Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

J.W. and S.W.

APPLICANTS

A N D :

R.G. and M.G.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about children playing basketball near the home of the applicants, J.W. and S.W. The applicants say their neighbours, the respondents, R.G. and M.G., allow their children and their children's friends to trespass on their property while playing basketball on the street and sidewalk. The applicants say the children's play has damaged their property and interfered with their peaceful enjoyment of it. They

claim $5,000, the maximum Civil Resolution Tribunal (CRT) small claim amount, for harassment, nuisance, mischief, trespass, and aggravated damages, without further breakdown.

2. The applicants did not name the respondents' children or their friends as parties to this dispute. The respondents admit that their child damaged a landscaping light, but say that their offer to repair it went unanswered. The respondents deny that their children caused any other property damage or caused a nuisance. The respondents say they did not harass the applicants, and owe nothing other than the light repair.

3. J.W. represents the applicants in this dispute. M.G. represents the respondents. In the published version of this decision I have anonymized the parties to protect the privacy of the respondents' minor children, whose conduct is at issue here.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons, which 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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. This dispute focusses mostly on the respondents' children's alleged actions, and those of the children's friends. However, no children are named as parties, so my decision does not address whether any children are liable for damages. The applicants do not allege that the respondents themselves committed any acts of trespass, nuisance, or property damage. Although they do not explicitly say so, I find the applicants claim damages from the respondents for the allegedly wrongful acts of their children and their children's friends. Below, I discuss the respondents' potential liability for the applicants' claims.

ISSUES

9. The issues in this dispute are:

    a. How much do the respondents owe, if anything, for the applicants' broken landscaping lights?

    b. Did the respondents' children cause any other property damage, and if so, are the respondents liable for it and what do they owe?

    c. Were the respondents negligent in supervising their children, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read and weighed all the parties' evidence and submissions, but I only refer to that which I consider necessary to explain my decision.

Mischief and Harassment

11. The applicants say the respondents are liable for mischief, which is a *Criminal Code* offence (section 430). I find the CRT does not have small claims jurisdiction over such offences under CRTA section 118. I infer that the applicants used "mischief" as their way of arguing that the respondents are liable for their children's behaviour.

12. The applicants also say the respondents are liable for harassment. First, the tort of harassment is not a recognized civil claim in BC (see *Total Credit Recovery v. Roach*, 2007 BCSC 530). Second, even if the tort of harassment existed in BC, case law indicates the applicants would likely need to prove outrageous conduct by the respondents or their children that intentionally or recklessly resulted in "severe or extreme emotional distress" (see *Mainland Sawmills Ltd. v IWA-Canada, Local 1-3567 Society*, 2006 BCSC 1195, where the court assumed without deciding that the tort of harassment existed in BC). On the evidence before me, I find the applicants have failed to prove such outrageous conduct or extreme emotional distress.

What is the appropriate remedy for the broken landscaping lights?

13. I will discuss the basketball activities at issue in more detail below. But first, I will address the issue of the applicants' landscaping lighting. The undisputed evidence is that the applicants' landscaping lighting includes a light installed at ground level on either side of their driveway. It is undisputed that the respondents' children and other neighbourhood children regularly played basketball near to the entrance light closest to the respondent's property. The applicants say both the entrance lights were broken. They say that given the frequency and nearness of the basketball play, the respondents' children or their friends must have broken the lights. I note that the

applicants often refer to the ever-changing groups of children playing basketball without naming all, or sometimes any, of the individual children present.

14. The respondents agree that one of their children broke the plastic housing on one of the lights in 2019. They say that R.G. offered to repair the light because he is an electrician, and it would have cost him no more than $50, but the applicants never responded to the offer. The applicants say R.G. never followed through on his offer.

15. Sections 3 and 9 of the *Parental Liability Act* (PLA) say a parent is liable for intentional property damage caused by their child, but only if they failed to reasonably supervise the child and discourage the damaging activities. I find there is no evidence before me showing that the respondents' children intentionally damaged the applicants' property, so I find the PLA does not apply.

16. I also find that generally, parents are not vicariously liable for their children's negligence (see *Taylor v. King*, 1993 CanLII 6859 (BCCA) at paragraph 32). However, parents do have a duty to supervise and control their children's conduct and activities, in view of the accepted community standard (*Taylor* at paragraphs 32 and 33). If parents do not meet the required standard of care in supervising their children, they may be found negligent, and liable to pay damages resulting from that negligence. (For example, see *Poirier (Guardian of) v. Cholette*, 1994 CanLII 1182 (BCSC).) It is undisputed that many other neighbourhood children play basketball with the respondents' children near the applicants' property. However, I find the respondents had no duty to supervise or control other children, in particular during the relatively safe basketball activities on municipal property in front of their house.

17. I find the respondents agree that their 9-year-old child broke the housing of the entrance light nearest to the basketball play area, and that the respondents are responsible for that damage. I accept that the respondents had a greater duty to supervise this child than their 14-year-old child. On balance, I find it likely that lack of supervision and control led to the foreseeable light damage. So, I find that the respondents are responsible for their child's admitted damage to that light.

18. Regarding the second entrance light, I find the applicants have not met their burden of proving it was damaged by the respondents' children. There is no video, witness, or other direct evidence of the second light being broken. While the video evidence showed basketballs rolling through the area near the second light, I find those balls were often thrown by other children. The second light is near the sidewalk, which the video evidence showed is very regularly used by pedestrians, bicyclists, and others. On balance, I find the evidence fails to show that the respondents' children broke the second light, or that the respondents are responsible for it because of a failure to adequately supervise their children.

19. The applicants also say a basketball broke a landscaping light switch, and that they upgraded their landscaping light system to avoid "further" damage, including more robust entrance lights. I find the submitted security video fails to show a basketball breaking a light switch. On balance, I find the children's basketball activities caused no other damage to the landscaping lighting. Further, I find the respondents are only liable for repairing the existing entrance light, not for upgrading that light.

20. The invoiced price for the upgraded entrance light parts was $53.05 each. R.G. says, and the applicants do not directly deny, that the original style of light is locally available for $32.97. On a judgement basis, and factoring in the likely cost of labour and sales taxes, I find the reasonable cost of replacing the original, damaged entrance lights is $75. I find the respondents owe the applicants $75 for the light.

Was there any other property damage?

21. Photos and video in evidence show that the parties' properties are adjacent and face the same street. The front of the applicants' house features steps leading to a door, and two garage doors with frosted glass windows. Immediately in front of the house is a concrete parking pad. The concrete pad on the side adjacent to the respondents' house continues a few metres to a sidewalk, providing vehicle access through this very short driveway. The concrete pad ends a few feet short of the sidewalk on the other side, and there are large rocks and some small plants between that portion of the pad and the sidewalk. Most of the applicants' front yard is concrete or rocks.

Between the parties' front yards is a 1 to 2 metre strip of loose river rocks. The respondents' children invariably set up their heavy but moveable basketball hoop and backboard at the end of the river rock strip, partially on the sidewalk.

22. Most of the security video and photo evidence shows that the basketball hoop is angled towards the street in front of the respondents' house. Based on that evidence, I find the main field of play was generally in front of the respondents' house, although it sometimes spilled onto the sidewalk and street in front of the applicants' house.

23. I find the applicants argue that they were virtually inundated with stray basketballs that struck their front steps and garage doors and damaged their property, including plants close to the sidewalk. The applicants have a video security system that provides full-motion, night-capable video of nearly their entire front yard, the sidewalk and street beyond it, and the basketball hoop. The applicants submitted many security video excerpts and photos in support of their claims, spanning approximately 1.5 years following their March 2019 house purchase. I reviewed all of the video footage and photos in evidence.

24. The applicants also submitted a diagram that they say is an approved construction drawing for their home, showing their property boundary in dashed red lines. For the purposes of this dispute only, I accept the drawing's undisputed property lines as correct. Contrary to the applicants' submissions and annotated photos, I find the drawing confirms that the applicants' front property line is situated approximately 2 metres inside of the sidewalk, towards their house. This means the area where the basketball hoop was positioned, the 2 large rocks on either side of the driveway where the children sometimes placed their belongings, and most of the large rocks and plants in front of the parking pad, are not on the applicants' property.

25. Given the video, photo, and property line evidence, I find there were only a few occasions where a basketball entered the applicants' property, at a relatively slow speed and causing no apparent damage. I find a large fraction of these occasions involved a basketball controlled by other neighbourhood children.

26. A friend visiting the applicants said she heard what she thought was a basketball hitting the applicants' house on one occasion. Security video shows a basketball contacting the house only once, hitting the front steps. The applicants provided a distant photo that they say shows garage door damage, but I see no such damage. There is no estimate for the door's repair in evidence, or for any other alleged house damage. Overall, I find none of the photos, video, or other evidence shows any additional damage to the applicants' house, plants, or other property. The applicants also allege that their tenant's car suffered basketball damage. However, the video evidence shows only one instance where a basketball came to rest, gently, underneath the car, and in a different area than the alleged scratch damage.

27. I find the applicants have failed in their burden of proving that the respondents' children caused any damage to their property beyond the landscaping light. So, I find the respondents are not responsible for any further property damage.

Were the respondents negligent in supervising their children, and if so, what is the appropriate remedy?

28. I find the applicants say, essentially, that the respondents' lack of appropriate supervision resulted in their children being liable for damages in trespass, nuisance, and aggravated damages, which the respondents are responsible for paying.

29. Based on the videos and photos in evidence, I find that the parties live on an extraordinarily child-friendly street. It appears that numerous children played in their front yards, on sidewalks, and in the street almost constantly, with trampolines, hockey nets, basketball hoops, bicycles, scooters, and even large plywood bicycle jumps constructed in the street. The evidence shows these children created a certain level of noise, and were not closely supervised. I find the respondents did not constantly supervise their children while they played basketball. However, I find the sum of the extensive video evidence showed that the basketball playing children behaved well and consistent with the community standard. Apart from the entrance light, they did not unreasonably interfere with the applicants' property. The applicants say that the children used rude language toward them, and the respondents say the

applicants used similar language toward the children, but there is no direct evidence of foul language or similar misbehaviour, and I find nothing turns on this.

30. So, I find the respondents' child supervision was not negligent, and they are not liable for any of their children's trespass or nuisance damages. I also dismiss the applicants' claim for aggravated damages, because the evidence fails to show that the respondents' conduct (or their children's) was particularly poor and caused the applicants intangible losses, such as mental distress and emotional shock (see *Gibson v. F.K. Developments Ltd. et al*, 2017 BCSC 2153 at para. 54). I find the applicants failed to prove mental distress, injury, or other intangible applicant losses.

31. Given my finding that the respondents' supervision of their children was not negligent, it is unnecessary to address the issues of whether the respondents' children trespassed on the applicants' property or created a nuisance. That said, I do note the following about nuisance. Contrary to the applicants' submission, I find there is no evidence showing that the children or their equipment ever unreasonably blocked access to the applicants' driveway. I also find the evidence fails to show the respondents' children were excessively noisy, particularly in light of the evidence of other community play activities. According to the nuisance test set out in *Burke v. Linder*, 2014 BCSC 1798, I find the evidence fails to show that the respondents' children interfered with the applicants' property interest, either substantially or unreasonably, so nuisance is not proven.

CRT FEES, EXPENSES, AND INTEREST

32. 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 the applicants' only success was on damages for a broken light that the respondents offered to repair before this CRT dispute. On balance, I find the respondents were substantially successful, but paid no CRT fees and claimed no expenses. I note that even if the applicants had been successful, they provided no proof of their claimed $691.87 in legal fees, and I find there are no

extraordinary circumstances justifying the reimbursement of legal fees under CRT rule 9.5(3). So, I order no reimbursements.

33. Under the *Court Order Interest Act*, the applicants are entitled to pre-judgment interest on the $75 owing. I find pre-judgment interest is calculated from the October 27, 2020 due date of the landscaping light renovation invoice until the date of this decision. This equals $0.10.

ORDERS

34. Within 30 days of the date of this order, I order the respondents, R.G. and M.G., to pay the applicants, J.W. and S.W., a total of $75.10, broken down as follows:

    a. $75 in damages for broken landscaping lights, and

    b. $0.10 in pre-judgment interest under the *Court Order Interest Act*.

35. J.W. and S.W. are entitled to post-judgment interest, as applicable. I dismiss the applicants' other claims.

36. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

37. 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