



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malkinson v. The British Columbia Society for the Prevention of Cruelty to Animals*, 2024 BCCRT 57

B E T W E E N :

DALE ALLISON MALKINSON

APPLICANT

A N D :

THE BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This dispute is about the ownership of a dog.

2. The applicant, Dale Allison Malkinson, says her dog, Zeva, went missing and was taken by the respondent, The British Columbia Society for the Prevention of Cruelty to Animals (BCSPCA). Ms. Malkinson asks for an order that Zeva be returned to her.
3. The BCSPCA says that a new owner adopted Zeva. It says that Ms. Malkinson no longer has any rights to Zeva under the *Prevention of Cruelty to Animals Act* (PCAA).
4. Ms. Malkinson is self-represented. The BCSPCA is represented by a lawyer, Andrea Greenwood.

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.
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. 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.
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 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.
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.

ISSUE

9. The issue in this dispute is whether the BCSPCA must return Zeva to Ms. Malkinson.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Malkinson must prove her 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.

Background

11. On April 10, 2022, Ms. Malkinson's dog, Zeva, went missing. Ms. Malkinson searched both in her neighbourhood and online but could not find Zeva. She assumed that a predator had killed Zeva.
12. In fact, a third party found Zeva on the side of a highway and dropped her off at the BCSPCA's South Peace branch on April 13, 2022. The BCSPCA took custody of Zeva and attempted to find her owner. The intake form notes that Zeva's identification tattoo was faded. The BCSPCA misread one letter of the tattoo and was not able to find Ms. Malkinson. Zeva's rabies tags had contact information for someone other than Ms. Malkinson. The BCSPCA left two voicemails but did not receive a callback. The BCSPCA posted Zeva on its social media pages as a lost dog, but Ms. Malkinson did not see the postings.
13. Zeva's teeth were in poor condition, so the BCSPCA transferred her to its Abbotsford branch where there was more availability for veterinary work. The BCSPCA Abbotsford branch named Zeva "Delilah" and put her up for adoption on its website.
14. Ms. Malkinson found the adoption listing through an internet search but did not realize it was Zeva. On May 1, 2022, Ms. Malkinson emailed the BCSPCA to try and adopt the dog listed as Delilah on its website. She said she "lost my Yorkie on April 10" and that Delilah "looks very much like my Zeva." The BCSPCA responded that it was only

considering local adoptions because of Zeva's ongoing appointments for dental work in Abbotsford.

15. The BCSPCA entered into a foster-to-adopt program with a third party Abbotsford resident on May 6, 2022. Zeva's dental surgery was completed on May 26, 2022, and paid for by the BCSPCA. The third party adopted Zeva on May 27, 2022. On the same day, Ms. Malkinson went to the South Peace branch and informed them that she thought Zeva was the dog named Delilah on the BCSPCA website. She sent veterinary records to the South Peace branch proving her ownership of Zeva after the close of business day on May 27, 2022.
16. Ms. Malkinson now seeks an order that Zeva be returned to her. The BCSPCA says this is not possible because a new owner adopted Zeva.

Preliminary Issue - Jurisdiction

17. The BCSPCA says BC's Farm Industry Review Board (BCFIRB) has exclusive jurisdiction to review the BCSPCA's decisions to remove animals. Section 10.1 of the PCAA says that the BCSPCA may take custody of an animal that is found straying. Section 20.3 of the PCAA allows a person to appeal the BCSPCA's decision to take custody of an animal to BCFIRB. The BCSPCA says the CRT does not have jurisdiction to review its decision to take Zeva.
18. The PCAA sets out the statutory scheme for a review of a BCSPCA decision to take custody of an animal. The first level of review is set out in section 20.2 and says that the animal's owner may request a review of the BCSPCA's decision. The second level of review is set out in section 20.3 and says that the animal's owner may appeal to BCFIRB where the BCSPCA fails to review the decision within 28 days or upholds its original decision.
19. Section 20.2(2) of the PCAA sets out the timelines for starting the review process. The deadline to request a review is 4 days after receiving notice under section 17(b) which applies where the animal's owner is known to the BCSPCA. Section 20.2 does not mention section 17(a) which applies where the animal's owner is unknown to the

BCSPCA. While I agree that BCFIRB has jurisdiction over the review/appeal process in sections 20.2 and 20.3 of the PCAA, I find that those sections do not apply to situations under section 17(a) where the animal's owner is not known to the BCSPCA.

20. Ms. Malkinson was not known to the BCSPCA until Zeva was adopted by a new owner. She never received a notice under section 17(b) of the PCAA. So, I find that the PCAA's review/appeal process does not apply to this case. Moreover, a review of the BCSPCA's decision is no longer possible now that Zeva has been adopted by a new family.
21. The PCAA's review/appeal process is not mandatory and the PCAA does not restrict a person's right to bring a claim in another forum. A determination of pet ownership generally falls within the CRT's jurisdiction under section 118 of the CRTA. So, I find that the CRT has jurisdiction to resolve this dispute which is essentially a claim for the recovery of personal property or, in the alternative, damages.

Ownership of Zeva

22. The PCAA applies to situations where the BCSPCA takes custody of an animal and puts that animal up for adoption. As noted above, section 10.1 of the PCAA says that the BCSPCA can take custody of an animal that is found straying. Zeva was found straying and was brought to the BCSPCA. I find that the BCSPCA was entitled to take custody of Zeva under section 10.1 of the PCAA.
23. Section 17 of the PCAA says that the BCSPCA could give Zeva to a new owner if the original owner was unknown and it held Zeva for 4 days. Here, the BCSPCA held Zeva for 6 weeks. I accept that the BCSPCA made its best efforts to locate Ms. Malkinson but was not able to do so. Zeva's identification tattoo was faded and the contact information on her rabies tag was not current. I find that the BCSPCA was entitled to give Zeva to a new owner after holding her for more than 4 days.
24. Section 19.1 of the PCAA says that when an animal has been adopted by a new owner then the old owner has no more rights to claim that animal. The foster-to-adopt

program started on May 6, 2022, and was completed on May 27, 2022. I find that Ms. Malkinson no longer has any right to claim Zeva under section 19.1.

25. Ms. Malkinson argues that the BCSPCA stole Zeva and withheld information such as the location where Zeva was found so that she did not realize that the dog listed for adoption was Zeva. She says the BCSPCA acted in bad faith by not contacting the new owner to take back Zeva.
26. I find that the BCSPCA acted reasonably and in good faith. Zeva was found straying so the BCSPCA took custody of Zeva, paid for her dental work, and found her a new home. Ms. Malkinson's May 1, 2022 email to the BCSPCA said that she lost Zeva and Delilah looked like Zeva's twin. This implies that Zeva passed away, which Ms. Malkinson believed at the time, and that she wanted to adopt a new dog. The BCSPCA would not have known from this email that Zeva had gone missing and that it should make further inquiries. I agree with the BCSPCA's submission that Ms. Malkinson should have reported Zeva's disappearance to the BCSPCA immediately rather than on May 27, 2022.
27. As Zeva cannot be returned, I considered whether Ms. Malkinson may be entitled to damages instead. However, section 25.1 of the PCAA says that no legal proceeding for damages can be brought against the BCSPCA unless the BCSPCA has acted in bad faith. As noted above, I find that the BCSPCA acted reasonably and in good faith in this matter. So, I do not award any damages to Ms. Malkinson.
28. I appreciate that Ms. Malkinson had a close connection with Zeva and that the struggles in her life were more bearable through Zeva's companionship. However, the law in British Columbia gives the BCSPCA the right to take custody of lost animals and, where the owner cannot be found, find new homes for those animals. Ms. Malkinson's rights to Zeva ended when a new owner adopted Zeva. So, I must dismiss Ms. Malkinson's claim.

CRT FEES AND EXPENSES

29. 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. Ms. Malkinson was not successful in her claim, so I do not order any reimbursement of her CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

30. I dismiss Ms. Malkinson's claim and this dispute.

Peter Mennie, Tribunal Member