



# Civil Resolution Tribunal

Date Issued: October 27, 2022

File: SC-2022-002494

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MacIntosh v. Zwicker*, 2022 BCCRT 1179

BETWEEN:

DANIEL IAN MACINTOSH

**APPLICANT**

AND:

PAMELA LYNN ZWICKER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about dog ownership. The applicant, Daniel Ian MacIntosh, and the respondent, Pamela Lynn Zwicker, were in a romantic relationship when they acquired a dog named Mambo. Mr. MacIntosh says Mambo is his dog, and that Ms. Zwicker improperly took Mambo when the parties' relationship ended. Mr. MacIntosh

seeks an order that Mambo, along with her crates, leashes, and toys, be returned to him.

2. Ms. Zwicker says Mambo is solely hers and that she is the dog's primary caretaker. Ms. Zwicker says Mr. MacIntosh is not entitled to Mambo's return.
3. Each party is self-represented.

## **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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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 I am properly able to assess and weigh the documentary evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is an issue. Further, 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 that 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.

## **ISSUE**

8. The issue in this dispute is which party owns and is entitled to possession of Mambo and her crates, leashes, and toys.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Mr. MacIntosh must prove his claim on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The parties were in a romantic relationship from approximately January 2021 to February 2022. They lived together from August 2021 to mid-March 2022. Given the short tenure of the relationship, the parties do not meet the definition of “spouses” under the *Family Law Act*. Before they moved in together, Ms. Zwicker already owned a dog named Harley. In early January 2022, Mambo, a miniature Australian Shepherd, came to live with the parties. It is undisputed Mr. MacIntosh paid for Mambo, though Ms. Zwicker says that payment was made from “family funds”. More on this below. Mr. MacIntosh is the only signatory to Mambo’s purchase contract.
11. It is undisputed that after Mr. MacIntosh ended the relationship on February 23, 2022, the parties continued to live together briefly. Ms. Zwicker moved out without notice on March 16, 2022, taking both Harley and Mambo with her. In a letter left for Mr. MacIntosh that day, Ms. Zwicker said Mambo was “our dog”, but that Mambo was “very attached” to Harley. Ms. Zwicker asked Mr. MacIntosh not to contact her for one month. However, 9 days later, Mr. MacIntosh texted Ms. Zwicker about getting Mambo back. To date, Ms. Zwicker has refused to return Mambo, and has maintained possession of her since moving out of Mr. MacIntosh’s home.

12. At law, pets are considered personal property. This can become complicated when personal relationships break down because people do not want their pets treated like other personal property that can be divided or sold to share the proceeds (see: *Delloch v. Piche*, 2019 BCPC 369). I acknowledge it can be difficult to determine who has the greater claim to a pet's ownership and possession.
13. In a recent non-binding but persuasive CRT decision, *Babicz v. Swynarchuck*, 2022 BCCRT 1030, the tribunal member set out the two approaches to pet ownership disputes: the narrow approach which considers only who purchased the pet, and the contextual approach, which considers various factors set out 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.
14. Here, given the parties submissions, I find a contextual approach is appropriate.
15. As noted, there is no dispute that Mr. MacIntosh purchased Mambo. Ms. Zwicker says this was done with "family funds" as she was unemployed and Mr. MacIntosh generally paid for everything. However, I note the submissions and evidence indicate

Ms. Zwicker was not completely financially reliant on Mr. MacIntosh, but also worked occasionally and says she contributed to shared household expenses. There is no indication she contributed to Mambo's purchase. So, I find it was Mr. MacIntosh alone who purchased Mambo.

16. Although Mambo's veterinary records list Ms. Zwicker as the contact person, it is undisputed Mr. MacIntosh paid for all veterinary bills before the couple split.
17. Additionally, I put no weight on Ms. Zwicker's argument that the American Stock Dog Registry certificate identifies her as Mambo's owner. This certificate was applied for after the party's break-up, when she had sole possession of Mambo against Mr. MacIntosh's wishes.
18. The parties essentially agree that Mr. MacIntosh paid for the majority of Mambo's expenses, food, and toys, though I acknowledge Ms. Zwicker submitted bank records showing various small purchases at pet stores. I am unable to determine whether these purchases were for Mambo, or for her other dog, Harley. In any event, it is relatively undisputed both parties contributed to Mambo's care.
19. Mr. MacIntosh says Mambo is his, though Ms. Zwicker helped him source the puppy. In contrast, Ms. Zwicker says Mambo is solely hers. However, I find the evidence shows Ms. Zwicker did not consider Mambo solely hers, as text messages in evidence and her move-out letter both refer to Mambo as a joint dog. In any event, Ms. Zwicker says within 48 hours of getting Mambo from the breeder on January 7, 2022, Mr. MacIntosh left for an 18-day trip. She says, therefore, Mr. MacIntosh "relinquished ownership" of Mambo. I disagree. The evidence shows the trip was planned before the parties took possession of Mambo. Although the timing was unfortunate, I do not find it meant Mr. MacIntosh was giving up his right to Mambo.
20. Additionally, upon Mr. MacIntosh's return from his pre-scheduled trip on January 25, 2022, he was fully involved in the care and training of Mambo, which is inconsistent with Ms. Zwicker's assertion that he relinquished ownership.

21. 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). Ms. Zwicker argues that Mr. MacIntosh's employment takes him away from home for long periods of time and so Mr. MacIntosh is unable to properly care for Mambo. I find the evidence does not support this assertion. I find both parties love and can adequately care for the dog.
22. Based on my weighing of the factors noted above, I find Mr. MacIntosh has a stronger ownership claim over Mambo than Ms. Zwicker. I order Ms. Zwicker to return Mambo to Mr. MacIntosh on the terms set out in my order below.
23. As for the "crates, leashes, and toys", Mr. MacIntosh did not specify what, or how many, items Ms. Zwicker took, or their value. But, Ms. Zwicker does not deny she took them. So, I also find Ms. Zwicker must return Mambo's crates, leashes, and toys that she took from Mr. MacIntosh's home when she took Mambo.
24. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. MacIntosh was successful, I find Ms. Zwicker must reimburse him \$125 in tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

25. Within 21 days of the date of this decision, I order Ms. Zwicker to pay Mr. MacIntosh a total of \$125 as reimbursement of tribunal fees.
26. Within 21 days of the date of this decision, I order Ms. Zwicker to return the dog Mambo, along with her crates, leashes, and toys, to Mr. MacIntosh, at Mr. MacIntosh's home or at a mutually agreed upon place and time, with at least 5 days' written notice, at Ms. Zwicker's expense.
27. Mr. MacIntosh is entitled to post-judgment interest, as applicable.

28. 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.

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Andrea Ritchie, Vice Chair