



Civil Resolution Tribunal

Date Issued: April 3, 2023

File: SC-2022-005003

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Guzman v. Moran*, 2023 BCCRT 275

BETWEEN:

ARNOLD GUZMAN

APPLICANT

AND:

KELLY MORAN (Doing Business As WAGS K9 TEETH CLEANING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a pet injury.
2. The applicant, Arnold Guzman, says his dog Ecko's leg was injured while in care of the respondent, Kelly Moran (doing business as Wags K9 Teeth Cleaning), for teeth

cleaning. Mr. Guzman claims reimbursement of the \$2,830 he says he paid in veterinarian fees.

3. Miss Moran acknowledges that Ecko had trouble bearing weight on his left leg before she started cleaning his teeth. However, Miss Moran denies any wrongdoing and negligence.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
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. 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 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.

ISSUE

9. The issue in this dispute are:
 - a. Whether Miss Moran or her employee (D) were negligent in their treatment of Ecko,
 - b. If so, is Miss Moran's liability limited by the submitted waivers, and
 - c. If not, what remedy is appropriate, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one the applicant, Mr. Guzman, must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.
11. Mr. Guzman's family member (J) took Ecko to a teeth cleaning appointment with Miss Moran on July 9, 2022. The appointment was inside a third-party dog daycare and grooming business, which is not party to this dispute. Miss Moran's employee D put Ecko in a crate until Miss Moran was free to clean his teeth. Ecko was removed from the crate approximately 30 minutes later by either D or Miss Moran. At that time Ecko was limping and holding his left hind leg in the air. None of this is disputed.
12. Miss Moran telephoned J and described Ecko's left hind leg behaviour. J told Miss Moran to continue with the teeth cleaning procedure. J picked Ecko up from the dog daycare later the same day and Ecko continued to have difficulty weight bearing on his left hind leg. Again, none of this is disputed.
13. Dr. Harneet Saini is a licensed veterinarian. According to their July 11, 2022 medical report, Ecko had a cranial dorsal luxation (dislocation) of his left femoral joint. Based on the report and the x-ray images Mr. Guzman submitted, I find Ecko's left hind leg was dislocated at the hip joint.

14. In their report, Dr. Saini said such injuries are “usually caused by minimum to moderate trauma. Potential cause of trauma cannot be identified.” Dr. Saini recommended surgery.
15. Dr. Saini set out their professional qualifications in their report, and undisputedly examined Ecko and looked at the x-ray images. So, I find Dr. Saini is qualified as an expert under the CRT rules to provide their opinion on the nature and potential cause of Ecko’s leg injury.
16. Ecko undisputedly had surgery on July 12, 2022. This is supported by the animal hospital invoices Mr. Guzman submitted as evidence.

Were Miss Moran or D negligent in their treatment of Ecko?

17. Mr. Guzman says that Ecko was having no difficulty with his left hind leg when J dropped him off at the dog daycare, which Miss Moran does not dispute. Mr. Guzman submitted a video clip of someone at the dog daycare, who identified themselves as “C”, who said she saw Ecko was not limping or favouring his left hind leg when he arrived for the appointment. So, I find Ecko had no difficulty using his left hind leg before he went into the crate but did have trouble with it after he came out of the crate before his teeth cleaning appointment.
18. Relying on Dr. Saini’s report, Mr. Guzman says that Ecko’s leg injury must have been caused by the intentional conduct or negligence of either Miss Moran or D. I disagree for the following reasons.
19. In order to prove negligence, an applicant must show the respondent owed a duty of care, failed to meet the applicable standard of care, that the failure caused the respondent’s loss, and that the loss was reasonably foreseeable (see *Mustapha v. Culligan*, 2008 SCC 27).
20. I find Miss Moran, and her employee D, owed Mr. Guzman a duty to take reasonable care of Ecko. I find the applicable standard is that of a reasonable pet teeth cleaner in the circumstances.

21. Generally, in claims of professional negligence, an applicant must prove a breach of the standard of care through expert opinion evidence (see *Bergen v. Guliker*, 2015 BCCA 283). This is because the standards of a particular industry are often outside an ordinary person's knowledge and experience. There are 2 exceptions to this rule. First, there is no need for expert evidence when the alleged breach relates to something non-technical. Second, there is no need for expert evidence when the breach is so egregious that it is obviously below the standard of care (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).
22. In this particular dispute, I find Mr. Guzman's claim is that Miss Moran or her employee were negligent in how they handled Ecco prior to his teeth cleaning appointment, rather than in how they carried out the actual cleaning process. I find Mr. Guzman's alleged breach relates to something non-technical and so I find expert evidence is not needed to establish the standard of care expected here, or whether that standard was breached.
23. I find that a reasonable person in the respondent's shoes would be expected to take care not to intentionally or negligently cause injury to a pet in their care, such as Ecco. However, I also find that Mr. Guzman has not proven that either Miss Moran or D breached that standard of care.
24. Mr. Guzman says that Dr. Saini's report shows that trauma caused Ecco's leg injury. I disagree. Rather, Dr. Saini said the potential cause of Ecco's leg injury could not be identified. They said the type of injury Ecco suffered (luxation) is usually caused by mild to moderate trauma. However, Dr. Saini did not explain what they categorized as mild or moderate trauma.
25. In the absence of any specific examples or definitions, I find it reasonable to find that something as innocuous as a sharp turn while walking, lying in a certain position, or banging his leg against the inside of the cage could result in a mild trauma to Ecco's hip joint. Given Dr. Saini's opinion that even a mild trauma could have caused Ecco's leg injury, I find the injury could have been caused by something minor, including Ecco's own movements before going into the crate, or while being in the crate. In

other words, the fact that Ecko sustained a leg injury while in Miss Moran or D's care does not itself prove they caused the injury.

26. Other than Dr. Saini's opinion pointing to mild or moderate trauma, Mr. Guzman provided no evidence to show that D or Miss Moran were negligent in how they handled Ecko. I find putting Ecko in a crate to wait for his appointment was reasonable in the circumstances, as it kept him contained and safe. There is no indication that the crate itself was broken, unsuitable, or could have caused a mild to moderate trauma to Ecko's leg joint. I find Mr. Guzman has not proven that either Miss Moran or D did anything wrong or failed to take reasonable care in handling Ecko before his teeth cleaning appointment. So, I find Mr. Guzman's claim of negligence is unproven.

Waiver

27. Given my conclusions above, I find it unnecessary to consider whether Miss Moran's submitted waivers limit her liability to Mr. Guzman. So, I will not address either party's submissions on the waivers.
28. 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. As Mr. Guzman was unsuccessful in his claim, I find he is not entitled to reimbursement of his paid CRT fees or claimed dispute-related expenses. As the successful respondent, Miss Moran did not pay any CRT fees or claim any dispute-related expenses, so I make no order about them.

ORDER

29. I dismiss Mr. Guzman's claims and this dispute.

Sherelle Goodwin, Tribunal Member