



Civil Resolution Tribunal

Date Issued: December 23, 2019

File: SC-2019-005297

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhuang v. Trninic*, 2019 BCCRT 1432

B E T W E E N :

XINYI ZHUANG

APPLICANT

A N D :

NICOLAS TRNINIC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a dog-on-dog attack.
2. The applicant, Xinyi Zhuang, says his toy poodle, Taotao, was attacked and bitten by Bella, a basenji owned by the respondent, Nicolas Trninic.

3. Taotao's veterinary bill totaled \$5,210.76. The respondent paid the applicant \$2,000. The applicant claims \$3,210.76 for the remaining cost of veterinary care and \$1,486.72 for lost productivity and a missed class.
4. The respondent says he does not owe the applicant any money. He says a third dog involved in the attack may have caused Taotao's injuries. The respondent also says that Bella had no history of aggressive behaviour, and that he took all reasonable precautions with Bella.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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, both parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

8. 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.
9. 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

10. The issues in this dispute are:
 - a. Did the respondent's dog Bella cause Taotao's injuries?
 - b. If so, is the respondent responsible for the applicant's veterinary bills and other expenses?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

Did Bella cause Taotao's injuries?

12. Taotao was bitten on June 11, 2019, but neither party witnessed the bite. The applicant's brother, L, was walking Taotao. The respondent's mother, V, was walking Bella.

13. Both L and V provided statements about the June 11, 2019 attack. V says she was walking Bella and stopped on a grassy area next to a playground so that Bella could play with another dog, a boxer. She said the boxer was not leashed. The two dogs spotted “a little poodle”, which I take to refer to Taotao, and ran around the corner. V said that Bella pulled the leash out of her hand and ran towards Taotao. She did not notice if Taotao was leashed. V said she heard the poodle barking but could not see what was happening for around 20 seconds. She caught up to the dogs a few seconds after the boxer’s owner did. V said she stepped on Bella’s leash and “the little boy”, whom I take to be L, picked up Taotao. V said she did not see Bella bite Taotao and did not see any blood. She went home and told her son, the respondent, about the incident.
14. In L’s statement to the animal control officer, he said that he was walking Taotao when, out of nowhere, a “yellow dog”, which I take to be Bella, ran toward Taotao. Bella attacked first. A black dog also charged at Taotao. L said that Bella was leashed, but nobody was holding the leash. He said he picked up Taotao to protect her from injury, but Bella ripped Taotao out of his arms, scratching L’s finger in the process. L said he picked up Taotao again and walked straight home.
15. The applicant took Taotao to the vet shortly thereafter. She submitted photos of Taotao after treatment showing significant stitching. He also provided detailed notes from the veterinarian, which document a “large, deep wound” with “concern for tracking into the abdomen.”
16. The respondent says there is no proof that Bella, as opposed to the black boxer, caused the harm. In addition to V’s statement, the owner relies on the notes from the veterinarian who treated Taotao. The veterinarian’s notes say that Taotao was attacked by 2 off-leash large dogs, and that the dogs jumped up and ripped Taotao down. I place less weight on the veterinarian’s version of events than the versions given by L and V. The veterinarian’s notes are a second or third-hand description, depending on whether L or the applicant talked to the veterinarian. As well, I would

expect the veterinarian to be more concerned with the injuries themselves than the details of the incident.

17. Although L's age is not clear from the evidence, L's statement is clear that Bella, not the boxer, bit Taotao. Although V did not see Bella bite, there were 20 seconds where she could not see the dogs because they were around a corner. 20 seconds is enough time for a dog to bite. I find it more likely than not that Bella bit Taotao and caused the injuries. This conclusion is supported by the animal control officer's decision, after speaking with both parties, to declare Bella a vicious dog as a result of the incident.

Is the respondent liable to the applicant for the applicant's veterinary bills and other expenses?

18. The respondent paid the applicant \$2,000 shortly after the bite. I find that this payment was a voluntary payment reflecting the respondent's sense of moral obligation to help out with Taotao's care, and that it was not an admission of legal responsibility for the incident.
19. There are 3 ways a dog owner can be liable for a dog attack: occupier's liability, the legal concept of scienter, and negligence.
20. I find that occupier's liability does not apply here because the attack occurred on a public area rather than private property.
21. For scienter to apply, the applicant must prove that at the time of the attack:
- a. the dog had manifested a propensity or tendency to cause the type of harm that happened, and
 - b. the dog's owner knew of that propensity (see *Janota-Bzowska v. Lewis* [1997] B.C.J. No. 2053 (BCCA)).
22. The applicant says the respondent was aware of Bella's vicious propensity. He says that on the night of the incident, he visited the respondent after returning from the

veterinarian and the respondent told a story about how Bella “had a bad experience before and has a tendency to be aggressive specifically to small furry animals.” The respondent does not confirm or deny making this statement, so I find that he made it.

23. However, in his submissions, the respondent says Bella has never shown random aggression toward dogs or humans in the past. The respondent provided written statements from 5 neighbours with dogs that interact with Bella. The statements express that the neighbours have never seen Bella act aggressively toward their dogs or other dogs.
24. The respondent’s employer also provided a statement. He said that the respondent has been bringing Bella into the office since she was a puppy and that Bella has never shown signs of aggression, even around 2 other office dogs.
25. Bella’s veterinarian also provided a statement, stating that she has assessed Bella in a stressful, chaotic environment and Bella gave no indication of having fearful, aggressive or reactive tendencies. She said Bella does not play-bite, become provoked, chase, or bark. She said Bella is an exceptionally low risk for attack.
26. The inferred fact that the respondent said Bella had been aggressive toward small furry animals must be weighed against the preponderance of evidence that Bella has never been aggressive toward a dog. On balance, I am satisfied that before this incident, Bella had not manifested a tendency to cause the type of harm she caused to Taotao. Therefore, I find that the applicant has not proven liability in scienter.
27. I turn to negligence. To succeed in negligence, the applicant must prove that the respondent failed to take reasonable care to prevent the incident from occurring. However, as discussed above, there is no evidence that the respondent should have known that Bella was dangerous.
28. The respondent was not in control of Bella at the time of the attack. He let his mother, V, walk the dog. The applicant did not claim against V. There is no suggestion that V was not capable of walking and controlling Bella. On the

evidence, Bella's escape from V's grasp on the leash was unexpected and unforeseeable. Accordingly, I find the respondent's decision to allow V to walk Bella was reasonable. I find the applicant has not proven that the respondent was negligent.

29. Because I have found that the respondent is not liable for the applicant's claimed damages, I need not consider whether the applicant has proven the specific damages alleged.

30. 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. As the applicant was unsuccessful, I dismiss his claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDER

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

Micah Carmody, Tribunal Member