



Civil Resolution Tribunal

Date Issued: July 6, 2020

File: SC-2020-001857

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Middleton v. Middleton*, 2020 BCCRT 752

BETWEEN:

CHRISTINA MIDDLETON

APPLICANT

AND:

MEGAN MIDDLETON and TYLER SCHOLING

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about who owns a dog named Tobiahs (Tobi).
2. The applicant, Christina Middleton, says she owns Tobi, but that her daughter, Megan Middleton, has taken possession of the dog against her wishes. Christina claims \$3,000 in unspecified damages and an order that Megan return Tobi. Given

the same last name, without meaning any disrespect and to avoid confusion I will refer to the parties by their first names.

3. Megan says that she and Christina co-own Tobi, and agreed to share the dog equally, including its expenses. Megan denies unreasonably depriving Christina of Tobi, and says she owes her nothing. Megan and the respondent, Tyler Scholing, live together and are domestic partners. Tyler says he is not involved in this dispute, which is between Christina and Megan only.
4. All of the parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a "she said, they said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or CRT proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.

7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate. Notably, section 118 says the CRT may resolve a claim for the recovery of personal property, which is what Tobi is under the law, as described below. So, I find that Christina's request for Tobi's return is within the CRT's jurisdiction.

ISSUE

9. Is Christina Tobi's sole owner, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Christina must prove her claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The undisputed evidence is that Tobi is about 6 years old and is a German Shepard crossbreed. Christina and Megan lived together until around 2018, and shared Tobi's care. Megan says she provided most of the care, while Christina says Megan participated in Tobi's care and helped with other household tasks in lieu of rent. The parties agree on little else about Tobi, including who owns him.
12. The parties do not dispute that Christina is an owner of Tobi. Tyler does not claim to own Tobi. So, this dispute turns on whether Megan is a part owner of Tobi.
13. As noted above, the law considers pets to be personal property: *Brown v. Larochelle*, 2017 BCPC 115. Both parties submitted evidence about who had provided, and could provide, better care for Tobi. However, the question of

ownership is not a “custody” issue, and these considerations are not necessarily relevant. *Brown*, which is binding on me, considered the best interests of a pet dog in determining which of 2 owners had the best claim to ownership. However, in *Brown*, there was no dispute that the 2 parties had jointly purchased and adopted the dog, and then disagreed about who owned the dog after their romantic relationship broke down. In this case, the parties disagree about whether Megan ever purchased or owned Tobi, from the time when he was first acquired. If I determine that only Christina owns Tobi, then the question of who can better care for Tobi is not relevant to his ongoing ownership.

14. So, is Christina Tobi’s sole owner? I considered the evidence about who purchased Tobi. Christina says she purchased Tobi, while Megan says she paid the majority of Tobi’s purchase price in 2014, which Megan says was \$199. There are no receipts or other documents confirming who purchased Tobi, or for what price. Megan submitted text messages with Christina and bank account statements that she says show she paid over \$100 for Tobi.
15. The undated text messages show that Megan sent her mother \$120 for what Christina said was “help with Tobi”. The messages suggest the money was financial assistance for Christina, to pay for an appointment for Tobi that addressed a second occurrence of an unspecified issue. I find the messages and the \$120 payment are from a time after Tobi had already been purchased, and were a contribution to help Christina afford a dog care expense, rather than being a purchase amount.
16. The bank account statements show two payments to “ANIMAL HOUSE PE” on February 21, 2014 totalling \$111.31. I find this was not the same payment as the money transfer to Christina. There is no indication what the payment was for, although it is undisputed it was made on Tobi’s purchase date. I find this payment may have been Tobi-related, but there is insufficient evidence showing whether the payment was for part ownership of Tobi, a contribution towards Tobi as a gift for Christina, or another purpose. There is also a lack of evidence showing how much Christina paid for Tobi’s purchase.

17. So, I also considered evidence from after Tobi's purchase in determining the strength of each party's claim to ownership. There is no dispute that Christina and Megan both cared for Tobi when they lived together. Christina says she is the dog's owner and primary caregiver, although Tobi was also cared for by Megan and her siblings. Megan says she had an agreement with her mother that they would share Tobi equally, and that because her mother moved away and kept Tobi for 1.5 years, until December 2019, it is now Megan's turn to have the dog. Megan acknowledges that she lived in a home that did not allow large dogs like Tobi during those 1.5 years, but because of the alleged dog-sharing agreement she did not rush to find a home that was appropriate for Tobi. There is no evidence that Megan asked for Tobi during that time. Christina denies having such a dog-sharing agreement with Megan.
18. I find that Megan living in a home for 1.5 years that did not allow large dogs is evidence supporting that Christina owned Tobi. I find there is no evidence showing that Christina agreed Megan was a 50% owner of Tobi, or that she would give Megan custody of Tobi permanently or for an extended period. Further, I find the evidence shows that apart from some short visits elsewhere, Tobi lived with Christina from the time of his 2014 purchase, while Tobi only lived with Megan while she lived in Christina's home.
19. Christina and Megan each submitted several statements by friends and relatives supporting their ownership claims. I place more weight on the statements of immediate family members and those who lived with Tobi, whom I find had direct and lengthy experience with Tobi's ownership situation, than I do on the statements of friends or other relatives who did not. Having weighed this evidence, I find the statements of immediate family members and those who lived with Tobi support that while Megan loved and cared for Tobi, Christina was Tobi's owner.
20. Veterinary invoices and other documents from shortly after Tobi's purchase list Christina as Tobi's owner. For example, the invoice for Tobi's initial vaccinations and an estimate for his neutering are directed to Christina, not Megan. Later,

Christina also applied for Tobi's dog licence. Megan's bank account statements show she paid for some, but not all, of Tobi's veterinary care. From 2017 onward, some veterinary invoices list Megan as his owner, but there is no evidence of a change in ownership. Megan says she paid for some of Tobi's care in part because of Christina's financial difficulties. Overall, I find that the veterinary invoices and payments in evidence, and the dog licensing documents, indicated that Christina owned Tobi.

21. I find both Christina and Megan's submissions fail to provide a complete picture of the circumstances of Tobi's ownership, and contradict each other in many respects. An immediate family member, AM, provided a written statement that I find provides a comprehensive, logical, and sufficiently unbiased account of the family's history with Tobi, which is consistent with the other evidence. I place significant weight on AM's evidence, although I find it is only her own evidence, because the other immediate family members ZM and TM did not confirm AM's statement that she was also writing on their behalf.
22. AM said she was present when Tobi was purchased as a family pet on February 21, 2014. She felt that Christina had paid for Tobi. AM said that Megan and her siblings, and Christina, lived in the family home at the time, and all agreed that they would share responsibility for Tobi. But AM said that Christina is Tobi's "primary," and that aside from occasional visits to others, Tobi has lived with Christina since his purchase, regardless of whether Megan also lived with them.
23. AM said that in December 2019, Christina decided to let Tobi stay with Megan over the holidays, with the understanding that Tobi would return to Christina afterward, although no return date was agreed upon. It is undisputed that Megan and Tyler did not allow Christina to repossess Tobi after the holidays. Tyler discussed the Tobi situation with Christina and Megan's siblings, who sought Tobi's return to Christina, but Megan refused. In text messages between Christina and Tyler after Megan withheld Tobi, Tyler said that he and Megan would not be keeping Tobi forever, and

that Christina should let Megan keep Tobi until a few months had passed. I find these messages support a finding that Christina, not Megan, owned Tobi.

24. The weight of the evidence from family members and friends, and in particular from those who lived with Tobi, I find shows Christina is Tobi's owner. While Megan paid for some of the dog's care, the evidence shows Christina purchased Tobi and paid for most of its care, and the majority of the family says Tobi was Christina's dog although he was bought as a family pet.
25. Further, given AM's statement and Tyler's text messages, I find that Christina agreed to let Tobi stay with Megan over the December 2019 holiday season. But on balance, I do not find Christina agreed to let Tobi stay with Megan and Tyler longer than that. So, I find that Megan and Tyler must return Tobi to Christina, as described in my order below.
26. It is not clear why Christina also claimed \$3,000, although Megan says that was the purchase price of another pet Christina wanted to buy. Given that Tobi is returning to Christina, I find the evidence before me does not show that Megan owes Christina any amount for Tobi. I dismiss Christina's claim for \$3,000.

CRT FEES AND EXPENSES

27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Christina was successful, and is entitled to reimbursement of the \$50 in CRT fees she paid. Megan and Tyler paid no CRT fees. None of the parties claimed CRT dispute-related expenses.

ORDERS

28. I order that within 45 days of this decision:

- a. At their expense, Megan and Tyler return the dog Tobias to Christina, at Christina's home or at a mutually agreed time and place, either personally or through a mutually agreed third party, with at least 7 days' written notice, and
- b. At the same time as the dog transfer, Megan and Tyler pay Christina \$50 for CRT fees.

29. I dismiss Christina's remaining claims.

30. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Chad McCarthy, Tribunal Member