Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

RH, DH, and CT

APPLICANTS

A N D :

SH

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about the replacement of personal property taken without permission. The applicant, RH, is married to the respondent, SH, but they are separated. The applicants, DH and CT, have a child together. DH is RH's girlfriend. RH says that SH took his personal property from his vehicle. In their submissions, the applicants clarify that SH allegedly took part of an infant car seat belonging to DH and CT, a diaper

bag and contents belonging to DH, and children's shoes belonging to RH. The applicants claim a total of $452.64 in damages for the cost of replacement items.

2. SH says she took the items during a heated interaction with RH at a scheduled transfer of their children. She says the shoes belong to her children, she later returned the infant car seat part to RH, and she attempted to return the diaper bag and contents to RH but he refused, so she owes nothing. SH also says that if RH purchased the replacement items, then this is a "family court matter" between her and RH, and should not be heard by the Civil Resolution Tribunal (CRT).

3. RH represents the applicants in this dispute. SH is self-represented. In the published version of this decision, I have anonymized the parties' names to protect the privacy and identities of their minor children, who are not parties.

JURISDICTION AND PROCEDURE

4. 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.

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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly 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.

8. As noted above, SH suggests that some of the property at issue is family property as defined in the *Family Law Act* (FLA), so decisions about it are in the exclusive jurisdiction of the Supreme Court of British Columbia. As further explained below, I find none of the disputed property is family property, and I find this dispute falls within the CRT's small claims jurisdiction over debt and damages.

ISSUE

9. The issue in this dispute is whether SH took the applicants' personal property without permission, and if so, whether she owes $452.64 for replacement items.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning "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.

11. RH and SH share custody of their children. In the morning of October 9, 2021, they met in a parking lot to transfer their children from SH to RH. RH's vehicle contained an infant car seat with a matching plastic seat base. I infer that the seat base is used by strapping it onto a vehicle seat, and then snapping the infant car seat into the base.

12. RH and SH had a heated interaction during the transfer. SH undisputedly threw the seat base into the parking lot. She also put the seat base, a diaper bag, and children's

shoes, into her vehicle and left with them. SH says the stress of the situation caused her to take the items accidentally. However, I find the evidence before me, including email and video evidence, shows that she took those items intentionally, without permission, and over RH's protests. I find SH knew that RH rightfully possessed the car seat base and diaper bag, and that those items were owned by one or more of the applicants.

13. Although the applicants say SH "stole" the items at issue, I find their claims are based on what is known in law as the torts of trespass to chattels, detinue, and conversion. Trespass to chattels is intentionally interfering with rightful possession of goods without consent. It includes intentional and unlawful seizure (see *Meade v. Armstrong (City)*, 2017 BCSC 2317 at paragraph 45). Detinue is refusing to return an item to a person who is entitled to it. Conversion is when a person wrongfully possesses another's personal property in a way that interferes with the owner's rights to it. To prove conversion, the applicants must show a wrongful act by SH involving handling, disposing, or destroying an item, and that the act was intended to or actually interfered with the applicants' right or title to the item (see *Li v Li*, 2017 BCSC 1312 at 214).

14. SH initially refused to return the car seat base and diaper bag to RH, and said DH as their owner could pick them up from SH at her workplace. Given the heated exchange and other communications between the parties, I find the applicants reasonably refused to pick up the items at SH's workplace without third parties present.

15. SH returned the car seat base to RH on October 22, 2021. For the above reasons, I find SH intentionally interfered with the applicants' rightful possession of DH's and CT's infant car seat base, and seized it for a period of time without consent. So, I find SH is liable in the tort of trespass to chattels, and the applicants are entitled to any damages that resulted from that trespass.

16. SH says she tried to return the diaper bag and its contents to RH outside of a police station during another scheduled transfer of their children, but he left it there. RH says he was unaware that the bag was left outside of the police station. SH admits she did

not directly inform RH that she had brought the diaper bag for him, but relied on him allegedly overhearing a statement to her child about not letting RH forget "all these items". I find the evidence does not show that "all these items" included the diaper bag and its contents, or that RH overheard SH's statement to her child. Further, although SH submitted a photo showing bags outside of what I infer is the police station, there are no people or vehicles in the photo. I find neither the photo nor other evidence shows that SH left the diaper bag during the transfer, or that RH knowingly left it behind.

17. I infer that the diaper bag is now missing and its whereabouts are unknown. I find the evidence shows that SH wrongfully took DH's diaper bag from RH's possession and never returned it, which interfered with DH's right and title to it. So, I find SH is liable in conversion, and the applicants are entitled to damages.

18. As for the children's shoes, RH says that they were given to him by his parents, for his children's use only when they were at his home. SH says the shoes belong to the children and go with them between homes. I find the shoes were reasonably gifted to the children, not RH, and are not family property. I also find there is insufficient evidence that RH has a greater claim to the shoes than SH, the children's other parent. Further, I find the evidence does not show that any children's shoes are presently missing. So, I dismiss the applicants' claim for shoes.

19. I turn now to the question of damages. The applicants say SH owes them the cost of a replacement infant car seat and base they purchased within hours of SH taking the original seat base, because DH needed to safely transport her child. Specifically, they say that it was more difficult to properly orient the infant car seat in the vehicle without its base, which they say was unsafe. However, the applicants do not directly deny that the car seat was usable without its base, as shown in an infant car seat instruction manual they submitted. On balance, I find the applicants likely knew the infant car seat could be used without its base, and that this type of use was approved by the manufacturer. So, I find there was no immediate need to purchase a new car seat and base.

20. I also find that beginning on the day SH took the seat base, the parties disagreed about how and when SH would return the seat base. However, I find SH did not refuse any return, and ultimately returned the seat base at a pre-arranged meeting. In the circumstances, I find the applicants had no reasonable expectation that the car seat base would be missing for an extended period and they needed to purchase a new one as a replacement.

21. The applicants also say SH damaged the seat base and made it unusable. I find they infer this damage from the fact SH threw the plastic seat base into the parking lot, and not because they identified any actual damage. I find the evidence does not reveal any actual damage to the seat base. I find that the question of whether the parking lot impact likely damaged the seat base and rendered it unsafe is a subject beyond ordinary knowledge and experience, and requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124). Under the CRT's rules, I find there is no expert evidence before me in this dispute. So, I find the applicants have not proven that SH damaged the seat base.

22. I find that although the applicants had no access to the seat base for almost 2 weeks until the parties agreed on a method of return, there was little consequence to the applicants other than the inconvenience of not being able to use the optional seat base during that time. Given the minor and time-limited nature of SH's trespass to the seat base, on a judgment basis I allow the applicants nominal damages of $20.

23. Regarding the diaper bag, the normal remedy for conversion is damages for the value of the items. I find a receipt in evidence shows that the applicants purchased a replacement diaper bag for $59.99 plus sales tax, which equals $67.19. SH does not dispute that the replacement bag was similar to the original bag, so I allow the applicants' claim for the diaper bag in the amount of $67.19.

24. The applicants do not list all of the diaper bag's contents, but provided a receipt including what I infer are replacement contents. SH listed and described the diaper bag's contents in detail. I find several of the items in the diaper bag were either irretrievably soiled or otherwise had no replacement value. I find the only items of

proven value in the diaper bag were an infant sleeper and a pacifier, and according to the applicants' receipt they cost $18.71 including sales tax to replace. So, I allow the applicants' claim for the diaper bag's contents in the amount of $18.71.

25. In sum, I allow the applicants' claims for a total of $105.90, for damages for the diaper bag and its contents, and for trespass to the car seat base

CRT Fees, Expenses, and Interest

26. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicants are entitled to pre-judgment interest on the $85.90 in damages owing for the diaper bag and its contents, calculated from when replacement items were purchased on October 13, 2021 until the date of this decision. This equals $0.19. Under the COIA, I find the applicants are not entitled to pre-judgment interest on the remaining $20 in nominal trespass damages.

27. Under section 49 of the CRTA, and the 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. The applicants were partly successful in their claim, so I find they are entitled to reimbursement of half the CRT fees they paid, which equals $62.50. SH paid no CRT fees, and the applicants claimed no CRT dispute-related expenses.

28. SH requested reimbursement of $650 in legal fees. She admits that "the CRT process is navigable for two clients like the parties here," but that she is entitled to legal fees to deter the applicants' alleged "abuse of process" in bringing this dispute. CRT Rule 9.5 says that the CRT will not order a party to pay another party's lawyer fees in a small claims dispute unless it determines there are extraordinary circumstances that make it appropriate. I find there are no extraordinary circumstances here, because I find this dispute was not unusually complex, there was no abuse of process, and no party was represented by a lawyer before the CRT. I dismiss SH's request for legal fee reimbursement.

ORDERS

29. Within 30 days of the date of this decision, I order SH to pay the applicants a total of $168.59, broken down as follows:

    a. $105.90 in damages for withholding an infant car seat base, and for a missing diaper bag and its contents,

    b. $0.19 in pre-judgment interest under the COIA, and

    c. $62.50 in CRT fees.

30. I dismiss the remaining aspects of the applicants' claim. I dismiss SH's claim for legal fees as a dispute-related expense.

31. 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.

32. 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.

Chad McCarthy, Tribunal Member