



# Civil Resolution Tribunal

Date Issued: November 10, 2020

File: SC-2020-004725

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilkinson v. Muller*, 2020 BCCRT 1270

BETWEEN:

DYLAN WILKINSON and SHAELYN MULLER

**APPLICANTS**

AND:

KAI MULLER and CHERYL BESTA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about ownership of a cat. The applicants, Dylan Wilkinson and Shaelyn Muller, say the respondents, Kai Muller and Cheryl Besta, failed to return the

cat after fostering it for about 18 months while the applicants awaited a pet-friendly home.

2. The respondents say that the applicants essentially abandoned the cat, having left it behind for 18 months without any financial contribution to its care or any expression of concern for the cat.
3. The parties are each self-represented. Without meaning any disrespect, I will refer to the parties by their first names as Shaelyn and Kai Muller share the same last name. The evidence indicates the respondents are Shaelyn's parents.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. I acknowledge the respondents submitted late evidence, namely a statement written by Cheryl. Bearing in mind the CRT's flexible mandate, I accept this late evidence, which the applicants had the opportunity to address.
9. The respondents says the applicants engaged in defamatory and harassing behaviour. There is no counterclaim and I find those issues are not related to the applicants' claim for the cat. In any event, under the CRTA the CRT has no jurisdiction over defamation claims.

## **ISSUE**

10. The issue in this dispute is which party has the rightful ownership claim to the cat.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. It is undisputed that in late December 18, Shaelyn asked the respondents to care for the cat, because she was moving into a residence where the cat was not allowed. Cheryl says the cat was Shaelyn's, which had been living with the respondents along with Shaelyn. It is undisputed Shaelyn moved out in November 2018 to live with Dylan for a month with the cat, but Shaelyn and the cat returned to the respondents' home.
13. It is clear from the evidence there are family issues and hostility. In BC, pets are treated as personal property under the law. This means I must consider not who has taken or will take the best care of the cat, but rather which party has the best ownership claim to it.

14. In either December 2018 or January 2019, Shaelyn moved out and left the cat behind with the respondents. The respondents say the last time Shaelyn saw the cat was on September 2019 and had never asked for the cat's return. The respondents say Dylan never had any ownership claim to the cat. I accept this undisputed evidence. Given this, I dismiss Dylan's claim as I find there is no evidence he ever had any ownership of the cat.
15. The applicants simply submit that they had a verbal agreement with the respondents that "once we had a home that allowed pets", the respondents would return the cat. The applicants submitted no documentary evidence, other than a June 2020 vaccine record printout and a June 2020 pet deposit receipt for their new home which I find irrelevant to the ownership issue.
16. In contrast, the respondents say the cat is now theirs as Shaelyn had abandoned it.
17. I turn then to the applicable law. The elements of the tort of conversion, which is essentially the wrongful interference with another person's property, are set out at paragraphs 213 and 214 of *Li v. Li*, 2017 BCSC 1312. In order to be successful, Shaelyn must prove that:
  - a. The respondents committed a wrongful act involving the cat, inconsistent with Shaelyn's rights to it,
  - b. The act must involve handling, disposing or destroying the property, and
  - c. The respondents' actions must have the effect or intention of interfering with or denying Shaelyn's right or title to the cat.
18. In this case, the focus is on whether the respondents' refusal to return the cat, on the basis Shaelyn had abandoned it, was wrongful. I find that if Shaelyn effectively abandoned the cat, the respondent is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if Shaelyn abandoned the cat, the respondents' continued possession of it is not conversion because in so doing, the respondents were not interfering with Shaelyn's right of possession. In other

words, if Shaelyn abandoned the cat, the respondents do not have to return it to Shaelyn.

19. I turn back to the relevant chronology and evidence of abandonment. In using the word 'abandonment', I do not need to find Shaelyn was heartless or negligent in handling the cat. Rather, 'abandonment' is a legal term which may apply to Shaelyn's decision to leave the cat in the respondents' care for a prolonged period.
20. In *Bangle*, it was roughly a 2-year period where the applicant was found to have abandoned their property. Here, it was about 18 months. Significantly, there is no evidence that Shaelyn made any effort to financially contribute to the cat's care during that time frame. There is also no evidence that Shaelyn contacted the respondents about the cat at all, other than Cheryl's admission Shaelyn saw the cat once in September 2019. Shaelyn does not say she contributed anything or communicated about the cat. On balance, based on the evidence before me, I find Shaelyn abandoned the cat. So, I dismiss her claim for its return.
21. 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. As the applicants were unsuccessful, I dismiss their claim for reimbursement of CRT fees. No dispute-related expenses were claimed and the respondents did not pay fees.

## **ORDER**

22. I dismiss the applicants' claims and this dispute.

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Shelley Lopez, Vice Chair