



Civil Resolution Tribunal

Date Issued: May 12, 2020

File: SC-2020-000402

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ryan v. Harper*, 2020 BCCRT 519

BETWEEN:

DENNIS RYAN

APPLICANT

AND:

DEBRA-LYNN HARPER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about whether the applicant, Dennis Ryan, gave the respondent, Debra-Lynn Harper, a dog named Seamus. The applicant says that he temporarily

placed the dog with the respondent and that the placement had conditions attached. He also says he transferred dog equipment to the respondent. He asks for Seamus' return, who he values at \$3,300. The applicant also wants the dog equipment returned, which he values at \$1,500.00. The applicant represents himself.

2. The respondent says that the applicant unconditionally gave her Seamus and the dog equipment. The respondent represents herself.

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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
5. 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.

6. 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

7. The issue in this dispute is whether the applicant gifted the respondent the dog and equipment and, if so, were there enforceable conditions attached.

EVIDENCE AND ANALYSIS

8. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant usually must prove his claim on a balance of probabilities.
9. The respondent says that the applicant gave her the dog. As discussed in *Lundy v. Lundy*, 2010 BCSC 1004 at paragraph 20, in order for a gift to be established, there must be an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of gift was inconsistent with any other intention or purpose. The burden of proof is on the person alleging the existence of a gift, which in this dispute is the respondent (see also *Pecore v. Pecore*, 2007 SCC 17 (CanLII)).
10. It is undisputed the applicant transferred Seamus to the respondent. However, as noted above, the applicant says there were conditions attached. The applicant says that the respondent had to show she was properly caring for Seamus, including grooming, feeding, and exercising him before the applicant would gift him to her in March 2020.
11. It is undisputed that the applicant, who is a lawyer, accepted a job overseas. He originally attempted to find a placement for Seamus but when this did not work out,

he put him up for sale on the internet for \$2,500. A society for the rehoming of Seamus' breed, which is a Kerry Blue Terrier, became aware of the advertisement on September 3, 2019 and contacted the applicant. The society told him that the respondent had been approved to adopt Kerry Blue Terriers and asked if the applicant was interested. The society told the applicant that the respondent could not afford to buy Seamus.

12. According to a statement from the society's representative, the applicant told them that it was not about the money but that he wanted the comfort of knowing Seamus was going to a good home. He also stated that he could give the respondent metal crates, grooming tables, shears and other equipment worth \$2,000. The applicant does not dispute this.
13. The society said that it checked with the original breeder who had the right to take Seamus back and that they already knew about the adoption and approved. The respondent has provided the communications between the breeder and the society where the breeder stated that she was aware Seamus was being "rehomed to a great home." The society also added that the applicant did not talk about this being a temporary placement.
14. The applicant and the respondent agreed to meet in a parking lot about halfway between their cities to transfer Seamus and the equipment. On September 7, 2019, the applicant and his neighbor J met with the respondent and the respondent's neighbor B. It is undisputed that the respondent has a hearing impairment and this is part of the reason she brought B along. Much of this dispute turns on what was said during this meeting. The applicant says that during the meeting he had concerns over the respondent being able to provide Seamus with a suitable environment and whether she could take care of Seamus' grooming, dietary, and medical needs.
15. The applicant says that it was then that he decided to make the placement of Seamus with the respondent conditional. The applicant says the respondent agreed to provide proper care, as well as photos and videos. Also, the respondent was to

provide access and visitation, specifically during the applicant's planned return in March 2020. The applicant says the respondent agreed that he had until March 2020 to determine whether to permanently gift Seamus.

16. The applicant provided a witness statement from J who said that the applicant told the respondent about Seamus' grooming, medical, exercise, and dietary needs. J says that the respondent told them that they could come and visit Seamus anytime. She says that the applicant informed the respondent that he would permit her to take Seamus and all the dog equipment if she groomed him regularly, kept him on a specific diet, exercised him properly, and gave both the applicant and J an opportunity to come and visit.
17. In her witness statement, J says that the applicant told her that if he thought the respondent was not providing proper care that he would take Seamus back. J does not say the applicant told the respondent this. J also does not say that the respondent agreed to allow visitation specifically in March 2020 or that there was a conversation that a decision about gifting Seamus would only be made at that time.
18. The respondent provided a witness statement from B who stated that she was present for the entire conversation and that because the respondent has a hearing impairment she assists in interactions in case the respondent has difficulty hearing. B noted that there was no discussion about the applicant having the right to take Seamus back or any specific conditions for Seamus' ongoing care. B said that the respondent did agree she would text the applicant when they got home with some pictures and to tell him how Seamus did during the drive.
19. The applicant acknowledges that the respondent has a hearing impairment and so brought B to understand what he was saying. However, the applicant says that "at all relevant times B separated herself on the other side of the vehicle quite some distance from a grassy boulevard" while he, J, and the respondent discussed his proposal.

20. Although the applicant now knows the respondent has a hearing impairment, it is unclear whether the applicant knew that the respondent had a hearing impairment when they met. If he did, it does not make sense that he negotiated these terms with her while the person who was there to help her understand and communicate was standing far away, especially given the applicant is a lawyer. If the applicant did not know at the time that the respondent had a hearing impairment, B definitely did. The applicant has not explained why B would have separated herself when she was there to assist the respondent and B says in her witness statement that she did not do so. I do not accept the applicant's submission that B was absent for the conversation between the parties.
21. I also find it unlikely the applicant would not have reduced the conditional nature of the gift to writing. Further, J's witness statement does not corroborate the crucial parts of the agreement the applicant is alleging, specifically that the applicant would only decide whether this was a gift in March 2020.
22. I also find it does not ring true that the applicant would decide once he was back in Canada whether he would leave Seamus with the respondent after leaving him there for 6 months. The applicant does not explain why he would do this. He also does not address the respondent's point that she would never agree to take care of somebody else's dog for free and allow him to come back months later and take the dog away.
23. As noted, for a gift to be established, the respondent must prove there was an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of gift was inconsistent with any other intention or purpose. I find that the respondent has proven that the applicant gave her Seamus. The communications show the applicant intended to give Seamus to the respondent and I do not accept his evidence that he communicated something different when they met in September. The evidence shows that when he handed Seamus over to the respondent in September 2019 his intention was to give him to her and this

intention was inconsistent with any other intention or purpose. The respondent accepted Seamus and there was a sufficient act of delivery.

24. Therefore, I find that the weight of the evidence indicates that the applicant unconditionally gave Seamus to the respondent in September 2019.
25. I also note that the applicant's subsequent behaviour shows that he gave Seamus to the respondent and not that he negotiated a temporary placement for him until conditions were met. After the respondent sent the applicant pictures of Seamus at her home, the applicant responded that he felt comfortable that Seamus had found a new "lifelong" home. There was no conversation about the respondent meeting any conditions of placement.
26. The applicant then said on December 30, 2019 that things did not work out with his job overseas and he was coming back to Canada permanently. He told the respondent that he knew that she was looking for a permanent placement but that he could not live with his decision to "abandon" Seamus.
27. The applicant says that he only said his job did not work out and that he felt bad about abandoning Seamus because he wanted to avoid a confrontation with the respondent over how she was caring for Seamus. Because I find there were no conditions upon his gift of Seamus, I need not consider why the applicant suddenly wanted him back in December 2019. I do note though that the fact the applicant's plans changed and he was no longer going to stay overseas seems to be the reason why the applicant claims that the placement of Seamus was temporary and conditional.
28. The applicant also makes several submissions about paperwork involving Seamus which he says shows he did not gift Seamus to the respondent. He has made several inconsistent statements about whether he gave the respondent the American Kennel Club certificate. I find the evidence shows that he did so. The respondent also says he registered Seamus and this proves he did not gift him to the respondent. This was done on January 3, 2020, after the applicant decided he

wanted the dog back. Similarly, he renewed Seamus' dog license on January 15, 2020. I do not accept the applicant's evidence that the paperwork discussed above indicates that he did not intend to give Seamus to the respondent in September 2019. The applicant also suggests that he would have to execute a deed of transfer to give the respondent Seamus. However, the applicant has provided no evidence that this is required to gift a dog.

29. Although the applicant has not made any specific submission about the dog equipment, I find that he also gave the respondent the dog equipment at the same time. There is no evidence to suggest that he ever put conditions on the gifting of the dog equipment.
30. Because I have decided there were no conditions attached to the gifting of Seamus, I need not consider the caselaw the applicant has provided on conditional gifts and trusts. Therefore, I dismiss the applicant's claims and this dispute.

TRIBUNAL FEES AND EXPENSES

31. 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. Here the applicant was unsuccessful, so he is not entitled to reimbursement of his tribunal fees. There was no request for expenses. The successful respondent did not pay fees or claim expenses.

ORDER

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

Kathleen Mell, Tribunal Member