



Civil Resolution Tribunal

Date Issued: April 21, 2021

File: SC-2020-009148

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Johnson v. Pittman*, 2021 BCCRT 410

BETWEEN:

ELSIE LORRAINE JOHNSON also known as LORRI JOHNSON

APPLICANT

AND:

VICTORIA PITTMAN and ELAINE HOLDAWAY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about dog breeding. The applicant, Elsie Lorraine Johnson also known as Lorrie Johnson, says that she had an agreement with the respondent, Victoria Pittman, to breed their dogs. Ms. Johnson says that Ms. Pittman's dog got pregnant and had 2 puppies, but that Ms. Pittman has refused to give her one of the puppies

or its saleable value, as agreed. Ms. Johnson requests an order that Ms. Johnson give her one of the puppies, or \$600 as the value of one chihuahua puppy.

2. Ms. Pittman says she discussed breeding her dog with Ms. Johnson's dog, but she later decided she did not want her dog to get pregnant and told Ms. Johnson she had changed her mind. Ms. Pittman says her dog got pregnant by Ms. Johnson's dog accidentally, and the previous agreement with Ms. Johnson did not apply to the puppies that were born. Ms. Pittman says she owes Ms. Johnson nothing.
3. The other respondent, Elaine Holdaway, is Ms. Pittman's mother. Ms. Holdaway says she was not a party to the alleged agreement and has nothing to do with this dispute.
4. Each of the parties is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision

in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.
8. 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.
9. As a preliminary matter, I address Ms. Holdaway's submission that she is not a proper respondent to this dispute. While Ms. Johnson says that Ms. Holdaway acknowledged the alleged agreement between Ms. Johnson and Ms. Pittman, it is undisputed that Ms. Holdaway was not a party to any agreement with Ms. Johnson. Further, I find that Ms. Johnson made no allegations specifically against Ms. Holdaway in the Dispute Notice or in her submissions. While Ms. Holdaway may be a witness with relevant evidence about this dispute, I find she is not a properly named party in that there are no substantive claims against her. I dismiss Ms. Johnson's claim against Ms. Holdaway.

ISSUE

10. The issue in this dispute is whether Ms. Johnson and Ms. Pittman had an agreement to breed their dogs, and if so, whether Ms. Johnson is entitled to a puppy or the puppy's value.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Johnson must prove her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. Ms. Johnson and Ms. Pittman live next to each other and their properties are separated by a low chain link fence. Ms. Johnson has a male chihuahua named Petie. Ms. Pittman has a female dog named Loca. Loca's breed was not specifically before me, though I infer she may also be a chihuahua.
13. The evidence shows that Loca gave birth to 2 puppies on about July 5, 2020. It is undisputed that Petie fathered the puppies.
14. Ms. Johnson says she and Ms. Pittman had an agreement about breeding their dogs. Ms. Johnson says when they first discussed it, she explained to Ms. Pittman that the usual agreement people make when breeding dogs privately is that the owner of the male dog gets to pick one of the puppies born or is paid the monetary value of a puppy. Ms. Johnson says Ms. Pittman agreed to these terms and they started trying to breed their dogs.
15. It is undisputed that there was no written contract between Ms. Johnson and Ms. Pittman about breeding their dogs. While verbal agreements are still enforceable, they can be harder to prove than if they had been in writing.
16. Given the parties' evidence and submissions, I am satisfied that Ms. Johnson and Ms. Pittman initially had a verbal agreement to breed their dogs and that Ms. Johnson would be entitled to pick one of the puppies born. Ms. Pittman does not particularly dispute this, but says she later changed her mind, as discussed further below. While I find the parties had an agreement, on the limited evidence provided, I find I cannot determine the date that the parties entered the agreement or whether there was any agreement about how long the agreement would remain in place.

17. The parties also did not explain the extent of their attempts to breed Loca and Petie. I find the evidence shows Petie could climb over the fence between Ms. Pittman's and Ms. Johnson's yard, and that Ms. Pittman was known to lift Petie over the fence into her yard at times so the dogs could play together. It is not clear whether the parties actively tried to breed the dogs or whether it was left mostly to chance, given Petie could access Ms. Pittman's yard when unattended. It is undisputed that Loca went through at least one heat where the breeding was unsuccessful.
18. In any event, as noted, Ms. Pittman says she ultimately changed her mind about the breeding agreement. She says she was worried that Loca was getting too old for a pregnancy, so she told Ms. Johnson that she had experienced a change of heart. She says Ms. Johnson understood and accepted that decision.
19. On the other hand, Ms. Johnson says that after she entered the breeding agreement with Ms. Pittman, there were only 2 opportunities to breed Loca, one in late summer 2019, and one in the spring of 2020, which is when Loca became pregnant. Ms. Johnson denies that Ms. Pittman told her she had changed her mind about breeding Loca.
20. So, is Ms. Johnson entitled to have one of the puppies or its value? For the following reasons, I find the answer is 'no'.
21. Ms. Pittman filed an unsigned statement from another neighbour, BC. While the statement is unsigned, Ms. Johnson does not dispute that BC was its author, and I accept that BC prepared the statement. In his statement, BC said his yard sides with both Ms. Pittman's and Ms. Johnson's yard, and he assisted both parties with various projects. I infer from his statement that BC spoke to both parties regularly, and he observed what occurred between the parties and their dogs in their respective yards.
22. BC stated that was aware of Ms. Johnson and Ms. Pittman's verbal agreement to breed their dogs. He also stated that Ms. Pittman changed her mind about breeding her dog and that Ms. Johnson understood this. I find that BC acquired this knowledge from his conversations with both parties. Nevertheless, BC stated he observed that

Ms. Johnson allowed Petie to roam the neighbourhood without a leash, and that Petie eventually found his way into Ms. Pittman's yard and impregnated Loca against Ms. Pittman's wishes.

23. I find BC's statement is credible. He stated that he is not advocating for either party in this dispute, which I accept, and I find that he has knowledge of the events from both parties, as well as his own observations.
24. Both Ms. Pittman and BC state that when Ms. Pittman changed her mind about breeding Loca, Ms. Johnson put up a tarp along her side of the fence so that Petie could no longer climb into Ms. Pittman's yard. Ms. Pittman filed a picture of the tarp on Ms. Johnson's fence. I note that Ms. Johnson does not deny she installed the tarp to prevent Petie from entering Ms. Pittman's yard.
25. On balance, I find that Ms. Pittman told Ms. Johnson she no longer wanted to breed Loca, before Petie impregnated her. When a party indicates they no longer intend to be bound by a contract's terms, it is called repudiation. The other party can accept the repudiation, which terminates the contract. Here, I find that when Ms. Pittman told Ms. Johnson she had changed her mind, she repudiated the contract. I also find that installing the tarp on her fence is evidence that Ms. Johnson accepted the repudiation, so their agreement came to an end.
26. While there was no longer an enforceable agreement between the parties, the dogs still found their way to each other. Ms. Johnson admits she does not know how Petie got into Ms. Pittman's yard. While Ms. Johnson denies that Petie roamed the neighbourhood unleashed, she admits that she left him unattended for 10 to 15 minutes at a time and always found him in either Ms. Pittman's or BC's yard. I accept BC's statement that Petie was unattended when he somehow got into Ms. Pittman's yard and impregnated Loca.
27. The law considers pets to be personal property (see *Brown v. Larochelle*, 2017 BCPC 115). I find that Loca is Ms. Pittman's property, and her ownership extends to Loca's puppies. I find that Petie having accidentally fathered the puppies does not

give Ms. Johnson any property rights to them, absent a valid agreement with Ms. Pittman. Given I have found their agreement terminated before Loca became pregnant, I find Ms. Johnson is not entitled to a puppy or any monetary compensation. I dismiss Ms. Johnson's claims.

28. 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. Ms. Pittman did not pay any fees or claim and dispute-related expenses, so I make no order.

ORDER

29. I dismiss Ms. Johnson's claims and this dispute.

Kristin Gardner, Tribunal Member