



Civil Resolution Tribunal

Date Issued: April 16, 2020

File: SC-2019-010369

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Anderson*, 2020 BCCRT 410

BETWEEN:

WILLIAM SHANE SMITH

APPLICANT

AND:

VICTORIA ANDERSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This is a dispute over the ownership of a dog named Luna. The applicant, William Smith, says the respondent, Victoria Anderson, took Luna from his house without his consent. He asks for an order that the respondent return Luna because she is his dog. The respondent disagrees. She says that Luna belongs to her.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. The tribunal has no jurisdiction over division of family property arising under the *Family Law Act* (FLA). I find that even though the parties were in a long-term romantic relationship, they never lived together. As such, there is no issue that the dog is family property under the FLA. Thus, I find the dispute falls under the tribunal's small claims jurisdiction.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether Luna belongs to the applicant.

EVIDENCE AND ANALYSIS

9. 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.
10. Under the law, pets are considered personal property (see *Brown v. Larochele*, 2017 BCPC 115). The ownership of a dog generally falls within the tribunal's personal property jurisdiction under section 118 of the CRTA.
11. The applicant says the respondent gifted Luna to him as a Christmas present in December 2017. The person alleging the gift bears the burden of proof to establish that a gift was made. In order to be successful, the applicant must show that the respondent intended to gift Luna to him, he accepted Luna as a gift, and there was a sufficient act of delivery (see *Pecore v. Pecore*, 2017 SCC 17 and *Lundy v Lundy*, 2010 BCSC 1004). Further, the evidence should show that the intention of gift was inconsistent with any other intention or purpose (*Lundy* at paragraph 20). Once someone has made a gift to another person, that gift cannot be revoked (see *Bergen v. Bergen*, 2013 BCCA 492).
12. The applicant provided text messages from the respondent to other people, whom I infer to be her friends, in which she stated that she was giving Luna to her boyfriend (who was the applicant at the time), Luna was a present for the applicant and his son, and that Luna would live with the applicant. The applicant also says that Luna lived with him since December 2017, aside from veterinarian visits. The respondent did not deny that she sent the text messages. She says that Luna belonged to her because she selected the dog, paid for dog food and supplies, and Luna's microchip was in the respondent's name. The respondent also says she cared more about Luna than the applicant and had more time available to look after her. The

respondent says she left Luna at the applicant's home to provide emotional support for the applicant's son.

13. I find the text messages overwhelmingly establish that the respondent intended to give Luna to the applicant as a gift in December 2017. I also find that the respondent delivered Luna to the applicant and he accepted Luna as a gift since Luna has resided continuously with the applicant since December 2017. I do not accept the respondent's explanation for leaving Luna at the applicant's home. Even though the respondent paid for some of Luna's supplies, this does not outweigh the fact that Luna resided with the applicant and he primarily cared for and looked after Luna. I find the text messages the respondent submitted about the applicant's attitude when Luna was ill were taken out of context. These messages expressed the applicant's frustration with the veterinarian and descriptions of Luna's physical condition. I find they did not mean the applicant was not taking proper care of Luna.
14. Luna is currently in the respondent's possession after the respondent took Luna from the applicant's home. I order the respondent to return Luna to the applicant. At my request, the parties provided submissions about how and when the respondent could do so in light of the Ministry of Health's current physical distancing recommendations due to the covid-19 pandemic. The applicant requested that the respondent return Luna to his city and was flexible about the date and specific location. The respondent suggested meeting in a store parking lot halfway between her city and the applicant's as early as within 2 weeks if necessary.
15. Since the respondent took Luna without consent, I order the respondent to return Luna to the applicant's residence within 14 days of the date of this decision. I order the applicant to communicate a reasonable date and time to the respondent in writing at least 3 days before the scheduled meeting. The applicant must take into consideration the respondent's work schedule and the time it will take for the respondent to travel to the applicant's city when scheduling the date and time.

16. In addition, Luna must be returned in a manner that does not violate any orders of any chief medical officer of British Columbia or of Canada in light of the COVID-19 pandemic and the parties must comply with social distancing advisories.
17. The applicant says he paid a \$700 in veterinary bills after Luna was injured in the respondent's home. He also says the respondent took an old desk, a robot vacuum, and bedding from his house when she took Luna. I make no order about these expenses since the applicant did not make a claim for them.
18. 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. As the applicant was successful, I find that he is entitled to reimbursement of \$125.00 in tribunal fees.

ORDERS

19. Within 14 days of the date of this decision, I order that the respondent return Luna to the applicant's residence. The applicant must provide the respondent with at least 3 days' written notice of the date and time. Luna must be returned in a manner that does not violate any orders of any chief medical officer of British Columbia or of Canada in light of the COVID-19 pandemic. In addition, the parties must also comply with social distancing advisories when Luna is returned.
20. Within 30 days of the date of this decision, I order the respondent to pay the applicant \$125.00 as reimbursement of tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.

23. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
24. 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.

Rama Sood, Tribunal Member