



Civil Resolution Tribunal

Date Issued: February 19, 2021

File: SC-2020-004885 and SC-2020-004937

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cook v. Hill*, 2021 BCCRT 196

BETWEEN:

CHRISTOPHER COOK

APPLICANT

AND:

ALICIA HILL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. These 2 linked disputes are about personal property taken from a residence. The applicant, Christopher Cook, says the respondent, Alicia Hill, stole his belongings in 2 separate incidents. Dispute number SC-2020-004937 is about the first incident, for which he claims \$5,000 as compensation. Dispute number SC-2020-004885 is about the second incident, for which he seeks an order for the return of the stolen goods.

2. Ms. Hill says the belongings were family property under the *Family Law Act* (FLA). She submits the Civil Resolution Tribunal (CRT) has no jurisdiction over these disputes.
3. Mr. Cook represents himself. Ms. Hill is represented by her lawyer, Marie Morrison.
4. For the reasons that follow, I agree with Ms. Hill and find the CRT has no jurisdiction over these disputes. I therefore refuse to resolve these disputes.
5. These linked disputes are related to a third dispute numbered SC-2020-004884. I have written a separate decision for that dispute because the parties are different. My findings in this decision are based on the evidence and submissions in the 2 disputes before me.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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.
10. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

ISSUE

11. The issue in this dispute is whether the CRT should refuse to resolve these disputes under CRTA section 10(1) for lack of jurisdiction.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Cook must prove his claims on a balance of probabilities. I have read all the evidence and submissions but only refer to them as necessary to explain my decision.
13. Mr. Cook did not provide any evidence or submissions. I find from CRT staff notes that from October to November 2020 Mr. Cook had multiple opportunities to do so but chose not to. Ms. Hill provided submissions and text messages as evidence.
14. The background facts are undisputed. The parties were previously married, had a child together, and lived at Mr. Cook's residence. Ms. Hill moved out with the child and left some belongings behind. Mr. Cook subsequently formed a relationship with another person, Amanda Tymusko. Ms. Tymusko is the respondent in the respondent in dispute number SC-2020-004884, mentioned above.

15. Ms. Hill says the following. Ms. Tymusko's relationship with Mr. Cook ended and in June 2019 she asked Ms. Hill to accompany her to Mr. Cook's residence while she retrieved her belongings. Ms. Tymusko did not want to do this alone.
16. Mr. Cook alleges that during their visit, Ms. Hill broke into his house and took some of his possessions. Ms. Hill denies this and based on the June 2019 text messages I prefer her version of events. The messages show Ms. Hill asked Ms. Tymusko if she could pick up her child's items while they visited Mr. Cook's residence together. Ms. Tymusko texted back that she agreed and said that Mr. Cook agreed to this as well. I find it likely that Ms. Hill took her child's items and nothing else. The text messages indicate Ms. Hill and Ms. Tymusko made the trip together and I find it unlikely that Ms. Hill would take any other items in those circumstances.
17. The division of family property is governed by the FLA. Section 84 says that family property includes personal property that was owned by at least one spouse at the date of separation. Section 88 says a spouse may apply to the BC Supreme Court for an order under section 94(1) for dividing family property. As stated in numerous CRT decisions, this means the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property. So, if I am satisfied that Ms. Hill only took family property, I have no jurisdiction to make any orders about it.
18. I have found that Ms. Hill only took the child's items during the first incident. Ms. Hill says, and I find, that they are family property. I reach this conclusion in part because Mr. Cook does not deny this. Further, the submissions and evidence also indicate that Mr. Cook's residence was previously the family home. In these circumstances I find it likely that the child's items, which were in the residence, were owned by one or both parties at the date of separation and are therefore family property.
19. Mr. Cook says Ms. Hill returned at some point to take more items in the second incident. There are no text messages or other evidence about the second incident. Ms. Hill did not directly address the second incident, but she generally denied taking anything other than family property from Mr. Cook's home. Mr. Cook did not refute

this or otherwise identify what Ms. Hill took. Given this, I am satisfied that Ms. Hill only took family property during the second incident as well.

20. Mr. Cook also says the police charged Ms. Hill with robbery but Ms. Hill says the police refused to proceed. There is no evidence that any authorities attempted to prosecute Ms. Hill so I find nothing turns on this.
21. In summary, I have found that Ms. Hill only took family property during the 2 incidents. It follows that I do not have jurisdiction over Mr. Cook's claims for ownership or compensation for those items. I find I must refuse to resolve these disputes. I note that section 85 of the FLA says certain property is excluded from family property, but Mr. Cook did not say that any exclusions applied, or otherwise deny that the items are family property.
22. Even if I had jurisdiction over these disputes, I would dismiss these claims as unproven. Mr. Cook did not provide any evidence or submissions about what was taken.
23. CRT documents show fees were waived and the parties did not claim for any dispute-related expenses, so I do not order any reimbursement.

ORDER

24. Under CRTA section 10(1), I refuse to resolve Mr. Cook's claims in both these disputes as they are outside the CRT's jurisdiction.

David Jiang, Tribunal Member