



# Civil Resolution Tribunal

Date Issued: March 21, 2022

File: SC-2021-001393

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wilkie v. Glasier*, 2022 BCCRT 310

BETWEEN:

DIANNE WILKIE and ROBERT SCOTT CAMPBELL

**APPLICANTS**

AND:

JANICE GLASIER

**RESPONDENT**

AND:

DIANNE WILKIE and ROBERT SCOTT CAMPBELL

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This dispute is about an alleged dog bite incident on August 30, 2020. The applicants (and respondents by counterclaim), Dianne Wilkie and Robert Scott Campbell, say their neighbour, the respondent (and applicant by counterclaim) Janice Glasier, is responsible for Miss Glasier's dog Melek biting the applicants' dog Wiggles. The applicants claim \$2,874.75 for veterinary bills and lost wages for their time off work.
2. Miss Glasier admits that Melek escaped from her yard, but she says there is no proof that Melek bit Wiggles. Miss Glasier alleges that the applicants' 2 dogs attacked Melek first and that Mr. Campbell then pulled the dogs apart and proceeded to beat Melek. Miss Glasier says Melek developed behavioural issues and anxiety from Mr. Campbell's beating. She counterclaims \$3,862 for reimbursement of Melek's medical expenses "past and future".
3. The parties are each 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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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. In

the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is Miss Glasier responsible for Wiggles' injuries, and if so, what is the appropriate remedy?
  - b. Are the applicants responsible for Melek's injuries, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). Miss Glasier bears the same burden to prove her counterclaims. I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

10. It is undisputed that there was an incident involving the parties' dogs on August 30, 2020, though the details are somewhat unclear. As noted, Miss Glasier does not dispute that Melek escaped from her fenced yard. She also admits that Melek wandered onto the applicants' unfenced property, where the applicants' 2 dogs, Wiggles and Ruby, were present.
11. However, there is no evidence that Ms. Wilkie saw the incident. It is also undisputed that Miss Glasier was not present, and I accept her evidence that she was away fishing. Miss Glasier's daughter, N, and another individual, L, were apparently responsible for Melek at the time, and the evidence shows they arrived at the applicants' property at some point during or shortly after the incident. Yet, Miss Glasier did not submit any statements from N or L in evidence.
12. I find Mr. Campbell was the only party to this dispute who was present for any part of the alleged incident. However, in the applicants' Dispute Notice, they did not set out what Mr. Campbell saw, and he did not provide his own statement in evidence about his observations or his part in allegedly separating the dogs. It is only in his response and submissions to Miss Glasier's counterclaim that Mr. Campbell set out his version of the events.
13. Mr. Campbell submits that he was home when Melek came onto the applicants' property and attacked Wiggles. I note that he does not specifically say he was outside, that he saw Melek approach, or that he observed Melek's alleged attack on Wiggles. However, Mr. Campbell does specifically say he saw Melek start to chase and fight with his other dog Ruby, so he says he grabbed and struck Melek with an open hand to release her "powerful grip on Ruby", before he "handed" Melek back to N and L.
14. On balance, I find Mr. Campbell did not see Melek bite Wiggles, as I find there is no evidence that he tried to stop the alleged attack or attend to Wiggles' injuries, which the applicants say were significant. He also did not explain how much time elapsed between Melek's alleged attack on Wiggles and when Melek started chasing Ruby. I find that if Melek had attacked Ruby, as alleged, the applicants likely would have

mentioned it in the initial Dispute Notice. Further, if Melek had bitten Ruby with such a strong grip, as Mr. Campbell suggests, I find Ruby likely would have sustained some injuries, but there is no evidence that Ruby was injured. For all these reasons, I do not place a lot of weight on Mr. Campbell's evidence.

15. Further, the applicants say their surveillance camera footage provides proof that Melek must be responsible for Wiggles' alleged injuries. However, the applicants provided only a few photographs of a computer displaying the camera footage. The still photographs show a smaller dog standing on a porch about one foot away from a larger dog on the steps, and another image of the larger dog several feet away from the porch approaching a different dog, that appears to be medium size. I infer that the smaller dog is Wiggles, the medium size dog is Ruby, and the larger dog is Melek.
16. I find none of the images shows any of the dogs injured, in distress, or displaying aggressive or excited behaviour. There is also one image of a man and woman on the applicants' property, who I infer are L and N. While the applicants say L is yelling at "the dog" and N is crying, I find the single blurry photograph in evidence is insufficient to make those findings.
17. The applicants did not provide any explanation for their failure to submit the full surveillance video footage in evidence. An adverse inference may be appropriate when a party fails to provide relevant evidence without a good explanation. Here, I find it is appropriate to draw an adverse inference against the applicants for failing to provide the video footage. This means that I find the video evidence likely would not have supported the applicants' claims. In other words, I find the video footage likely shows Melek did not bite Wiggles, or it shows that Wiggles and Ruby were the aggressors and attacked Melek first.
18. I note that the applicants say their veterinarian told them that Wiggles' injuries were from a "large mouth dog". While the applicants say they have a letter from their veterinarian to this effect, they did not submit it or any other veterinary records into evidence. The only evidence of Wiggles' medical treatment the applicants provided was a veterinary invoice for medication on September 3, 2020, and what appears to

be a surgery on September 4, 2020. It does not specify that the treatment was for a dog bite, and the applicants did not explain the delay between the alleged August 30 incident and treatment several days later. Again, I find it appropriate to draw an adverse inference against the applicants for failing to provide the clearly relevant veterinary records. Based on this adverse inference, I find the records likely would not show that Wiggles suffered an injury consistent with Melek biting Wiggles on August 30, 2020.

19. On the evidence before me, I find the applicants have not proven Melek caused Wiggles' injuries. Therefore, I find Miss Glasier cannot be held responsible for the applicants' claimed damages.
20. However, I note that even if I had found Melek bit Wiggles, I still would have dismissed the applicants' claim. In British Columbia, there are 3 ways a dog owner may be liable for their dog's actions: occupier's liability, negligence, and the legal concept of 'scierter'.
21. I find occupier's liability does not apply because the incident did not occur on Miss Glasier's property. I also find the applicants have not proven negligence because Miss Glasier was not home, and it was N and L who were responsible for Melek (and therefore Melek's escape) at the time of the incident. There is no suggestion that Miss Glasier was negligent for leaving Melek in N and L's care, and I find there is no evidence to support that suggestion in any event.
22. As for scierter, the applicants must establish that Melek had previously shown an inclination or tendency to cause the type of harm that happened, and that Miss Glasier as Melek's owner, knew of that tendency (see *Janota-Bzowska v. Lewis*, [1997] B.C.J. No. 2053 (BCCA)).
23. The applicants submit that Melek was deemed a vicious dog, but they did not say when or provide any evidence of such a declaration. Further, Miss Glasier denies this allegation. She provided an October 28, 2020 letter from the BC SPCA officer who investigated the applicants' report of the alleged August 30 incident, which stated that

Melek was very friendly and showed no signs of aggression. The letter did not mention any previous reports involving Melek. I find there is no evidence that Melek was declared a dangerous dog or that she had any history of biting or aggression towards other dogs. So, I find the applicants have not proven scienter or any other basis on which to hold Miss Glasier responsible for Wiggles' injuries. I dismiss the applicants' claims.

24. As for Miss Glaser's counterclaim, she says Melek developed anxiety and a fear of men, loud noises, and the dark, after Mr. Campbell "beat" her during this incident. As noted, Mr. Campbell admits to striking Melek once in order to separate her from Ruby.
25. Miss Glasier provided no independent evidence that Mr. Campbell abused or used excessive force against Melek in the circumstances. I find that N and L would have been able to provide relevant evidence about Mr. Campbell's alleged actions against Melek, as they were allegedly present at that time. I find it is appropriate to draw an adverse inference against Miss Glasier for her failure to provide statements from N and L, as Miss Glasier provided no explanation for the absence of this important evidence. So, I find their witness statements likely would not have supported Miss Glasier's counterclaim.
26. Further, while Miss Glasier provided evidence that she purchased a heavy-duty dog crate in July 2021 (\$293.99) and that Melek was prescribed trazodone in November 2021 (\$21.52), I find there is insufficient evidence that these items were related to the August 2020 incident. Miss Glasier provided no veterinary records or statements from other witnesses or experts about Melek's behavior after the alleged incident.
27. Overall, I find Miss Glasier has not proven Mr. Campbell caused Melek any injuries, nor has she proven her damages from those alleged injuries. Therefore, I dismiss Miss Glasier's counterclaims.
28. 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. Given that all parties were unsuccessful, I find that none of them are entitled to reimbursement of CRT fees or dispute-related expenses.

**ORDER**

29. I dismiss the applicants' claims, Miss Glasier's counterclaims, and this dispute.

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Kristin Gardner, Tribunal Member