



Civil Resolution Tribunal

Date Issued: October 4, 2022

File: SC-2022-000687
SC-2022-001587

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stefanishion v. Baldwin*, 2022 BCCRT 1090

B E T W E E N :

SHELLY STEFANISHION

APPLICANT

A N D :

BRADLEY BALDWIN and DONNA LEE POWER (also known as
DONNA POWERS)

RESPONDENTS

A N D :

SHELLY STEFANISHION

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Shelly Stefanishion lives in a mobile home. She is the applicant in Civil Resolution Tribunal (CRT) dispute SC-2022-0000687. She asked to be referred to as Ms. Stefanishion. The respondents in that dispute are Bradley Baldwin and Donna Lee Power, also known as Donna Powers. They are romantic partners who live 5 homes down from Ms. Stefanishion. They both asked to be referred to by their first names, and I will refer to them together as the respondents. They are both applicants in CRT dispute SC-2022-001587 against Ms. Stefanishion.
2. After an incident on June 28, 2021, the parties' relationship deteriorated, ultimately leading to these 2 CRT disputes. Ms. Stefanishion and the respondents each claim \$5,000 in damages. Ms. Stefanishion alleges that over the summer of 2021, the respondents repeatedly yelled insults at her whenever they passed by her home. She also alleges that they put a bag of dog feces in her car. She claims that these actions were harassment and a nuisance. For their part, the respondents allege that Ms. Stefanishion engaged in a persistent campaign to turn the small mobile home community against them. They also say that Ms. Stefanishion regularly insulted them back. They base their claim in nuisance.
3. Brad represents both respondents. Ms. Stefanishion is self-represented.

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. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of the others. 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 *Yas v. Pope*, 2018 BCSC 282, 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.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. The 2 CRT disputes were filed separately but were linked and travelled through the CRT's process together. I find that the respondents' claim is a counterclaim within the meaning of the CRT's rules. Under section 61 of the CRTA, I have amended the style of cause accordingly.
9. In the first dispute, Ms. Stefanishion named a respondent as "Donna Powers". In the second dispute, one of the applicants is named "Donna Lee Power". It is clear from the evidence that they refer to the same person. Under section 61 of the CRTA, I amend the name in both disputes to "Donna Lee Power (also known as Donna Powers)". I have also amended the style of cause accordingly.
10. Finally, Ms. Stefanishion provided late evidence. The respondents did not object to this late evidence and provided submissions about it. So, I find that there is no

prejudice or procedural unfairness arising from the late evidence, and I have considered it.

ISSUES

11. The issues in this dispute are:
 - a. Did the respondents commit a nuisance against Ms. Stefanishion?
 - b. Did the respondents harass Ms. Stefanishion?
 - c. Did Ms. Stefanishion commit a nuisance against the respondents?
 - d. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant in each dispute must prove their claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. Before turning to the details, I will briefly outline the law of nuisance, which both parties rely on. In short, a nuisance occurs when one person substantially and unreasonably interferes with another person's quiet use and enjoyment of their land. A substantial interference is one that is "more than mere inconvenience or minor discomfort". It must be something that "would not be tolerated" by an ordinary person. See *Wasserman v. Hall*, 2009 BCSC 1318, at paragraph 85. A nuisance can involve a physical interference, like water damage from a neighbouring property, or an intangible interference, like noises or smells.
14. With that, I turn to the relevant background. The parties' conflict began on June 28, 2021, after Ms. Stefanishion took a neighbour's dog out of his home. Ms. Stefanishion says that she did so because the dog was overheating inside. She also says she had the dog's owner's permission. The respondents say that she only got

that permission by misleading the owner about the dog being in distress. I find that nothing turns on what actually happened.

15. The next day, the parties had a verbal confrontation about the neighbour's dog at a beach near the mobile home park. Ms. Stefanishion was walking her own dog, Bailey, at the time. The respondents say that Ms. Stefanishion approached them, attempting to justify her actions from the previous day. The respondents say that Bailey then bit Donna Lee. They admit to responding angrily to the bite. For her part, Ms. Stefanishion says the respondents approached her, yelling and swearing at her. Ms. Stefanishion denies that Bailey bit Donna Lee, suggesting that Donna Lee gave themselves a bruise to fabricate a bite. Donna Lee does not claim damages for the alleged bite, so I find it unnecessary to determine whether the bite occurred.
16. From there, the parties' relationship deteriorated. Ms. Stefanishion's alleges that on June 29, 2021, one of the respondents left a bag of dog feces in her car. She provided a photo of the bag. The respondents deny that it was them, blaming another park resident. There is no direct evidence that it was the respondents who put the dog feces in her car. I find that she has not proven that the respondents put the dog feces in her car.
17. Ms. Stefanishion's main allegation is that after June 29, 2021, the respondents yelled insults at her every time they walked or drove past her home. It is undisputed that because of the park's layout, the respondents must go past Ms. Stefanishion's home every time they come or go. Ms. Stefanishion kept a written log of these incidents starting on July 7. The log indicates that the respondents usually called her a liar, but there are also entries describing lewd insults and gestures. According to the log, the respondents did this almost every day until July 20, then there was a 10-day break, and then most days until the end of August. The incidents then largely stopped as there are no September entries and a single October entry. In submissions, Ms. Stefanishion says that the log does not capture every incident, as there were sometimes multiple in the same day.

18. The respondents did not specifically respond to the log. They admit to calling Ms. Stefanishion a liar “on numerous occasions”. The respondents say that they did so to “shame” Ms. Stefanishion. They also say that there was nothing wrong with calling Ms. Stefanishion a liar because it was true.
19. I accept that Ms. Stefanishion’s log is reasonably accurate. First, the respondents implicitly admit that at least some of it is true and do not specifically dispute any of it. Second, it is written on multiple pages with multiple different pens, which suggests that it was not created after the fact. Third, a Telus employee, with no prior connection to Ms. Stefanishion, provided an emailed statement that while they were helping Ms. Stefanishion with her security system, a person drove by, rolled down their window and “very intently” called Ms. Stefanishion a liar. The Telus employee said they found it “very intimidating”. I find that this person was one of the respondents. Given that the respondents admitted to wanting to shame Ms. Stefanishion and given the log’s likely accuracy, I find that the respondents likely also directed offensive gestures and lewd insults at Ms. Stefanishion. Again, they do not directly dispute this. Ultimately, it does not matter exactly how many times the respondents insulted Ms. Stefanishion. I find that the respondents persistently insulted Ms. Stefanishion while she was at home throughout July and August 2021.
20. On November 10, 2021, the mobile park manager wrote to Brad telling them to stop communicating with Ms. Stefanishion or face eviction. Other than a brief and minor interaction on March 21, 2022, it appears that the respondents have not communicated with Ms. Stefanishion since the park manager’s letter.

Ms. Stefanishion’s Nuisance Claim

21. The key question this dispute raises is whether insults and lewd gestures can amount to a legal nuisance. Ms. Stefanishion relies on 2 cases where the court found a person liable in nuisance, in part, because of similar behaviour. Both were disputes between next door neighbours

22. In *Pellegrin v. Wheeldon*, 2020 BCPC 143, the court found that Mr. Pellegrin intentionally deposited yard debris and snow onto the Wheeldons' property over several years. The court also found that Mr. Pellegrin made "lewd and insulting comments and gestures" directed at the Wheeldons while the Wheeldons were on their property. The court found that these actions were a nuisance because they were "calculated to interfere with the Wheeldons' use and enjoyment of their land, and to cause them emotional distress". The court awarded the Wheeldons \$1,000 each.
23. In *Aschenbrenner v. Yahemech*, 2010 BCSC 905, Mr. Yahemech became angry after the plaintiffs installed a hot tub in their yard, which Mr. Yahemech found obnoxious. The court found that Mr. Yahemech relocated his compost bin near the hot tub, and later intentionally put rotting fish in the compost bin on a hot day to ruin an outdoor graduation party. The court also found that Mr. Yahemech frequently yelled, swore at, and threatened the plaintiffs over several months. The court awarded one plaintiff \$2,000 and the other \$3,500 for the nuisance.
24. I find there is an obvious similarity between this dispute and those cases. I recognize that the respondents' behaviour did not include more direct interferences with land as was the case in *Pellegrin* (yard debris) and *Aschenbrenner* (dead fish odour). I also find that a reasonable person likely would have tolerated the respondents' behaviour if it only occurred once or twice in the heat of a disagreement. However, I find that a reasonable person would consider the respondents' persistent insults and lewd gestures over many weeks to substantially interfere with their use and enjoyment of their home. I further find that even if Ms. Stefanishion lied about the events of June 28 and 29, 2021, the respondents' behaviour was clearly unreasonable, given their admitted intention to cause harm.
25. I turn then to the assessment of Ms. Stefanishion's damages. Ms. Stefanishion provided a letter dated July 27, 2021, from a social worker. According to the social worker, Ms. Stefanishion went to an urgent care center with severe anxiety and was treated by the social worker and a physician. The social worker said that Ms. Stefanishion's primary stressor was a "recent altercation with a neighbour".

26. Ms. Stefanishion also provided an expert report from a psychologist, Dr. Jessica Driscoll. I accept this evidence as expert evidence under the CRT's rules. However, most of Dr. Driscoll's letter describes the potential impact of "bullying" on a person's mental and physical health, without commenting specifically on its impact on Ms. Stefanishion. However, Dr. Driscoll does indicate that Ms. Stefanishion experienced a worsening of pre-existing mental health conditions.
27. I accept that the nuisance caused Ms. Stefanishion significant anxiety for about 2 months. I find that this was a relatively short period of time. Based on the awards in the above cases and the medical evidence before me, I find that \$500 is appropriate compensation for the nuisance. Given that Brad and Donna Lee both participated in the name-calling, I find that they are jointly and severally liable for these damages.

The Respondents' Nuisance Claim

28. I turn then to the respondents' claims, which are mostly based on an allegation that Ms. Stefanishion "badgered" other neighbours to support her account of what happened on June 28 and 29, 2021. They say that she was spreading "malicious lies", which made it difficult for the respondents to socially integrate into the community. They also say that when they went past her home, she sometimes called them losers or made lewd gestures (presumably in response to their insults).
29. It is undisputed that none of these alleged incidents occurred on the respondents' property, although the respondents say that her conduct led them to feel "trapped in their home". The law of nuisance protects a person's use and enjoyment of their own land. In that way, the law recognizes that people have a heightened expectation of peace and quiet at home as opposed to out in public. I find that there is not a sufficient connection between Ms. Stefanishion's alleged conduct and the respondents' use and enjoyment of their property to ground a nuisance claim.
30. I also acknowledge that in some respects, the respondents' allegations about swearing and insults mirror Ms. Stefanishion's. However, in *Aschenbrenner*, the plaintiffs admitted to occasionally "answering the swearing with swearing of their

own”, which the court found reasonable given that Mr. Yahemech was the instigator. To the extent that Ms. Stefanishion’s conduct was a response to being sworn at and insulted while on her own property, I find that the same reasoning applies here. I dismiss the respondents’ nuisance claim.

31. The respondents did not mention the legal doctrine of defamation. When a person says something negative about another person to a third party, and it impacts the person’s reputation or standing in the community, it is defamation. Arguably, the respondents’ allegations about Ms. Stefanishion’s comments to neighbours could give rise to a defamation claim. However, section 119 of the CRTA says that the CRT does not have jurisdiction (or legal authority) over defamation claims. So, if the respondents had argued defamation, I would have refused to resolve the claim under section 10 of the CRTA, which says that the CRT must refuse to resolve claims that are not in its jurisdiction. I make no comment on the potential strength of the respondents’ defamation claim.

Ms. Stefanishion’s Harassment Claim

32. Ms. Stefanishion also argues that the respondents’ behaviour was “harassment”. As the respondents point out, there is no tort of harassment in Canada: see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, at paragraph 61. However, I considered whether the tort of intentional infliction of mental distress applied to either party’s allegations. To succeed in proving intentional infliction of mental distress, a person must prove 3 things:

- a. That the respondent engaged in flagrant or outrageous conduct,
- b. That the respondent’s conduct was calculated to produce harm, and
- c. That the applicant suffered a “visible and provable” mental injury.

See *Mission Group Homes Ltd. v. Braam*, 2017 BCSC 1281, at paragraph 9.

33. In *Eks v. Tadeu*, 2019 ONSC 3745, the Ontario Superior Court of Justice considered what counted as “flagrant and outrageous” conduct in a dispute between neighbours. The court found that whether conduct is flagrant or outrageous is assessed from the standpoint of a reasonable bystander, aware of all the facts.
34. The court found that behaviour is flagrant or outrageous if it is “conspicuously offensive”, “shockingly bad or excessive”, “very bold and unusual”, or “going beyond all standards of what is right and decent”. In contrast, behaviour that the court considered “unwise and misguided” or “ill-advised, disproportionate and even anti-social” was not bad enough to meet the standard of flagrant or outrageous.
35. I have no doubt that the parties in this dispute view the other side’s behaviour as being flagrant and outrageous as the court defined these terms. However, from the perspective of a reasonable bystander, I find that none of the alleged behaviour meets this high bar. I find that a reasonable person would consider the exchange of insults to be rude, insensitive, obnoxious, or mean-spirited, but not shocking or excessive. I do not find either party liable for intentional infliction of mental distress.
36. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Stefanishion is entitled to pre-judgment interest on the damages award from July 1, 2021, a date I consider reasonable, to the date of this decision. This equals \$4.46.
37. 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. The applicant was partially successful, so I find she is entitled to reimbursement of half of her \$175 in CRT fees, which is \$87.50. She did not claim any dispute-related expenses. I dismiss the respondents’ claim for reimbursement of their CRT fees and dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order the respondents to pay Ms. Stefanishion a total of \$591.96, broken down as follows:

- a. \$500 in nuisance,
- b. \$4.46 in pre-judgment interest under the COIA, and
- c. \$87.50 in CRT fees.

39. Ms. Stefanishion is entitled to post-judgment interest, as applicable.

40. I dismiss the respondents' counterclaims.

41. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member