



Civil Resolution Tribunal

Date Issued: September 6, 2022

File: SC-2022-001119

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Collins v. Koenig*, 2022 BCCRT 990

BETWEEN:

ALLAN COLLINS and JULIE COLLINS

APPLICANTS

AND:

GAIL KOENIG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a dispute about land survey fees. The applicants, Allan Collins and Julie Collins, and the respondent, Gail Koenig, own neighbouring properties. The Collinses claim \$3,188.85 for land survey fees from Mrs. Koenig. The Collinses say they wanted to fence their property, but Mrs. Koenig refused to accept their measured estimate of where the parties' mutual property lot corner was located, so they obtained a land

survey. They say that the land surveyor discovered that a survey pin had been destroyed, allegedly by Mrs. Koenig. The Collinses say the land survey fees would not have been incurred had the survey pin not been destroyed or moved from its original location.

2. Mrs. Koenig says she is not responsible for the land survey fees. She says that the Collinses did not provide her with any estimated measurement and denies destroying the survey pin.
3. All parties are self-represented in this dispute.

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.

Preliminary Issue

8. The parties provided written arguments by the CRT's deadlines. However, due to a technical issue, I was unable to view the arguments. At my request, CRT staff provided me with a copy of the parties' arguments. Out of an abundance of caution, at my request, CRT staff also emailed the arguments to the parties in the event they had been unable to view them. The parties were given an opportunity to provide any submissions they may have in response. Mrs. Koenig did not provide any additional submissions by the CRT's deadline. The Collinses' submissions included 3 documents which are already in evidence.

ISSUE

9. The issue in this dispute is whether Mrs. Koenig must pay the Collinses \$3,188.85 for the land survey fees.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicants the Collinses must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
11. The background facts are largely undisputed. As mentioned, the parties own neighbouring properties. Mrs. Koenig and her husband purchased their property in or around 1992. Either the Collinses or their family members have owned the neighbouring property since 1977. After purchasing their property, Mrs. Koenig and her husband had a 40-foot rock wall constructed between the two properties. No land survey was conducted prior to the rock wall's construction.

12. The evidence shows that in March 2019, the Collinses wrote a letter to Mrs. Koenig and her husband asking for assistance locating a survey pin at the south-east corner of the Koenigs' property. In the letter, the Collinses said they wanted to fence their property and would obtain a survey if the survey pin could not be located. The Collinses say the Koenigs did not respond to this letter.
13. In May 2021, the Collinses conducted a legal survey of their property. The evidence includes a June 21, 2021 invoice from Browne Johnson Land Surveyors for \$3,188.85 that the Collinses have undisputedly paid.
14. On May 13, 2021, MM, the land surveyor, emailed the Collinses and advised that the rock wall was encroaching on their property. MM also said that the southwest survey pin was destroyed and needed to be replaced. In an April 27, 2022 email, MM clarified that the southwest pin was damaged to the point that the position could not be measured. MM said that the pin did exist, buried in the lawn, but that it was badly bent.
15. The evidence shows that after finding out the rock wall was encroaching on the Collinses' property, Mrs. Koenig had it removed in September 2021.

Must Mrs. Koenig pay the Collinses \$3,188.85 for the land survey?

16. As noted, in the Dispute Notice the Collinses allege that at some unspecified point in time, Mrs. Koenig destroyed a survey pin when landscaping her yard and is thus responsible for the land survey fees. In their written argument, the Collinses make further allegations about the rock wall. They say that the rock wall was built without their knowledge or input and that Mrs. Koenig enjoyed the use of their property since it was built. The Collinses say that since the rock wall was constructed without Mrs. Koenig first determining her property line, she is responsible for the land survey fees they have incurred.
17. As mentioned above, Mrs. Koenig says that she did not destroy the survey pin. She further says that before the rock wall was built, she and her husband consulted with Mrs. Collins' father who advised them of the properties' boundaries. Mrs. Koenig says

the rock wall was built 4-feet in from that boundary and that she would not have intentionally encroached on the neighbouring land.

18. In *Graham v. Golden Gate Developments Inc.*, 2013 BCSC 1890, the court declined to order either party to pay for fence surveys because neither had “improperly caused the incurring” of the survey expenses (see paragraph 85). Based on *Graham*, I find that in order for Mrs. Koenig to be liable for the land survey fees, the Collinses must prove on a balance of probabilities that she improperly caused them to incur those fees.
19. Though the Collinses say that the survey pin was destroyed by Mrs. Koenig’s landscaping, I find there is no documentary evidence that supports this allegation. Rather, in their March 2019 letter, the Collinses referred to a time Mrs. Koenig’s husband informed them that he had not found the survey pin when the rock wall was constructed. Based on this evidence, I find that it is just as likely that the survey pin was destroyed prior to the Koenigs purchasing the property than it being destroyed by Mrs. Koenig. As a result, I find the Collinses have failed to prove on a balance of probabilities that Mrs. Koenig destroyed the survey pin.
20. As mentioned above, it is undisputed that the rock wall encroached on the Collinses’ property. Though the Collinses do not use these specific words, I find they essentially argue that the rock wall was a trespass to their land. Trespass to land occurs when someone enters on the land of another without lawful justification, or places, throws, or erects some material object on the land without a legal right to do so (see *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6). Mistake is not a defence to trespass (*Lahti* at paragraph 8). Since it is undisputed that the rock wall encroached on the Collinses’ property, I find the rock wall was a trespass to land.
21. Does this trespass make Mrs. Koenig liable for the land survey fees? For the reasons that follow, I find it does not. As noted above, the evidence shows that in March 2019, the Collinses expressed their desire to fence their property and wrote in their letter that they would obtain a legal survey if the missing survey pin could not be located. Though I have found the rock wall’s encroachment was a trespass on the Collinses’

property, I find the evidence fails to establish that this trespass caused the Collinses to incur the land survey fees. Rather, I find the evidence shows that it was only after the survey was completed that the Collinses discovered the trespass. As a result, I find the evidence fails to establish that Mrs. Koenig improperly caused the Collinses to incur the survey fees. Instead, I find the Collinses incurred the survey fees for their own purpose of putting up a fence around their property. So, I find Mrs. Koenig is not liable for the \$3,188.85 survey fees claimed by the Collinses.

22. 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. Since the Collinses were unsuccessful, I dismiss their claim for CRT fees. The Collinses did not claim any dispute-related expenses. Mrs. Koenig did not pay any CRT fees or claim any dispute-related expenses, so I order none.

ORDER

23. I dismiss the Collinses' claims and this dispute.

Nav Shukla, Tribunal Member