



Civil Resolution Tribunal

Date Issued: October 5, 2020

File: SC-2020-003656

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McVeigh v. Hawkins*, 2020 BCCRT 1120

BETWEEN:

REAGAN MCVEIGH

APPLICANT

AND:

JENNIFER HAWKINS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about wedding photos. The applicant Reagan McVeigh bought a wedding photography package from the respondent Jennifer Hawkins, for \$2,700. Ms. McVeigh says Ms. Hawkins' photos of her August 3, 2019 wedding were missing a number of requested photos that the parties had agreed would be taken. Ms. McVeigh also says Ms. Hawkins failed to provide a 2nd photographer for the

entire wedding day and that Ms. Hawkins' editing of some photos was of poor quality. Ms. McVeigh claims \$1,350, being a 50% refund of what she paid.

2. Ms. Hawkins says she complied with the parties' agreement and that she is not responsible for certain guests not having been captured in photos.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether Ms. Hawkins fulfilled the parties' wedding photography agreement, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. McVeigh bears the burden of proof, on a balance of probabilities. While I have reviewed all of the parties' evidence and submissions carefully, I have only referenced the evidence and submissions as necessary to give context to my decision. I will not detail every particular photo or complaint raised by Ms. McVeigh.
10. Ms. McVeigh paid Ms. Hawkins a \$1,000 deposit on May 4, 2018 and the outstanding balance of \$1,700 on June 21, 2019, which Ms. Hawkins required as full pre-payment before the August 3, 2019 wedding. Ms. McVeigh received some wedding photos on October 1, 2019 and the balance on October 7, 2019. Under the parties' May 4, 2018 contract, Ms. Hawkins agreed to photograph the wedding day from "getting ready" to the "first dance". None of this is disputed.
11. Ms. McVeigh acknowledges that Ms. Hawkins took some "great photos", and says that is why she only claims a 50% refund. Ms. McVeigh alleges Ms. Hawkins breached the parties' May 4, 2018 contract due to the following:
 - a. The contract said there would be 2 photographers to capture the day, but the 2nd photographer missed the cake cutting, sunset photos, and first dance.
 - b. As required by Ms. Hawkins, about a month before the wedding Ms. McVeigh and her husband completed a form indicating group photos they wanted taken. Ms. McVeigh says Ms. Hawkins failed to shoot 10 out of the 19 requested photos.
 - c. Ms. Hawkins failed to edit or photoshop certain photos.

12. Ms. Hawkins took a number of photos which Ms. McVeigh says did not capture the best angle or facial expressions.

Second photographer

13. Based on the evidence before me, which includes a statement from the 2nd photographer KB and KB's invoice to Ms. Hawkins, KB left the wedding reception sometime after the dinner and speeches. This left Ms. Hawkins to alone capture the cake cutting, sunset photos, and first dance. I find KB left the wedding reception just before 8pm.

14. I do not agree with Ms. Hawkins' submission that KB's presence was a complimentary service. The parties' May 4, 2018 contract says, "two photographers will capture your day". I find that meant the 2nd photographer was included in the \$2,700 contract price. Ms. Hawkins' later messaging about KB being "complimentary" does not unilaterally change that contractual term.

15. However, on balance, I accept that the contract provided that Ms. Hawkins would herself be present for the entire wedding event, up to the first dance. This is supported by the fact that contract's term about the entire timeframe refers to Ms. Hawkins as "I", in the first person. I find KB was substantially present to capture the wedding day.

16. In any event, I also accept Ms. Hawkins' evidence that the reception slowed after the speeches and so there was no need for a 2nd photographer after that point. Ms. McVeigh does not point to any issues with either the cake cutting or the sunset photos that were taken and I can see none. While Ms. McVeigh argues that additional photos of the first dance would have been desirable, based on the photos in evidence I am not prepared to accept that KB's departure had any significant impact on the variety or quality photos Ms. Hawkins delivered. I dismiss this aspect of Ms. McVeigh's claim.

Missing photos

17. It is undisputed Ms. McVeigh returned a completed form to Ms. Hawkins on June 29, 2019, identifying a list of shots she wanted taken. Ms. McVeigh says 10 out of the 19 requested group photos were not taken, identified by such descriptions as: “groom with his parents” and “a large family photo of both families”.
18. I accept these 10 group photos were not taken, which is not particularly disputed by Ms. Hawkins.
19. Ms. McVeigh says Ms. Hawkins had advised before the wedding that she was familiar with the venue and as a professional photographer she should have ensured before the wedding began that she could situate herself to obtain the requested shots.
20. In contrast, Ms. Hawkins submits that there are “a lot of moving parts to a wedding” and that she cannot be held responsible for failing to capture all of the requested shots. For instance, Ms. Hawkins says that guests got in the way and some family members were ill. I accept Ms. Hawkins’ submissions on this point, as discussed further below. KB’s statement also confirms Ms. Hawkins’ evidence that Ms. McVeigh “took control in specifying which family and friends” she wanted photographed. KB also said that at the end of the group photo session Ms. Hawkins confirmed with Ms. McVeigh and her now husband that they were content and did not require any further photos. I accept all of this evidence as it is consistent with Ms. Hawkins’ evidence and Ms. McVeigh does not particularly dispute it.
21. Ms. McVeigh’s essential submission is that she assumed Ms. Hawkins would have referred back to the list of requested photos during the wedding day and ensured all of the requested shots were taken. Given the circumstances described above, and most significantly that Ms. McVeigh took over arrangements for the family group photos, I find Ms. Hawkins did not breach the parties’ contract nor was she negligent in failing to obtain all of the requested shots. I accept that Ms. Hawkins did not have a significant opportunity to control the progress of the wedding, a live

event with 75 guests plus a bridal party. Further, the list of requested group photos was not part of the parties' contract. Rather, I find it was a tool Ms. Hawkins used to attempt to provide the best photography package possible. As the guests' names were not identified on the list Ms. McVeigh gave, Ms. Hawkins could not know who had been photographed and who had not. Most importantly, since Ms. McVeigh took over organization of the group photos, I find Ms. Hawkins cannot be held responsible for the absence of some group photos being taken. The fact that Ms. McVeigh expressly said she did not require further photos when asked, supports this conclusion.

22. I also accept the undisputed evidence that the family photos comprised about .05% of all of the 900 photos taken. I note the contract says that Ms. Hawkins' liability is limited to the percentage of the loss. While I acknowledge Ms. McVeigh says the missing photos are important to her, the evidence shows they were not particularly significant since Ms. McVeigh told Ms. Hawkins how satisfied she was with the photos and only complained about the missing photos 6 months after she received them. So, even if I had found Ms. Hawkins in breach of the parties' agreement given the missing photos, I find the missing photos resulted in only a nominal loss.
23. On balance, I find there is no basis to order any refund based on the missing group photos and I dismiss this aspect of Ms. McVeigh's claim.

Alleged poor quality and editing

24. Photography appreciation is inherently subjective. What is a "good shot" to one person may be a terrible shot to another, and vice versa. I have reviewed the photos and video in evidence. I am unable to conclude, in the absence of expert evidence from an objective professional photographer critical of Ms. Hawkins' work, that there is anything deficient in the photos supplied to Ms. McVeigh. I place no weight on the lesser quality shots (people blinking or awkward facial expression) that Ms. Hawkins originally chose not to deliver as part of the package but provided at Ms. McVeigh's request. For example, while Ms. McVeigh complains that the back of the groom's head is depicted in certain photos, I find it reasonable that the

intended aesthetic was as shown, namely that in that particular group of photos Ms. McVeigh's expression at the altar was the intended subject of the photo. There are many photos showing both the bride and groom facing the camera or their faces in profile.

25. As another example, Ms. McVeigh asked Ms. Hawkins before the wedding to be sure there was a photo of her and her father walking her down the aisle. Ms. McVeigh says the photos Ms. Hawkins took were from a bad side angle, with a bush partially obscuring her lower half and her dress. Ms. McVeigh argues that Ms. Hawkins should have known as a professional photographer that she should have ensured she had a good vantage point to take head-on photos, as one of Ms. McVeigh's friends did. Yet, there is nothing in the parties' contract nor any request for Ms. Hawkins to take "head-on" shots, and I can see nothing obviously objectionable in the "aisle walk" photos Ms. Hawkins did take. Further, based on the video provided, one of Ms. McVeigh's guests walked in front of her as she descended the stairs at the beginning of the "aisle walk". I accept that these sorts of unexpected things can happen and I find Ms. Hawkins' vantage point was not an unreasonable choice. While Ms. McVeigh also complains that her whole dress is not always visible, I see there are many photos where it is fully visible. Since there is no evidence that Ms. McVeigh told Ms. Hawkins she wanted her whole dress visible in all of the shots in question, I find Ms. Hawkins did not breach the parties' agreement nor do I find Ms. Hawkins negligent in the way she took the photos.
26. I find Ms. McVeigh's complaints simply reflect a hindsight difference of opinion about what was the ideal shot for the photos in issue. I find she has not proved any deficiency in the photographs taken. In saying this, I accept that photography during a busy wedding event will not likely result in all shots reflecting every person smiling at the camera in a perfect pose. I find the wedding photos provided by Ms. Hawkins reasonably captured the wedding day and fulfilled the parties' contract. The fact that Ms. McVeigh was clearly very happy with Ms. Hawkins' work for the first 6 months after she received the photos supports this conclusion.

27. I turn to the editing issue. The evidence shows Ms. Hawkins assured Ms. McVeigh that all photos are edited. Ms. McVeigh argues however that not all photos were edited, contrary to that agreement. As an example, Ms. McVeigh complains that Ms. Hawkins did not edit out the strings of her bouquet that had been hand-made by a friend. I find this falls within the range of subjective appreciation of photography and that Ms. Hawkins did not breach the parties' agreement by not identifying the bouquet strings for editing. Without a specific request from Ms. McVeigh, I find Ms. Hawkins reasonably believed Ms. McVeigh would be happy with the bouquet as depicted in the photos. Again, there is no expert photographer's evidence before me that Ms. Hawkins' finished product was deficient. I am unable to conclude based on my own review of photos that they unreasonably lacked editing. Given all the above, I dismiss Ms. McVeigh's claims for a refund.

28. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Ms. McVeigh was unsuccessful and so I find she is not entitled to reimbursement of \$125 in paid CRT fees. Ms. Hawkins did not pay fees or claim dispute-related expenses.

ORDER

29. I order Ms. McVeigh's claims and this dispute dismissed.

Shelley Lopez, Vice Chair