



Civil Resolution Tribunal

Date Issued: April 6, 2023

File: SC-2022-005991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kendall v. Lestage*, 2023 BCCRT 291

BETWEEN:

GLENN DAVID KENDALL and KOREENA MADELINE PREVOST

APPLICANTS

AND:

ALANNAH KATHERINE MIKAYLA LESTAGE and JUSTIN SAMUEL
MEYERS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the return of a dog named Denaë.
2. The applicants, Glenn David Kendall and Koreena Madeline Prevost, say the respondents, Alannah Katherine Mikayla Lestage and Justin Samuel Meyers, took

their dog and refuse to give her back. They seek Denae's return, which they value at \$850. The respondents say first, that Denae was initially a gift to Mr. Meyers, so was his dog to take. Second, the respondents say Mr. Kendall abused the dog and so Mrs. Prevost surrendered Denae to the respondents.

3. The applicants are represented by Mr. Kendall. The respondents are each 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, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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.
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.

ISSUES

8. The issue in this dispute is whether the respondents must return the dog to the applicants.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claims 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. Mr. Kendall and Mrs. Prevost are married. Ms. Lestage and Mr. Meyers are two of Mrs. Prevost’s adult children.
11. Mr. Meyers previously lived with the applicants. He says that in 2020, he asked his mother, Mrs. Prevost, to get him a dog. Mr. Meyers says he was told the dog would be solely his responsibility, which he agreed to. Mr. Meyers says in May 2020, Mrs. Prevost adopted Denae for him.
12. Mrs. Prevost does not specifically address Mr. Meyers’ submissions about how the family came to acquire Denae. However, Mr. Kendall says when they got Denae in May 2020, Mr. Kendall told Mr. Meyers “point blank” the dog was Mrs. Prevost’s, but that Mr. Meyers was free to play with her and care for her.
13. In any event, after a physical altercation between Mr. Kendall and Mr. Meyers, Mr. Meyers moved out. He said he was unable to take Denae with him as he could not find a suitable pet-friendly apartment at that time. So, Denae continued to live with the applicants.

14. Text messages in evidence show that Mrs. Prevost advised her children, including Ms. Lestage, that Mr. Kendall had physically abused Denae. In a statement in evidence, one of Mrs. Prevost's other children, AW, said she attended at the applicants' home on March 29, 2022 to house sit. When AW arrived, she noticed Denae was outside alone and had wrapped herself around a tree in the yard. When Mr. Kendall arrived home, AW said she told him what had happened, and Mr. Kendall rushed outside, grabbed Denae by the collar and began screaming at her and punching the dog in the neck and head. AW says she immediately called her mother who told her Ms. Lestage could take the dog.
15. This is consistent with text messages in evidence between Mrs. Prevost and Ms. Lestage. Ms. Lestage wrote that she was taking Mrs. Prevost's dog, and that Mr. Kendall's continued abuse was inexcusable. Mrs. Prevost responded by saying "take her, he'll just keep beating her".
16. It is undisputed that Ms. Lestage came and got the dog, while Mr. Kendall watched. Over the next few days, text messages in evidence show that the respondents were making arrangements for where the dog would live while Mr. Meyers found a pet-friendly apartment. Mr. Meyers' girlfriend, MA, agreed her mother would take the dog temporarily. Text messages in evidence show MA and Mrs. Prevost making arrangements for MA to pick up Denae's things the next day, including her bed, toys, treats, and food.
17. Mrs. Prevost and the respondents continued to message about the dog over the next few days. Mrs. Prevost noted she did not even get to say goodbye, but was happy Denae was safe. However, by April 11, 2022, Mrs. Prevost began asking for the dog back, which the respondents refused as long as she continued to live with Mr. Kendall. Mr. Meyers still has possession of Denae. Notably, although the applicants argue the dog showed "no signs of being abused", they do not deny Mr. Kendall physically struck the dog on multiple occasions. So, given this and Mrs. Prevost's own undisputed text messages about Mr. Kendall beating the dog, I accept that he did.

18. As noted, the applicants seek Denae's return. First, I dismiss Mr. Kendall's claims. There is no indication Denae was ever his dog, nor does he claim she was. In fact, he argues the dog belongs to Mrs. Prevost.
19. So, who is Denae's rightful owner? At law, pets are considered personal property (see: *Henderson v. Henderson*, 2016 SKQB 282 and *Brown v. Larochelle*, 2017 BCPC 115). As noted, Mr. Meyers says the dog was gifted to him. In any event, the respondents say Mrs. Prevost gave them the dog due to Mr. Kendall's undisputed abuse. Under the law of gifts, the respondents must prove that Mrs. Prevost intended to gift or donate Denae to them, they accepted Denae, and there was a sufficient act of delivery (see: *Pecore v. Pecore*, 2017 SCC 17 and *Lundy v. Lundy*, 2010 BCSC 1004). The evidence should also show that the intention of gift was inconsistent with any other intention or purpose (see: *Lundy* at paragraph 20).
20. Here, I find there is insufficient evidence that Mrs. Prevost initially bought the dog as a gift for Mr. Meyers. I find that is inconsistent with the text messages between the parties which generally refer to Denae as Mrs. Prevost's dog. I also note Mrs. Prevost was the person listed on Denae's veterinary bills and license documentation.
21. However, I find that on March 29, 2022, the evidence supports that Mrs. Prevost intended to donate Denae to the respondents, and that they accepted her. This is consistent with Mrs. Prevost's text messages telling Ms. Lestage to take the dog to keep her away from Mr. Kendall's abuse, and with Mrs. Prevost's text messages to MA about picking up Denae's accessories. There is no indication in the text messages that Mrs. Prevost was giving up Denae temporarily. I find it more likely than not that Mrs. Prevost donated or gifted Denae to the respondents to keep her safe. I see no other purpose on the evidence before me.
22. I acknowledge that Mrs. Prevost now wants Denae back. However, once someone makes a gift to another person, that gift cannot be revoked (see: *Bergen v. Bergen*, 2013 BCCA 492). So, I find Mr. Meyers is now Denae's rightful owner and Mrs. Prevost is not entitled to Denae's return.

23. I dismiss the applicants' claims.

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. The respondents were successful but did not pay any tribunal fees or pay any dispute-related expenses.

ORDER

25. The applicants' claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair