



Civil Resolution Tribunal

Date Issued: August 20, 2021

File: SC-2021-001510

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thatcher v. Perry*, 2021 BCCRT 919

BETWEEN:

RYAN THATCHER

APPLICANT

AND:

SHERRY PERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a dog. The applicant, Ryan Thatcher, says he owns the dog and the respondent, Sherry Perry, has wrongfully refused to return it. Mr. Thatcher claims for the return of the dog or \$1,850 as compensation.

2. Ms. Perry disagrees. She says she adopted the dog from a pet shelter and Mr. Thatcher had no property rights over the dog.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Thatcher's claims.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

Mr. Thatcher's Late Evidence

9. Mr. Thatcher provided a receipt for the purchase of the dog as late evidence. I find Ms. Perry is not prejudiced by the late evidence. She did not object and had the opportunity to review it and provide submissions and evidence in response. I also find it relevant to the issues in this dispute. For those reasons, I find it admissible.

ISSUE

10. The issue in this dispute is whether Mr. Thatcher abandoned the dog, and if not, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Thatcher 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 to provide context for my decision.
12. I begin with the undisputed background facts. In March 2019, Mr. Thatcher purchased the dog for \$1,850. On December 15, 2019, another person, BR, signed a form to give the dog away to a dog daycare that offers dog adoption services. BR was previously in a relationship with Mr. Thatcher. On the form, BR gave no indication that anyone other than BR owned the dog. She wrote the dog was a Great Dane that weighed about 150 pounds. BR wrote that she surrendered the dog because she could not house or train it.

13. The dog daycare advertised for a new owner on Facebook. On December 19, 2019, Ms. Perry applied in writing to adopt the dog. The dog daycare gave the dog to Ms. Perry without requiring payment.
14. In January 2020, Ms. Perry reached out to the veterinarian named on the dog's collar to obtain medical records. The veterinarian connected her with Mr. Thatcher. Ms. Perry then phoned Mr. Thatcher. He advised that he never gave anyone permission to give the dog away and he wanted the dog returned. Ms. Perry contacted the dog daycare about this and decided to keep the dog. The RCMP contacted Ms. Perry about the dog and ultimately decided to take no action. I note the RCMP's determinations do not bind me. Ms. Perry subsequently returned the dog to the daycare because it fought with her other 2 dogs. It currently has a new owner.

Did Mr. Thatcher abandon the dog?

15. In law, dogs are treated as personal property or goods. Although Mr. Thatcher did not use the term, I find his claim is essentially based on the tort of conversion. As noted in *Li v. Li*, 2017 BCSC 1312, the elements of the tort consist of the following, as applied to this dispute: a wrongful act by Ms. Perry involving Mr. Thatcher's goods, the act must consist of handling, disposing, or destroying the goods; and Ms. Perry's actions must have either the effect or intention of interfering with or denying Mr. Thatcher's right or title to the goods.
16. I find that Ms. Perry essentially alleges that Mr. Thatcher abandoned his dog prior to her adopting it. I find that if this is the case, it would provide a defence to the tort of conversion. In the non-binding decision of *Chuang v. Aves*, 2018 BCCRT 344, a CRT Vice Chair held that a dog owner has not abandoned their animal if they have made reasonable arrangements for its care while the owner is away. I agree with this principle and find the inverse to be true. In other words, a dog owner has abandoned their animal if they have not made reasonable arrangements for the dog's care while they are away.

17. BR's parent, AR, wrote an April 6, 2021 email to the dog daycare to explain what happened. He said the following. At some point in 2019, Mr. Thatcher left his dog with a friend, X, while he went away for work. I infer Mr. Thatcher went outside BC as some correspondence mentions he was in Calgary. Mr. Thatcher subsequently asked BR to temporarily house the dog. BR and AR picked up the dog from X on November 1, 2019. BR did not live in a place that allowed pets, so the dog stayed with BR's parents. BR's parents also paid to keep the dog at the dog daycare on several occasions in November and December 2019.
18. AR continues as follows. In late November 2019, AR asked Mr. Thatcher about alternative housing for the dog. Mr. Thatcher's only suggestion was to return the dog to X, but X refused. AR then emailed Mr. Thatcher to advise that finding new housing was urgent. Mr. Thatcher never replied. Sometime later, AR spoke with Mr. Thatcher's mother, and she suggested rehoming the dog.
19. I place significant weight on AR's evidence because it is corroborated by emails between himself and Mr. Thatcher. For example, AR warned in a November 28, 2019 email that they could no longer look after the dog or bear the expense of dog daycare. On December 4, 2019, Mr. Thatcher asked AR to provide pictures of the dog as he thought he had a place for the dog to go. AR wrote back on December 5, 2019, that he would try to get the photos tomorrow. AR said he had a couple of homes for the dog, but he needed Mr. Thatcher's consent. AR also wrote that the matter of finding housing for the dog was urgent because they would be going away soon.
20. Given the above, I find that by the time BR gave the dog to the dog daycare on December 15, 2019, Mr. Thatcher had abandoned his dog. This was 10 days after AR warned Mr. Thatcher that the dog had to go elsewhere on an urgent basis. I find it was still open to Mr. Thatcher to make reasonable arrangements such as offering to pay for temporary dog boarding or to ask AR for more time, but he did not reply to AR at all. Given AR's emails and Mr. Thatcher's silence, I do not find Mr. Thatcher had any reasonable basis to assume BR's parents or BR would keep the dog. So, I

find Mr. Thatcher abandoned the dog and had no property rights over it by the time Ms. Perry took ownership. For that reason, I find his claims about the dog must fail.

21. 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. Ms. Perry paid no CRT fees and claimed no dispute-related expenses, so I order none. I dismiss Mr. Thatcher's claims for CRT fees and dispute-related expenses.

ORDER

22. I dismiss Mr. Thatcher's claims and this dispute.

David Jiang, Tribunal Member