IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *MacDonald v. Hart*, 2024 NSSM 38

Date: 20240621
Claim: No. 525708
Registry: Sydney

Between:

Timothy Shane MacDonald

Claimant

And

Nicole Marie Hart

Defendant

DECISION

Adjudicator: Raffi A. Balmanoukian

Heard: January 8, 2024, by Teams

Counsel: Timothy Shane MacDonald, self-represented claimant
Justin J. Cashin, for the Defendant

By the Court:

[1] Finley didn't choose the pug life. Sadly, the pug life that was chosen for him now renders him a proxy in a domestic dispute between the Claimant and the Defendant.

[2] For good or for bad, this little dog's best interests are not the issue in this proceeding. As with so many cases before and to come, it is about who is his owner as a matter of law. And as with so many cases before and to come, the parties' underlying animus has been visited upon the animal.

[3] As will be seen, much of the Claimant's case was based on expenses he incurred, and/or which were not reimbursed by the Defendant. His claim checks the "return of goods" box on the claim form, but also refers to "Claim amount $1200." At the start of the hearing, at my instigation, he confirmed that his claim is for return of the dog, not for payment of money. He clarified that this referred to Finley's purchase price (and by implication the "value" involved), rather than a monetary claim.

[4] The Claimant and the Defendant are former spouses. Finley came into their lives in 2015. They, according to the Claimant, split the cost of the dog; but the

purchase price came from the Claimant's account (according to the filed defence, "Finley was purchased solely with the funds of the Defendant" and the evidence showed at least some transfers which were claimed to be for this). When the parties separated in 2019, they shared custody of Finley, more or less, until June 2023; their divorce had been finalized three months before. The Claimant delivered Finley to the Defendant, according to his testimony, on June 14, 2023. Shortly afterwards, he asked for the dog "full time" but was refused.

[5] At my direction, I was provided with a copy of their corollary relief order. Finley is not mentioned, although the home (and associated debt), vehicles, bank accounts, pensions, and "all furniture and household items" are addressed. Given both parties' professed devotion to Finley, this is a notable omission. The Claimant referred to this on cross examination as an "oversight." A second dog, Ham, is with the Claimant (although apparently living with the Claimant's parents) and was purchased in June 2019 "with combined funds." Ham is not in issue in these proceedings. The Claimant denied an implied agreement that he would keep Ham and the Defendant, Finley.

[6] In 2021, Finley needed expensive eye surgery. The Claimant paid for this - $7,399. Further procedures added another $2,924. The Claimant said that the Defendant agreed to reimburse these amounts, but has only paid $950.

[7] The Claimant further said that he had Finley for most of his recovery period, and that the Defendant did not see the dog for much of this time, "being busy with school and work."

[8] Finley is not registered with the CKC (although there is a purported "registration" to the Defendant with the Cape Breton SPCA); there is no written agreement or contract with the breeder.

[9] The Defendant testified. She told the Court that Finley was her idea, and that it was she who contacted the breeder. She testified to various fees paid (licensing, microchipping, most grooming, eye drops, as well as a deposit towards the purchase price), and that Finley is effectively also her service animal for therapeutic and mental health purposes (a physician's letter was in evidence referring to Finley as her "emotional support dog"). He was characterized as "all I have" as the Defendant had no local friends or family.

[10] From separation to late 2020, Finley was primarily with the Defendant, while the Claimant had Ham. It was later stated that Ham had "bonded" with the Claimant's parents post-separation, and still resides with them.

[11] As for the surgery, the Defendant's testimony was that the parties decided that "whatever [she] could pay was good enough," as she was paying all household

expenses post-separation, and reconciliation had not yet been excluded as a possibility.

[12] In short, while I was presented with extensive receipts for "care and feeding," the thrust of the evidence is that the Defendant paid most but not all day-to-day expenses, and the Claimant paid for Finley's eye surgeries, less the $950 noted above.

[13] I was also presented with various photos of Finley with both the Claimant and the Defendant, implying "whose dog" he was. Overall, these are typical family-type snaps which did not persuade me one way or the other.

[14] I was also presented with screenshots of text exchanges, of variable temperature and maturity, arguing over who-paid-what, threatening to advise the Claimant's landlord of pets-on-premises, and culminating with literal "see you in Court."

[15] The Defendant's cross-examination contained evidence of whether she stopped payments towards the surgery, or whether the Claimant declined to accept them; whether the Claimant offered to 'purchase' Finley for the original $1200 paid to the Breeder (or, as the Claimant characterized it, to enable the Defendant to purchase another dog); and other such financial discussions. As noted, both sides

tendered extensive documentation and receipts; but as also noted, this is a 'dog custody,' not a financial dispute. Nonetheless, the crux of the Claimant's case is that since he has more pecuniary "skin in the game" overall, taken in combination with the purchase and previous possessory history Finley is (or should be) his.

[16] *MacDonald v. Pearl*, 2017 NSSM 5 has long stood as the guiding decision in cases such as this. It has been cited repeatedly in this jurisdiction and others – and in at least three different languages (*MacKinnon v. MacKinnon* 2022 NSSM 38).

[17] *MacDonald* has been cited often in British Columbia, both before and after it recently proclaimed "companion animal" legislation.

[18] In that Province, Bill 17 of 2023 amended its *Family Law Act*, SBC 2011, c. 25. It added a definition of "companion animal" (excluding service, commercial, or agricultural animals) and directed a Court dividing property to consider a number of factors, including circumstances of acquisition, care provided, violence or cruelty (towards the animal or otherwise), relationship of a child towards the companion animal, caregiving, and other circumstances. It precluded a declaration of joint ownership or shared possession. Notably, it does not change the nature of a companion animal *as* property – it directs the Court, in effecting a division *of*

property, to take these factors into account. It is also notable that *MacDonald* remains cited, with approval, within this environment, in BC "dog dispute" cases.

[19] At paras. 25-28 of *MacDonald,* Adjudicator Richardson said:

> [25] I have reviewed the following Small Claims Court cases with interest: *Gardiner-Simpson v. Cross* 2008 NSSM 78; *Hawes v. Redmond* [2013] NSJ No. 739; *Millet v. Murphy* [2011] NSJ No. 182. I believe that the following principles are applicable:
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> 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:
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> 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;
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> iii. The nature of the relationship between the people contesting ownership at the time the animal was first acquired;
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> iv. Who purchased or raised the animal;
>
> v. Who exercised care and control of the animal;
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> 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.

[27] In cases involving pets the determination of ownership may not be enough to resolve a dispute. Certain animals—and in particular cats and dogs—are the subject of intense emotional bonds with humans. As was noted by Adjudicator Slone in *Gardiner-Simpson v. Cross* 2008 NSSM 78 at para.3, "[t]he love that humans can develop for their pets is no trivial matter, and the loss of a pet can be as heartbreaking as the loss of any loved one." The intensity of this love can lead people to treat pets as if they were children, and hence to expect the law to determine the right to possess an animal based on what they say are the best interests of the animal: see, for example, *Henderson v. Henderson* [2016] SJ No. 493, where a separating husband sought interim possession of one of two dogs based on marital property legislation; see also Warnica v. Gering [2004] OJ No. 5396*; Kitchen v. MacDonald* [2012] BCJ No. 81. That of course is not the current law, though the law may be beginning to recognize that a more nuanced approach to these types of issues may be necessary: *Colthard v. Lawrence* [2011] OJ No. 6207. Some support for such a nuanced approach may be found in cases involving people who were married, since a pet's status as family or matrimonial property may ground an order for access to—or possession of—that pet by a former spouse: see, for e.g., *Rogers v. Rogers* [1980] OJ No. 2229; *Gauvin v. Schaeffer* [2003] SJ No. 117; *Anderson v. Antoine* [2006] NWTJ No. 51.

[28] But the fact that people in a common law relationship may view their pets as akin to children also gives rise to the possibility of agreements—whether express or implied—as to what might happen to the animals in the event the people separate. The law must be alert to the question of what people who are in such a relationship would say about ownership, or possession, or the right of access to those pets in the event their relationship later dissolves.

[20] In this case:

- It is not contested that Finley was acquired during, not before, the parties' relationship
- There is no indication of Claimant ownership, to the required civil standard, either before or after the relationship. The texts with the breeder are inconclusive; there was back-and-forth on payment and reimbursement (ie funds appear to have come from the Claimant's account but there were transfers from the Defendant to the Claimant); as noted above, there was no CKC registration. I do not accept the receipts from the SPCA for microchipping, or the receipt for registration, as determinative. These are indications of who paid that particular bill (or more specifically, who took Finley for these purposes), nothing more.
- The extent of care and control was disputed, but in context appears to have been exclusively or primarily with the Claimant either when the Defendant had work/school commitments, or back-and-forth after separation. Otherwise, Finley was with the Defendant, or (when there was one) under the parties' common roof.

- "Care and comfort" and expenses were substantially disputed. The best that can be said is that both bore the regular expenses of having a well-kept pet. Each side presented its "stack" of receipts. The text messages allude to the parties' respective financial positions which waxed and waned during their relationship; it is as likely as not that bills were paid depending on who had resources from time to time. There is no dispute that the Claimant paid for Finley's very expensive eye surgeries. There was a significant dispute as to why this was so, and whether this was an indication of ownership, subject to reimbursement, or as a type of equalizer for other non-animal expenses paid by the Defendant. It is notable that the 2023 (ie post-surgery) corollary relief order specifies that each party's respective debt is theirs and theirs alone.
- There is no allegation of Finley being a "gift" to or from either of the parties.
- While the text messages indicate some attempt to share Finley, they ultimately do not prove any "indicia of ownership." While I do not accept that there was an agreement to "split" Ham and

Finley, I conclude that the parties simply did not address the issue at the time of their divorce.

- To that end, the absence of mention of either Ham or Finley in the Corollary Relief Order is conspicuous in that absence. However, the fact Finley was "returned" to the Defendant about three months after its issuance, without apparent future "rotational arrangements" in place implies that at that point the Claimant accepted, at a minimum, that if Finley did not belong to the Defendant, Finley was at least not wholly his. It appears that three days later, he had a change of heart, which was promptly rebuffed. While at times the exchange deteriorated into mutual immaturity (with intermittent pleadings, recriminations, and less-than-subtle aggressions), there is no non-financial basis upon which the Claimant asserted 'ownership.'
- I have medical evidence, albeit brief, that Finley serves as a therapy companion animal to the Defendant. While Finley may have "come and gone" for a period of time, it is a salient and to me highly relevant indicator of ownership, consistent with the "more nuanced approach" referred to by Adjudicator Richardson

following his non-exhaustive list. This role Finley plays would also be known to the Claimant. I have to conclude that this dispute is at least part of the love-to-hatred-turn'd between them; while I do not go so far as to say that striking out at the Defendant is the Claimant's sole motive – he too clearly has affection for this pug - neither do I accept that the Defendant's love and medical need for Finley has escaped his radar.

- I accept that the Claimant paid a substantial sum for the surgeries. I do not accept that this was done as an exercise in ownership. The evidence is that this was either a loan or an equalizer; and it may well be that the parties were not of the same mind as to which it was. This case is not, I repeat, a monetary dispute between them. If there is a separate proceeding in that regard (and in light of the provisions of the Corollary Relief Order) so be it.

[21] The burden is on the Claimant, to a civil standard, to prove that he is entitled to delivery of Finley, as owner. He has not so proven. The claim is dismissed.

[22] I add a final note. This decision will be released on or about what would, unrealistically, have been my golden retriever Gibson's 19th birthday. I was

introduced to that magical breed by a former partner at the turn of this century; good things can come out of everything, if you take the effort to look. Although Gib has long been on the other side of the Rainbow Bridge, he and his late half-brother Colin made life better. Their legacies still do. I hope they would have approved of this decision.

[23] The parties to this litigation have gone their separate ways; they each, however, have in their lives unjudging, unconditional love in the forms of Ham and Finley. The fact they are property in the eyes of the law does not change this. The parties have much to learn from them. I hope they do.

Balmanoukian, Small Claims Court Adjudicator