



Civil Resolution Tribunal

Date Issued: June 17, 2022

File: SC-2021-009351

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ford v. Zhi*, 2022 BCCRT 713

BETWEEN:

SAMANTHA FORD

APPLICANT

AND:

YAN ZHI and HAN GUANG ZHANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an alleged dog attack. The applicant, Samantha Ford, says the respondents, Yan Zhi and Han Guang Zhang, negligently allowed their Kangal Shepherd dog to escape their property and bite Mrs. Ford's 2 dogs. She claims for \$789.10 as reimbursement for a combination of a veterinary bill, online search fees

for looking up the respondents' names, and her husband missing work to deal with this issue.

2. The respondents do not dispute owning the Kangal Shepherd dog, named Eorpata, but deny liability. Mr. Zhang says Eorpata ran out of his yard when he opened a gate, but did not attack Mrs. Ford's 2 dogs. He says Mrs. Ford's 2 dogs bit her and each other during the incident. Mrs. Zhi was not present but says Mr. Zhang's version of events is accurate.
3. Mrs. Ford represents herself. Mr. Zhang represents the respondents.
4. For the reasons that follow, I find Mrs. Ford has proven most of her claims and make the orders set out below.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is whether the respondents are responsible for the alleged dog attack, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mrs. Ford must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and arguments that I find relevant to provide context for my decision. I note that the respondents only provided photos of Eorpata as evidence.
11. I begin with the undisputed background. On the morning of September 16, 2021, Mrs. Ford was walking her 2 leashed dogs outside. She also brought her baby in a stroller. Mrs. Ford's dogs are a golden retriever named Tucker and a Bernese cross named Piper. During the walk, Mr. Zhang returned home in his car and opened a gate to drive onto his property. When he opened the gate, Eorpata exited the yard and

chased after Mrs. Ford's 2 dogs. At the time, Mrs. Ford was 10 to 20 meters down the street. Mr. Zhang exited his car and chased after Eorpata to stop the dog.

12. I note that Mrs. Zhi is Mr. Zhang's family member and lives at the same property. There is no indication that she was present at the time or witnessed what happened.
13. The parties disagree on what happened next. Mrs. Ford provides the following version of events. Eorpata ran towards her and repeatedly bit her 2 dogs while she held their leashes. She fell and hit her chin. She tried to stop the attack and at one point Tucker bit her forearm in the confusion. Mr. Zhang was unable to control Eorpata until he began throwing and hitting the dog with large rocks. This caused Eorpata to back away. Mrs. Ford then ran away with her dogs and baby. The baby was uninjured. In all, the incident lasted 3 to 4 minutes.
14. In contrast, Mr. Zhang says that Eorpata only barked at and circled Mrs. Ford and her 2 dogs, and that Eorpata never got close enough to bite Mrs. Ford's dogs. Mr. Zhang says he did not see any injuries on Mrs. Ford's dogs.
15. I find Mrs. Ford's version of events is likely accurate as it is well supported by the evidence. Mrs. Ford provided photos of the injury to her forearm and a scrape on her chin. She also provided photos of both Piper and Tucker showing that each had multiple wounds. She also provided documents from a veterinarian dated September 17, 2021. An invoice of \$615.75 says it was specifically for treating Tucker and it included fees for antibiotics and surgery. The post-surgery discharge instructions state that Tucker underwent sedation to suture wounds. In an October 1, 2021 letter, the veterinarian explained that Piper also had injuries, but they determined that further care was unnecessary.
16. I also place significance on the undisputed fact that Eorpata left the yard to confront the 2 dogs. Given this, I find it highly likely that Eorpata caused these injuries to Piper and Tucker. Mr. Zhang says that Mrs. Ford's dogs bit each other. However, he admits that he was "not paying attention to what [Mrs. Ford's] dogs were doing". So, I find his submissions on the issue unpersuasive. I also find it improbable that Mrs. Ford's

dogs would inflict multiple injuries on each other when confronted by another, unfamiliar dog. Mrs. Ford also admitted that her own dog bit her forearm, instead of blaming Eorpata. So, I find Mrs. Ford to be credible and prefer her version of events.

17. Mrs. Ford also says she submitted a complaint to a bylaw officer, and that the officer issued Mr. Zhang a bylaw infraction ticket for impermissibly allowing his dog to run at large without a leash. She says that Mr. Zhang disputed the ticket and after a hearing he was found liable. She says the trial occurred on April 6, 2022, in the Provincial Court of Surrey, under file M102409-242. Mrs. Ford provided copies of the bylaw officer's report and a notice to attend the hearing. The parties did not provide a copy of the reasons for judgment, but the respondents did not dispute Mrs. Ford's summary of the matter. So, I accept Mrs. Ford's summary as accurate. That said, I have not relied on this judgment to make findings in my decision. I only note that it is consistent with my decision.

Are the respondents responsible for the alleged dog attack, and if so, what is the appropriate remedy?

18. In BC there are 3 ways a dog owner can be liable for a dog attack: 1) occupier's liability, 2) negligence, and 3) the legal doctrine of 'scienter'.
19. The parties' submissions indicate the dog attack occurred some distance away from the respondents' property. So, I find occupier's liability does not apply.
20. Mrs. Ford bases her claim on the law of negligence. To prove negligence, Mrs. Ford must show the respondents owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that must have been reasonably foreseeable. In *Martin v. Lowe*, 1980 CanLII 546 (BCSC) at paragraph 13, the court said a dog owner has a duty to ensure their dog is sufficiently under control so that it will not escape to injure someone or damage their property. In *Martin*, an unleashed dog knocked down a person on a sidewalk, causing injury.
21. For the reasons that follow, I find that the respondents were negligent.

22. I find that the respondents owed Mrs. Ford a duty of care to take reasonable steps to control Eorpata and ensure their dog did not attack other dogs. I find it clear that the respondents breached the standard of care by failing to take any reasonable steps to ensure Eorpata did not escape from their yard. The respondents' submissions show that Eorpata was not on a leash or otherwise restrained. Despite this, Mr. Zhang opened the gate while still in his car, allowing Eorpata to escape. I find that it was reasonably foreseeable that Eorpata would leave the yard and attack other dogs, causing injuries of the sort suffered by Piper and Tucker. I also find from the parties' submissions that the attack by Eorpata was entirely unprovoked.
23. I note that scienter is when a dog has previously shown a tendency to cause the type of harm that happened here, and the dog's owner knew of that tendency. See *Janota-Bzowska v. Lewis*, 1997 CanLII 3258 (BCSC). However, given my finding that the respondents were negligent, I find it unnecessary to consider whether scienter applies.
24. This leaves the issue of damages. September 17, 2021 veterinary bills show Mrs. Ford paid \$615.75 for Tucker's treatment and \$52.50 for examining Piper. So, I order the respondents to pay the total of \$668.25 to Mrs. Ford.
25. Mrs. Ford also claimed an additional \$120.85 for online search fees and for her husband missing work. She did not provide a breakdown of this amount. I find these claims unproven by any evidence, such as receipts or time slips. I also find that Mrs. Ford cannot claim for any loss suffered by her husband in any event, as she lacks standing to do so. So, I decline to award these amounts.
26. The *Court Order Interest Act* applies to the CRT. Mrs. Ford is entitled to pre-judgment interest on the damages award from September 17, 2021, the date of the veterinary invoice, to the date of this decision. This equals \$2.25.
27. 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 find Mrs. Ford is entitled to reimbursement of \$125 in CRT fees. Aside from the online search fees mentioned above, the parties did not claim for any dispute-related expenses.

ORDERS

28. Within 14 days of the date of this order, I order the respondents to pay Mrs. Ford a total of \$795.50, broken down as follows:
- a. \$668.25 as damages,
 - b. \$2.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. Mrs. Ford is entitled to post-judgment interest, as applicable.
30. 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.
31. 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.

David Jiang, Tribunal Member