



Civil Resolution Tribunal

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File: SC-2022-003024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Halsey v. Tilley*, 2022 BCCRT 1325

B E T W E E N :

MARGARET HALSEY

APPLICANT

A N D :

LICHEN TILLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about who owns a dog named Sophie. Margaret Halsey says that she adopted Sophie from Lichen Tilley, who operates a dog rescue service. Ms. Halsey says that Ms. Tilley agreed to look after Sophie while Ms. Halsey was on a short trip, but then refused to give Sophie back. Ms. Halsey wants an order for Sophie's return. She is self-represented.

2. Ms. Tilley says that Sophie is her dog. Ms. Tilley says that she agreed to let Ms. Halsey foster Sophie temporarily and ultimately decided not to adopt Sophie out to Ms. Halsey. She is represented by a lawyer, Nathan Rayan.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 of 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 *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.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether the parties agreed to a contract for Ms. Halsey to adopt Sophie from Ms. Tilley.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Ms. Halsey as the applicant must prove her case on a balance of probabilities, which means “more likely than not”. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.
9. I note at the outset that some of the documents in evidence refer to Ms. Tilley’s dog rescue service as the “Dogwood Rescue Society”. Two forms in evidence refer to it as a “BC registered non-profit society”. Despite this, Ms. Tilley says that Dogwood Rescue Society is not a registered society, and there is no separate legal entity for her rescue operation. For the purposes of this decision, I find that she operates her dog rescue operation as a sole proprietorship.
10. I will first set out the applicable law. Despite the unique position pets occupy in people’s lives, the law generally considers them to be personal property. However, the parties correctly point out that the law has evolved somewhat to allow a more contextual approach to pet ownership. For the most part, this contextual approach applies when personal relationships break down, so I find that it has limited application in this dispute. However, the law allows me to consider whether there are any animal welfare concerns when deciding who has a better ownership claim over a pet. See, for example, *Babicz v. Swynarchuk*, 2022 BCCRT 1030. Here, the parties each believe that they are better suited to care for Sophie, but neither alleges any animal welfare concerns like mistreatment or neglect. I therefore find that the sole question before me is whether the parties agreed that Ms. Halsey would adopt Sophie.

11. There is no written contract between the parties. Ms. Halsey alleges a verbal adoption contract. Verbal contracts are enforceable just like written contracts, but it is often harder to prove that a verbal contract exists, and if it does, what its terms are. For a contract to exist, there must be a “meeting of the minds”. In other words, the parties must agree to all the essential terms of a contract. There also must be an outward expression of their agreement, regardless of whether that expression is communicated in writing, verbally, by the parties’ conduct, or some combination of these. See *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303, at paragraphs 322 to 325.
12. It is particularly important in this dispute to note that the parties’ subjective intentions or beliefs about what they agreed to are not relevant. The existence of a contract is determined by asking whether an objective bystander, knowing the material facts, would understand that the parties had entered into a contract based on their correspondence and conduct. See *Crosse Estate (Re)*, 2012 BCSC 26, at paragraphs 27 to 33. With that in mind, I turn to the facts.
13. Ms. Tilley acquired Sophie in January 2022 after Sophie’s former family surrendered her to Ms. Tilley. Sophie was 9.5 years old. It is undisputed that at that point, Ms. Tilley became Sophie’s legal owner.
14. Ms. Halsey filled out Ms. Tilley’s application form to adopt or foster a dog on January 22, 2022. She said that her preferred arrangement was to “foster to adopt”. She also said she would consider just fostering or going straight to adoption. She met Sophie around the same time.
15. Ms. Tilley says that the parties spoke on the phone on February 26, 2022, about Ms. Halsey fostering Sophie. She says that she decided to wait until Ms. Halsey was done fostering another dog before sending Sophie. She says that she agreed to consider Ms. Halsey’s suitability for a permanent adoption during the foster period. She says that she was concerned about Ms. Halsey’s relatively small urban yard (Ms. Tilley lives on an acreage). Ms. Halsey denies that Ms. Tilley ever

mentioned fostering Sophie, although she does not specifically mention this alleged February 26 conversation.

16. Sophie stayed with Ms. Tilley until March 2, 2022, when Ms. Halsey picked her up. Ms. Halsey says that Ms. Tilley promised to send a formal adoption agreement and tell Ms. Halsey the adoption fee. Ms. Halsey says that the parties verbally agreed to an adoption. Ms. Tilley denies this. She says that she was again clear that it was a foster arrangement. Ms. Halsey provided a statement from a friend who went with her to pick up Sophie. The friend does not recall the parties discussing adoption. The friend also said that she “believes” Ms. Halsey asked for an adoption agreement. I find that this statement does not assist Ms. Halsey, because her friend does not say that the parties agreed to an adoption.
17. I find that the parties’ accounts of these conversations are equally plausible. In other words, there is no objective evidence to support either parties’ account of what they said. I find it unproven that the parties entered into an explicit verbal contract about Sophie, either as an adoption or a foster.
18. Sophie lived with Ms. Halsey from March 2 until April 9, 2022, when she brought Sophie back to Ms. Tilley’s house. It is undisputed that the parties both initially understood that Ms. Tilley would look after Sophie while Ms. Halsey travelled, and that Sophie would go back to Ms. Halsey on April 22, 2022. However, on the morning of April 22, Ms. Tilley told Ms. Halsey that she was keeping Sophie. Ms. Tilley says that while Sophie was back in her care, she reconsidered whether it was in Sophie’s best interest to go back to Ms. Halsey’s house. Ms. Tilley says that because she had only agreed to a fostering arrangement, Sophie remained her property and she had every right to keep Sophie. Sophie has been with Ms. Tilley ever since.
19. The parties’ submissions focus on whether the parties’ conduct is more consistent with a foster or adoption. I pause to note that Ms. Halsey also argues, somewhat contradictorily, that the terms “foster” and “adoption” may sometimes be used interchangeably. I disagree with this submission. I find that the parties both

understood adoption (a transfer of ownership) and fostering (a temporary transfer of possession, but not ownership) to be distinct arrangements. I find that a “foster-to-adopt” arrangement is one that starts as a foster with the potential of a future adoption. With that, I turn to Ms. Halsey’s arguments about the existence of an adoption contract.

20. First, Ms. Halsey argues that the lack of a signed contract is more consistent with an adoption than a foster because fostering is typically more “formal”, with a robust vetting process and a firm end date. In contrast, Ms. Tilley says fosters are less formal because they are temporary. Ms. Tilley provided the 2 written contracts she typically uses, one for adoptions and the other for fosters and foster-to-adoptions. I find these contracts suggest that the arrangements are equally “formal”. I find that the lack of formality does not support Ms. Halsey’s position.
21. In fact, I find that the parties’ correspondence about signing a contract shows that they were not on the same page about the nature of Sophie’s move to Ms. Halsey’s house. On March 5, 2022, Ms. Tilley emailed Ms. Halsey that she would give her the “foster/adopt contract” shortly. In an April 20, 2022 email, Ms. Tilley asked if Ms. Halsey had received the “foster/adopt contract” as she had been having problems with her email. I find that this shows Ms. Tilley intended to provide the contract for foster-to-adoption arrangements, which is consistent with what Ms. Halsey had originally proposed. Ms. Halsey responded that she had never received “the adoption contract” and asked about the adoption fee. I find that this shows that Ms. Halsey wanted to adopt Sophie. Significantly, the parties apparently did not notice that they were not talking about the same thing, and Ms. Tilley never provided a contract or responded about an adoption fee, presumably because she decided against the adoption shortly afterwards.
22. Second, Ms. Halsey relies on a January 24, 2022 letter that she wrote Ms. Tilley. That letter does not explicitly mention adoption or fostering, but I agree with Ms. Halsey that it clearly indicates that Ms. Halsey wanted Sophie permanently. However, this is also consistent with a foster-to-adopt arrangement, which may

become permanent. So, I find that this letter does not help prove that Ms. Tilley intended to adopt Sophie to Ms. Halsey.

23. Third, Ms. Halsey says that Ms. Tilley never asked for updates about Sophie. She says that rescue organizations typically want frequent updates about the dog's temperament, behaviour, and health. Ms. Halsey's submission is consistent with Ms. Tilley's foster contract, which requires regular updates. However, as Ms. Halsey points out, Sophie had lived with Ms. Tilley for several weeks before moving to Ms. Halsey's home, so I find that Ms. Tilley already knew Sophie. Also, Ms. Halsey provided several emailed updates about Sophie without Ms. Tilley asking for them. In any event, I find that Ms. Tilley's only hesitation with Ms. Halsey providing a permanent home was whether Sophie would be happy in an urban area, which is not something that would require updates.
24. Fourth, Ms. Halsey relies on the fact that Ms. Tilley never reimbursed her for food and other supplies and never offered to do so. She says that rescue organizations, not foster volunteers, typically pay for food. However, Ms. Tilley points out that when she left Sophie with Ms. Halsey, she provided food and other supplies. She says she only does this with fosters. Although as mentioned Ms. Tilley never sent her foster contract to Ms. Halsey, I note that it says that Ms. Tilley "generally" supplies food "when required". This suggests that Ms. Tilley does not always provide food for fosters. Also, there is no evidence that Ms. Halsey ran out of food.
25. Along similar lines, Ms. Halsey says that when the parties discussed a possible vet checkup, Ms. Tilley did not offer to pay for it. However, the parties were discussing a free checkup, so I find it would have made no sense for Ms. Tilley to offer to pay. More importantly, Ms. Tilley said that she would have to make the appointment, not Ms. Halsey. I find that this is consistent with Ms. Tilley believing that she still owned Sophie.
26. Fifth, Ms. Halsey relies on the timeline as evidence that the parties both intended for it to be an adoption. She says that pets are typically fostered when they are recently rescued and need to be assessed for suitability for adoption. She also says that

fosters are only used when a pet needs a temporary home. She argues that because Sophie lived with Ms. Tilley for around 6 weeks before Ms. Halsey picked her up, Ms. Tilley had already assessed her. She also says that Sophie did not need a temporary home because she was living with Ms. Tilley and was moving in with Ms. Halsey, who wanted to adopt her. Ms. Tilley says that the delay was because she was waiting for Ms. Halsey to finish fostering another dog before taking Sophie.

27. Ms. Halsey's arguments about "typical" foster arrangements are based on her previous experiencing fostering dogs, mostly with other rescue organizations. I find that these typical arrangements do not necessarily prove that Ms. Tilley intended to adopt Sophie. Ms. Tilley's explanation she uses a foster-to-adopt arrangement when she wants to assess a specific potential adopter for a particular dog is plausible, as is her explanation for the delay in starting the foster. In other words, I find that the timing does not establish that Ms. Tilley intended to adopt Sophie to Ms. Halsey.
28. Finally, Ms. Halsey argues that she "never would have agreed" to an arrangement where Ms. Tilley could take Sophie back "at her whim". I accept that this is true. I find that Ms. Halsey honestly believed she had adopted Sophie. I accept that she became attached to Sophie expecting her to stay permanently. However, I find that the evidence also establishes that Ms. Tilley honestly believed that she had sent Sophie to Ms. Halsey's as a foster. I find that her comment about making the vet appointment and repeated reference to the "foster/adopt" contract show that she continued to consider Sophie her property.
29. Viewed objectively, I find that the parties' correspondence and conduct do not show a "meeting of the minds" about adopting Sophie. I find that there was no contract transferring ownership of Sophie from Ms. Tilley to Ms. Halsey, so Sophie remains Ms. Tilley's property.
30. Assuming there was a foster-to-adopt contract, Ms. Halsey's submissions raise the issue of whether Ms. Tilley was entitled to keep Sophie unilaterally. In the absence

of an explicit agreement otherwise, I find that Ms. Tilley's continued ownership of Sophie meant that she alone was entitled to decide where Sophie lived, as long as she did so in good faith. This is because all contracts include a duty to exercise contractual obligations in good faith. See *Bhasin v. Hrynew*, 2014 SCC 71. Ms. Tilley acknowledges that she should have told Ms. Halsey sooner about her decision to keep Sophie. Ms. Tilley explains that she procrastinated because was nervous about having a conversation she knew would be difficult. This is understandable, although I agree that the last-minute timing was unfortunate. Still, I find no evidence that Ms. Tilley decided to keep Sophie for any reason other than her own assessment of what was in Sophie's best interests. While Ms. Halsey may disagree with that assessment, I find that Ms. Tilley acted in good faith.

31. I therefore find that Ms. Halsey is not entitled to an order for Sophie's return. I dismiss her claim.
32. 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 unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses. The respondent did not claim any dispute-related expenses or pay any CRT fees.

ORDER

33. I dismiss Ms. Halsey's claims, and this dispute.

Eric Regehr, Tribunal Member