



Civil Resolution Tribunal

Date Issued: July 19, 2021

File: SC-2021-000789

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Poole v. Ramsey-Wall*, 2021 BCCRT 789

BETWEEN:

RYAN POOLE

APPLICANT

AND:

TINA RAMSEY-WALL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about ownership of a cherished mixed-breed dog named Tessa.

2. The applicant, Ryan Poole, and the respondent, Tina Ramsey-Wall, were in a relationship from June 2018 to September 2019. On May 12, 2019, the parties acquired Tessa from an animal rescue organization for \$800.
3. Mr. Poole says when the parties broke up they initially agreed to share time with Tessa. He says in December 2020, Ms. Ramsey-Wall unilaterally ended the time-sharing arrangement and denied him access to Tessa. Mr. Poole says he is Tessa's owner, and asks for an order that Ms. Ramsey-Wall return Tessa to him.
4. Ms. Ramsey-Wall says when the parties broke up they agreed that she would have sole ownership of Tessa. If there was no agreement, she says she is Tessa's rightful owner and can provide her a better home and environment. Ms. Ramsey-Wall also says Tessa is worth over \$5,000, and so she says the Civil Resolution Tribunal (CRT) does not have jurisdiction over the claim given the CRT's \$5,000 small claims monetary limit.
5. Both parties are self-represented.

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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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. The CRT does not have jurisdiction over division of family property arising under the *Family Law Act* (FLA). However, since the parties were not married and did not live together for 2 years, I find the parties were not "spouses", as defined in the FLA, and Tessa was therefore not family property.
10. 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. Mr. Poole says the parties originally agreed to a time-sharing arrangement for Tessa, but he asks for ownership of Tessa rather than enforcement of that agreement. So, I find this is a claim for recovery of personal property that the CRT has jurisdiction to resolve.
11. As noted, Ms. Ramsey-Wall argues the CRT does not have jurisdiction because she says Tessa is worth more than \$5,000. While I accept that Tessa has intangible value as a companion, the law considers animals personal property. Ms. Ramsey-Wall did not provide evidence of Tessa's value, so I find the best evidence is the \$800 adoption fee. I find this claim falls within the CRT's \$5,000 small claims monetary limit.

Late evidence

12. Both parties provided relevant evidence after the stated deadline. Given the CRT's mandate that includes flexibility, and since all parties had an opportunity to respond to the late evidence, I find it admissible and where relevant I discuss it below.

ISSUES

13. The issues in this dispute are:

- a. Who is Tessa's legal owner?
- b. If Tessa is owned jointly, should one party be granted ownership of Tessa, and if so, which party?
- c. Should the party not awarded ownership of Tessa receive compensation from the other party?

EVIDENCE AND ANALYSIS

14. As the applicant in this civil dispute, Mr. Poole must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

15. Mr. Poole lives in small British Columbia community and owns a bike repair shop. Ms. Ramsey-Wall, a nurse, moved into the rental suite above Mr. Poole's garage in May 2018. By June they were in a relationship. On May 12, 2019, the parties adopted Tessa from "In the name of ZOEY", a Texas-based animal rescue group. Tessa is believed to be a mix of plott hound, Staffordshire bull terrier and great dane.

Who is Tessa's legal owner?

16. At law, a dog is considered personal property. That does not mean that dogs are not important and cherished. It means that when 2 people disagree about who should get a dog, the question is not who has the most affection for the dog or treats it better, so

long as both parties treat the dog humanely. The question is who owns the dog (see *Baker v. Harmina*, 2018 NLCA 15, and *Brown v. Larochelle*, 2017 BCPC 115).

17. To determine who owns a dog, a court or tribunal will consider the following factors, summarized in *MacDonald v. Pearl*, 2017 NSSM 5:
 - a. Whether the dog was owned by one of the parties before their relationship began,
 - b. The nature of the relationship between the parties when the dog was acquired,
 - c. Any express or implied agreement about ownership, made either when the dog was acquired or after,
 - d. Whether at any point the dog was gifted by one party to the other,
 - e. Who purchased the dog,
 - f. Who exercised care and control of the dog,
 - g. Who bore the burden of the care and comfort of the dog,
 - h. Who paid for expenses related to the dog's upkeep, and
 - i. What happened to the dog after the party's relationship changed.
18. The list is not exhaustive and no single factor is necessarily determinative, although some carry more weight than others.
19. It is essentially undisputed that the parties initially acquired Tessa jointly, as both parties' submissions use the term "we" in reference to the adoption. Ms. Ramsey-Wall first identified Tessa online and shared the link with Mr. Poole. Mr. Poole completed Tessa's adoption form but used "we" when communicating with In the name of ZOEY. Mr. Poole paid Tessa's adoption fee in cash, but he does not dispute that Ms. Ramsey-Wall paid for the initial supplies, including a bed, collar, leash, food, toys and tags. I find the parties adopted Tessa jointly.

20. Both parties provided evidence about payment of veterinary bills, food and other expenses, as well as participation in Tessa's training, socialization, exercise and care. It is not necessary to parse this evidence in detail because it does not weigh strongly in favour of either party's ownership. I find both parties contributed roughly equally to Tessa's training, socializing, expenses and care. These factors point toward joint ownership.
21. Ms. Ramsey-Wall worked full-time and during the day, Tessa was with Mr. Poole at his bike shop. Ms. Ramsey-Wall picked up Tessa after work. It is unclear if Tessa slept in the rental suite or Mr. Poole's house or both.
22. I acknowledge Ms. Ramsey-Wall's submission that Tessa helps her with her anxiety and that in August 2019 she registered Tessa with the Assistance Dogs of America as her therapy dog. However, there is no evidence about the requirements of registration, or the legal significance in British Columbia of that registration. There is also no evidence from a qualified professional such as a psychologist or therapist about Tessa's effect on Ms. Ramsey-Wall's anxiety. I find this evidence does not support Ms. Ramsey-Wall's claim to sole ownership.
23. The most contested factor is whether the parties had an agreement about Tessa's ownership when they separated. Ms. Ramsey-Wall says they agreed she would be Tessa's sole owner and that if she needed someone to watch Tessa, she could contact Mr. Poole.
24. In contrast, Mr. Poole denies giving up his ownership rights. He says when the parties broke up, they agreed on a time-sharing arrangement for Tessa. Mr. Poole says the time-sharing arrangement worked until December 13, 2020, when Ms. Ramsey-Wall ended the agreement and refused him access to Tessa.
25. Ms. Ramsey-Wall relies on Mr. Poole's undisputed statement on the night they broke up, that she could "take Tessa if it helps." Ms. Ramsey-Wall says this followed a discussion about her decision to move closer to her work, so it was an agreement

that she would have “complete ownership”. Mr. Poole says he meant that she could take Tessa upstairs to her rental suite for the night.

26. Both parties refer to subsequent conduct in support of their position. Ms. Ramsey-Wall says she obtained rental housing that allowed dogs and had a secure yard for Tessa. However, I find obtaining rental housing that accommodated Tessa is equally consistent with ongoing co-ownership as it is with sole ownership.
27. Mr. Poole says he had Tessa 60-70% of the time for the first year after the parties separated. Ms. Ramsey-Wall acknowledges that Mr. Poole had Tessa frequently, but says he did so according to her schedule. Ms. Ramsey-Wall says if they co-owned Tessa, time with Tessa would revolve around both of their schedules, and not only hers. In the circumstances, I disagree. I find Mr. Poole’s flexibility and accommodation reflected his desire to see Tessa as much as possible and the reality that Ms. Ramsey-Wall could not take Tessa to work, but he could. It does not mean he agreed that Ms. Ramsey-Wall was Tessa’s sole owner. I also find that the parties’ text messages after separation show a give-and-take approach, more consistent with co-ownership.
28. A member of Ms. Ramsey-Wall’s family, SR, gave a written statement. SR lived with Ms. Ramsey-Wall in the rental suite. SR said when the parties separated, they determined that Tessa would “live primarily with” Ms. Ramsey-Wall while Mr. Poole would provide “dog sitting” when Ms. Ramsey-Wall had to work. SR does not suggest that she overheard any of the parties’ conversations, so I infer that she has restated what Ms. Ramsey-Wall told her. I treat this statement as confirmation of how Ms. Ramsey-Wall interpreted Mr. Poole’s statement that she could take Tessa. I find this does not assist Ms. Ramsey-Wall in establishing a “meeting of the minds” with Mr. Poole about Tessa’s ownership.

29. The parties rely on numerous text messages and emails from December 2020 in support of their positions. The email I find most relevant is a December 13 email in which Ms. Ramsey-Wall said that sharing ownership of Tessa was not working out. This supports a finding that the parties co-owned Tessa, including after their separation. I acknowledge that in the same email Ms. Ramsey-Wall said the parties previously agreed Tessa would be “staying with” her. However, I find this is insufficient evidence to prove sole ownership.
30. In summary, the evidence does not persuade me that Mr. Poole gave up his ownership rights and interest in Tessa. I find the parties continued to co-own Tessa after they separated.

Should one party be granted ownership of Tessa, and if so, whom?

31. I am aware that a finding of joint ownership is considered “the worst result of all” (see *Gardiner-Simpson v. Cross*, 2008 NSSM 78, cited in *Brown*). This is because a dog is a unique type of property that cannot be divided, and parties do not generally want an order that their dog be sold with the proceeds shared between the parties.
32. Ms. Ramsey-Wall says if the CRT finds that the parties jointly own Tessa, I should order shared possession of Tessa for equal amounts of time. She relies on *O'Donoghue v. Walker*, 2019 BCPC 257. In that case, the judge found that the parties agreed after separating that they would co-own and share time with the dog. The judge ordered specific performance of that agreement. The CRT has jurisdiction to order specific performance of an agreement, but there are several problems with that approach here. First, although the parties shared Tessa for the first year after separating, there is no evidence that they turned their minds to a binding agreement and discussed the terms with sufficient specificity to order performance. Second, Ms. Ramsey-Wall did not file a counter-claim. Mr. Poole is the applicant in this dispute, and he does not seek specific performance of any alleged time-sharing agreement. At this point, Mr. Poole does not think it in Tessa’s best interests to share time between the parties. The evidence shows that Ms. Ramsey-Wall similarly thought time-sharing was detrimental to Tessa, which is why she ended the practice. Finally,

despite the orders made in *O'Donoghue*, courts have generally observed that time-sharing of pets should not be ordered (see *Gardner-Simpson* and *Brown*).

33. What is done in cases of joint pet ownership? When there are 2 dogs, typically each owner gets 1 dog, as was ordered in *Almaas v. Wheeler*, 2020 BCPC 51. When there is only 1 dog, ownership is granted to 1 owner, as happened in *Brown*. Therefore, I must determine which party should have ownership and possession of Tessa.
34. *Brown*, which is binding on me, considered the dog's best interests based on the idea that, had the parties turned their minds at any time to what would happen to the dog if they broke up, they would have agreed that the decision would consider the dog's best interests and its humane treatment. In *Brown*, the court considered the breed's nature and the individual dog's characteristics, and the dog's condition since the parties separated. The court found that the dog had cemented her bond with the respondent after the separation, and was well cared-for by the respondent, so despite the claimant having previously had an equal bond with the dog and no evidence of mistreatment, the claimant was unsuccessful.
35. I note Ms. Ramsey-Wall cites 4 BC provincial court decisions that considered the best interests of a dog, but those decisions were about interim custody pending determination of ownership, so they do not carry the same weight as a determination of ownership. Nonetheless, I am satisfied that the law permits me to consider evidence of Tessa's best interests. Ms. Ramsey-Wall agrees, and it is fair to say Mr. Poole does as well, given the emphasis in his evidence and submissions.
36. Ms. Ramsey-Wall submitted a letter from Carrie Lumsden as expert evidence, and describes Ms. Lumsden as an experienced dog trainer and behaviourist. However, Ms. Lumsden did not provide her qualifications or experience. There are several letters after her name – "CPDT-KA, CTB.ccs IPDTA-CDT" – but it is not apparent to me what those letters stand for. I do not accept Ms. Lumsden's letter as expert evidence, and this reduces the weight I give it.

37. Ms. Ramsey-Wall asked Ms. Lumsden to assess Tessa and provide an opinion on Tessa's future care and management. Ms. Lumsden said Tessa is cautious when meeting people, has not bitten but once snapped at a child, and is often fearful when strangers enter the bike shop. She said it would be detrimental for Tessa to be in the bike shop for many hours a week as it causes stress and can increase fearful behaviour. On the other hand, Ms. Lumsden also said it would be beneficial for Tessa to greet people at the bike shop in a controlled manner, on leash, limited to a few hours, a few times a week depending on how frequently patrons enter the shop.
38. Ms. Lumsden did not observe Tessa at the bike shop. Her recommendations stem largely from what Ms. Ramsey-Wall told her about Tessa's history and past behaviour, rather than Ms. Lumsden's independent observations. This also reduces the weight I give Ms. Lumsden's letter.
39. Mr. Poole says his bike shop is an ideal environment for Tessa. He says several times a day he test-rides bikes and Tessa joins him in the back of the 2-acre property for a run. He says he and his customers use that area to let their dogs run and play together. Mr. Poole explains in detail how he trained Tessa not to bark at customers using a controlled greeting routine and lots of praise. He says since the parties separated, when Tessa returns to the shop, he has had to use the same controlled greeting routine for the first 2-3 customers of the day. After that, Tessa greets customers with a wagging tail.
40. Mr. Poole's evidence about Tessa's comfort in the bike shop is amply supported by numerous witness statements that I need not describe here.
41. I find the most relevant and persuasive evidence is that of Patti Turner, a certified guide dog and service dog trainer for a service dog training school.
42. Patti Turner's duties include assessing dogs, clients and homes for suitability to enter the school's program, working with dog handlers struggling with behaviour issues, teaching obedience, and managing and placing dogs in foster homes to be raised as

service dogs. I find Patti Turner is qualified to provide an opinion about what is best for Tessa, and I accept Patti Turner's evidence as expert opinion evidence.

43. Patti Turner said they have witnessed Tessa greeting Patti Turner's dogs and other customers at the bike shop. They said Tessa was very respectful and "dog social". They said they have never observed any fear, anxiety or stress in Tessa at the shop. Patti Turner said the workplace can be a very safe and happy place for a dog, particular with a good dog handler like Mr. Poole. Importantly, they said if Tessa is experiencing fear and anxiety, it has developed since being removed from Mr. Poole's care. I find this is consistent with Ms. Ramsey-Wall's evidence about Tessa's increase in fearful behaviour. Patti Turner said fear and anxiety can develop quickly when different people handle the dog.
44. I find Patti Turner's expert opinion is more persuasive than Ms. Lumsden's letter. I say this in part because Patti Turner observed Tessa in the bike shop, while Ms. Lumsden did not. I am satisfied that Tessa did not exhibit fearful or anxious behaviour when the bike shop was part of her normal routine. There is no evidence that while the parties were still together Ms. Ramsey-Wall expressed concern about Tessa being in the shop full-time.
45. Patti Turner's conclusions are also supported by the evidence of Angelica Chavez-Etchechury, director of In the name of ZOEY, who wrote a letter in support of Mr. Poole. They said when they placed Tessa in Mr. Poole's care, they approved of her going to his bike shop daily where she would benefit from being socialized and enjoying Mr. Poole's company all day.
46. I acknowledge Ms. Ramsey-Wall's submission that she does not leave Tessa alone for extended periods of time, and that when she works, she leaves Tessa with SR or a friend. I have no doubt that Ms. Ramsey-Wall provides excellent care for Tessa. However, the weight of the evidence satisfies me that living with Mr. Pool and accompanying Mr. Poole every day to and from his bike shop is what Tessa was accustomed to and what is best for her.

47. Given my findings above, I order Ms. Ramsey-Wall to return Tessa to Mr. Poole on the terms set out in my order below.
48. Having granted ownership of Tessa to Mr. Poole, the final question is whether Mr. Poole must compensate Ms. Ramsey-Wall. The parties' respective contributions to Tessa's care and maintenance are not possible to quantify on the evidence before me. In any event, Ms. Ramsey-Wall did not file a counterclaim and did not ask for any monetary compensation as a set-off. So, I make no order for monetary compensation.
49. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. I find Mr. Poole is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

50. Within 30 days of the date of this order, I order Ms. Ramsey-Wall to pay Mr. Poole \$125.00 in CRT fees.
51. Within 30 days of the date of this order, I order Ms. Ramsey-Wall to return Tessa to Mr. Poole, at his bike shop during its business hours or at a mutually agreed place and time, with at least 3 days' written notice, at Ms. Ramsey-Wall's expense. Both parties must comply with any applicable provincial or federal health orders in light of the COVID-19 pandemic.
52. Mr. Poole is entitled to post-judgment interest, as applicable.
53. 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 in effect until

90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

54. 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.

Micah Carmody, Tribunal Member