycare. After AG responded to say she would leave her child at Ms. Micheli’s daycare, there were no further messages in the document filed in evidence.
40. AG and another parent, LD, wrote statements saying that Ms. Hughes suggested they remove their children from Ms. Micheli’s daycare, in private communications.
41. AG also referred to an online post by Ms. Hughes. A copy of the post was not filed in evidence.
42. LD reported that Ms. Hughes wrote to her about concerns that Ms. Micheli had lied about being unlicensed, saying that the situation was “potentially dangerous.”
43. Neither AG nor LD removed their children from Ms. Micheli’s care.
44. I find the evidence does not prove wrongful interference. In addition, I find that Ms. Micheli did not prove any financial loss or other damages, and so I dismiss her claim.

45. 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. I find Mr. and Ms. Hughes are entitled to reimbursement of 50% of \$125 in tribunal fees, because they were partly successful in proving the full amount of their claim. They did not claim dispute-related expenses.
46. I dismiss Ms. Micheli's claim for fees, because she failed in her counterclaim. Ms. Micheli did not claim dispute-related expenses.
47. I refuse to resolve the aspect of Ms. Micheli's counterclaim dealing with defamation or slander, given section 10(1) of the CRTA.
48. I dismiss the rest of Ms. Micheli's counterclaim.

ORDERS

49. Within 30 days of the date of this order, I order Ms. Micheli to pay Mr. and Ms. Hughes a total of \$434.28, broken down as follows:
 - a. \$267.50 as a refund of the daycare fee paid for the second half of April 2018,
 - b. \$100 for the application deposit,
 - c. \$4.28 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$62.50 being 50% of their tribunal fees.
50. Mr. and Ms. Hughes are entitled to post-judgment interest, as applicable.
51. I refuse to resolve the aspect of Ms. Micheli's counterclaim dealing with defamation or slander, given section 10(1) of the CRTA. I dismiss the rest of Ms. Micheli's counterclaim.
52. Under section 48 of the CRTA, 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.

53. Under section 58.1 of the CRTA, 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.

Julie K. Gibson, Tribunal Member