

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *Mardian v. Benoit*, 2017 NSSM 74

**BETWEEN:**

**CEANNA MARDIAN**

Claimant

- and -

**SHERRI BENOIT**

Defendant



**Hearing Date:** April 24, 2017  
**Appearances:** Claimant – Gary Richard, Barrister & Solicitor  
 Defendant – Dennis James, Q.C., Barrister & Solicitor

**DECISION and ORDER**

- [1] This is a claim for delivery of a pet dog named "Krew," a male French Bulldog born February 23, 2016. The Claimant, Ceanna Mardian, along with her boyfriend, Brandyn Cavanaugh, purchased Krew on April 16, 2016. Mr. Cavanaugh tragically passed away on June 26, 2016.
- [2] The Defendant, Sherri Benoit, is the mother of Brandyn Cavanaugh. She presently has possession of Krew and has had since October 2, 2016. She asserts that Krew was gifted to her by Ceanna Mardian.
- [3] Ceanna Mardian disputes that.
- [4] There is no question that the Claimant had owned Krew. There is also no question, at least no such claim is asserted based on a right of successorship from the estate of Brandyn Cavanaugh. I raised this issue at the hearing and was advised that counsel had concluded

there was no basis for such a claim. Therefore, the sole issue before me is whether on the facts there was a gift of the dog named "Krew."

- [5] It has been stated many times and no authority need be cited for the proposition that in the law, a dog is considered as personal property. Therefore, any consideration of what may or may not be in the "best interest of the dog" is legally irrelevant. The legal principles concerning ownership of a dog are the same as those concerning the ownership, or the transfer of ownership in any other tangible personal property such as a motor vehicle, a boat, a record collection, a fly rod, or any other piece of property that one may think of.
- [6] The law relating to *inter vivos* gifts, which merely means a gift made during someone's lifetime, is fairly basic. It has been described and quoted with authority as follows:
- "A gift *inter vivos* has been described as a "gratuitous transfer of property from the owner to another, with the full intention on the part of both donor and donee that the thing shall not be returned to the donor but shall be retained as the donee's own." (*Doucet v. Doucet*, 2005 N.S.S.C. 46, per Boudreau, J.)
- [7] There would appear to be two basic requirements valid gift of personal property – first, evidence of an intention on the part of both parties that the thing shall not be returned and secondly, delivery of the gift property to the donee (or alternatively, transfer by deed or declaration of trust).
- [8] It would appear quite clear in this present case that there was a delivery of Krew on October 2, 2016, at the parking lot of the Cobequid Educational Centre football field in Truro.
- [9] The more contentious issue here is whether or not there is evidence of the requisite intention.
- [10] Following Mr. Cavanaugh's death in June, 2016, the Claimant and the Defendant shared Krew on a week by week basis for the summer of 2016. At the end of August, Ms. Mardian went out west, specifically, Alberta, and stayed with a friend for two weeks. She apparently did this to test the waters and see whether she might like to move out there. When she returned, Krew was returned to her by the Defendant, without any issue or argument. However, I understood in the evidence that Ms. Benoit did indicate to Ms. Mardian that she would take ownership of Krew on a permanent basis but that suggestion was declined by Ms. Mardian at that time.

- [11] On September 14, 2016, Ms. Beniot went to Ms. Mardian's place of work, Medi Spa, in Truro, for an appointment with Ms. Maridan and a discussion about Krew. This is a critical discussion to the outcome of this case and not surprisingly the parties' evidence of what was said on this day varies.
- [12] Ms. Mardian says that she told Ms. Benoit that she was going out to Alberta again, this time for a month. She was leaving Krew with her for a month but was not giving her ownership. She wanted to get away from what she described as the "chaos." She did not quit her job but she asked her employer if she could go for a month and they told her they would keep her job open for a year. She actually left on October 4, 2016, and returned on November 9, 2016. Ms. Mardian says that there was no discussion with Ms. Beniot that she was staying permanently. On the night before she left, October 3<sup>rd</sup>, (the day after the delivery of Krew at the CEC parking lot), she dropped into Ms. Benoit's house to say good bye to Krew. She indicates that she said to the dog, but in Ms. Beniot's presence, that she would find a home for them and she would be back. She states that she also gave Ms. Beniot a bag of food and a backpack with a water dish and some toys and other stuff. This was the last time she saw Krew.
- [13] On cross examination, Ms. Mardian said she did not recall telling Robin Withrow that she was moving to Alberta and did not recall saying to her that she was giving Krew to Ms. Beniot; she did not recall saying that Ms. Benoit could afford to look after Krew; and did not recall saying that's what Brandyn would have wanted.
- [14] She also stated that she did recall the discussion of September 14<sup>th</sup> with Ms. Benoit but as to her saying that she was moving, she stated that it was not worded that way. She confirmed that her ticket to Alberta was a one way ticket.
- [15] As to the photograph entered showing the articles presumably given by her to Ms. Beniot (Exhibit D5), she stated that was not all of the stuff that she had and as well, there was stuff there that was not hers. She kept his bed and his crate.
- [16] Sherri Benoit's evidence was that on September 14<sup>th</sup> she had the appointment at Medi Spa and requested Ms. Mardian so that she could have a discussion with her.
- [17] When they went in the waiting room, Ms. Mardian told her that she had decided to move out west. She said that she liked it when she was out there in August. She said it was in

Krew's interest that she give him to Ms. Benoit. She said she could not handle it here anymore. Ms. Beniot said there was no misunderstand and Ms. Mardian was very clear. She gave Krew to her. She stated that Ms. Mardian said she was thinking of Krew's best interest and said I am "giving him to you."

- [18] A little over two weeks later they arranged to meet at the Cobequid Educational Centre football field on October 2<sup>nd</sup>, a Sunday. Ms. Beniot's son was playing football there. They met in the parking lot and Ms. Mardian gave Krew to Ms. Benoit. As well, she gave her number of items which are in the photo that was tendered. s. Benoit along with her husband, Warren Benoit, told her that they were very happy for her. She assured her that she loved Krew and he would have a good home.
- [19] She recalled that Ms. Mardian dropped by the next day for a couple of minutes, she was playing with Krew, and gave him kisses. She reiterated that she was very much looking forward to her move out west. She said Krew would bring her, Ms. Benoit, great comfort. Her husband, Warren, and son, Dilan, were also there.
- [20] As to the statement allegedly made by Ms. Mardian that she would be back in 30 days, Ms. Benoit said that was not said. She said the first time she heard it was at the evening of the hearing.
- [21] On November 7, 2016, she was surprised to get the text from Ms. Mardian saying she was moving back.
- [22] Jacqueline Rosecock gave evidence. She is the office manager at the Truro Medi Spa. She stated that in the fall Ms. Mardian was having issues with Brandyn's passing and she needed to get away so they let her go. She stated that they knew she would be back. She stated that she never gave her an ROE as she knew she would be back. Ms. Mardian said she wanted to move out to Alberta, but as a mother, Ms. Rosecock stated that she knew she would be back. She stated that Ms. Mardian told her that her plan was to get a job, an apartment and then get her other possessions and get Krew and go back out.
- [23] Robin Withrow testified that she knows Ms. Mardian and recalled a conversation she had with her in or about September 2016. Her husband is Brandyn's father.

- [24] She recalled that Ms. Mardian was on the couch in her home and said that she was moving out west. She stated there was just too much to deal with here. The issue of Krew was brought up and she said she was leaving her with Sherri. She said Sherri could afford to take care of him. Krew has allergies and needs medication. She said Brandyn would be happy that Sherri was taking care of Krew. It was her understanding that she was not returning to Nova Scotia. Her brother and father are in Alberta. On cross-examination she said that she may have said that she was returning to get her things but she was not present for that discussion.
- [25] Warren Benoit is married to Sherri Benoit and was Brandyn's step father. He recalls the day Sherri came back from the Medi Spa and told him about her discussion with Ceanna. He also recalled getting Krew at the football game on October 2<sup>nd</sup>. He stated that Krew came back with them to watch the second half of the game. Ms. Mardian had already told Sherri she was giving Krew to her. The next day she came by to say her goodbyes. She again said the dog is yours and that she knew he would bring her great comfort. He stated he never heard anything about a 30 day period.
- [26] Dilan Benoit is the son of Sherri and Warren Benoit and is in Grade 11 at Cobequid Educational Centre. He stated he recalled the night she came over to say her goodbyes. He stated she was there just a couple of minutes. He testified that she stated she was giving the dog to his mother because she knew how much the dog meant to her. He never heard anything about a 30 day period.

### **Analysis**

- [27] In order to confirm that an effective gift was made in law I have to conclude on a balance of probabilities that the donor, Ceanna Mardian, and the donee, Sherri Benoit, had the requisite intention that Krew would not be returned. As I will explain, I conclude that the evidence does show that an effective gift of Krew was made.
- [28] First, I was impressed with the evidence of Sherri Benoit. It was entirely credible and convincing. Of most significance was what she said about the meeting of September 14<sup>th</sup> at the Medi Spa. And, with respect, the suggestion made in closing submissions that Ms. Benoit heard what she wanted to hear and that she was in the "fog of grief" is not convincing. I dismiss that suggestion.

- [29] Ms. Withrow's evidence is entirely consistent with and corroborates Ms. Benoit's evidence of what Ms. Mardian said to her.
- [30] Ms. Marian's evidence on the other hand is a little bit contradictory. That is, on the one hand she seemed to be saying that she had no intention of moving to Alberta and was only going for 30 days. On the other hand, she seemed to be saying that she was moving to Alberta but would be back once she got established to take more of her possessions and at that time would take Krew back out. Under this theory, as I would understand it, she changed her mind when she was out there.
- [31] Either way, those things were not communicated to Ms. Benoit. According to her evidence, which I accept, she was told by Ms. Mardian that she was moving our west.
- [32] Further, no other witness referred to the 30 days which Ms. Mardian stated several times. Had she stated that to her employer, or to Ms. Withrow or to Ms. Benoit, or Ms. Benoit's husband and son, I expect they would have remembered that specific figure.
- [33] Also, it is of some significance that in her text to Ms. Benoit of November 7<sup>th</sup>, she stated "I'm moving back to Nova Scotia." That clearly infers that she had "moved" to Alberta first. Such a statement is inconsistent with going out for 30 days or some other temporary period.
- [34] I also refer to the fact that the supplies given by Ms. Mardian to Ms. Benoit on October 2<sup>nd</sup> were significantly more than had been given previously.
- [35] My conclusion is that Ms. Mardian's intention in September, 2016, was to move out to Alberta if things worked out. It was for an indeterminate time and if she had 30 days in her mind, she did not communicate it to anyone else who gave evidence before me (including Ms. Rosecock). Her employer did leave her job open and this was communicated to her that it would be left open for a year. Her hope and intention was to find a job and a living arrangement which suited her. That she moved back tells me that she did not find those things or was not prepared to stay out there much longer in hopes of finding them. The evidence also suggested that she was still having difficulty with the recent passing of her boyfriend and she hoped that getting away from Truro to an entirely different environment would help with that issue. In a sense, the fact that the job was left open for her was, in her thinking in September, the backup plan. As it turned out, she ended up going with the backup plan.

[36] It is possible that she did indeed think that if she got established in Alberta with a job and with a living arrangement which would accommodate a dog (bearing in mind that not all apartments allow dogs), she may have thought she could come back and take Krew out to Alberta. This might have been the thinking that was behind what she apparently told Ms. Rosecock. However, I find that there was no discussion along these lines with Ms. Benoit.

[37] I find that the discussion with Ms. Benoit was entirely to the effect that she was giving ownership of Krew to Ms. Benoit. I consider that the evidence amply demonstrates that.

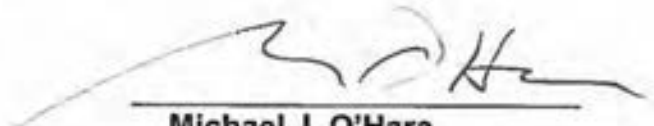
[38] Accordingly I find that in law an effective gift was made effective October 2, 2016, when Krew was delivered from the donor, Ceanna Mardian, to the donee, Sherri Benoit.

[39] The claim must therefore, be dismissed.

**Order**

[40] It is hereby ordered that the within claim be and is hereby dismissed without cost to any party.

**DATED** at Halifax, Nova Scotia, this 5 day of July, 2017.



**Michael J. O'Hara**  
**Adjudicator**