



Civil Resolution Tribunal

Date Issued: April 28, 2022

File: SC-2021-007798

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McKinnon v. McKinnon*, 2022 BCCRT 493

BETWEEN:

CHANTEL MCKINNON

APPLICANT

AND

MATHEW MCKINNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about responsibility for a dog's veterinary bills and other expenses.

2. The applicant, Chantel McKinnon, and the respondent, Mathew McKinnon, are former spouses who separated in 2020. The parties signed a separation agreement filed in BC Provincial Court on January 8, 2021.
3. Ms. McKinnon remained the primary caregiver for the family dog, Tonka. Ms. McKinnon says when the parties negotiated their separation agreement, they verbally agreed to evenly split Tonka's care costs. Ms. McKinnon seeks \$2,450.26 for veterinary bills, food and supplies incurred between February 1 and October 12, 2021.
4. Mr. McKinnon denies agreeing to pay half of Tonka's care costs. He says the parties' separation agreement fully addresses his obligations to Ms. McKinnon and already accounted for Tonka's care costs. He says the claim should be dismissed.
5. Each party is self-represented in this dispute.

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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in

issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

Family Law Act

10. Under the *Family Law Act*, the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property and family debt, and to set aside agreements about property and debt division.
11. I find Ms. McKinnon is not seeking an order dividing family property or family debt, nor is she seeking to set aside the parties' separation agreement. Rather, I find this is a claim for damages arising from a breach of an alleged oral agreement she says the parties made around the same time as the settlement agreement. I find the CRT can decide this claim under its small claims jurisdiction over debt and damages. Bearing in mind the amount at stake and the CRT's mandate to provide accessible and economical dispute resolution, I find it is appropriate for the CRT to resolve this dispute.

ISSUES

12. The issues in this dispute are:
 - a. Did the parties verbally agree to equally share the cost of Tonka's care?

- b. Did Mr. McKinnon breach that agreement?
- c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. McKinnon must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. Mr. McKinnon brought Tonka into the relationship, but it is undisputed that since separating, Tonka has lived with Ms. McKinnon. Although Mr. McKinnon says Ms. McKinnon made the decision unilaterally, he also says he did not object to this arrangement.
15. The parties' written separation agreement does not explicitly address Tonka and Tonka's care costs. Ms. McKinnon says that "in negotiating their separation," the parties verbally agreed to equally split Tonka's care costs, including vet bills, for as long as Tonka lived. As noted, Mr. McKinnon denies any such oral agreement.
16. Ms. McKinnon relies on Mr. McKinnon's payment of half of a January 15, 2021 vet bill, shortly after filing the separation agreement. The parties' emails from that time show that Ms. McKinnon summarized the vet's findings and provided the appointment's cost, which was \$216.83. Mr. McKinnon responded, "I sent you half for the visit." Ms. McKinnon thanked him. She did not specifically ask Mr. McKinnon to pay, or refer to any agreement.
17. In September 2021, Tonka became very ill and required extensive treatment. Ms. McKinnon's emails to Mr. McKinnon about treatment decisions and costs went unanswered. In Ms. McKinnon's second email, she said "I also need you to confirm that you will pay half of the vet bills for Tonka." In her third email, she said "You are responsible for 50% of all costs associated with Tonka."

18. I find this evidence falls short of establishing on a balance of probabilities that the parties had an oral agreement to share Tonka's care costs. I find Mr. McKinnon's single payment of \$108.42 is equally consistent with a gratuitous payment as it is with a contractual obligation. He never acknowledged any agreement. I find Ms. McKinnon's second email asking Mr. McKinnon to confirm that he would pay half the vet bills is somewhat inconsistent with the existence of an oral agreement. As well, neither of the parties' emails reference an oral agreement.
19. Mr. McKinnon says the cost of Tonka's care was discussed in negotiations and factored into the settlement agreement. On balance, considering the settlement agreement's terms, I agree with Mr. McKinnon. The settlement agreement said the parties intended the agreement to be a settlement of, among other things, child support, spousal support, and rights to any property they jointly own and to each other's individual property. I find this includes Tonka's care costs because Tonka was a family pet.
20. Paragraph T in the agreement's preamble said the parties "explored many ideas and arrangements when drafting this agreement, but all of those are replaced by this agreement, which is the entire agreement between them relating to the terms of separation" and "is not subject to any terms, conditions, representations or warranties contained in other agreements." Further, paragraph 112 says the agreement is a full and final settlement of all issues between the parties and all rights and obligations arising out of their marital relationship. I find that these terms reflect the parties' mutual intention to achieve certainty and finality about their separation.
21. The parties had legal advice before signing the separation agreement. Each party acknowledged that the agreement addressed any economic advantage or disadvantage experienced as a result of the marriage or its breakdown, and that they were economically self-sufficient from their own resources, subject to performance of the agreement.
22. If Ms. McKinnon wanted to include an explicit agreement to share Tonka's care costs, it was open to her to negotiate those terms into the separation agreement. I also find

it likely, as Mr. McKinnon says, that the parties took those potential costs into account when reaching the agreement. Either way, I find giving effect to the separation agreement means I cannot accept Ms. McKinnon's argument that the parties had an oral collateral contract that directly contradicted the settlement agreement's terms.

23. As Ms. McKinnon is undisputedly Tonka's owner after separation, I find she is responsible for Tonka's care costs. I dismiss her claim.

24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Mr. McKinnon was successful but did not pay CRT fees or claim expenses. I dismiss Ms. McKinnon's claim for reimbursement of CRT fees.

ORDER

25. I dismiss Ms. McKinnon's claims and this dispute.

Micah Carmody, Tribunal Member