



# Civil Resolution Tribunal

Date Issued: January 28, 2022

File: SC-2020-007674

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yellowfly v. Corbett*, 2022 BCCRT 110

BETWEEN:

DALLAS YELLOWFLY

**APPLICANT**

AND:

CARRIE CORBETT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The applicant, Dallas Yellowfly, lived with the respondent, Carrie Corbett, in a romantic relationship until 2011. When this dispute began, Mr. Yellowfly said that either he owned Blaize or that the parties agreed to share Blaize's ownership equally when they separated in 2011. Mr. Yellowfly says Ms. Corbett refused to return Blaize to him or allow him access to Blaize since June 2020. Mr. Yellowfly originally asked

for an order that Ms. Corbett return Blaize to him, but Blaize has since died. So, Mr. Yellowfly says he is entitled to \$1,200 for the cost of Blaize, \$1,000 for mental and emotional distress, and \$1,800 for the loss of use and enjoyment of Blaize.

2. Ms. Corbett says she has always been Blaize's primary owner and caregiver and denies any agreement about shared ownership on separation. Ms. Corbett says she allowed Mr. Yellowfly unsupervised visits with Blaize and acknowledges she stopped those in June 2020. She says that was because Mr. Yellowfly was unable or refused to properly care for Blaize.
3. Both parties are self-represented.

## **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. 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.
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.

### ***Decision History***

8. Mr. Yellowfly applied to the CRT on October 5, 2020. CRT staff identified a potential jurisdictional issue and asked the parties for their submission on whether Blaize was family property and whether the CRT had jurisdiction to resolve the dispute. This is because, under section 94(1) of the *Family Law Act* (FLA), the BC Supreme Court (BCSC) has exclusive jurisdiction to determine whether property owned by at least one spouse is family property and, if so, how it should be divided. In those earlier submissions, the parties agreed that Blaize was family property and so the CRT did not have jurisdiction over this dispute. In a December 21, 2020 decision, another tribunal member refused to resolve the dispute under section 10(1) of the CRTA on the basis that the BCSC had exclusive jurisdiction over family property disputes, which the parties agreed this was.
9. On June 4, 2021, the BCSC set aside the December 21, 2020 decision and remitted the dispute back to the CRT (*Yellowfly v. Corbett*, 2021 BCSC 1211). In his oral reasons, Justice Milman considered Mr. Yellowfly's arguments that he originally paid for Blaize and that Ms. Corbett violated the parties' alleged agreement about joint ownership. Justice Milman found the dispute was not entirely outside the CRT's jurisdiction because it was not solely based on whether Blaize was family property subject to division under the FLA.
10. Contrary to Mr. Yellowfly's submissions, the court did not make a ruling that Blaize was not family property. Rather, the court said that, even if Blaize was family property under the FLA, the CRT still had jurisdiction to consider Mr. Yellowfly's other claims, such as whether Ms. Corbett breached the parties' agreement about Blaize's ownership.

11. In the non-binding but persuasive decision *Brousseau v. Grouchy*, 2021 BCCRT 671, a settlement agreement is a contract, even if it is about a family law matter. The CRT has jurisdiction over a breach of contract claim under its CRTA section 118 small claims jurisdiction. So, I find the CRT has jurisdiction to consider Mr. Yellowfly's claim that Ms. Corbett breached the parties' ownership agreement about Blaize.

## **PRELIMINARY ISSUE**

12. Ms. Corbett received permission from the CRT to submit more characters than usually allowed in submissions. Mr. Yellowfly objects and says Ms. Corbett wasted her character limit discussing things that were not relevant to this dispute and further says her spelling, grammar, and short forms were difficult to understand. I find both parties included understandable short forms and abbreviations in their submissions, as well as some irrelevant information. I also find both parties provided extensive submissions and a significant amount of evidence. So, in the interests of fairness, and bearing in mind the CRT's flexible mandate, I have exercised my discretion to accept and consider all the parties' submissions.

## **ISSUES**

13. The issues in this dispute are:

- a. Did the parties have a post-separation agreement about Blaize's ownership and, if so, did Ms. Corbett breach the agreement by refusing Mr. Yellowfly access to Blaize as of July 2020
- b. Is Mr. Yellowfly entitled to any of the claimed remedies?

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, Mr. Yellowfly must prove his claims on a balance of probabilities. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.

15. It is undisputed that the parties have no written agreement about Blaize's ownership. Although verbal agreements are just as binding, they are harder to prove.
16. In his application for dispute resolution, Mr. Yellowfly said that he and Ms. Corbett agreed to share Blaize's ownership equally when they separated in 2011, and that they had been doing so until June 2020. However, in his final reply submissions, Mr. Yellowfly argued that he owned Blaize and only allowed Ms. Corbett to visit Blaize as a "user" rather than an owner.
17. In his final reply submissions Mr. Yellowfly argues that Blaize was gifted solely to him during the parties' relationship. It is undisputed that Mr. Yellowfly's family member, LY, owned Blaize upon birth, as she owned Blaize's mother. According to the Offer to Sell in evidence, LY sold Blaize to Mr. Yellowfly for \$1,200. However, in his March 26, 2021 affidavit, Mr. Yellowfly swore that LY gifted him half the purchase price. In this dispute, Ms. Corbett says she paid LY the remaining \$600 for Blaize, which Mr. Yellowfly does not dispute. So, I find Ms. Corbett partly paid for Blaize, even though she was not named on the sales contract.
18. Further, a January 8, 2009 Canadian Kennel Club (CKC) registration certificate in evidence identifies both parties as Blaize's owners. An August 2020 email from CKC confirms Blaize remained registered to both owners. The evidence shows that the parties, along with LY, applied for that registration. So, I find the certificate shows the parties' intention to be joint owners of Blaize.
19. Finally, Mr. Yellowfly referred to himself and Ms. Corbett as "joint owners" of Blaize in his Facebook messages and emails to Ms. Corbett between 2019 and 2021 and in his initial dispute application and submissions. I find these communications are inconsistent with Mr. Yellowfly's later argument that he was Blaize's sole owner.
20. On balance, I find it more likely than not that the parties jointly owned Blaize during their relationship. For the below reasons, I find the parties agreed to continue as Blaize's co-owners after they separated in 2011.

21. Contrary to Ms. Corbett's argument, I find Mr. Yellowfly did not give up his ownership interest in Blaize when the parties' relationship ended. There is no evidence he expressed that intention to Ms. Corbett, or anyone else. Further, I find Mr. Yellowfly's behaviour and treatment of Blaize over the years indicates he intended to maintain joint ownership of the dog.
22. Blaize resided with Mr. Yellowfly at least 30% of the time according to Ms. Corbett, and up to 50% of the time according to Mr. Yellowfly. Photos provided by Mr. Yellowfly show Blaize in his house and spending time with him. I accept Mr. Yellowfly's undisputed statement that he caught, and purchased, food for Blaize, and cared for him. This is supported by the witness statement of AC, Mr. Yellowfly's current common law partner. I do not accept Ms. Corbett's statement that she allowed Blaize to "visit" Mr. Yellowfly. There is no indication that Blaize took his toys, bedding, food, or other necessities with him when with Mr. Yellowfly, other than some medications, as discussed further below.
23. Based on Ms. Corbett's invoices and receipts, I accept that she has arranged, and paid for, most of Blaize's veterinarian care. The evidence supports Mr. Yellowfly's undisputed statement that Ms. Corbett receives discounted medication and services, due to her role in a rescue organization. So, I find her arranging Blaize's care is reasonable and does not necessarily mean that Mr. Yellowfly's lack of doing so means he gave up his ownership rights.
24. I acknowledge that Ms. Corbett registered Blaize and paid for his identification microchips and tattoos. She also ensured he was licensed with the municipality. I note that she identified herself as Blaize's owner or "primary" owner on these documents and that there was only space for one owners' name. However, I do not find that determines that Ms. Corbett was Blaize's sole owner after the parties separated.
25. The parties' messages in 2019 and 2020, along with Mr. Yellowfly's banking records, show that he reimbursed her half of Blaize's grooming, care, medication and veterinary costs that he agreed with. Further, I find Mr. Yellowfly directly paid some

vendors at Ms. Corbett's request and purchased some medications and supplements. Contrary to Ms. Corbett's arguments, I do not find these payments were at Mr. Yellowfly's discretion. Rather, I find he paid the exact amount of money she requested as reimbursement of Blaize's expenses. Further, the messages show the parties discussed how to keep expenses down, what care was necessary, how the expenses should be divided, how to care for Blaize as he aged, and what to do if Blaize became ill or his quality of life started to suffer. I find these payments and messages support a conclusion that the parties were Blaize's co-owners.

26. I now turn to consider whether Ms. Corbett improperly withheld Blaize from Mr. Yellowfly.

27. Ms. Corbett argues that Mr. Yellowfly was not able to continue to properly care for Blaize as he aged. I infer she argues that Mr. Yellowfly breached an implied term of the parties' agreement to properly care for the dog. Further, although animals are personal property at law, there is a legal requirement that animals, and in particular dogs and cats, be treated "humanely" (see *Brown v. Larochelle*, 2017 BCPC 115).

28. Specifically, Ms. Corbett says Blaize returned from Mr. Yellowfly's home ill or injured in August 2019, January 2020, and February 2020. Veterinarian receipts and photos support that Blaize was ill, had an ear infection, and developed a toe injury. However, Ms. Corbett provided no evidence that the illness or injuries were because of Mr. Yellowfly's lack of appropriate care. While I acknowledge Ms. Corbett's submission that Blaize's toenail was damaged because of his arthritic gait during a long walk with Mr. Yellowfly, she provided no expert opinion evidence. As the cause of injury or illness is not obvious or within common knowledge, I find such expert opinion is required (see *Bergen v. Guliker*, 2015 BCCA 283).

29. Ms. Corbett submitted an undated letter from Laurie Mason, who provided laser therapy to Blaize. Ms. Mason wrote she saw improved mobility with Blaize's treatment, but that he would regress due to lack of treatment when he was with Mr. Yellowfly. Ms. Mason did not set out her qualifications to provide such an opinion, so I do not accept her letter as expert evidence under the CRT rules. Further, although

I acknowledge Ms. Corbett's desire to have Blaize continue with laser treatments, she has not shown that Mr. Yellowfly refused to allow Blaize to continue treatment while with him, or that such refusal was not proper dog care.

30. In any event, I would find that, even if Mr. Yellowfly breached the parties' agreement about Blaize's care, Ms. Corbett accepted the breach as Mr. Yellowfly continued to care for and have Blaize reside partly with him, during each of these events.
31. Finally, the parties agree that Mr. Yellowfly did not give Blaize 2 doses of two medications during a family emergency in June 2020. Further, the parties' Facebook messages show Mr. Yellowfly administered Blaize's medications once daily, with food, rather than twice daily, as requested by Ms. Corbett. As above, Ms. Corbett provided no expert evidence about the medications, what Blaize's prescriptions were, or the potential effects of Blaize missing those doses. So, I find Ms. Corbett has not proven Mr. Yellowfly misedicated Blaize.
32. On balance, I find Ms. Corbett has not proven Mr. Yellowfly breached their agreement about Blaize's ownership by failing to properly care for him, or otherwise failed to treat Blaize humanely. So, I find Ms. Corbett was not justified in discontinuing Mr. Yellowfly's access to Blaize, which she undisputedly did at the end of July 2020. Based on the parties' correspondence, I find Mr. Yellowfly never again saw Blaize alive, either in a supervised or unsupervised setting, despite his requests to Ms. Corbett that he have any form of access to Blaize. While I acknowledge Ms. Corbett's believe that she was taking the best care of Blaize by refusing Mr. Yellowfly access, I find it was not justified in the circumstances and was a breach of the parties' ownership agreement.

### ***Remedy***

33. As noted above, I find Mr. Yellowfly was gifted half ownership of Blaize by LY at birth, which I value at \$600, based on the Offer to Sell. So, I find Mr. Yellowfly is entitled to \$600 for his loss of joint ownership of Blaize.



34. I turn to Mr. Yellowfly's claim for mental and emotional distress. Damages for mental distress can arise under a contract claim if there is evidence of a serious and prolonged disruption that transcends more than ordinary emotional upset and distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253). As noted in the persuasive but non-binding decision of *Eggbery v. Horn et al*, 2018 BCCRT 224, there must be some medical evidence to support a claim for stress or mental distress.
35. I give significant weight to Dr. Akbar's July 23, 2021 letter that Mr. Yellowfly was under "a lot of stress" that affected his mental health, due to Blaize's custody issues. I accept Dr. Akbar is qualified as an expert under the CRT rules and would be in a position to judge Mr. Yellowfly's mental health as his family physician for over 2 years. I also accept AC's statement that, as of October 5, 2021, Mr. Yellowfly continued to be upset, emotional, and some days mentally unable to work. I find AC is in a position to provide such observations as Mr. Yellowfly's common law partner and work colleague. Overall, I find Mr. Yellowfly experienced a serious and prolonged disruption from being unable to exercise his ownership rights to Blaize from July 2020 to his undisputed death in July 2021.
36. In the non-binding but persuasive decision *PD v. WY*, 2021 BCCRT 1065, another tribunal member considered a range of mental distress damages and found \$5,000 appropriate in circumstances where medical evidence evidenced much more severe distress than in the case here. So, I find Mr. Yellowfly's claim for \$1,000 in mental distress damages is appropriate and award that amount here.
37. I find Mr. Yellowfly is not entitled to the further claimed \$2,800 for loss of use and enjoyment of Blaize. I find the \$600 award compensates Mr. Yellowfly for the loss of his dog, and his \$1,000 award compensates him for the mental distress he experienced as a result. I dismiss the \$2,800 claim.

### ***CRT Fees, Expenses and Interest***

38. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Yellowfly is entitled to pre-judgment interest on the \$600 in damages for the loss of Blaize from July 30,

2020, the date he was denied any further access, to the date of this decision. This equals \$4.05. The COIA does not apply to non-pecuniary damages, such as damages for mental distress.

39. 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. As Mr. Yellowfly was partially successful, I find he is entitled to reimbursement of \$87.50, which is half his paid CRT fees.
40. Mr. Yellowfly also claims reimbursement of \$4,321.21 in legal fees he said he paid during the judicial review of the December 21, 2020 decision. At paragraph 19 of the decision the court decided that each party should bear their own costs of the action, meaning legal fees. For the same reasons, I also refuse to grant Ms. Corbett's request for reimbursement of her legal expenses for the judicial review. As the unsuccessful respondent, I find she is not entitled to her claimed dispute-related expenses in any event.

## **ORDERS**

41. Within 14 days of the date of this order, I order Ms. Corbett to pay Mr. Yellowfly a total of \$1,691.55, broken down as follows:
  - a. \$600 in damages for refusing access to Blaize,
  - b. \$1,000 in damages for mental distress,
  - c. \$4.05 in pre-judgment interest under the COIA, and
  - d. \$87.50 in CRT fees.
42. Mr. Yellowfly is entitled to post-judgment interest, as applicable.
43. I dismiss Mr. Yellowfly's remaining claims.

44. 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.
45. 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.

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Sherelle Goodwin, Tribunal Member