



Civil Resolution Tribunal

Date Issued: March 30, 2023

File: SC-2022-005681

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bond v. McNulty*, 2023 BCCRT 263

BETWEEN:

JEFFREY WAYNE BOND

APPLICANT

AND:

CHRISTINA MCINULTY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about dog ownership. The applicant, Jeffrey Wayne Bond, and the respondent, Christina McNulty, were formerly in a romantic relationship. After that relationship ended, they continued to share a European Doberman dog named Bentley. Mr. Bond says Ms. McNulty suddenly decided to stop sharing ownership of

Bentley. Mr. Bond seeks Bentley's return, or \$5,000 for Bentley's expenses over the years.

2. Ms. McNulty says she decided to keep Bentley because she no longer felt comfortable with Mr. Bond having access to him. She says she will not be returning the dog, or paying for any of Bentley's prior expenses.
3. The parties 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. 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 issues in this dispute are:
 - a. Who is Bentley's rightful owner?
 - b. Is Mr. Bond entitled to Bentley's return or reimbursement for Bentley's care expenses?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Bond must prove his 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. The parties were in a romantic relationship and acquired Bentley together. Shortly after getting Bentley, the parties broke up, but continued to share Bentley over the next 8 years. There is no evidence before me about how long the parties were together, but neither argues they were "spouses" as defined by the *Family Law Act* (FLA).
11. The parties say they both paid for Bentley's initial acquisition cost, and after they broke up, they shared custody of Bentley with each party taking the dog for 3 weeks at a time before handing him over to the other. Ms. McNulty says the parties shared Bentley's expenses while they shared ownership of Bentley, which Mr. Bond does not deny.
12. In any event, in June 2022, during Ms. McNulty's time with Bentley, she texted Mr. Bond and stated she had "discovered some pretty upsetting things" about Mr. Bond that made it so she was no longer comfortable interacting with him, or letting Bentley stay with him. Ms. McNulty advised she would be keeping Bentley. In subsequent text messages, Ms. McNulty refused to tell Mr. Bond what the allegations were. She says this was to protect the unidentified person who allegedly disclosed the concerns to her.

13. When Ms. McNulty's 3-week visit was up in July 2022, Mr. Bond tried to retrieve Bentley from her possession with police supervision. Ms. McNulty refused to give Mr. Bond the dog, and Mr. Bond has not seen the dog since.
14. At law, pets are considered personal property. This can become complicated when personal relationships break down because people do not want their pets treated like other personal property that can be divided or sold to share the proceeds (see: *Delloch v. Piche*, 2019 BCPC 369). I acknowledge it can be difficult to determine who has the greater claim to a pet's ownership and possession.
15. In fact, earlier this week the Government of British Columbia proposed amendments to the FLA specifically to deal with pets in family law cases. However, these proposed amendments deal specifically with cases under the FLA, which does not apply here, and the amendments are not yet in force. In any event, I discuss these proposed amendments further below.
16. Several past CRT decisions have dealt with this issue (see: *MacIntosh v. Zwicker*, 2022 BCCRT 1179, *Babicz cv. Swynarchuck*, 2022 BCCRT 1030). Previous CRT decisions are not binding on me, but I adopt the approach discussed in them. That is, there are two approaches to pet ownership disputes: the narrow approach which considers only who purchased the pet, and the contextual approach, which considers various factors set out in *MacDonald v. Pearl*, 2017 NSSM 5:
 - a. Whether the dog was owned by one of the parties before their relationship began,
 - b. The nature of the relationship between the parties when the dog was acquired,
 - c. Any express or implied agreement about ownership, made either when the dog was acquired or after,
 - d. Whether at any point the dog was gifted by one party to the other,
 - e. Who purchased the dog,
 - f. Who exercised care and control of the dog,

- g. Who bore the burden of the care and comfort of the dog,
 - h. Who paid for expenses related to the dog's upkeep, and
 - i. What happened to the dog after the parties' relationship changed.
17. Here, given the parties' submissions, it does not matter which approach I use, as I find the parties had joint ownership of Bentley either way. My reasons follow.
18. As noted, the parties admittedly shared the cost of initially purchasing Bentley, and intended to acquire him jointly. Additionally, for 8 years the parties shared possession and ownership of Bentley after their relationship ended, with the dog spending 3 weeks at a time at each person's home, without incident. The parties essentially agree they continued to equally contribute to Bentley's care expenses while they shared custody of him. Ms. McNulty says she now takes care of 100% of the expenses now that she has Bentley full time. There is no indication either party gifted Bentley to the other.
19. The veterinary records list both Mr. Bond and Ms. McNulty as owners. Further, the evidence indicates Bentley is registered to Mr. Bond in his town, and he is registered to Ms. McNulty in her town (the parties live approximately an hour away from each other).
20. There is simply no evidence either party had any issue with the other's care of Bentley for the 8 years they shared ownership of him. Despite Ms. McNulty unilaterally deciding to be Bentley's sole owner as of June 2022, I find the parties continued to co-own the dog.
21. *Brown v. Larochelle*, 2017 BCPC 115 (citing *Gardiner-Simpson v. Cross*, 2008 NSSM 78) notes that the worst result for pet ownership cases is a conclusion the dog is joint property. I note the proposed FLA amendments prevent the courts from declaring spouses jointly own a companion animal and from requiring spouses to share possession of it. Clearly, a dog cannot be divided, and parties do not generally want an order that their dog be sold with the proceeds shared between the parties. So,

consistent with the current common law, and the proposed FLA amendments, I must determine which party should have ownership and possession of Bentley.

22. The court in *Brown* considered the dog's best interests, based on the idea that, had the parties turned their minds at any time to what would happen to the dog if they broke up, they would have agreed that the decision would consider the dog's best interests and its humane treatment. In *Brown*, the court considered the breed's nature and the individual dog's characteristics, and the dog's condition since the parties separated. The court found that the dog had cemented her bond with the defendant after the separation, and was well cared-for by the defendant, so despite the claimant previously having an equal bond with the dog and no evidence of mistreatment, the claimant was unsuccessful.
23. Here, Mr. Bond argues Bentley has always had a stronger connection with him. Although Ms. McNulty argues she is "no longer comfortable" with Mr. Bond having Bentley due to "some very upsetting things about his behaviour", she did not provide any details or explain this alleged behaviour. There is no indication at all that the behaviour related to Mr. Bond's ability to care for Bentley. So, I put no weight on Ms. McNulty's unsupported allegation.
24. Given the parties' history of amicably sharing Bentley for 8 years without incident, I find both parties are able to care for him.
25. Although there may be an argument that Bentley's bond with Ms. McNulty has cemented over the past 10 months that she has had sole possession of him, I find that is not the only factor to consider. In fact, I find that Ms. McNulty unilaterally removing the dog from one of its owners, Mr. Bond, without any explanation about the allegedly "upsetting" behaviour or how it may have been dog-related, displays a lack of ability to put Bentley's best interests above her own personal interests. Parties are told to submit all relevant evidence during the CRT process, and Ms. McNulty still failed to substantiate the allegation on which she entirely bases her right to solely retain Bentley.

26. So, although I accept Ms. McNulty provided good care for Bentley, I find Mr. Bond is better suited to care for him.
27. Additionally, given the proposed FLA amendments, I also considered whether the proposed factors for the court to consider in determining custody of a companion animal would change my decision if I applied them to the facts of this dispute. I find the factors in proposed section 97(4.1) of the FLA are generally similar to the common law factors in *MacDonald*, discussed above. However, proposed section 97(4.1) also includes consideration of whether there is any history of family violence, risk of family violence, cruelty or threat of cruelty towards an animal, and any relationship a child has with the animal. I find none of these factors are applicable here, based on my findings above and the evidence before me. So, I find even if I applied the factors in proposed section 97(4.1) to this dispute, the outcome would be the same.
28. Given all the above, I order Ms. McNulty to return Bentley to Mr. Bond on the terms set out in my order below. As I have found Ms. McNulty must return Bentley to Mr. Bond, I do not need to consider Mr. Bond's claim for expenses, though I note the evidence is that the parties shared expenses while they shared custody, so I would not have ordered reimbursement for those expenses in any event.
29. 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. As Mr. Bond was successful, I find Ms. McNulty must reimburse him \$175 in paid tribunal fees. He did not claim any dispute-related expenses.

ORDERS

30. Within 21 days of the date of this decision, I order Ms. McNulty to return Bentley the dog to Mr. Bond, at Mr. Bond's home or at a mutually agreed upon place and time, with at least 3 days' written notice, at Ms. McNulty's expense.
31. Within 21 days of the date of this decision, I order Ms. McNulty to pay Mr. Bond a total of \$175 as reimbursement of tribunal fees.

32. Mr. Bond is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
33. 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.

Andrea Ritchie, Vice Chair