



Civil Resolution Tribunal

Date Issued: June 5, 2020

File: SC-2020-001135

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jonas v. Nirvana Pet Resort Inc.*, 2020 BCCRT 626

BETWEEN:

JAYNE JONAS

APPLICANT

AND:

NIRVANA PET RESORT INC. and MICHAEL SNEDDEN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Jayne Jonas says her dog, a 9-year-old Havanese named Sammy, suffered a rear right leg injury while being groomed at the respondent Nirvana Pet Resort Inc. (Nirvana). Ms. Jonas claims \$1,380.29, broken down as:
 - a. \$1,245.07 in veterinary bills for treatment of Sammy's leg,

- b. \$68.25 for a follow-up veterinary consultation, and
 - c. \$66.97 for pain and anti-inflammatory medication.
2. Nirvana and the respondent Michael Snedden filed identical Dispute Responses. Nirvana says the grooming service provided to Sammy was conducted to professional standards by M, a groomer with over 10 years of experience.
 3. However, Nirvana agrees that Sammy was injured during the grooming service. Nirvana says Sammy's hip seemed to have popped out, but popped back in. Nirvana describes that Sammy left able to weight bear and walk properly. Nirvana suggests that Sammy may have a pre-existing luxating hip, meaning her hip is prone to subluxing or dislocating. Nirvana says that Ms. Jonas signed a waiver releasing it from liability for any claims involving an injury to Sammy. Nirvana and Mr. Snedden ask that I dismiss the dispute.
 4. The applicant is self-represented. Nirvana is represented business contact Michael Snedden, who also represents himself personally.

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. Under section 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
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. 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.
10. The Dispute Notice identified the respondents as CHRIS ANCTIL (Doing Business As NIRVANA PET RESORT) and MICHAEL SNEDDEN. After the Dispute Response was filed, Ms. Jonas agreed to name only NIRVANA PET RESORT INC. and MICHAEL SNEDDEN as respondents. I have therefore amended the style of cause above to reflect this change.

ISSUES

11. The issues in this dispute are:
 - a. whether Nirvana was negligent in the grooming care it provided for Sammy, and if so to what extent if any must it pay Ms. Jonas the claimed \$1,380.29, and
 - b. whether Nirvana can rely on the liability waiver Ms. Jonas signed as a defence against the negligence claim.

EVIDENCE AND ANALYSIS

12. In this civil claim, Ms. Jonas, as the applicant, bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
13. Because the Dispute Notice does not disclose a claim against Mr. Snedden personally, I dismiss the dispute against him. Below I provide reasons for my decision regarding Ms. Jonas' claims against Nirvana.
14. The parties agree to the following facts:
 - a. On July 10, 2019, when Sammy began attending at Nirvana for grooming, Ms. Jonas signed liability waiver in favour of Nirvana.
 - b. On January 17, 2020, Sammy received a grooming service at Nirvana from an experienced groomer, M.
 - c. During the grooming, Sammy appeared to sustain a right leg injury.
 - d. M, the groomer, stopped the service and contacted Ms. Jonas.
 - e. When Ms. Jonas attended to collect Sammy, his hip was in its socket.
 - f. On January 18, 2020, Sammy received veterinary care.
15. The parties disagree about the precise nature of Sammy's injury during the grooming service. Ms. Jonas says Sammy sustained a knee injury.
16. M describes that Sammy was reluctant to have her nails trimmed. As a result, M lay Sammy down on her left side. When she could not successfully trim Sammy's nails in that position, she asked a fellow groomer, S, to hold Sammy in her arms while she trimmed Sammy's nails.
17. When M stood Sammy up after trimming her nails, M noticed that Sammy was unable to weight bear on her right rear leg. M thought Sammy's hip had come out of its socket and then popped back in. M noted that Sammy was running around the

salon and able to weight bear by the time Ms. Jonas attended to pick her up. M remained concerned and recommended Ms. Jonas take Sammy to a veterinarian.

18. Ms. Jonas says that M and S held Sammy down while trying to trim Sammy's nails, at which point Sammy urinated due to distress. M disagrees, saying that Sammy urinated in her crate and it was unrelated to the grooming.
19. Because M was a first-hand witness to what occurred during grooming, I prefer her evidence to that of Ms. Jonas. Although M is an interested party, she was forthright in calling Ms. Jonas immediately and sharing her concerns that Sammy may have been injured. I find M's frankness and genuine concern for Sammy consistent with her credible evidence about what occurred.
20. Dr. Tin Wai Kwan, veterinarian, assessed Sammy on January 27, 2020 and diagnosed a medically luxating patella (part of the knee) with damage to the lateral and medial collateral ligaments in Sammy's stifle (in dogs, the knee is called the stifle). Sammy's hip was found to be "rotating well". On January 27, 2020, Sammy had lameness in the right leg due to the stifle injury.
21. Dr. Kwan's opinion did not say that Sammy's injury was caused by the grooming on January 17, 2019. Rather, Dr. Kwan relied on assumptions provided by Ms. Jonas that an injury of some sort occurred during the January 17, 2020 grooming. While I accept Dr. Kwan's expert opinion about the type of injury Sammy sustained, I find the opinion does not comment on the standard of care for grooming Sammy nor whether that standard of care was breached. I discuss this point further below.
22. Specifically, Dr. Kwan wrote:

The history provided by Ms. Jonas, was that on January 17, 2020, "Sammy" was at the groomers. During the nail trim, she struggled and was told her hip "popped" out of joint and spontaneously "popped" back about an hour before the owner picked her up. The owner noted she was moderately lame that night. The next morning, the lameness became non weight bearing after she jumped form the front seat to the back seat in her car."

23. From Dr. Kwan's report, Sammy may have been injured during the grooming, or later when she jumped from the back to the front car seat, or some combination of the two. Because M observed an injury during grooming, I find that Sammy sustained some injury at that time. I find that M thought the injury was to Sammy's hip, but it turned to be to her knee.
24. I now turn to the question of whether Nirvana is responsible, at law, for Sammy's injury.

Negligence

25. The general elements of a negligence claim are: the respondent owes the applicant a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages.
26. Nirvana owed Ms. Jonas a duty of care regarding Sammy. The issue here is whether Nirvana breached the standard of care of a reasonable dog groomer in the circumstances, and whether Ms. Jonas has proven any such breach caused her claimed damages. For the reasons given below, I find Ms. Jonas has not proved that Nirvana breached the standard of care.
27. Generally, in claims of professional negligence, an applicant must prove a breach of the standard of care through expert opinion evidence. I find Nirvana's dog grooming service falls under the umbrella of a professional treatment. Given the nature of dog grooming, I cannot presume a failure to meet the relevant standard from the fact that Sammy suffered an injury. While I recognize there is not an absolute rule, I find expert opinion evidence is necessary here, because the subject matter is technical and outside the knowledge and experience of the ordinary person: *Bergen v. Guliker*, 2015 BCCA 283.
28. Expert evidence is required to determine whether or not M, in her role as Nirvana's groomer, exercised the care and skill of a reasonably competent dog groomer in accordance with the standards of the profession.

29. Ms. Jonas did not file an expert report from Dr. Kwan or anyone else commenting that Nirvana, or M, fell below the expected standard for an experienced dog groomer when grooming Sammy. Therefore, I find that Ms. Jonas has not proven what the applicable standard of care was, nor that Nirvana breached the relevant standard.
30. Given my conclusion about the standard of care, it is not necessary for me to determine causation or damages.

Liability Waiver

31. Even if I am wrong in my conclusion that negligence is not proven, I find that the signed waiver is binding on Ms. Jonas and provides a full defence to Nirvana.
32. This dispute involves a signed contract with clear wording that explains the liability waiver. There is a general assumption that the person signing intends to be bound by the terms of the document: *L'Estrange v. Graucob, Ltd.*, [1934] 2 KB 394 (CA)).
33. In the July 2019 liability waiver Ms. Jonas agreed to waive any claims against Nirvana for any injury sustained to Sammy as a result of attending at Nirvana, regardless of the cause of the injury.
34. In *Apps v. Grouse Mountain Resorts Ltd.*, 2020 BCCA 78, the Court of Appeal noted that an “own negligence” clause, which excludes liability both for the inherent risks of an activity and the provider’s own carelessness, is an “onerous” condition. The more onerous the condition, the greater the requirement that an applicant was given reasonable notice of it.
35. Therefore, I must consider whether Ms. Jonas had reasonable notice of the liability waiver clause. In the context of a signed contract, I must consider whether there was an active misrepresentation about the waiver, or “...(1) that in the circumstances a reasonable person would have known that she did not intend to agree to the release she signed; and (2) that in these circumstances the defendants failed to take reasonable steps to bring the content of the release to her attention”:

see *Karroll v. Silver Star Mountain Resorts*, 1988 CanLII 3094 (BCSC) at paragraph 24.

36. I find that in signing the July 2019 liability waiver, Ms. Jonas understood and intended to be bound by its terms, including the agreement not to pursue a claim against Nirvana for an injury to Sammy, however caused. There was no proof of a misrepresentation about the nature of the waiver or that Ms. Jonas did not intend to agree to it. I find the signed waiver language clear. I find that Ms. Jonas had reasonable notice of the liability waiver. As a result, I find that Nirvana can rely on the signed waiver as a defence to Ms. Jonas' claim about Sammy's injury: see also *Schuster v. Blackcomb Skiing Enterprises Ltd. Partnership*, 1994 CanLII 2855 (BCSC).

Conclusion

37. Given my findings on the issues of negligence and the waiver of liability, I dismiss Ms. Jonas' claims and this dispute.

38. 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. Because Nirvana was successful but paid no tribunal fees and claimed no dispute-related expenses, I make no order.

ORDER

39. I dismiss Ms. Jonas' claims and her dispute.

Julie K. Gibson, Tribunal Member