



Civil Resolution Tribunal

Date Issued: June 28, 2021

File: SC-2021-000854

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eckford v. Thomas*, 2021 BCCRT 716

B E T W E E N :

TIM ECKFORD

APPLICANT

A N D :

DAWN THOMAS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about 2 pet dogs named Kona and Peaches. The applicant, Tim Eckford, says that he and the respondent, Dawn Thomas, acquired Kona when they were in a relationship that has since ended. During a period when the parties were

dating, Kona had a litter of puppies that included Peaches. Mr. Eckford says he has been Kona's and Peaches' primary caregiver, and that Ms. Thomas took them away without his permission in 2021. Mr. Eckford's claim is for an order granting him "sole ownership and custody" of Kona and Peaches, including an order that Ms. Thomas return the dogs to him, which he values at \$2,000.

2. Ms. Thomas says she is the sole owner of Peaches and Kona. She says that Mr. Eckford was not part of Kona's purchase, and that she never agreed to give the 2 dogs to Mr. Eckford. She opposes his claims for the dogs' possession.
3. Both parties are self-represented in this dispute.

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. Although the parties' submissions each call into question the credibility of the other party in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, 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 alone, and that 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. After the evidence deadline, Ms. Thomas submitted receipts and correspondence related to the dogs at issue in this dispute. Mr. Eckford objected to the late evidence because he says Ms. Thomas “had plenty of time before the deadline.” However, Mr. Eckford did not say he was prejudiced by the delayed evidence, and I find he had an opportunity to review it and comment on it in his submissions. So, I find the late evidence is not unfair to Mr. Eckford, and given the CRT’s mandate to be flexible, I allow it.
9. Ms. Thomas submitted an unstamped Notice of Claim for the BC Provincial Court showing claims against Mr. Eckford by Ms. Thomas. The late evidence also included a May 11, 2021 Notice of Claim filing receipt, but no court-stamped copy of the Notice of Claim. I find this Notice of Claim is not relevant, because the submitted evidence shows it is not about ownership of Kona or Peaches and it does not duplicate any of the claims in this CRT dispute. I find the evidence does not show that the CRT claims are before another court or tribunal, and I find this dispute is properly before the CRT.
10. Although the parties were in a relationship and lived in the same building for a time, along with Ms. Thomas’ daughter and her family, I find the evidence does not show that they lived together in a marriage-like relationship for 2 years. The parties agree that their relationship was not committed, they lived separate lives, and Mr. Eckford had his own room in the house. Mr. Eckford also confirms that he refused to marry Ms. Thomas or make significant relationship commitments. So, for the purposes of this CRT dispute, I find the *Family Relations Act* does not apply because the parties were not spouses, and Kona and Peaches were not family assets under that *Act*.

ISSUE

11. Does Mr. Eckford own or co-own Kona and Peaches, and if so, must Ms. Thomas return the dogs to Mr. Eckford?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Mr. Eckford must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
13. In part, Mr. Eckford seeks an order declaring that he is the sole owner and possessor of Kona and Peaches. This type of order, declaring the rights of a party without ordering a specific action, is known in law as "declaratory relief." Declaratory relief is outside the CRT's small claims jurisdiction, and the CRTA does not permit me to make that type of order here. So, I decline to declare that Mr. Eckford is the sole possessor and owner of Kona and Peaches.
14. However, I find Mr. Eckford also requests an order for Ms. Thomas to return Kona and Peaches to him, as confirmed in his submissions. I find such an order is within the CRT's small claims jurisdiction for recovery of personal property or relief from opposing claims to personal property, as set out in CRTA section 118. So, I will decide whether Ms. Thomas should return the dogs to Mr. Eckford.
15. The law considers pets to be personal property: see *Brown v. Laroche*, 2017 BCPC 115. I find, and the parties do not dispute, that a pet's owner is entitled to possess it. So, I find this decision turns on who owns Kona and Peaches.
16. Mr. Eckford says that he and Ms. Thomas both owned Kona, and later agreed that Mr. Eckford would keep Kona and Peaches while Ms. Thomas kept other dogs. Ms. Thomas denies this, and says she alone owns the 2 dogs.

17. Kona was purchased in 2018. It was a cash transaction, and there are no receipts or other documents showing who bought Kona. However, Mr. Eckford does not dispute Ms. Thomas' submission that only she selected Kona and paid the dog's full \$1,000 price. It is undisputed that both parties lived in the same building and were in a relationship when Kona was purchased, and that they both provided care for Kona. However, weighing the evidence before me, I find that Ms. Thomas purchased Kona, and that Mr. Eckford did not.
18. Mr. Eckford submitted dog licence application forms and veterinary invoices and estimates that listed him as Kona's and Peaches' owner. However, I find that this documentation is not reliable evidence of ownership, and I give it little weight. The evidence before me does not show that a person must prove their ownership of a dog in order to apply for a dog licence or seek veterinary care for it. I also find that the submitted evidence fails to show that an annual municipal dog licence is proof or registration of a dog's legal ownership, as opposed to caretaker contact information.
19. Many of Mr. Eckford's arguments are that he is entitled to possess Kona and Peaches because he was their primary caregiver. It is undisputed that Ms. Thomas travelled abroad in the fall of 2019, and that the house she, her daughter, and Mr. Eckford lived in burned down during her absence. Ms. Thomas says she left Kona in the care of her daughter during her travel, but Mr. Eckford took over after the fire. Mr. Eckford says he ended the relationship at the beginning of Ms. Thomas' travel and declared that he would be moving out and "taking" Kona. I find none of the evidence before me shows that he told Ms. Thomas he intended to take Kona at that time.
20. Kona lived with Mr. Eckford after the house burned down, without significant objection by Ms. Thomas, while Ms. Thomas lived in temporary accommodations followed by a much smaller unit on the former house property. The Parties' relationship resumed for a while, during which Kona was bred and had a litter of puppies in August 2020, including Peaches. Mr. Eckford does not deny that Ms. Thomas paid the breeding fees. Mr. Eckford says he and Ms. Thomas had a verbal agreement that Mr. Eckford would keep Kona and Peaches, and that Ms. Thomas would keep 2 of the other

puppies in the litter. Ms. Thomas denies that there was any such agreement, and says she owns both Kona and Peaches. I find the evidence before me does not show that the parties agreed Mr. Eckford would keep the 2 dogs in exchange for Ms. Thomas keeping 2 other puppies.

21. It is undisputed that Kona and Peaches lived with Mr. Eckford until the parties' relationship ended again in January 2021. I find correspondence in evidence shows that Ms. Thomas regularly saw Kona and Peaches and the parties allowed the dogs to play with other dogs from Kona's litter, although she and Mr. Eckford lived in separate homes. Mr. Eckford refused to give Kona and Peaches to Ms. Thomas when the relationship ended. Mr. Eckford says Ms. Thomas took Kona from his yard on January 28, 2021, and that he retrieved Kona from Ms. Thomas on January 31, 2021. I find it is unclear on the evidence how Mr. Eckford repossessed Kona and why, or if, Ms. Thomas permitted him to do so. There is no dispute that later, in April 2021, Ms. Thomas took Kona and Peaches from Mr. Eckford's residence at night and without notice, and had a tracking chip installed in Kona listing Ms. Thomas as Kona's owner. Ms. Thomas has not returned the dogs to Mr. Eckford since then.
22. Mr. Eckford submitted receipts, witness statements, and other documentation showing that he provided care for the dogs, including purchasing dog food, veterinary treatment, and dog licences, among other expenses. Mr. Eckford makes no claim in this dispute for the dogs' care costs, but suggests that these expenses and activities show he owns the dogs. I find that these expenses and activities are consistent with owning the dogs, but evidence of such costs and care alone is insufficient to prove the dogs' ownership.
23. Although Ms. Thomas does not deny that Mr. Eckford possessed and cared for the dogs after her return from travel, the evidence shows that she continued to interact with them on a regular basis, including during the parties' resumed relationship, and with no objection by Mr. Eckford. Overall, I find the evidence does not show that Ms. Thomas abandoned the dogs to Mr. Eckford. I also find that Mr. Eckford has not met

his burden of proving that the parties entered into an agreement to transfer Kona's and Peaches' ownership to Mr. Eckford following Kona's breeding.

24. I find the dogs' ownership is not a "custody" issue, so the question of who has provided, or will provide, the best care for them is not necessarily relevant. *Brown*, which is binding on me, considered the best interests of a pet dog in determining which of 2 owners had the best claim to ownership. However, in *Brown*, there was no dispute that the 2 parties had jointly purchased and adopted the dog. Here, the parties disagree about whether Mr. Eckford ever owned Kona and Peaches. Although Mr. Eckford possessed and cared for the dogs for a significant length of time, mostly without Ms. Thomas' objection, I find that the weight of the evidence fails to prove that Mr. Eckford ever obtained full or partial ownership of the dogs, either from the previous owners or from Ms. Thomas.
25. I found above that Ms. Thomas, not Mr. Eckford, purchased Kona. I find that Ms. Thomas was Kona's owner at the time Peaches was born, and therefore was also Peaches' owner. Having weighed the evidence, I find it does not show that Mr. Eckford acquired Kona together with Ms. Thomas, or that Ms. Thomas abandoned, gave, or otherwise agreed to transfer either dog's ownership to Mr. Eckford.
26. Overall, on the evidence before me, I find Mr. Eckford has not met his burden of proving that he has an ownership interest in Kona or Peaches. So, I dismiss his claim for an order that Ms. Thomas return the dogs to him.

CRT FEES AND EXPENSES

27. 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 see no reason in this case not to follow that general rule. Mr. Eckford was unsuccessful in his claims, but Ms. Thomas paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

28. I dismiss Mr. Eckford's claims, and this dispute.

Chad McCarthy, Tribunal Member