



Civil Resolution Tribunal

Date Issued: January 3, 2020

File: SC-2019-005462

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zubyk v. Lamont-Paradis*, 2020 BCCRT 7

BETWEEN:

JUDITH ZUBYK and JOHN ZUBYK

APPLICANTS

AND:

SAMUEL LAMONT-PARADIS and STUART DAWSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about a missing wallet and a “considerable” amount of cash allegedly contained within it. The applicants, Judith Zubyk and John Zubyk, say the respondents, Royal Canadian Mounted Police (RCMP) constables Samuel Lamont-Paradis and Stuart Dawson, mishandled the wallet. The applicants also say

the respondents either stole or lost the cash allegedly inside the wallet. The applicants claim \$2,500, though in their supporting evidence they have elsewhere estimated the allegedly missing money as being between \$1,700 and \$2,400.

2. It is undisputed the wallet belonged to the applicants' now deceased adult son, D. It is also undisputed that on August 11, 2017 the respondents examined the wallet in D's apartment, during their investigation of a missing person report about D. Ms. Zubyk relies on an August 12, 2017 conversation she had with Constable Lamont-Paradis in which she says he told her that there was a "considerable" amount of money in the wallet and that he had seized it in order to secure it. In contrast, the respondents say they left the wallet behind at D's rented apartment because it was not relevant to their investigation. They say it had no money in it and that Ms. Zubyk had misunderstood Constable Lamont-Paradis, whose reference to a large sum was in reference to a bucket of coins found in the apartment.
3. The applicants are represented by Judith Zubyk. The respondents are represented by a lawyer, Daniel Nunez, appointed by their employer.
4. For the reasons that follow, I find the applicants' claims must be dismissed.

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 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. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a “she said, he said” scenario about what likely happened. 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. 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 the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
8. The evidence before me does not show that the applicants have standing to bring a claim for their son D’s wallet and money. In particular, I do not know if the applicants are the executors or true beneficiaries under D’s estate. I say this because I do not have a properly executed will before me and I do not know if D had a spouse who may be entitled to his assets. D’s note left in his apartment is not a properly executed will, though I acknowledge he appeared to leave certain monies to his parents, as discussed below. However, given my ultimate conclusion that the applicants’ claims must be dismissed, I find nothing turns on their standing to bring the claim.

ISSUE

9. The issue in this dispute is whether the respondents mishandled the applicants’ son’s wallet and any cash within it, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. I will refer only to the evidence as necessary to give context to my decision.
11. I note the applicants chose not to provide submissions, which I infer prompted the respondents to not provide any response submissions, as there was nothing to respond to. Then, the applicants filed a full submission that the respondents had no opportunity to respond to. Ordinarily, I would disregard the applicants' reply submissions in those circumstances. However, I find here nothing turns on them as I have made my decision based on the documentary evidence before me, which includes the applicants' evidence and the contemporaneous business records kept by the RCMP. I turn then to the relevant chronology.
12. Regrettably, the applicants' son D was reported missing on August 11, 2017. This prompted the RCMP investigation led by the respondents. It is undisputed that on August 11, the respondents attended D's rented apartment, at which time the landlords E.M. and P.M. were present. It is also undisputed that the applicants were not present while the respondents were in the apartment with the wallet.
13. As discussed further below, when the applicants arrived on August 20, 2017, they say the wallet was not in the apartment. At the heart of this dispute is this: Ms. Zubyk says Constable Lamont-Paradis had told her on August 12, 2017 he had taken the wallet and cash inside it into custody, along with a driver's license. The respondents say Ms. Zubyk misunderstood Constable Lamont-Paradis, as referenced above.
14. Based on the evidence before me, I find that Constable Dawson entered the apartment first, together with P.M. Based on E.M.'s evidence, I further find that about 5 minutes later Constable Lamont-Paradis entered the apartment with E.M. Contrary to the applicants' submission, I find the precise timing of the respondents' presence in the apartment is not determinative of the issue in this dispute. I find the

material point is that E.M. and P.M. cannot recall the wallet was seized by the respondents.

15. As noted above, the respondents say they examined the wallet and found it had nothing in it relevant to their investigation. The respondents say it did not have any identification or bank cards in it, nor any substantial sums of money. The respondents say they left the wallet in the apartment when they left, escorted by E.M. and/or P.M. They say the only thing the respondents seized into custody was D's note, which I discuss further below.
16. The applicants rely in large part on E.M.'s evidence, including taped telephone conversations Ms. Zubyk had with her in 2018 and an email exchange in 2019. I find it is clear E.M. admits in 2018 that she does not have a clear recollection of specific details, given the passage of time. I find E.M.'s best evidence is what she said closer in time to the August 11, 2017 event, namely when the RCMP interviewed her in October 2017. That said, at no point in any of the evidence before me does E.M. say there was money in the wallet at the time the respondents examined it. In fact, she says she and her husband P.M. did not see any money in it.
17. Given E.M.'s admittedly frail recollection of events in 2018 and 2019, I place little weight on her later evidence about whether there was a truck driver's licence in the wallet or not. This matters only because the applicants say Constable Lamont-Paradis told Ms. Zubyk on August 12, 2017 that he also seized a license. It is undisputed that the wallet may have contained some non-banking type cards in it. I find the applicants have not shown the wallet had a driver's license in it and have not proved the respondents took a license. More on E.M.'s evidence below.
18. The applicants argue their son D had left money in his wallet because Ms. Zubyk says Constable Lamont-Paradis told her on August 12 that there was a "considerable sum" in it. Ms. Zubyk also says that there was money in the wallet based on her D's note and his bank withdrawals in mid to late July 2017. In the note, D said he left all his possessions and "final pay" to his parents (with reference

to his last paycheque in the bank). He also noted his truck's value, and that there was \$500 or \$600 in change "somewhere in those boxes". D added that if his last rent cheque bounced, he would owe his landlords \$1,200. The landlords confirmed that D always paid his rent by cheque, not cash. To the extent the applicants argue that their son's note shows he left money in his wallet, I disagree. There is nothing in D's note to indicate he specifically left cash in the apartment, apart from the \$500 or \$600 in change. It is undisputed that the respondents did not seize the change, which in the evidence is referred to as being in a pail or bucket. Given what D included in the note, I find it more likely he would have mentioned a significant sum in cash in the wallet, if there had been such a sum in it.

19. The applicants then argue that the landlords' failure to see money in the wallet must be because the wallet had a zippered compartment. The applicants argue their son likely was using a wallet they gave him 8 years prior, and submitted photos of a similar bi-fold wallet. Even if I accept that submission, I find at least \$1,700, if not \$2,400, in cash would have made the wallet appear quite thick. I find it unlikely the respondent police officers and the landlords would have failed to notice a zippered compartment with a wad of bills inside it. While Ms. Zubyk argues Constable Lamont-Paradis did look inside the zippered compartment, I find this submission is unsupported. Ms. Zubyk was not present in the apartment, and she did not say Constable Lamont-Paradis told her he looked in a zippered compartment. E.M. did not say she saw a zippered compartment. Rather, Ms. Zubyk's argument about the money being in the zippered compartment arose later, to explain why the landlords did not see the money.
20. On balance, I find Constable Lamont-Paradis' apology and explanation the most consistent with all the evidence before me. Namely, when he told Ms. Zubyk about a large amount of money in the apartment, he meant the \$500 or \$600 in change D had identified in his note. I acknowledge Ms. Zubyk's frustration. However, I find there is simply insufficient evidence to support a conclusion that there was money in the wallet. None of the persons present say there was money in it, and I have found

someone would have likely noticed if there had been a large amount of cash inside the wallet, whether in a zippered compartment or not.

21. Ms. Zubyk appears to argue that Constable Lamont-Paradis told her about the money in the wallet on August 12, 2017 because she had not yet been informed of her son's death. She argues that once her son's death was established, Constable Lamont-Paradis intentionally changed his story to hide the wallet and the cash, because D would no longer be looking for it. As noted, only D's note was logged into police custody. Based on the weight of the evidence before me, I conclude that it is unlikely that Constable Lamont-Paradis would intentionally volunteer to Ms. Zubyk that he seized D's driver's licence and a wallet full of cash, and then later deny he ever seized those items so that he could keep the cash. I find it more likely that during their August 12, 2017 conversation Constable Lamont-Paradis misspoke and/or there was a misunderstanding between Ms. Zubyk and Constable Lamont-Paradis.
22. I turn then to the wallet itself, which the applicants say was no longer on the counter when they arrived at the apartment on August 20, 2017. The RCMP conducted a recorded interview of E.M. on October 18, 2017. In the recording, E.M. said that after the police left on August 11, they did not return. E.M. said later the applicants and several other people came to clean out D's apartment and a lot of things were taken out to the garbage. The police conducted a non-recorded interview with P.M. and neither he nor E.M. say the respondents took the wallet with them although they recall the respondents seized D's note. While I acknowledge the applicants say there was no wallet on their arrival at the apartment, I find there is simply insufficient evidence that the respondents took the wallet.
23. I have addressed above Ms. Zubyk's argument about Constable Lamont-Paradis' statements during their August 12, 2017 phone call. It is certainly unfortunate that Constable Lamont-Paradis's statements led Ms. Zubyk to believe the wallet was seized or that it had cash in it. On balance, I find the weight of the evidence does not show that the wallet had any cash inside it. I find the evidence shows the wallet

was not seized into custody by the respondents. At most, the evidence shows the empty wallet was misplaced somehow by someone. Section 21 of the *Police Act* gives the respondents immunity for actions performed during the course of their duties unless the evidence establishes they were grossly negligent or committed fraud. I find the applicants have not proven gross negligence or fraud.

24. Given my conclusions above, I find the applicants' claims must be dismissed. Under the CRTA and the tribunal's rules, as the applicants were unsuccessful, I find they are not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

25. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair