

Claim No: 419744

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Hawes v. Redmond, 2013 NSSM 57

BETWEEN:

VIOLET C. HAWES

Claimant

- and -

LAUREL A. REDMOND

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on December 9, 2013

Decision rendered on December 23, 2013

APPEARANCES

For the Claimant

Laura Kanaan
Counsel

For the Defendant

Damien Penny
Counsel

BY THE COURT:

[1] This Claim was originally commenced by the Claimant on September 20, 2013, seeking financial relief for unjust enrichment arising out of a domestic relationship which had ended in August 2013.

[2] On October 11, 2013, the Defendant filed a defence, together with a counterclaim for the return to her of a dog, Tiny Tim, which had remained with the Claimant when the relationship ended some weeks earlier.

[3] The claim and counterclaim were eventually scheduled for a special hearing before this court on December 9, 2013. Before the hearing started, the Claimant elected to advance her unjust enrichment claims in the Supreme Court (Family Division), leaving only the counterclaim to be determined by this court.

[4] For sake of the narrative, given that this is a counterclaim being adjudicated, I will refer to the parties by their names rather than by the term Claimant or Defendant.

[5] Dr. Violet Hawes, is a medical doctor who is currently on long-term disability. She lives in Middle Musquodoboit with two teenaged children and three dogs, one of whom is the dog whose ownership is in dispute.

[6] Laurel Redmond is a somewhat younger woman who also lives in Middle Musquodoboit, though no longer with Dr. Hawes. Ms. Redmond has one dog,

Leo, the ownership of which is not in dispute, although it appears to have been at one time.

[7] The dog in dispute, Tiny Tim or sometimes Tim, is a long-haired Chihuahua. He was purchased as a 10-week-old puppy on November 23, 2012. There is no dispute that the person who picked out and paid for Tim was Dr. Hawes.

[8] The dog is not registered with the municipality or with a Kennel Club. As such there are no documents that evidence ownership. Vet bills concerning Tim appear to name as owner whoever brought the dog in and would be paying the bill.

[9] The circumstances of the acquisition of Tim appear to be these. There were already three dogs living in the house. Two of them clearly belonged to Dr. Hawes and her children. The third one, Leo, was clearly identified with Ms. Redmond. However, since they all lived together, there were not many distinctions for how they were treated. They were family dogs. The questions of who bought food, let them out, applied training, cared for them or took them to the vet, had little or nothing to do with ownership. It partly depended on routine, and partly on who was available at any given time.

[10] According to Dr. Hawes, she learned about this Chihuahua puppy incidentally, and made a quick decision to buy it. The timing was such that it was almost Ms. Redmond's birthday, and also close to Christmas. She testified that her relationship with Ms. Redmond was struggling, and she thought that the introduction of Tim into the family would cheer everyone up. She admits that

she told Ms. Redmond that it was a birthday gift, but also insisted that it was a gift for the whole family.

[11] For the next eight months or so until the relationship ended, Tim became integrated into the household and was treated pretty much the same as all of the other dogs. Because Dr. Hawes was not working outside the home, unlike Ms. Redmond, she attended to many of the duties that come with dog ownership. She bought the majority of the food. She took Tim to some of the vet appointments.

[12] Given the division of responsibility within the household, pertaining to all of the dogs, all of this evidence is utterly equivocal. Even if Tim had been registered to Ms. Redmond, bought by her with her own money, and clearly identified as Ms. Redmond's dog by all legal indicators, it is difficult to see how anything would have been different in terms of day to day care. Ms. Redmond was out of the house much of the time for work. Dr. Hawes was home. There were teenagers who were attached to all of the pets, including Tim. Anyone might have gone to the vet, depending on who was available.

[13] I cannot say that any of the evidence about who spent what money, or who looked after the dog more, establishes anything.

Subjective evidence of ownership

[14] Although it can be difficult sometimes to differentiate between what one does as part of a family that owns a pet, and what one does or would do as a sole owner, Ms. Redmond clearly regarded Tim as her dog, at least in some

respects. The best evidence of this is in her Facebook posts shortly after Tim was acquired. On December 13, she captioned one photo of Tim “my new guy.” On December 17, 2012 she posted an earlier picture with the caption “the day I got Timmy, he’s really growing.” On January 19, 2013, she posted a picture of Tim and Leo with the caption “my boys.”

[15] According to the evidence of Ms. Redmond’s mother, when Ms. Redmond came to visit during this period of time, she usually brought with her the two dogs, Leo and Tim. She did not bring the other dogs.

[16] Ms. Redmond concedes that Tim became very bonded to Dr. Hawes and her children. She admits that she often joked with Dr. Hawes that Tim was “your guy” because of how attached to her he seemed to be. But she insists that she did not mean that in any ownership sense. From her point of view, Tim was her dog, given to her as a birthday gift. When the relationship ended, she expected to take Tim with her. When Dr. Hawes refused to part with Tim on that emotionally charged day at the end of August, she did not want an altercation but instead planned to get a lawyer and pursue her claim through the court.

[17] Dr. Hawes sought to downplay the extent to which it was a gift to Ms. Redmond and insisted that it was a gift to the family. Her evidence mostly focussed on the fact that she did the majority of the care and feeding of the dog and that she incurred most of the expense.

[18] There is no question, as evidenced by the original claim brought by Dr. Hawes, that she believes that Ms. Redmond exploited her during the relationship and, based on that, is looking for financial redress. I see her evidence about the

dog Tim in much the same light. She has a grievance against Ms. Redmond because she believes she did not pull her weight in the household and in the relationship generally.

[19] Although not explicitly stated, I got the impression from her evidence that her claim to the right of ownership is partly based on the fact that she believes the dog is very attached to her and to her children, and vice versa, and that it would be wrong to interfere with that status quo.

The Law

[20] Cases involving pets are well known in this court, and they are rarely easy. I believe it is apt to quote some of what I wrote in a 2008 case of *Gardiner-Simpson v. Cross*, 2008 NSSM 78, as setting out the necessary framework:

[2] Both the Claimant and Defendant are very fond of the dog, and they both have arguable cases for ownership. They tried without lasting success to share ownership. As such, the issue of ownership must be decided in favour of one of them, and the other will have to endure the loss of the relationship.

[3] The 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.

[4] Emotion notwithstanding, the law continues to regard animals as personal property. There are no special laws governing pet ownership that would compare to the way that children and their care are treated by statutes such as the *Custody and Maintenance Act* or the *Divorce Act*. Obviously there are laws that prohibit cruelty to animals, but there are no laws that dictate that an animal should be raised by the person who loves it more or would provide a better home environment.

[21] In that case, there was also a claim by one party that the dog was a gift, and I had this to say about gifts:

[19] The Claimant bases her ownership claim on the premise that the dog was a gift to her, either for Christmas, or as an inducement for her to live with him. She relies also on the fact that she, rather than he, actually made the payments.

[20] The Defendant bases his claim on the fact that he was the purchaser, the dog is registered with the vet and the City in his name, and he has had possession of the dog for most of the past two years. He denies that it was a gift to the Claimant. He says that if it was a gift at all, it was to themselves as a couple or to the household. He further argues that the Claimant ceded the dog to him in their Separation Agreement.

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[32] The concept of a gift is legally more complex and problematic than most people may realize. The law is suspicious of alleged gifts, especially under circumstances where the donor is no longer alive or otherwise able to corroborate the intention to make a gift. Perhaps sadly, it is more consistent with human nature to find people acting in their own interest and not being motivated by pure generosity.

[33] This is not a matter where the alleged donor is unavailable to speak to his intention, so the matter becomes more of a straightforward question of fact, namely: was there a clear intention on the part of the alleged donor (here the Defendant) to vest the property interest in the item (Jersey) in the Claimant?

[22] In that case, based upon all of the evidence, I was unable to find that a gift had been intended.

[23] In the case here, I am satisfied that Dr. Hawes intended to make a gift of Tim to Ms. Redmond, at the important time in the analysis - namely at the beginning. I have no doubt that she knew that the dog would be a welcome addition to this very dog-focussed household, but she appears to have been

principally motivated by a desire to strengthen or salvage her relationship with Ms. Redmond. She used the term gift and connected it to Ms. Redmond's birthday. Ms. Redmond clearly accepted the gift, and in her Facebook posts presented the dog to her friends as hers, in the singular sense.

[24] I find it significant that when Ms. Redmond went to visit her mother, she brought the two dogs that she regarded as hers. She did not bring four dogs (unmanageable though that might have been). All of this clearly points to her belief that the dog had been gifted to her by Dr. Hawes, a belief that Dr. Hawes never sought to deny until the time of separation.

[25] On the other side of the equation, there is very little evidence that would negate the gift. The fact that much of the care fell to her, and that the dog would become bonded to Dr. Hawes and her children, is equivocal, as I have noted. This was a function of family dynamics.

[26] I have no doubt that the dog currently has a good home with Dr. Hawes and her family, but that is not the point. This case is not about the best interest of the dog; it is about who has the better claim to legal ownership. The analysis is no different than it would be if we were talking about a bicycle.

[27] In the final result, the counterclaim succeeds and I order that the dog, a roughly 14-month old long-haired Chihuahua named Tiny Tim, be returned to Ms. Redmond who I recognize as having the better claim to ownership on the basis that it was gifted to her by Dr. Hawes.

Eric K. Slone, Adjudicator