

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Faulkner v. Hunt*, 2019 NSSM 52

Date: 2019-09-25

Docket: SCCH 490852

Registry: Halifax

Between:

Chad Faulkner

Claimant

- and -

Gerrid Hunt and Mandy Hunt

Defendants

Adjudicator: Eric K. Slone

Heard: in Halifax, Nova Scotia on September 17, 2019

Appearances: For the Claimant, self-represented

For the Defendants, self-represented

BY THE COURT:

[1] This case concerns ownership of a 5-year old English Bulldog named Jaxx.

[2] The Claimant acquired Jaxx as a puppy from his cousin Gina in December 2014. The paper trail with the association that registers this breed is incomplete, but there is no question that the Claimant owned Jaxx and cared for him until about August 2018. His ownership during that period is not open to serious question.

[3] In or about August 2018, the Claimant ran into some personal financial problems and was about to lose his housing. He asked his close friends, the Defendants, if they would be willing to take Jaxx into their home and look after him until the Claimant could get on his feet financially.

[4] What occurred at that time was either some form of an agreement or a loose arrangement, depending on whose version one believes. The Defendants say that under the terms of a binding verbal agreement entered into at that time, ownership of the dog transferred to them in August of 2019. The Claimant says that the arrangements at the time did not rise to the level of an enforceable agreement which could result in him losing ownership of his dog.

[5] The law concerning ownership of animals is succinctly set out by Adjudicator Richardson in *MacDonald v. Pearl*, 2017 NSSM 5 (CanLII):

[25] I have reviewed the following Small Claims Court cases with interest: *Gardiner-Simpson v. Cross* 2008 NSSM 78 (CanLII); *Hawes v. Redmond* [2013] NSJ No. 739; *Millet v. Murphy* [2011] NSJ No. 182. I believe that the following principles are applicable:

- a. Animals (dogs included) are considered in law to be personal property;
- b. Disputes between people claiming the right to possess an animal are determined on the basis of ownership (or agreements as to ownership), not on the basis of the best interests of the animal;
- c. Ownership of—and hence the right to possess—an animal is a question of law determined on the facts;

- d. Where two persons contest the ownership of an animal, the court will consider such factors as the following:
- i. Whether the animal was owned or possessed by one of the people prior to the beginning of their relationship;
 - ii. Any express or implied agreement as to ownership, made either at the time the animal was acquired or after;
 - iii. The nature of the relationship between the people contesting ownership at the time the animal was first acquired;
 - iv. Who purchased or raised the animal;
 - v. Who exercised care and control of the animal;
 - vi. Who bore the burden of the care and comfort of the animal;
 - vii. Who paid for the expenses of the animal's upkeep;
 - viii. Whether a gift of the animal was made at any time by the original owner to the other person;
 - ix. What happened to the animal after the relationship between the contestants changed; and
 - x. Any other indicia of ownership, or evidence of any agreements, relevant to the issue of who has or should have ownership or both of the animal.

[26] This is not a complete list of factors that might be considered. Nor is any one or more of them necessarily sufficient to establish ownership. And there is more when it comes to animals that are pets.

[6] Since the Defendants have no other arguable right to the dog, this case turns on the single question of whether or not there was an enforceable agreement to transfer ownership.

[7] Since the onus to establish such an agreement is on the Defendants, I will consider their evidence first.

[8] The Defendant Gerrid Hunt testified that the Claimant came to him asking that he and his wife look after Jaxx until the Claimant "got back on his feet."

They were close, longstanding friends, at the time. At the same time, a mutual friend of theirs, Stephanie Cooper (who they all call “Stevie”), was coping with a cancer diagnosis. Stevie lived in the same building as the Claimant, though as noted the Claimant was about to lose his unit because of financial difficulties. Stevie had a spare room, but already had a dog and three cats and could not also take Jaxx. The idea according to Gerrid’s evidence was that the Claimant could move in with Stevie at a reduced rent, and that he would help her out in various ways while she was undergoing cancer treatment. Gerrid testified that he told the Claimant that he was only willing to adhere to this arrangement for a year, because after a year his family would be too attached to Jaxx to have to return him.

[9] Gerrid could not place the precise date of this agreement, but believed it was likely sometime in early to mid-August of 2018.

[10] Although this initial discussion was between the Claimant and Gerrid, others became privy to the arrangements. Specifically, Mandy Hunt and Stevie claimed to be aware that there was an agreement “for a year.” Mutual friend Joseph Weagle claimed also to be aware that there was such an agreement.

[11] The Claimant’s evidence is that there was no such “agreement,” just a vague understanding that the Defendants would help him out and that he had about a year to get his act together. He specifically denied that he ever agreed that he would give up ownership of Jaxx.

[12] During the early part of the year, the Claimant was free to take Jaxx anytime he wanted, and he was a frequent visitor in the Defendants’ home where he could maintain his relationship with Jaxx. There is some evidence that as the year was almost up, the Defendants’ attitude changed, and they started denying him access to Jaxx. The Claimant’s evidence was that he was doing his best to get his own place, but he was not able to find anything suitable until sometime in August when he found a place available September 1, 2019.

[13] On August 8, 2019, if not earlier, the Claimant understood that the Defendants were claiming ownership or control of Jaxx. On that date he filed this claim seeking the return of his dog. The Defendants never filed a written defence, though they showed up in court fully prepared to present their case. I mention this

because the Claimant would only have heard for the first time at the trial what the Defendants' specific arguments were.

[14] The Defendants argued that the Claimant did not fulfill his part of the bargain, which (they say) means that ownership of Jaxx transferred to them. They say that he breached the agreement in several respects. First of all, he did not retrieve Jaxx within a year. Furthermore, they say that he was not as helpful to Stevie as they hoped he would be, not fulfilling that part of the bargain.

[15] They also argued, somewhat irrelevantly, that the Claimant never offered to contribute to Jaxx's upkeep, such as by buying or contributing to the cost of food. They also claim that the Claimant was not as diligent a pet owner as they are, suggesting that he fed the dog substandard food and neglected his veterinary health.

Findings of fact

[16] Was there a contract? For an agreement to be legally binding there must be four separate elements: offer, acceptance, consideration and an intention to form legal relations. It is the latter element that is seriously questionable here, as well as the precise terms. Expressed from the Defendants' point of view, the contract was "we will take your dog for up to a year, to help you out, on the condition that you move in with Stevie and provide help to her during her illness. If you do not redeem the dog by a year, it will be ours."

[17] One should not lose sight of the fact that this was an arrangement between close friends, during a time when the Claimant was in vulnerable circumstances. He was appealing for help, and the Defendants responded with an offer that seemed to be motivated by a real desire to help. Viewed objectively, it is hard to see that the stipulation that this was for a year meant that the clock was ticking and that there would be some type of automatic transfer of ownership on such and such a date.

[18] In short, I cannot accept that there was any clear intention to form a legally binding contract. No one even took care to make note of the date, which would have been an important element from the point of view of the Defendants.

[19] However, even if I am wrong and there was such an agreement, it is clear that by sometime in July and, at the latest on the date this claim was issued on August 8, 2019, the Claimant was trying without success to redeem his dog. Whether or not he had a suitable place to take the dog is irrelevant. If the year was not up, he had a right to demand the dog. How he would have looked after the dog in the interim was his problem.

[20] I find that the Claimant was within his legal right to demand the return of the dog on August 8, 2019, and I am ordering the dog to be returned to him.

[21] I specifically reject all of the Defendants' reasons for believing that the Claimant has surrendered his right of ownership, or that his ownership was somehow imperfect. The fact that he did not licence the dog with the City of Halifax is irrelevant. Also irrelevant is the fact that other documentation of ownership may be lacking. I refuse to be drawn into a consideration of whether or not the Claimant was as responsible a pet owner as he could have been prior to turning the dog over to the Defendants in 2018. And lastly, I utterly refuse to be drawn into a consideration of whether or not the Claimant was as good or helpful a friend to Stevie as perhaps the Defendants and Stevie hoped. I note that in her evidence, Stevie was not critical in any specific way of the Claimant and basically said that the arrangement did not work out.

[22] I appreciate that this order will come as a grave disappointment to the Defendants. They and their children are attached to Jaxx. But the argument that they make amounts to a forfeiture, and the law is very disapproving of forfeitures and will strive for a result, where the facts justify it, that does not result in a party forfeiting his legal rights.

[23] The Claimant is entitled to an order for the return of the dog and to the cost of issuing the claim in the amount of \$99.70.

Eric K. Slone, Adjudicator