



# Civil Resolution Tribunal

Date Issued: January 26, 2023

File: SC-2022-003948

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *JH (Litigation Guardian of) v. KT*, 2023 BCCRT 68

BETWEEN:

DL as Litigation Guardian of JH, Minor

**APPLICANT**

AND:

KT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about car ownership. The applicant, DL as Litigation Guardian of JH, Minor, says JH purchased a 2005 Mustang car using a \$4,300 loan from his mother, DL. JH says his former girlfriend, the respondent KT, possesses the car and refuses to return it to him. JH requests an order for the car's return, or alternatively \$4,300 for its value. KT says DL owned the car and then gifted it to KT, so she owes JH nothing.

2. The parties are each self-represented.
3. In the published version of this decision, I have anonymized the parties' names to protect the identity of the minor, JH, given that DL is his mother and KT is his ex-girlfriend.
4. For the following reasons, I dismiss the applicant's claim for lack of standing, meaning I find the applicant lacks the required authority to file this dispute.

## **JURISDICTION AND PROCEDURE**

5. These are the formal 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. Although the parties' submissions each call into question the credibility of the other party to some extent, the credibility of interested witnesses cannot be determined solely by whose demeanour appears most truthful in a courtroom or tribunal proceeding. Determining the most likely account includes assessing its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Here, I find I can properly assess and weigh the written evidence and submissions before me. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find that an oral hearing is not necessary in the interests of justice.

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. 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.
9. JH submitted a social media post about a car purchase after the evidence deadline. I find that late evidence is relevant, and KT commented on it but did not object to it. I allow the late evidence because it is fair to do so. I have considered its weight in coming to my decision below.
10. As noted, JH requests CRT dispute resolution through his litigation guardian, DL. I find DL is named as litigation guardian solely because JH is a minor, which is undisputed. DL is not personally named as an applicant in this dispute. CRTA section 4(1) says that a person “who has a claim” may request that the CRT resolve the claim. Here, I found it necessary to address below whether JH is a person “who has a claim” about the car. This determines whether he has standing to bring this CRT dispute. I find both parties addressed in their submissions who owned and possessed the car at various times. So, I find it was not necessary to request further party comments on standing, as I find there is sufficient information before me to make an informed decision on that that topic in a procedurally fair manner.

## **ISSUES**

11. The issues in this dispute are:
  - a. Does JH have an ownership interest in the car that gives him standing to bring this dispute?
  - b. If so, must KT return the car to JH or pay him \$4,300 for the car’s value?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant must prove the claim on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.

### ***Does JH have standing to bring this dispute?***

13. JH and KT lived together in JH’s parents’ home from late December 2020 until May 2022, when KT moved out because the relationship with JH ended. The car at issue was purchased used from a private seller in 2021. JH did not have a driver’s licence, but KT often drove the car. None of this is disputed.

14. However, the car’s ownership is disputed. I find JH knew, or reasonably ought to have known, that to successfully claim the car’s return or its value in this CRT dispute he would have to prove his alleged ownership interest in the car. I consider that below.

15. In a handwritten note on a bank statement, DL said she loaned JH \$4,300 to purchase the car, and that as of November 3, 2022 he still owed her \$2,670. It is undisputed that JH has not yet paid DL the full \$4,300 for the car. However, Transfer/Tax documents in evidence show that the car’s ownership registration was transferred from the seller to DL in 2021, from DL to KT in 2022, and never to JH.

16. JH says he purchased the car, but DL registered its ownership in her name because JH did not have a driver’s licence. KT says JH only paid DL \$100-200 toward the car, but KT does not further explain why she thinks JH’s payments to DL were for loan repayments, rather than for purchasing the car from DL. I address below whether the evidence shows DL loaned JH money to purchase the car and then registered it in her name, or whether DL purchased the car and then agreed to resell it to JH. This relates to whether JH owned the car and was entitled to possess it.

17. First, although KT refers to JH’s payments to DL as “loan” payments, she argues that DL owned the car and later transferred ownership to KT. KT also says JH did not own

the car, and she is not responsible for any car payments JH made to DL. So, I find KT does not clearly admit that DL directly loaned money to JH.

18. I find none of the bank records or other evidence before me show that DL transferred \$4,300 to JH. Text messages show that JH communicated with the car's seller about the purchase, but do not show that JH arranged to purchase the car himself. There are no bank records, cheque copies, receipts, or other evidence before me showing that JH paid the seller for the car. A Transfer/Tax form date stamped May 2, 2021 shows that the seller sold the vehicle to DL for \$4,300, and not to JH. Given the above, I find the evidence does not show that JH purchased the car from the seller, with loaned money or otherwise, or that the seller transferred its ownership registration to JH.
19. Second, as noted JH says the car's ownership was registered to DL because he did not have a driver's licence. However, nothing before me shows that a person must have a driver's licence to be registered as a car owner. Further, the Transfer/Tax form for DL's purchase contains a pre-preprinted declaration above DL's signature, which says the purchaser was either at least 18 years old or had obtained their parents' consent to apply to transfer the car's registered ownership. I find this indicates that a minor, like JH was on the purchase date, could be registered as a vehicle's owner with parental consent. JH does not explain why DL did not simply consent to JH registering himself as the car's owner on the Transfer/Tax form, if she had loaned him money to purchase it as he alleges.
20. What does DL say? I find all of JH's submissions are written in JH's voice, so I infer he wrote them. I find none of the written arguments are DL's evidence, and DL would reasonably expect to provide her evidence in her own words. However, apart from the note on the bank statement, DL did not provide a separate witness statement, although I find she would have had an opportunity to do so as JH's litigation guardian. So, DL does not explain whether JH actually purchased the car from the seller and owned it, contrary to the Transfer/Tax form in evidence.

21. Third, I find bank statements in evidence show that JH transferred money to DL multiple times after the car's purchase date. JH says those payments were for the alleged car loan. I find JH likely made those payments toward a purchase of the car, as there is no evidence to the contrary. However, although JH characterizes those payments as loan repayments, I find the evidence does not support that conclusion because I find there was no proven loan from DL to JH. Rather, I find the evidence, including Transfer/Tax documents and bank records, supports a finding that JH made those payments towards purchasing the car from its registered owner, DL.
22. Having weighed all of the evidence, I find it does not show that DL loaned JH money to purchase the car from the seller, or that JH purchased the car and DL agreed to register herself as the owner in place of JH. Rather, I find the evidence is consistent with DL purchasing the car from the seller, later agreeing to resell the car to JH for the same \$4,300 price, and then transferring the car's registered ownership to KT before the sale to JH was complete (more on that below). On the submitted evidence, I find KT was not a party to the resale agreement between JH and DL.
23. Given the payment evidence and JH's submissions, I find DL allowed JH to make payments on the car's \$4,300 price over time. I consider below whether JH's partial payment of that price gave him any beneficial interest in the car, meaning any ultimate ownership rights despite not having legal title to the car.
24. DL undisputedly permitted JH and KT to use the car before JH paid the full purchase price to DL, although as noted JH did not have a driver's licence. KT undisputedly paid DL for insuring the car during DL's ownership. As noted, DL did not transfer the car's ownership registration to JH, although I find the evidence shows she could have. DL provided no explanation for why she did not transfer registered ownership to JH. In the circumstances, I find the most likely explanation is that DL and JH agreed DL would retain registered ownership until JH paid her the full purchase price.
25. So, if JH was making car payments to DL, why did DL transfer its registered ownership to KT, as shown on a submitted Transfer/Tax form dated stamped March 29, 2022? The parties agree that KT did not pay anything for the car, despite the

\$1,000 purchase price shown on the form. JH says DL transferred the car because she did not want to be responsible for it while others were driving it. KT confirms that DL did not want her insurance premiums to rise because of accidents, and also says that DL gifted her the car. There is no statement from DL about her reasons for transferring the car's registered ownership to KT. Given the submitted evidence, including that JH was making car payments to DL, I find that DL likely transferred the car's ownership registration to KT temporarily, to avoid incurring higher insurance premiums.

26. However, the evidence before me does not confirm the terms of the temporary transfer from DL to KT. Contrary to JH's assertion, I find the evidence does not show DL and KT agreed KT would transfer the car to JH once he had a driver's licence. The evidence does not show that JH has a driver's licence in any event. However, I find submitted text messages show that after JH and KT broke up, KT agreed to give the car "back" once she purchased her own car, although she later changed her mind.
27. What did KT's agreement to give the car "back" mean? I find text messages show KT did not specifically agree to give the car back to JH rather than DL. Further, DL's partner, DJ, texted KT that he wanted to switch the "insurance" into DJ's name, not JH's. DJ also texted that there was money owing on the car and he wanted it to remain parked at their house. JH texted KT on May 25, 2022 that, "My mom is taking the car... Not me." This all supports a finding that JH did not own the car. It also supports a finding that KT and DL agreed KT would return the car to DL on demand or when a certain event occurred, and not to JH. I find the submitted evidence does not show that DL demanded the car's return from KT, or whether KT is now required to return the car to DL under the temporary registration transfer arrangement with KT. However, for the following reasons, I find nothing turns on that.
28. The difficulty for the applicant is that, as noted, DL is JH's litigation guardian in this CRT dispute, but DL is not personally named as a party. Therefore, DL makes no claim to the car on her own behalf in this dispute, as the car's owner or under a temporary transfer agreement between DL and KT. For the above reasons, I find the

weight of the evidence shows DL, and not JH, owned the car at least until she transferred its ownership registration to KT, and possibly longer under the temporary transfer agreement with KT. I find the evidence does not show that DL agreed to transfer, or was required to transfer, the car's ownership to JH before he paid her the full purchase price, which he undisputedly has not done. So, I find JH has never had an ownership interest in the car, either legal or beneficial, that would entitle him to demand it from KT.

29. For all of the above reasons, I find JH has no standing to bring his claim against KT, either directly or through his litigation guardian DL. This is because I find he does not "have a claim" against KT under CRTA section 4(1), either for a car he never owned, or under his purchase agreement with DL that KT was not a party to. Accordingly, I dismiss the applicant's claim for the car's return or alternatively \$4,300.

### ***CRT Fees and Expenses***

30. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party's CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
31. I dismissed the applicant's claim based on the evidence showing that JH lacked standing to bring it. I find that means the applicant was unsuccessful in this dispute. However, KT paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

### **ORDER**

32. I dismiss the applicant's claim, and this dispute.

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Chad McCarthy, Tribunal Member