



Civil Resolution Tribunal

Date Issued: June 3 2024

File: SC-2023-000124

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peng v. Houston*, 2024 BCCRT 505

B E T W E E N :

WEIJUN PENG

APPLICANT

A N D :

ROBERT RICHARD HOUSTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a pet dog named Peanut.

2. The applicant, Weijun Peng, and the respondent, Robert Richard Houston¹, are former romantic partners. They bought Peanut while they were together. After they separated and the respondent moved out, the parties agreed to a time-sharing arrangement for Peanut. The arrangement broke down after several months, and the applicant says since late-October 2022, the respondent has withheld Peanut from her.
3. The applicant asks for an order for “full custody” of Peanut in exchange for a “buyout” equivalent to the \$875 the respondent paid toward Peanut’s purchase price. The respondent denies the applicant’s claims. They say the applicant kept trying to unreasonably change the parties’ time-sharing arrangement, so they decided to keep Peanut until the parties had “a legal agreement in place.”
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal’s (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. To some extent, the parties call into question each other’s credibility, or whether they are telling the truth. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person’s gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT addresses them respectfully throughout the process, including in published decisions. Robert Richard Houston did not provide their pronouns. So, I will use gender neutral pronouns refer to them throughout this decision, intending no disrespect.

questions, and the extent to which cross-examination may assist in answering those questions.

7. Here, the questions of credibility relate to some of the factors to be considered in deciding pet ownership disputes. However, I find those factors are outweighed by consideration of Peanut's best interests, which does not involve an assessment of credibility. So, I find I can fairly decide the key issues based on the documentary evidence and written submissions before me, and an oral hearing is not necessary.
8. CRTA section 42 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.

Preliminary issues

9. The *Family Law Act* (FLA) applies to people who are either legally married or who lived together in a marriage-like relationship for at least two years. The CRT does not have jurisdiction over division of family property under the FLA. The parties were not married, and though they lived in the same house for over two and a half years, they undisputedly lived together in a marriage-like relationship for less than two years. So, they were not "spouses", as defined in the FLA, and Peanut was not family property.
10. I find this dispute falls under the CRT's small claims jurisdiction set out in CRTA section 118. Under that provision, the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.
11. I was unable to open four pieces of the applicant's evidence, which appear to be photos or videos showing the applicant's prior interactions with Peanut. Given I was able to open other similar evidence, and based on my decision below in favour of the applicant, I decided it was unnecessary to ask her to re-submit the evidence in an accessible format.

ISSUES

12. The issues in this dispute are:

- a. Who owns Peanut?
- b. If the parties jointly own Peanut, should I grant sole ownership of Peanut to one of the parties?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but refer only to information I find relevant to explain my decision.
14. The parties began living together and bought Peanut in 2019. Their relationship ended in March 2021, but the respondent did not move out of their jointly owned home until February 2022. After that, the parties agreed to a time-sharing arrangement for Peanut, and they exchanged her every one to two days.
15. By October 2022, the applicant felt the frequency of moving Peanut between households was unsustainable, so the parties agreed to try a longer period between exchanges. The evidence suggests there was a misunderstanding or miscommunication about when the exchange would happen, and the respondent returned Peanut late. This led to a disagreement about whether the applicant could keep Peanut longer, which ended with police involvement. Shortly after that, the respondent decided not to continue sharing Peanut with the applicant.

The applicable law

16. The courts have recognized the unique place pets occupy in peoples' lives, (see, for example, *Atwal v. Randhawa*, 2023 BCPC 238). Even so, contrary to what the applicant says in submissions, legally, pets are considered personal property, and the principles of property law generally apply to pet ownership. This means when pet-

owners separate and there is a dispute about the pet, the question is who owns the pet, rather than who should have “custody” of it.

17. In *Alamaas v. Wheeler*, 2020 BCPC 51, the court reviewed the law governing competing pet ownership claims. The court found factors to consider in determining ownership include who bought and selected the pet, whether it was bought as a gift, who attended its veterinary appointments, who paid for the pet’s needs, who licensed it, and how the parties viewed ownership. Other factors courts have considered include who bore the burden of the pet’s care and comfort, agreements about ownership when the pet was acquired or after, and what happened to the pet after the parties’ relationship changed (see *MacDonald v. Pearl*, 2017 NSSM 5). This list is not exhaustive, and no single factor is necessarily sufficient to establish ownership.
18. Under recent changes to the FLA, the Supreme Court must now consider the willingness and ability of each spouse to care for the pet’s basic needs, cruelty or threat of cruelty towards a pet, family violence, and other factors. While the FLA does not apply to this dispute, these changes reflect developments around the common law “best interests of the dog assessment”. Courts have increasingly considered animal welfare and the animal’s needs in considering ownership claims (see, for example, *Atwal*, and *Munce v. Livingston*, 2022 BCPC 108).

Who owns Peanut?

19. It is undisputed that the parties bought Peanut jointly, with each contributing equally to her purchase price. I find this established the foundation for the way the parties viewed Peanut’s ownership. In submissions, the applicant repeatedly refers to the parties having joint ownership of Peanut. The respondent does not dispute this, and talks about the parties as “co-owners”, including in an October 31, 2022 email to the applicant and her son. In that email, the respondent also indicated they did not feel comfortable returning Peanut to the applicant until the parties had a legal agreement in place. I find this shows the respondent considered the parties joint owners even at the point they decided to take possession of Peanut after the time-sharing arrangement broke down.

20. The parties dispute whether they equally shared the expense of and time required to address Peanut's care and needs. I return to this below. However, for the purposes of deciding Peanut's ownership, I find the most important factors are that the parties viewed ownership as being joint, and arranged to share in the time they had with Peanut after they separated. To be clear, while the respondent suggests the parties' arrangement was not a contract, I find emails and text messages show they created a binding agreement to share possession of Peanut on a regular schedule.
21. Turning to Peanut's best interests, I find there is no evidence or allegation of animal cruelty or threat of cruelty by either party. The applicant says she felt threatened when the respondent came to collect Peanut in October, and they became verbally aggressive when her son would not agree to the handover. In contrast, the respondent says it was the applicant's son who became aggressive. However, neither party alleges violence, and I find there is no evidence of family violence. So, I find these considerations do not affect the question of Peanut's ownership.
22. Based on the above, I find the parties jointly owned Peanut from the time they bought her, and continued to do so after they separated and the respondent moved out.

If the parties jointly own Peanut, should I grant sole ownership of Peanut to one of the parties?

23. Typically, the worst outcome in a pet dispute is to conclude that the pet is joint property (see *Brown v. Larochelle*, 2017 BCPC 115, citing *Gardiner-Simpson v. Cross*, 2008 NSSM 78). This can create the potential for future disagreements or lack of finality.
24. In cases of joint property that is not a living animal, the property can be divided, or sold and the proceeds divided. However, a pet clearly cannot be divided, and parties typically do not want an order that their pet be sold, and the proceeds shared (see *Bond v. McNulty*, 2023 BCCRT 263 and *Poole v. Ramsay-Wall*, 2021 BCCRT 789). The common law approach is consistent with FLA section 97(4.2), which prohibits orders declaring that spouses jointly own pets or requiring spouses to share

possession of pets. So, I find I must decide which party should have ownership and possession of Peanut.

25. First, I consider who paid and cared for Peanut before late-October 2022. As noted above, the parties disagree about this. The applicant says they shared expenses for Peanut's veterinary bills, grooming, and pet insurance. The respondent says these expenses were not shared equally. All the paid veterinary invoices in evidence list both parties as the client, except one that lists only the applicant. The only other submitted evidence of payment for Peanut's care is two e-transfers the applicant made to the respondent for \$50 for grooming and \$112 for an annual checkup, and a text message confirming the respondent transferred money to the applicant for pet insurance. So, based on the evidence submitted, I find the parties shared relatively equally in paying for Peanut's care and needs.
26. The respondent says they took care of Peanut daily, feeding her, walking her, and taking her for car rides. They say the applicant's children only occasionally took Peanut for walks or on runs. The applicant disputes this, saying when the respondent worked full-time outside of the home or was away, they were not primarily responsible for Peanut's care. She says everyone in "the family", by which I find she means herself, the respondent, and her two children, participated in Peanut's care. I do not find one party's account more compelling than the other's, and there is no documentary evidence to support either one, so I find both parties contributed to a similar degree. There is no evidence to prove either party would be unable to properly care for Peanut were they awarded sole ownership.
27. The parties each describe strong bonds they forged with Peanut. The applicant also highlights the relationship between Peanut and her adult daughter, with whom she lives. She says there was an instant connection between her daughter and Peanut when they visited the breeder's house. The applicant says Peanut helped her daughter manage her mental health condition through difficult teenage years, and could continue to do so going forward. She provided a letter from her daughter's family doctor in support of this. The respondent also describes how Peanut has been

instrumental in supporting them to manage their mental health condition. They also submitted a letter from their psychiatrist saying the same.

28. I acknowledge the importance of these different bonds with Peanut. However, I also find the respondent's behaviour in unilaterally deciding to take possession of Peanut of significant importance. I find their behaviour indicates they were unwilling or unable to consider whether their actions were in Peanut's best interests, given the existing bonds between Peanut and the applicant's family members. In addition, while the respondent suggests they withheld Peanut in response to the applicant being unwilling to agree to a reasonable time-sharing schedule, I find it is the respondent who breached the agreement to share Peanut on a regular schedule.
29. The respondent says after their altercation with the applicant's son in October 2022, they were afraid they would never see Peanut again. However, it is undisputed that two days later, the respondent went to collect Peanut from the applicant without incident. The respondent does not explain why they thought they would never see Peanut again, after the applicant's daughter willingly handed her over to them. Further, even if there is an explanation for the respondent's fear, it does not take into account that withholding Peanut from the applicant may not have been in Peanut's best interests, or that the parties had a time-sharing agreement for Peanut.
30. Weighing all of the above, I award ownership of Peanut to the applicant. I order the respondent to return Peanut to the applicant on the terms set out below.
31. This leaves the question of compensation. The respondent did not file a counterclaim or ask for monetary compensation as a set-off. In any case, I have found the parties shared relatively equally in paying for Peanut's care and needs, and for her purchase price. So, I make no order for compensation.
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. As the applicant was successful, I find she is entitled to

reimbursement of \$125 in CRT fees. The applicant did not claim dispute-related expenses.

ORDERS

33. Within 30 days of this order, I order the respondent to return Peanut to the applicant at the applicant's home or at a mutually agreed upon place and time, with at least 3 days' written notice, at the respondent's expense.
34. Within 30 days of the date of this order, I order the respondent to pay the applicant \$125 in CRT fees.
35. The applicant is entitled to post-judgment interest, as applicable.
36. 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.

Megan Stewart, Tribunal Member