

Citation: *Gillespie v. Cuthbert*, 2016 YKSM 9

Date: 20161129
Docket: 16-S0041
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Chisholm

EMERALD GILLESPIE

Plaintiff/Respondent

v.

SHELLEY CUTHBERT operating as ANY DOMESTICATED ANIMAL
RESCUE AND BOARDING KENNELS

Defendant/Applicant

Appearances:
Shelley Cuthbert
Graham Lang

Appearing on own behalf
Counsel for Respondent

RULING ON APPLICATION

[1] On November 17, 2016, the Defendant, Ms. Cuthbert, brought an application to adjourn the trial of this matter, which had been set for November 21. I granted the application on that date with costs to the Plaintiff and gave summary reasons upon which this written ruling expands. A detailed factual background regarding the substance of the claim is set out in *Gillespie v. Cuthbert*¹, 2016 YKSM 8.

[2] In brief, this is a dispute with respect to the ownership of a dog that the Plaintiff had boarded with Ms. Cuthbert in an attempt to resolve some behavioural issues. The Plaintiff seeks the return of the dog which the Defendant argues was ultimately surrendered to her. Pending the trial of this matter, I made an order placing the dog in

¹ The pleadings have since been amended to reflect the proper spelling of the Defendant's name.

the care of a third party. Soon after the making of the order, the Defendant indicates she completed arrangements to have the dog placed with an individual in Alberta who wished to adopt it. During transport to Alberta, the Defendant says the dog escaped and could not be further located.

[3] The parties to this action appeared in court on November 7 with respect to a discovery of the Defendant that I had ordered. Immediately prior to the discovery process that day, the parties appeared before me to address the issue of costs and to also confirm the November 21 trial date. At that time, the Plaintiff indicated that if she were successful at trial, she would be seeking punitive damages.

[4] In light of this, the Defendant asked the Court if she would be able to seek and retain counsel for the trial. The Court advised her that it was her right to do so. At that time, the Defendant did not provide any indication that she had made previous attempts to retain counsel in this matter.

[5] On November 17, the Defendant advised the Court that she had been attempting to retain a lawyer for approximately a month without success. She outlined the significant efforts she had made. After balancing the issue of further delay in a straightforward case and the issue of whether the Plaintiff would be unduly prejudiced by a later trial date, I granted the Defendant's application and scheduled a new trial date.

[6] However, in my view, this application was unnecessary. The Defendant should have provided information about her efforts with respect to counsel to the Court on November 7 when she raised the issue of wanting a lawyer. If she had fully explained

the situation, I would have foreseen the unlikelihood of her retaining and instructing a lawyer who would have been available for the fast approaching trial date.

[7] The issue of a trial adjournment could have been raised and dealt with on November 7, thereby obviating the need for the present application.

[8] Further, contrary to the Defendant's oral representations on this application outlining substantial efforts to seek counsel, her representations on November 7 and her written application of November 14 to adjourn the trial initially left me with the impression that her interest in seeking counsel only arose on November 7, as opposed to some earlier date. I would be surprised, however, if that were the case, since a reasonable person would, in my view, assume that the loss of property which is the subject of litigation could lead to an award of significant damages, punitive or otherwise. I, therefore, accept her explanation on this application that she has been seeking counsel for some time.

[9] Pursuant to s. 38 of the *Small Claims Court Regulations*, O.I.C. 1995/152 amended by O.I.C. 2011/04, a Court may fix costs of an application where the Court is satisfied that the application was necessary because of the default of a party. I find that had the Defendant supplied the Court on November 7 with all of the details of her attempts to retain counsel, thus displaying her longstanding desire to be represented, the issue of a trial adjournment could have been dealt with at that time. Instead, the Defendant made this last minute application which necessitated further court time and another appearance by the Plaintiff's counsel.

[10] I award costs to the Plaintiff for this application and fix the costs at \$250, payable immediately.

CHISHOLM T.C.J.