



Civil Resolution Tribunal

Date Issued: March 19, 2024

File: SC-2023-005389

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carlson v. MacArthur*, 2024 BCCRT 285

BETWEEN:

HAYDEN CARLSON

APPLICANT

AND:

LARISSA MACARTHUR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The dispute is over a dog named Henry. The applicant, Hayden Carlson, says he owns Henry jointly with the respondent, Larissa MacArthur. He claims for an order that Ms. MacArthur share access to Henry or give him sole ownership. He provides a claim value of \$1,000, which I find is his estimate of the value of his interest in Henry.

2. Ms. MacArthur disagrees and says she is Henry's sole owner. However, she says she is willing to pay Mr. Carlson \$1,000 plus dispute fees to end this dispute.
3. The parties are self-represented.
4. For the reasons that follow, I find Mr. Carlson has proven most of his claim.

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.
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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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 court.

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.

The CRT's Jurisdiction over Family Assets

9. As discussed below, I find that the parties were likely spouses under FLA section 3 as they lived in a marriage-like relationship for at least 2 years. The CRT does not have jurisdiction over the division of family property arising under the *Family Law Act* (FLA).
10. The BC Supreme Court has considered whether the CRT has jurisdiction over post-separation agreements. In *Yellowfly v. Corbett*, 2021 BCSC 1211, the applicant argued he originally paid for the dog and the respondent violated the parties' joint ownership agreement. The court found that even if the dog was family property under the FLA, the CRT still had jurisdiction to consider whether the respondent breached the parties' post-separation agreement about the dog. The court remitted the issue back to the CRT. The CRT issued a new decision on the merits, indexed as *Yellowfly v. Corbett*, 2022 BCCRT 110.
11. No party objects to the CRT's jurisdiction. I find Mr. Carlson essentially alleges a breach of a post-separation agreement about Henry. So, I find the under the reasoning in *Yellowfly*, I have jurisdiction to consider this issue and this dispute.

ISSUE

12. The issue in this dispute is whether Ms. MacArthur breached a post-separation agreement about Henry, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Carlson must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but

refer only to the evidence and argument that I find relevant to provide context for my decision.

14. Around 2018, Ms. MacArthur began living with Mr. Carlson. They were in a marriage-like relationship at the time. In March 2019, Ms. MacArthur purchased Henry from the previous owner, IC. In a July 21, 2023 letter, IC says they sold Henry to Ms. MacArthur for \$900. A financial document dated March 4, 2019 shows a payment of \$500. I accept Ms. MacArthur's explanation that she also paid \$400 cash to IC. This is supported by a witness statement from Ms. MacArthur's family member, JM.
15. I note that the parties' submissions discuss whether Ms. MacArthur purchased Henry using ICBC proceeds from an accident claim. This has relevance under the FLA. However, my analysis below discusses the alleged post-separation agreement about Henry. So, it is not relevant to this dispute.
16. In late 2019 the parties moved to Kelowna. They broke up in August 2021. Ms. MacArthur moved out and stayed with her family member, JM. Ms. MacArthur took Henry with her. Ms. MacArthur subsequently moved out and found a pet friendly rental unit for herself and Henry.
17. During this time, the parties agreed that Mr. Carlson could see Henry on the weekends. Their submissions indicate they lived close to each other.
18. Ms. MacArthur's landlord sold the rental property in early 2022. Ms. MacArthur asked Mr. Carlson to look after Henry until she could find a new pet-friendly apartment. According to Ms. MacArthur's text messages, Mr. Carlson had Henry for about 8 months. Ms. MacArthur found a new apartment in August 2022. She took back Henry. Subsequent text messages indicate Mr. Carlson took Henry occasionally on a "week on week off" schedule, though this varied. I find the text messages did not outline a firm schedule and it is unclear whether "week on week off" refers only to weekends or other days.
19. The parties' relationship deteriorated in late April 2023. That month, Mr. Carlson took Henry on a trip outside Canada. He returned to his residence on April 30, 2023 and

left Henry inside for pickup. This upset Ms. MacArthur as Mr. Carlson had previously agreed to drop the dog off at her place. Further, Mr. Carlson did not answer her phone calls on April 28, 2023. He says, and I accept, that this was because he lost his phone.

20. On May 9, 2023. Ms. MacArthur texted Mr. Carlson and said that she felt Henry was getting inadequate care. She said she would not share Henry to the same degree. Mr. Carlson disagreed and said he would sue over the issue. Ms. MacArthur now says she no longer wishes to share access to Henry with Mr. Carlson.
21. I turn to the applicable law. At law, pets are property. This means the principles of property law apply when determining ownership of pets. See the non-binding decision of *Vinall v. Chisholm*, 2023 BCCRT 988 and *Brown v. Laroche*, 2017 BCPC 115. These principles include who purchased the pet, as well as any agreements between the parties, transfers, and waivers of legal ownership. Recent decisions have also considered the pet's "best interests" in certain circumstances, such as where both parties have an equal property claim or where there are allegations of animal welfare issues. See *Poole v. Ramsey-Wall*, 2021 BCCRT 789 and *Munce v. Livingston*, 2022 BCPC 108.
22. Ms. MacArthur says that Henry is not suitable for Mr. Carlson. She says he stays out late nights and now has another dog. She says this increases Henry's anxiety. However, I find these submissions unsupported by evidence and inconsistent with the fact that Ms. MacArthur trusted her dog with Mr. Carlson for significant periods of time. I find it more likely that both parties take reasonable care of Henry. So, I find the pet's "best interests" are not a factor here.
23. I next consider whether the parties had a post-separation agreement about Henry. For a contract to exist, an applicant must prove that 1) there was a mutual intention to create legal relations, 2) consideration, or something of value, flowed in return for a promise, 3) the essential terms of the alleged contract are objectively clear, and 4) there was matching offer and acceptance of the terms of the contract.

24. Contracts do not need to be written or signed to be enforceable. However, it can be more difficult to prove a verbal agreement's terms. Whether an enforceable contract exists is an objective test based on what a reasonable person in the parties' situation would have believed and understood, rather than on the parties' subjective beliefs. The CRT may consider the parties' conduct leading up to, and following, the conclusion of the alleged agreement. See *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.*, 2021 BCSC 2216, at paragraphs 66 to 69.
25. There is no indication that the parties entered into any formal written or oral post-separation agreement. However, I find the text messages show that the parties acted consistent with an agreement to jointly own Henry, from an objective perspective. Text messages from November and December 2021 show that Ms. MacArthur referred to Henry as the parties' "child", and that Henry would be "fine as long as we can share him fairly and not have others involved". She also referred to Henry as "ours" in a March 15, 2023 text message and referred to "sharing" Henry in an April 28, 2023 text. The parties also shared possession, as outlined above.
26. Mr. Carlson also says he paid some of Henry's expenses. I accept this was the case as he provided dog grooming receipts from March, May, and December 2022. I find this consistent with joint ownership.
27. Given the above, I find the parties entered into a post-separation agreement about Henry. They agreed to jointly own Henry and to share possession of Henry on a reasonable basis. I say this because, as noted above, the messages lacked further specifics. I find that by denying access entirely, Ms. MacArthur breached the parties' separation agreement. This leaves the question of the appropriate remedy.
28. The CRT may order specific performance of an agreement. Orders for specific performance are not appropriate when money will adequately compensate a party. That said, courts have generally observed that time-sharing of pets should not be ordered. See the non-binding decision of *Poole v. Ramsey-Wall*, 2021 BCCRT 789 at paragraph 32, citing *Gardiner-Simpson v. Cross*, 2008 NSSM 78 and *Brown*, cited above. The CRT has previously found that the potential for future disagreements or

a lack of finality are other reasons to avoid ordering specific performance. See the non-binding decision of *Hourigan's Carpets & Linos Ltd. dba Hourigan's Flooring v. Bulmer*, 2020 BCCRT 1299

29. I find that, as the parties' relationship has deteriorated, the potential for future disagreements and lack of finality are high. I also agree that, as a general principle, I should avoid ordering time-sharing of pets. I find that an order for specific performance would be unworkable and likely provide Mr. Carlson no practical remedy at all. I find that damages are appropriate.
30. In submissions, Ms. MacArthur said she is willing to pay Mr. Carlson \$1,000 plus CRT fees in order to keep Henry. Mr. Carlson provided a claim value of \$1,000. Although IC's evidence suggests Henry is worth \$900, I accept the parties' valuation instead. I find they essentially agree that a half interest in Henry is worth \$1,000. So, I order Ms. MacArthur to pay Mr. Carlson \$1,000 in damages for breach of contract.
31. The *Court Order Interest Act* applies to the CRT. I find Mr. Carlson is entitled to pre-judgment interest on the damages award from May 9, 2023, the date Ms. MacArthur began to reduce access to Henry, to the date of this decision. This equals \$42.67.
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. I see no reason in this case not to follow that general rule. Ms. MacArthur agrees to reimburse Mr. Carlson for CRT fees and I find he is successful, though he did not obtain the exact remedy he hoped for. I find Mr. Carlson is entitled to reimbursement of \$125 in CRT fees. The parties did not claim any specific dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Ms. MacArthur to pay Mr. Carlson a total of \$1,167.67, broken down as follows:
 - a. \$1,000 as damages for breach of contract,

- b. \$42.67 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

34. Mr. Carlson is entitled to post-judgment interest, as applicable.

35. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member