



# Civil Resolution Tribunal

Date Issued: September 20, 2022

File: SC-2022-001624

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Babicz v. Swynarchuck*, 2022 BCCRT 1030

BETWEEN:

JULIA BABICZ

**APPLICANT**

AND:

DAYAN SWYNARCHUCK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about dog ownership.
2. The applicant, Julia Babicz, and the respondent, Dayan Swynarchuck, were in a relationship, during which they acquired a dog named Hondo. Ms. Babicz says that

Hondo is her dog, and that Mr. Swynarchuck stole Hondo after the parties broke up. Ms. Babicz seeks an order that Mr. Swynarchuck return Hondo to her.

3. Mr. Swynarchuck says that he purchased Hondo, and that he is Hondo's rightful owner. I infer it is Mr. Swynarchuck's position that this dispute should be dismissed.
4. Both parties are self-represented.

## **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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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.
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. The CRT does not have jurisdiction over division of family property arising under the *Family Law Act* (FLA). However, since the parties were not married and did not live together for 2 years, I find the parties were not “spouses”, as defined in the FLA, and Hondo was therefore not family property.
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.

## **ISSUE**

10. The issue in this dispute is which party owns and is entitled to possession of Hondo.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Ms. Babicz must prove her claims on a balance of probabilities (meaning “more likely than not”). I note that Ms. Babicz did not provide any final reply submissions, despite having the opportunity to do so. I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
12. The parties were in a relationship for approximately 5 to 6 months, and they lived together for about 2 of those months. Before they moved in together, Ms. Babicz already owned a dog named Lumi. On November 28, 2021, the parties acquired Hondo, a 9-week-old Rottweiler cross. Which party purchased Hondo is disputed, as discussed below. The parties agree that their relationship ended on February 11, 2022, and that Ms. Babicz is entitled to keep Lumi. This dispute is about who owns Hondo.
13. It is undisputed that when Ms. Babicz moved out of the parties’ shared residence, she took both Lumi and Hondo with her. Mr. Swynarchuck says that Ms. Babicz stole Hondo when she left. Mr. Swynarchuck says he repeatedly asked Ms. Babicz to return Hondo to him, and that she ultimately did so a few days later. Ms. Babicz did

not specifically respond to this portion of Mr. Swynarchuck's submissions. However, I find nothing turns on it because Ms. Babicz acknowledges that Mr. Swynarchuck did not agree to give Ms. Babicz sole possession of Hondo when she left.

14. In any event, the parties agree that about one week after they broke up, Ms. Babicz asked Mr. Swynarchuck to look after both Lumi and Hondo while she was out of town between February 18 and 20, 2022. It is undisputed that when Ms. Babicz returned, she claimed that Hondo was her dog and asked Mr. Swynarchuck to give Hondo back to her, but he refused. Hondo has remained with Mr. Swynarchuck ever since.
15. At law, pets are considered personal property. As noted in *Delloch v. Piche*, 2019 BCPC 369, this can become complicated when personal relationships break down because people do not want their dogs treated like other personal property that can be divided or sold to share the proceeds. I acknowledge that people often develop strong emotional attachments to pets, and it can be difficult to determine who has the greater claim to a pet's ownership and possession.
16. When determining who owns a pet, some court decisions have taken a very narrow approach and considered only who purchased the pet. However, other decisions take a more contextual approach, and consider the following factors, as summarized in *MacDonald v. Pearl*, 2017 NSSM 5:
  - a. Whether the dog was owned by one of the parties before their relationship began,
  - b. The nature of the relationship between the parties when the dog was acquired,
  - c. Any express or implied agreement about ownership, made either when the dog was acquired or after,
  - d. Whether at any point the dog was gifted by one party to the other,
  - e. Who purchased the dog,
  - f. Who exercised care and control of the dog,
  - g. Who bore the burden of the care and comfort of the dog,

- h. Who paid for expenses related to the dog's upkeep, and
  - i. What happened to the dog after the party's relationship changed.
- 17. This non-exhaustive list of factors has been considered in courts across Canada: see *Bain v. Brown*, 2022 BCSC 915 and *Coates v. Dickson*, 2021 ONSC 992. While no single factor is determinative, some carry more weight than others. I generally agree that this contextual approach to pet ownership disputes is appropriate, and I apply it here.
- 18. As noted, the parties dispute who purchased Hondo. Mr. Swynarchuck says that he decided he wanted a dog once he moved in with Ms. Babicz, as she already had Lumi. He says that while they went together to purchase Hondo, he was the one who wanted a dog, paid for it, and named it after his favourite television character.
- 19. In contrast, Ms. Babicz says that the seller sold Hondo only to her. In support of her position, she provided a February 11, 2022 letter signed by the seller, TW. The letter stated that the agreement to sell Hondo was between TW and Ms. Babicz only, and that TW would not have agreed to sell Hondo to Mr. Swynarchuck because TW had never met him before the purchase.
- 20. I place very little weight on TW's statement. This is largely because TW stated that he and Ms. Babicz have known each other for over 9 years, so I find he is not a neutral or independent witness. Mr. Swynarchuck says TW lied in the letter, and that TW knew Hondo was going to be Mr. Swynarchuck's dog and was fine with that. I note that TW's statement is dated the same day the parties' relationship undisputedly ended. On balance, I find it is more likely than not the contents of TW's statement reflect an attempt to support his friend's position, rather than the actual circumstances of Hondo's sale.
- 21. Further, Mr. Swynarchuck provided text messages he sent to TW about paying for Hondo and a screenshot of an e-transfer confirmation showing he paid TW \$700 on the purchase date. Overall, I find Mr. Swynarchuck's evidence is more persuasive. I

find that Mr. Swynarchuck purchased Hondo, a factor on which I place significant weight in the circumstances of this case.

22. The parties both say that Hondo's veterinary records show them as Hondo's owner. The parties provided different copies of Hondo's December 23, 2021 and January 21, 2022 vaccine certificates. Inexplicably, Ms. Babicz's copies show that she is the veterinary clinic's client, and Mr. Swynarchuck's copies show that he is the client. Nevertheless, Mr. Swynarchuck admits that Ms. Babicz paid for these 2 vaccines at the time because he was working. He says he transferred Ms. Babicz the money to repay her, but he provided no evidence of these alleged transfers. However, even if Ms. Babicz paid for the 2 vaccinations, I find that factor alone is not determinative of Hondo's ownership.
23. Ms. Babicz alleges that she also paid for all of Hondo's daycare expenses, food, and toys. However, she provided no evidence about these alleged expenses. Mr. Swynarchuck says that both parties contributed to the 2 dogs' common expenses. As noted, Ms. Babicz bears the burden of proving her claims. I find she has not proven she paid for more of Hondo's upkeep expenses, or that she bore more of the burden to care and comfort Hondo than Mr. Swynarchuck while they lived together.
24. After the party's relationship broke down, I find Ms. Babicz generally acknowledged that Mr. Swynarchuck was entitled to keep Hondo. In a February 21, 2022 text to Mr. Swynarchuck, Ms. Babicz said she was coming to pick Lumi up and "say goodbye to Hondo". In another text, Ms. Babicz told Mr. Swynarchuck that she was not ever trying to take Hondo away from him. Ms. Babicz did not provide any alternative explanation for these texts, which I find suggest that Ms. Babicz understood Hondo belonged to Mr. Swynarchuck. I note that in none of the parties' post-breakup texts before me does Ms. Babicz assert that she is Hondo's rightful owner. Overall, I find the weight of the evidence shows the parties agreed Mr. Swynarchuck was Hondo's owner from the date he purchased Hondo.
25. Even though pets are considered personal property, some courts have considered the dog's welfare in determining ownership: see *Brown v. Larochelle*, 2017 BCPC

115. I agree that this approach is appropriate in some circumstances. Other than a vague comment that Ms. Babicz is concerned for Hondo's well-being, I find there is no evidence that Mr. Swynarchuck has mistreated Hondo, or that Hondo is in danger with Mr. Swynarchuck. In other words, I find that Ms. Babicz has not proven that Hondo's welfare is a factor in this dispute.

26. Overall, I find that Ms. Babicz has not proven her ownership claim to Hondo is stronger than Mr. Swynarchuck's. Therefore, I find Ms. Babicz is not entitled to an order that Hondo be returned to her possession. I dismiss Ms. Babicz's claim.

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. As Ms. Babicz was unsuccessful, I dismiss her claim for CRT fees. Mr. Swynarchuck did not pay and fees and neither party claimed any dispute-related expenses.

## **ORDER**

28. I dismiss Ms. Babicz's claims, and this dispute.

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Kristin Gardner, Tribunal Member