



Civil Resolution Tribunal

Date Issued: January 19, 2022

File: SC-2021-003927

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EL v. Paul Henry Law Corporation, 2022 BCCRT 72*

BETWEEN:

EL

APPLICANT

AND:

PAUL HENRY LAW CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a legal bill. The applicant, EL, says the respondent, Paul Henry Law Corporation (PHLC), provided deficient and professionally negligent parenting coordination services. EL claims for a \$4,431 refund.

2. PHLC disagrees. It says it provided appropriate services to both EL and his ex-wife under a parenting coordination agreement. I will refer to the former spouses as the parents.
3. EL represents himself. Paul Henry, a lawyer and PHLC's principal, represents PHLC.
4. While the parties did not request it, in the published version of this decision I have anonymized the applicant's name to protect the identity of the parents' non-party minor children.
5. For the reasons that follow, I dismiss EL's claims.

JURISDICTION AND PROCEDURE

6. 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.
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.

The Parties' Late Evidence

10. PHLC submitted all its evidence late. EL reviewed the evidence and submitted evidence in response. I find both sets of evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing PHLC's late evidence or EL' responsive evidence.

ISSUE

11. The issues in this dispute is whether PHLC breached the parenting coordination agreement, through professional negligence or otherwise, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant EL must prove his claims on a balance of probabilities. This means more likely than not. 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.
13. I begin with the undisputed background facts. On September 1, 2020, the parents entered into a BC Supreme Court consent order. They agreed to retain Mr. Henry as a parenting coordinator under section 15 of the *Family Law Act* (FLA) for at least 24 months. Under the order, Mr. Henry could assist the parents by mediating parenting disputes and building consensus between them. They agreed that if the parents disagreed on parenting arrangements, Mr. Henry could decide on matters under sections 18 and 19 of the FLA, subject to some limitations. The parents also agreed to share Mr. Henry's bill equally.

14. The parents also entered into a detailed written parenting coordination agreement to retain PHLC, through which Mr. Henry would provide parenting coordination services. In general terms, Mr. Henry agreed to assist the parents in settling disputes about the children in a timely manner and to facilitate compliance with parenting plans and court orders. There is no dispute that PHLC is the correct party to this dispute. I have proceeded on that basis.
15. PHLC provided services as contemplated under the consent order and written agreement. EL was dissatisfied with PHLC's services. He complained formally to the BC Parenting Coordinators Roster Society and the Law Society of BC around March 2021. In a March 9, 2021 email to PHLC, he wrote that he would limit his participation in the parenting coordination process until either 1) PHLC and the Law Society of BC addressed his complaints, or 2) the parents agreed upon a new parenting coordinator.
16. On August 26, 2021, PHLC emailed both parents to provide 30 days' notice under the agreement that it was withdrawing from the parenting coordination process. In his email, Mr. Henry explained PHLC was withdrawing because EL had done the following: 1) abused Mr. Henry verbally and in writing, 2) complained about Mr. Henry to the BC Parenting Coordinators Roster Society and the Law Society of BC, 3) claimed against PHLC in this dispute, and 4) failed to pay an invoice. I note that EL did pay the invoice, though there is some dispute over whether it was paid late. Nothing turns on this.

Did PHLC breach the parenting coordination agreement, through professional negligence or otherwise?

17. I first consider the role of a parenting coordinator. Section 1 of the FLA defines a family dispute resolution professional to include a parenting coordinator. Their duties include assessing whether family violence is present under FLA section 8. Under the written retainer, EL agreed that Mr. Henry was a dispute resolution professional under the FLA.

18. EL says PHLC was professionally negligent and provided deficient services for the period of September 2020 to May 2021. In particular, EL says PHLC slandered him in an email to the other parent’s lawyer, ignored his requests to remove itself as a parenting coordinator, failed to be impartial, failed to respond to his emails, either in a timely manner or at all, failed to take steps to minimize opportunities for future violence by the other parent, and failed to change its methodology. In particular, EL says PHLC forced him to read and respond to emails from the other parent that were “triggering” for him, and contributed to his stress and anxiety.
19. In claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283. This is because the standards of a particular industry are often outside of an ordinary person’s knowledge and experience.
20. Here, I find the conduct of a reasonably competent parenting coordinator is outside ordinary knowledge and experience. This is because EL’s allegations are about topics such as whether PHLC or Mr. Henry used appropriate methodology, properly assessed the risk of family violence from the other parent, or failed to be impartial. I find that expert evidence would be necessary to prove whether PHLC’s or Mr. Henry’s conduct in these areas was professional negligence. However, EL submitted no expert evidence.
21. As for allegations about ignoring or replying late to emails, the emails in evidence show that PHLC responded to some of EL’s emails and not others. I do not find that, by itself, shows negligence. Mr. Henry also exchanged some correspondence with the lawyer for the other parent about EL’s alleged threats to report him to the Law Society of BC if he did not return EL’s retainer money. I find it unproven that this conduct was a breach of contract. Under section 2.3 of the written agreement, EL expressly agreed that none of his discussions with PHLC or Mr. Henry were privileged or confidential. I make no finding on whether the email was “slander” as alleged by EL as CRTA section 119(a) excludes libel and slander from the CRT’s small claims jurisdiction.

22. Given the above, I dismiss EL's claims as unproven.

23. 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. I dismiss EL's claims for reimbursement. PHLC made no specific claims for reimbursement, so I order none.

ORDER

24. I dismiss EL's claims and this dispute.

David Jiang, Tribunal Member