

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Millett v. Boudreau*, 2024 NSSM 21

Date: 20240410

Docket: 527875

Registry: Digby

Between:

Kaylea Bree Millett

v.

Téa Rose Boudreau

Adjudicator: Sarah A. Shiels

Heard: February 22, 2024

Decision April 10, 2024

Appearances: Kaylea Millett, claimant, for herself
Téa Rose Boudreau, defendant, for herself

By the Court:

Background

[1] The claimant, Kaylea Millett, seeks “joint custody” of two border collies named Axle and Theo currently in the possession of the defendant, T ea Boudreau, or, in the alternative, possession of one of the two dogs.

[2] Ms. Millett’s claim follows the breakdown of a romantic relationship and cohabitation with Ms. Boudreau that terminated on or around October 8, 2023. The parties cohabited from around April 2018 and were mutually engaged in the care of the dogs while they were living together.

[3] Ms. Boudreau took the dogs with her when she moved out of the parties’ shared residence and subsequently refused to return them to Ms. Millett. Ms. Millett alleged that, by doing this, Ms. Boudreau was violating the terms of the parties’ verbal agreement to share “joint custody” and maintain a “one week on and one week off” arrangement with respect to the dogs.

[4] Ms. Boudreau defended the claim. She stated that she was not in a romantic relationship with Ms. Millett at the time when the dogs were purchased and that

she had not agreed to share or separate the dogs. She asserted that the dogs were hers alone and that she purchased the dogs because she wanted them.

Jurisdiction

[5] This claim falls within the Small Claims Court's jurisdiction to order the delivery to a person of specific personal property where the personal property does not exceed twenty-five thousand dollars as provided by section 9(c) of the *Small Claims Court Act*.

[6] This court lacks jurisdiction to make an order of specific performance. However, in *MacDonald v. Pearl*, 2017 NSSM 5 at paragraph 29, Adjudicator Richardson acknowledged the possibility that an access order could be made in an appropriate case.

[7] Although Ms. Millett does not expressly assert an ownership interest, the determination of whether either of the dogs should be delivered to her merits consideration of whether she had such an interest in either Axle or Theo.

Ownership

[8] The principles applicable to the ownership of pets in Nova Scotia are outlined in *MacDonald v. Pearl*, 2017 NSSM 5 at paragraph 25. The court will

consider the nature of the relationship between the people contesting ownership and any express or implied agreement, as well as who purchased or raised the animal, and what happened to the animal after the relationship between the parties changed.

[9] Ms. Millett admitted that Ms. Boudreau originally acquired the oldest dog, Axle, before the parties moved in together.

[10] With respect to the second dog, Theo, Ms. Millett testified that Ms. Boudreau brought up the idea of getting another dog at a time when the parties were experiencing difficulties in their relationship. Ms. Millett testified that she asked Ms. Boudreau: "can we fix our problems, if we're going to get another dog?"

[11] It was not clear from the evidence whether the parties' relationship improved prior to the acquisition of Theo. At the hearing, Ms. Boudreau testified that much of the relationship was unhealthy. The parties were not consistently in an intimate partner relationship while they were living together. Ms. Boudreau described the parties as "separated" at the time when Theo was purchased.

[12] Ms. Boudreau made arrangements with the breeder and paid for Theo. Ms. Millett accompanied Ms. Boudreau to pick up Theo around November 2021.

[13] Ms. Millett testified that she subsequently paid for half of Ms. Boudreau's rent to cover her contribution toward the cost of purchasing Theo. This assertion was disputed by Ms. Boudreau, who denied that Ms. Millett paid anything for Theo. Ms. Millett clarified that she didn't pay for half of the rent precisely when Theo was acquired, but that she did pay an extra \$400 that same month. She testified she would have to look for the remaining \$100.

[14] Regardless of Ms. Millett's intentions, it was not evident that any subsequent contribution toward the parties' shared living expenses was accepted by Ms. Boudreau as a payment toward Theo. The court notes that Ms. Boudreau testified that she spent a lot of money helping Ms. Millett to get out of debt. In the absence of a more detailed accounting of the parties' relative contributions toward shared living expenses during the period of cohabitation, there is insufficient evidence to support Ms. Millett's claim that she shared the cost of purchasing Theo.

[15] After the dogs were purchased, Ms. Millett contributed to the care and maintenance of the two dogs while the parties were cohabiting; however, Ms. Boudreau paid the majority of the dogs' expenses.

[16] On the basis of the facts and evidence presented, the court finds that Ms. Boudreau has an ownership interest in both Axle and Theo. Further to the

reasoning outlined in *MacDonald v. Pearl*, 2017 NSSM 5 at para 34, this conclusion leads to the next question of whether Ms. Boudreau's interest was sole, or whether she shared an ownership interest with Ms. Millett.

[17] Separate and apart from the inherent difficulty of dividing ownership in a pet as discussed by Adjudicator Slone in *Gardiner-Simpson v. Cross*, 2008 NSSM 78, and Adjudicator Young in *MacKinnon v. MacKinnon*, 2022 NSSM 38, the court finds that any evidence of joint ownership was limited and insubstantial. The fact that both parties' names were on the veterinary bills is suggestive of co-ownership, but is not determinative. A partner or spouse may be added to a veterinary account for any number of reasons unrelated to ownership.

[18] Axle was acquired by Ms. Boudreau independently of Ms. Millett. With respect to Theo, Ms. Boudreau took the initiative to make arrangements with the breeder and paid the purchase price. Ms. Boudreau decided to acquire both pets and she carried most of the financial burden of the animals' upkeep. She did not expressly make a gift of either dog to Ms. Millett, and there was no evidence of an implied gift. The court finds that Ms. Boudreau has the stronger right of ownership with respect to both dogs.

Potential agreement regarding access

[19] When Ms. Boudreau moved out of the parties' shared residence, she took the dogs with her. She remembered fighting with Ms. Millett around this time but did not recall any agreement to share the dogs. Rather, she informed Ms. Millett that she was "able to see them".

[20] Ms. Boudreau proceeded to remove Ms. Millett's name from the dogs' veterinary account.

[21] The court is not persuaded that Ms. Millett and Ms. Boudreau reached any binding agreement regarding shared access to Axle and Theo. Ms. Millett had an expectation that she would have access to the dogs, but the precise terms of any supposed or anticipated access arrangements are too vague to be enforceable. The court interprets Ms. Boudreau's statement to Ms. Millett that she could see the dogs after the parties separated as not intended to be legally binding. Given the court's finding that the dogs belong to Ms. Boudreau, Ms. Boudreau had no obligation to share possession of Axle or Theo with Ms. Millett absent an express or implied agreement.

[22] The court finds that there was no express or implied agreement that Ms. Millett had any right to possess either of the dogs after the parties separated.

Conclusion

[23] Ms. Millett tendered into evidence many photos and text messages demonstrating that she had a positive and caring relationship with Axle and Theo. The texts associated with Ms. Millett's photos often used possessive pronouns including "our", "ours", and "my" in reference to the dogs. Ms. Millett clearly maintains a deep affection for the two dogs and presently has the financial means and ability to care for Axle and Theo.

[24] Although Ms. Millett had a significant role caring for Axle and Theo during the period when she cohabited with Ms. Boudreau, she has not established on a balance of probabilities that she has an ownership interest in either of the two dogs. Moreover, she has not established that she has any right to access Axle or Theo on the basis of an agreement with Ms. Boudreau.

[25] Ms. Millett's claim is hereby dismissed.

Sarah Shiels, Small Claims Court Adjudicator