



Civil Resolution Tribunal

Date Issued: January 3, 2024

File: SC-2022-010013

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schooley v. Preston*, 2024 BCCRT 3

BETWEEN:

RANDY FREDERICK SCHOOLEY

APPLICANT

AND:

LEANNE ERIN PRESTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about money withdrawn from a joint bank account. Randy Frederick Schooley and Leanne Erin Preston were formerly in a relationship. While they were together, they purchased flights to Europe in March 2020 that were cancelled because of the COVID-19 pandemic. The parties separated in 2021, and Ms. Preston received the cancelled flight credit under the parties' separation agreement. In June

2022, Ms. Preston withdrew \$3,948.56 from Mr. Schooley's bank account, because she mistakenly believed the airline refunded Mr. Schooley the full price of the cancelled flights.

2. In this dispute Mr. Schooley claims repayment of the \$3,948.56 Ms. Preston withdrew from his bank account. Ms. Preston says she does not owe Mr. Schooley anything. She says Mr. Schooley already received a partial refund for the cancelled flights. She also says the travel points she received as partial credit for the cancelled flights are not as valuable as the parties thought when they drafted the settlement agreement, and the settlement agreement is unfair.
3. Both parties are 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.
5. 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.
6. 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.

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.
8. After reading the parties' evidence and submissions, I determined that the \$3,948.56 Mr. Schooley claims in this dispute may be considered family property under section 84 of the *Family Law Act* (FLA). Under the FLA, the BC Supreme Court has exclusive jurisdiction to make orders about the division of family property. I asked the parties to provide submissions about whether the CRT has jurisdiction to decide this dispute. I also asked them to provide the signed separation agreement they referred to in their initial submissions, and any other evidence they have that may be relevant to whether the CRT has jurisdiction over this dispute. The parties made submissions about jurisdiction, which I address below. They did not submit the separation agreement or any additional evidence.

ISSUES

9. The issues in this dispute are:
 - a. Should I refuse to resolve this dispute on the basis that the \$3,948.56 Mr. Schooley claims is family property under the FLA?
 - b. If not, is Mr. Schooley entitled to repayment of \$3,948.56?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Schooley must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
11. The parties generally agree about the facts underlying this dispute. The parties lived together in a marriage-like relationship from May 2016 until their separation in March 2021. They signed a separation agreement in June 2021 to divide their assets. As noted above, the separation agreement is not in evidence.

12. The parties planned to take a European vacation in March 2020, but the COVID-19 pandemic prevented them from traveling. The parties used travel points to purchase the airfare, and they paid for the \$1,382.56 in taxes with a credit card. The parties agree that under the separation agreement, Ms. Preston kept the credit for the cancelled flights, which they valued at \$4,000.
13. In June 2022, Ms. Preston withdrew \$3,948.56 from Mr. Schooley's bank account. The account was technically a joint account in both parties' names at the time, but Mr. Schooley undisputedly took over this account for his sole use after the parties separated in 2021. Since Ms. Preston's name was still on the account in June 2022, the bank allowed her to withdraw the \$3,948.56 at that time.
14. Ms. Preston says she withdrew the money from Mr. Schooley's bank account because the airline the parties purchased the flights from told her it would refund the airfare to the credit card used to purchase the tickets. The airline told her that credit card ended in 2571. Ms. Preston says she assumed this was Mr. Schooley's credit card. She says she learned in August 2022 that the credit card ending in 2571 was actually her bank's travel rewards program's credit card, so it was her bank that received the \$3,948.56 refund, not Mr. Schooley. In an August 2022 email, Ms. Preston promised to repay Mr. Schooley as soon as she received the refund from the bank.
15. Ms. Preston says that despite the bank's promise to refund her the full price of the airfare, in November 2022 it instead refunded Mr. Schooley's credit card (ending in 2306) \$1,382.56 for the taxes, and credited Ms. Preston 130,000 travel points. She says this means Mr. Schooley is only out of pocket \$2,566, not the \$3,948.56 she withdrew from his bank account. Mr. Schooley says he cancelled the 2306 credit card after the parties separated, so he did not receive the \$1,382.56 refund. Based on my findings below, I find nothing turns on whether Mr. Schooley received the refund, so I make no findings about it.
16. Ms. Preston says the non-transferable 130,000 travel points she received as partial credit for the cancelled flights are worth just under \$1,000. She says that since the

parties valued the flight credit at \$4,000, the separation agreement is unfair. She says she does not owe Mr. Schooley anything.

Should I refuse to resolve this dispute?

17. Under section 10(1) of the CRTA, the CRT must refuse to resolve a claim that it considers is not within the CRT's jurisdiction. Under the FLA, orders about the division of family property may only be made by the BC Supreme Court.
18. As noted above, I asked the parties for submissions about whether the CRT has jurisdiction to decide this dispute. Mr. Schooley says this matter should not be handled by the BC Supreme Court. He says his claim is simply that Ms. Preston took money from his bank account without his authorization. He says her reason for doing so has no bearing on this dispute. He says that under the separation agreement the flight credit went to Ms. Preston, and its value is irrelevant.
19. Ms. Preston says she is unsure whether this is a matter for the BC Supreme Court. She says Mr. Schooley's claim is for money she was originally entitled to under their separation agreement, so he is welcome to take this dispute to the BC Supreme Court if he wishes. She says that had she known what a long and difficult process it would be to receive a refund for the airfare, she would have taken money or other assets under the separation agreement instead of the flight credit. Ms. Preston also says Mr. Schooley received significantly more money and assets than her under their separation agreement.
20. At the time Ms. Preston withdrew the money from Mr. Schooley's account, it was undisputedly still a joint account in both parties' names. Although the parties say Mr. Schooley took over this account under the separation agreement, that document is not in evidence. In any event, under section 84 of the FLA, family property includes all personal property owned by at least one spouse on the date of separation. On the evidence before me, I find the flight credit and the bank account from which Ms. Preston withdrew the \$3,948.56 both fall within the definition of family property under

the FLA. So, I find the CRT does not have jurisdiction to resolve this dispute, and I refuse to do so.

21. Since I have refused to resolve Mr. Schooley's claims, I direct CRT staff to refund the \$175 he paid in CRT fees.

ORDER

22. Under section 10(1) of the CRTA, I refuse to resolve Mr. Schooley's claims in this dispute as they are outside the CRT's jurisdiction.

Sarah Orr, Tribunal Member