



Civil Resolution Tribunal

Date Issued: October 17, 2022

File: SC-2022-001131

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thompson v. T.M.*, 2022 BCCRT 1131

BETWEEN:

MARGE THOMPSON also known as MARJORIE THOMPSON

APPLICANT

AND:

T.M.

RESPONDENT

AND:

MARGE THOMPSON also known as MARJORIE THOMPSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about parenting coordinator fees. The applicant and respondent by counterclaim, Marge Thompson also known as Marjorie Thompson, says that the respondent and applicant by counterclaim, T.M., owes her \$5,002.19 plus contractual interest for unpaid parenting coordinator fees. The applicant has reduced her claim to \$5,000, the Civil Resolution Tribunal (CRT) small claims monetary limit.
2. The respondent says the applicant has billed her for work she did not ask for and denies that she owes the applicant anything. In her counterclaim, the respondent says the applicant was an ineffective parenting coordinator and says she is entitled to a refund of the \$6,500 she paid to the applicant. The respondent also limits her claim to \$5,000 to stay within the CRT's small claims monetary jurisdiction.
3. While the parties did not request it, in the published version of this decision I have anonymized the respondent's name to protect the identity of her minor child.

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. Some of the evidence in this dispute amounts to a "she said, she 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.

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 Issues

Applicant's name

8. In the claim, the applicant named herself as "Marge Thompson". In the counterclaim, the respondent by counterclaim is named "Marjorie Thompson". It is clear from the evidence that they refer to the same person. Under section 61 of the CRTA and the CRT's rules, I amend the name in both the claim and counterclaim to "Marge Thompson also known as Marjorie Thompson". I have also amended the style of cause accordingly.

Respondent's allegations of bias and unfairness

9. In response to the applicant's claim and in her own counterclaim, the respondent alleges the parenting coordination determinations made by the applicant were biased and unfair. The respondent also says that the applicant lacked the jurisdiction (legal authority) to make one of her determinations, specifically Determination #6, and did not provide the respondent with procedural fairness in making the determination.

10. The applicant issued Determination #6 on December 17, 2021, a few days before withdrawing as parenting coordinator. In the determination, the applicant addressed various outstanding and ongoing issues between the respondent and her former spouse, AK, as well as the applicant's withdrawal as parenting coordinator. AK is not a party to this CRT dispute.
11. Section 19 of the *Family Law Act* (FLA) allows a parent to make an application to the court to change or set aside a parenting coordinator's determination if the court finds the parenting coordinator acted outside of their authority or made an error of law or of mixed law and fact. The FLA jurisdiction in this area is not about awarding damages or refunds of money paid to a parenting coordinator.
12. The evidence shows the respondent filed an application with the British Columbia Supreme Court (BCSC) on January 18, 2022 to set aside Determination #6 under FLA section 19. The respondent and AK (together, the parents) are the only named parties in the BCSC application. Based on the respondent's submissions, it appears the application has not been heard by the court.
13. Though not raised by the parties, I have considered whether to refuse to resolve this dispute given the overlap in the respondent's allegations of bias and unfairness in this CRT dispute and in the BCSC application. CRTA section 11(1)(a)(i) says that the CRT may refuse to resolve a claim or dispute if it considers the claim or dispute would be more appropriate for another legally binding process or dispute resolution process.
14. For the reasons that follow, I find I do not need to refuse to resolve this dispute. First, I note that the applicant is not a party to the BCSC application. Based on the evidence before me, the applicant's debt claim for the unpaid parenting coordinator fees and the respondent's refund claim are not part of the BCSC application.
15. Since the BCSC application will not resolve the applicant's debt claim and the respondent's refund claim, refusing to resolve this dispute would leave the parties without a remedy other than to start a new proceeding in court.

16. Further, in her counterclaim in this CRT dispute, the respondent does not seek any declarations about Determination #6 which are within the court's authority under FLA section 19. Though it is possible the court may make different findings of fact than I do here about the respondent's allegations of bias and unfairness, the CRT's findings of fact are not binding on the court.
17. So, despite the overlap of allegations of bias and unfairness in this CRT dispute and the BCSC application, I find the claims in this dispute fall within the CRT's jurisdiction over debt and damages.
18. In the respondent's submissions, she asks the CRT to wait to decide this dispute until the court has heard the respondent's application about Determination #6. The respondent says that if the court sets Determination #6 aside, it would be "pretty clear evidence" of what the applicant has done. The applicant's submissions do not address the respondent's request for the CRT to hold off on deciding this dispute.
19. It is unclear from the evidence and written submissions before me if the respondent's application is currently scheduled for hearing, and if so, when that hearing might be. In her submissions, the respondent says she received a settlement offer from AK on August 2, 2022. It is unclear whether this offer has been accepted or if the application will still go ahead.
20. The CRT's mandate includes providing dispute resolution services in a speedy manner. Given the unknown date for the BCSC application and the CRT's mandate, I find it is not in the interests of justice to effectively pause this CRT dispute indefinitely. So, I decline the respondent's request to wait to decide this dispute. Accordingly, I consider below the respondent's allegations of bias and unfairness with respect to the applicant's claim for unpaid parenting coordinator fees and the respondent's claim for a refund.

ISSUES

21. The issues in this dispute are:

- a. To what extent, if any, does the respondent owe the applicant for the unpaid parenting coordinator fees?
- b. Should the applicant refund any of the \$6,500 already paid by the respondent?

EVIDENCE AND ANALYSIS

22. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). The respondent must prove her counterclaims to the same standard. I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
23. I begin with the undisputed background facts. On January 27, 2021, the parents entered into a parenting agreement. Under the parenting agreement, the parents agreed to retain the applicant as their parenting coordinator under section 15 of the FLA for at least 24 months. The applicant was not a party to the parenting agreement.
24. In early February 2021, the parents then entered into a written parenting coordination agreement (PC agreement) with the applicant. Under the PC agreement, the applicant agreed to assist the parents in the interpretation, implementation, enforcement and management of their arrangements to parent their child. If the parents could not reach an agreement, a parent chose not to participate, or time constraints made it impossible to reach an agreement, the applicant could make determinations about various matters as outlined in the PC agreement.
25. The PC agreement further said that:
 - a. Neither parent could unilaterally terminate the applicant’s appointment, subject to a court order sought by either parent.
 - b. If the applicant had good reason to withdraw, she could do so by giving 30 days’ notice in writing, where possible.
 - c. The applicant’s hourly rate was \$425.

- d. The parents would share the applicant's fees, disbursements and other charges equally subject to the applicant's discretion to reapportion the fees where she found it appropriate to do so.
 - e. Any invoices not paid within 30 days would accrue interest at a rate of 18% per year, calculated from the date of the invoice until it was paid in full.
26. It is undisputed that in accordance with the PC agreement's terms, the parents each paid the applicant a \$1,500 deposit and a \$5,000 retainer. Between February 2021 and April 2021, the applicant billed the respondent \$4,016.28 for the respondent's 50% share of the total billing. This amount was paid with the respondent's \$6,500 combined deposit and retainer. The applicant then issued the following invoices to the respondent:
- a. July 12, 2021 for \$3,425.01,
 - b. August 31, 2021 for \$2,153.18, and
 - c. December 21, 2021 for \$1,907.72.
27. When the July 12, 2021 invoice was issued, \$2,483.72 remained in trust with the applicant from the respondent's initial \$6,500 payment. This \$2,483.72 was applied against the July 12, 2021 invoice, leaving a balance of \$941.29 for that invoice. In total, \$5,002.19 remains outstanding from the unpaid invoices.
28. The respondent does not deny that the applicant did the work the applicant claims for in this dispute. However, as noted above, the respondent says she should not have to pay the applicant because she says she did not ask her to do this work, and because the applicant was allegedly biased and unfair. She also says that the applicant is "intentionally and maliciously" trying to destroy her life, which the respondent says she will not pay her to do.
29. The evidence shows that between March 26, 2021 and December 17, 2021, the applicant issued 6 determinations for the parents. It is undisputed that the respondent was unhappy with most of these determinations and generally dissatisfied with the

applicant's services. Though the respondent had the option to apply to the court to set aside the determinations, she has only applied to set aside Determination #6, as mentioned above.

30. It is also undisputed that the respondent told the applicant multiple times that she would not work with her. On December 21, 2021, the applicant wrote to the parents to provide notice that she intended to withdraw as their parenting coordinator due to the respondent's refusal to work with her and pay the outstanding invoices.

Applicant's claim for the unpaid invoices

31. The respondent says that she should not have to pay the outstanding invoices since it was AK, and not her, who asked for the applicant's assistance. However, I find the PC agreement that the respondent signed makes each parent responsible for half of the applicant's fees, regardless of who requested the applicant's services.
32. The respondent says the applicant should have reapportioned the fees, something the applicant is undisputedly entitled to do under the PC agreement. The applicant says given the respondent's lack of cooperation and unreasonable positions, any reapportionment would have been against the respondent.
33. Further, as the party alleging bias, unfairness, and malicious conduct, I find the respondent has the burden of proving these allegations. The applicant's role as parenting coordinator was to be a neutral third-party, and not as a lawyer or counsellor for either parent. I find the respondent's allegations that the applicant was biased are vague, other than she did not like the outcome of the applicant's determinations. On balance, I find the evidence fails to establish that the applicant was biased in her role as parenting coordinator, including in making the 6 determinations.
34. With respect to the applicant's alleged unfairness, the respondent says that the applicant issued Determination #6 without notice and without the respondent's input. The respondent admits that she refused to work with the applicant which is also clear from the evidence before me. However, clause 7.1 of the PC agreement says that

the applicant can issue a determination if one of the parents refuses to participate in the information gathering and consensus building process. Since the respondent undisputedly repeatedly said that she would not work with the applicant and did not take steps to apply to the court to terminate the applicant's appointment as parenting coordinator, I find the respondent has not proven that the applicant acted unfairly in issuing Determination #6.

35. Lastly, I similarly find the respondent's allegation that the application intentionally and maliciously tried to destroy her life unfounded based on the evidence before me.

36. I find the evidence shows that the respondent is responsible under the PC agreement for the \$5,002.19 in unpaid parenting coordinator fees. So, I order the respondent to pay the applicant \$5,000 for the unpaid invoices.

Respondent's counterclaim

37. As mentioned above, in her counterclaim the respondent seeks a \$5,000 refund from the applicant. She says the applicant was biased, unfair and an ineffective parenting coordinator and alleges the applicant is unfit to practice in this role. I have already found above that the evidence does not establish that the applicant was biased or unfair. I find the respondent's remaining claims are that the applicant was professionally negligent and provided deficient services under the PC agreement.

38. I have considered whether the applicant was negligent, though the respondent does not expressly use that word. In claims of professional negligence, it is generally necessary for the applicant to prove a breach of the applicable standard of care with expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside of an ordinary person's knowledge and experience.

39. As noted, the respondent has the burden to prove her allegations of professional negligence. Though the respondent says the applicant was ineffective, incompetent and unfit to practice as a parenting coordinator, I do not find it obvious that the applicant was negligent based on the evidence before me. Given this, I find that

expert evidence is required to determine whether the applicant breached a parenting coordinator's standard of care. Since there is no expert evidence before me, I find the respondent has not proven what the applicable standard of care is, or that the applicant breached that standard of care and was negligent. So, I dismiss the respondent's counterclaims as unproven and find she is not entitled to any refund.

CRT FEES AND INTEREST

40. As mentioned, under the PC agreement unpaid invoices accrue interest at a rate of 18% per year. However, in her Dispute Notice, the applicant waived her right to contractual interest on the outstanding invoices in order to stay within the CRT's \$5,000 small claims monetary limit. While the *Court Order Interest Act* (COIA) applies to the CRT, it says there is no COIA pre-judgment interest where the parties had an agreement about interest. So, I make no order about pre-judgment interest.
41. 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 the applicant is entitled to reimbursement of \$175 in CRT fees. The applicant did not claim any dispute-related expenses, so I order no reimbursement. Since the respondent was unsuccessful with her counterclaim, I dismiss her claim for paid CRT fees.

ORDERS

42. Within 21 days of the date of this decision, I order the respondent to pay the applicant a total of \$5,175, broken down as follows:
 - a. \$5,000 in debt, and
 - b. \$175 in CRT fees.
43. The applicant is entitled to post-judgment interest under the COIA, as applicable.

44. I dismiss the respondent's counterclaims.

45. 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.

Nav Shukla, Tribunal Member