



# Civil Resolution Tribunal

Date Issued: January 22, 2021

File: SC-2020-004831

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Andersen v. Andersen*, 2021 BCCRT 85

BETWEEN:

NICOLE ANDERSEN and ROBERT ANDERSEN

**APPLICANTS**

AND:

BRAD ANDERSEN and SARA ANDERSEN

**RESPONDENTS**

AND:

NICOLE ANDERSEN and ROBERT ANDERSEN

**RESPONDENTS BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about ownership of a dog, a beagle named Lola.
2. The applicants Nicole Andersen and Robert Andersen say that the respondents Brad Andersen and Sara Andersen took care of Lola for a temporary period, but then refused to return her. Because all four parties share the same surname, for clarity, and without intending any disrespect, I will use their first names in this decision.
3. Nicole and Robert seek an order requiring Brad and Sara to return the dog and \$2,000 in damages. Brad and Sara say that Lola lived with them for almost 2 years before Nicole and Robert expressed an interest in her. Brad and Sara say Lola was abandoned to their care.
4. Brad counterclaims, asking that if the CRT returns Lola to Nicole and Robert, then he wishes to be reimbursed for \$5,000 in food, veterinary care, boarding fees, yard and house maintenance. Nicole and Robert say there was no agreement that they would pay Brad and Sara boarding fees or other expenses.
5. The parties represent themselves, with Nicole and Sarah as primary applicant and respondent in the main claim, respectively.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. Here, I find that I am properly 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.

8. 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.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Who is entitled to ownership and possession of Lola?
  - b. What remedies are appropriate?

## **EVIDENCE AND ANALYSIS**

11. In this civil claim, the applicants Nicole and Robert bear the burden of proof on a balance of probabilities. Brad bears this same burden in the counterclaim.
12. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision. Neither Nicole and Robert nor Brad and Sara provided submissions on the main claim, despite being given opportunities to do so. Brad provide very brief submissions in the counterclaim.
13. The following facts are undisputed:
  - a. Robert and Brad are brothers.

- b. In December 2015, Nicole and Robert purchased a puppy, Lola, from a breeder.
- c. In May 2019, Nicole and Robert were experiencing some personal challenges, and asked Brad and Sara to care for Lola.
- d. Brad and Sara agreed. Lola moved to their home on May 26, 2019 and is still living with Brad and Sara.
- e. The parties did not have an agreement about Nicole and Robert paying Brad and Sarah for Lola's expenses while she was in their care.
- f. Brad and Sara have paid Lola's expenses while she lives with them. Nicole and Robert have not reimbursed Brad and Sara for those expenses.

14. The parties disagree about who owns Lola.

### ***Who Owns Lola?***

15. Determination of pet ownership generally falls within the CRT's personal property jurisdiction under section 118 of the CRTA. This is because under the common law, pets are considered personal property (see *Vallance and Brown v. Larochelle*, 2017 BCPC 115). The issue of pet ownership is not about who might be better able to care for Lola. The ownership issue is about who has the best property claim to Lola.
16. Because Brad and Sara kept Lola, the applicable law includes the tort of conversion, which is essentially the wrongful interference with another person's property. The elements of the tort of conversion are set out at paragraphs 213 and 214 of *Li v. Li*, 2017 BCSC 1312. In order to be successful, Nicole and Robert must prove that:
- a. Brad and Sara committed a wrongful act involving Lola, inconsistent with Nicole and Robert's rights to her,
  - b. The act must involve handling, disposing or destroying Lola, and

c. Brad and Sarah's acts must have the effect or intention of interfering with or denying Nicole and Robert's right or title to Lola.

17. In this case, the focus is on whether the respondents' refusal to return Lola, on the basis Nicole and Robert had abandoned Lola, was wrongful. I find that if Nicole and Robert effectively abandoned Lola, Brad and Sara are not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256). As set out in *Bangle*, if Nicole and Robert abandoned Lola, Brad and Sara's continued possession of Lola is not conversion because in so doing, the respondents were not interfering with Nicole and Robert's right of possession.
18. I turn back to the relevant chronology and evidence of abandonment. In using the word 'abandonment', I am not implying that Nicole and Robert were unfeeling or negligent in handling Lola. I accept that all parties care about Lola. Rather, I am applying the legal term 'abandonment', which may apply to Nicole and Robert's decision to leave the Lola in the respondents' care for a prolonged period.
19. The parties agree that the initial agreement was to leave Lola with Brad and Sara for a short period. However, Nicole and Robert say that they then ended up leaving Lola with them longer than expected.
20. The uncontested evidence is that Nicole and Robert did not ask for Lola to be returned until March 2020, nearly a year after they left her with Brad and Sara. During that 10-month interval, Nicole and Robert did not offer to pay Lola's expenses.
21. As noted above, Nicole and Robert also did not provide submissions on their claim, despite being given opportunities to do so.
22. Nicole provided one piece of evidence dated October 20, 2020, a personal statement in which she wrote that, although she and her family love Lola, she understands that Brad and Sara also love Lola. Nicole writes that she has no desire to take Lola away from a loving family again.

23. Nicole then writes that she “would be willing to let Brad and Sara keep Lola if they would agree to drop all suits” (quote reproduced as written). Because Nicole is the primary applicant acting for herself and Robert, it appears that she would have abandoned her claim to Lola if the counterclaim was withdrawn.
24. I note the 10-month interval where Nicole and Robert did not offer to contribute financially to Lola’s care. As well, there is only minimal evidence, being Robert’s assertion that he occasionally texted about her, that Robert and Nicole tried to contact or visit with Lola during that interval. For these reasons, I find that Lola was abandoned to Brad and Sara. I base that decision on the whole of the evidence, and analysis from decisions including *Bangle* and the Vice-Chair’s persuasive but non-binding decision in *Wilkinson v. Muller*, 2020 BCCRT 1270.
25. For these reasons, I dismiss Nicole and Robert’s claim for Lola’s return.

### **Remedy**

26. The parties also disagree about whether Brad and Sara ought to pay Nicole and Robert a “purchase price” and compensation for “initial costs” given my decision that Lola will remain with Brad and Sara.
27. Because there was no agreement to purchase Lola, I dismiss the claim for a “purchase price” or “initial costs”. I dismiss the claim for \$2,000 in damages, which I infer is the purchase price and “initial costs” claim.
28. The counterclaim focuses on the disagreement between the parties about whether and to what extent Nicole and Robert ought to pay Brad and Sara for Lola’s expenses while she lived with them. Brad limited his claim to the \$5,000 to a scenario where Lola was ordered returned. That is, the claim for \$5,000 was in the alternative if Brad and Sara did not prevail in the main claim. The counterclaim also included a claim to keep Lola.
29. I have considered the counterclaim for completeness. I dismiss the counterclaim for \$5,000 for Lola’s food, veterinary care, potential boarding fees and other expenses. I

make this decision because Brad and Sara agreed to take on Lola without any promise of reimbursement for such costs, have kept Lola in their care since and, in this proceeding, asked to keep Lola. As noted above, the monetary counterclaim is not triggered because I have decided that Lola will remain with Brad and Sara.

### ***CRT Fees and Dispute-Related Expenses***

30. 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. Because there was divided success on the monetary claims, I make no order for CRT fees or dispute-related expenses.

### **ORDER**

31. I dismiss Nicole and Robert's claims.

32. I allow Brad's counterclaim for Lola to remain with Brad and Sara. I find it does not require a separate order because that result flows from the outcome of the main claim.

33. I dismiss the other counterclaims.

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Julie K. Gibson, Tribunal Member