



**IN THE COURT OF APPEAL  
OF NEWFOUNDLAND AND LABRADOR**

**Citation:** *Baker v. Harmina*, 2018 NLCA 15

**Date:** March 6, 2018

**Docket:** 201701H0049

**BETWEEN:**

DAVID BAKER

APPELLANT

**AND:**

KELSEY HARMINA

RESPONDENT

**Coram:** White, Harrington and Hoegg JJ.A.

**Court Appealed From:** Supreme Court of Newfoundland and Labrador  
Trial Division (G) 201701G1914

**Appeal Heard:** October 27, 2017

**Judgment Rendered:** March 6, 2018

**Reasons for Judgment by:** White J.A.

**Concurred in by:** Harrington J.A.

**Dissenting in Part:** Hoegg J.A.

**Counsel for the Appellant:** Shane R. Belbin

**Counsel for the Respondent:** Self Represented

**White J.A.:**

[1] Mya is a cross between a Bernese mountain dog and a poodle. For nearly two years she was treated as a family member by David Baker and Kelsey Harmina. Now they have split up, and this case is about who gets to keep her.

**Background**

[2] Mya came to Newfoundland in October 2014 from a kennel in Ontario. She was greeted at the airport by Ms. Harmina. Mr. Baker was in Alberta, where he worked 14 days out of every 21. When he was out of town Ms. Harmina kept the dog; when he was in town, he took it.

[3] In late 2014 Ms. Harmina and Mr. Baker moved into a house in Kenmount Terrace. She was in town all the time, studying part time, while he worked away, first in Alberta and then in Marystown. So she spent more time caring for Mya than he did.

[4] In August 2016 they broke up. Ms. Harmina kept Mya. They talked about sharing her, but the arrangements did not work out. In November 2016 they took out peace bonds against each other.

[5] Finally Mr. Baker sued Ms. Harmina in small claims court, seeking an order that she return Mya to him. He said he owned Mya outright: he'd made the arrangements with the breeder, he's paid for her purchase and most of her expenses, and he'd never given Ms. Harmina a share of the dog.

[6] Ms. Harmina's position was that Mya was jointly owned. The decision to buy a dog was a joint one and depended on her availability. Mr. Baker did not pay for Mya alone. There were a number of e-transfers back and forth between them around the time of the purchase, for example in relation to a couch for the new apartment. She had spent more time with Mya, had acted more like a primary owner, and had also paid for some ongoing expenses.

[7] After fully considering and weighing all the evidence, the small claims judge concluded that Mr. Baker bought Mya alone and for himself. While Ms. Harmina advanced part of the purchase price, she did that on Mr. Baker's behalf, as he was having difficulty with his on line account. She was fully reimbursed the funds she advanced. Later Ms. Harmina took care of Mya and became close to her but she never acquired a property interest in her by gift or purchase. Mr. Baker remained Mya's sole owner.

[8] Ms. Harmina appealed to the Supreme Court Trial Division. The appeal judge found that the small claims judge had erred in deciding ownership without having regard to the full context of the parties' relationship. She concluded that the parties owned Mya jointly and ordered that Mr. Baker should keep her while he was in town and Ms. Harmina the rest of the time.

### **Issues**

[9] Did the appeal judge err in setting aside the small claims judge's decision, finding that Mya is jointly owned, and setting a "custody" schedule?

### **Standard of Review**

[10] On a second level appeal, the question is whether the appeal judge correctly selected and applied the standard of review: *Wright v. Sun Life Assurance Company of Canada*, 2014 BCCA 309 at paras. 34-37; *R.W. v. Alberta (Child, Youth and Family Enhancement Act, Director)*, 2011 ABCA 139 at paras. 14-15.

[11] The appeal judge correctly selected the standards of review from *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: correctness for questions of law, palpable and overriding error for questions of fact, and palpable and overriding error for questions of mixed law and fact, except for extricable questions of law, which are reviewed for correctness.

### **Analysis**

#### **Was Mya Jointly Owned in Law?**

[12] In the eyes of the law a dog is an item of personal property. That doesn't mean dogs aren't important. It means that when two people disagree about who should get a dog, the question is not who has the most affection for the dog or treats it better (so long as both parties treat the dog humanely). The question is who owns it.

[13] The small claims and appeal decisions present two different models of how a court should determine pet ownership. The small claims judge's approach focuses on the chain of ownership and looks for discrete transactions where ownership changed hands. Who bought Mya from the breeder? Mr. Baker alone, as he paid for her. Had Mr. Baker given or sold an interest in Mya to Ms. Harmina? No. So Mr. Baker remained the sole owner.

[14] The small claims judge's approach follows a line of decisions such as *Warnica v. Gering* (2004), 136 A.C.W.S. (3d) 278 (Ont. Sup. Ct.); *Kitchen v. MacDonald*, 2012 BCPC 9; *Ireland v. Ireland*, 2010 SKQB 454; *McIntosh v. Daoust*, 2016 MBQB 194; *Henderson v. Henderson*, 2016 SKQB 282.

[15] The appeal judge's approach takes a broader look at the relationship between the parties and the dog. Instead of looking for a chain of ownership with clear moments of transition, the appeal judge's reasons emphasize that the parties "picked out the dog together while dating", that they shared expenses, that Mya spent much of her time alone in Ms. Harmina's care.

[16] The main authority the appeal judge draws on is *MacDonald v. Pearl*, 2017 NSSM 5, but a similarly contextual approach is evident in *Coulthard v. Lawrence* (2011), 219 A.C.W.S. (3d) 891 (Ont. Sup. Ct.) and *Rogers v. Rogers* (1980), 5 A.C.W.S. (2d) 178 (Ont. Dist. Ct.).

[17] At first glance, this case seems to pit traditional legal doctrine against social realities. The small claims judge's approach reflects the traditional theory that property only changes hands through deliberate transactions, particularly gifts or purchases. The appeal judge's approach seems more sensitive to the way in which, over the course of a romantic and domestic partnership, "my" dog can become "our" dog, without any explicit moment of gift or purchase.

[18] The appeal judge's approach significantly loosens the traditional requirement that a party who claims joint ownership should point to a particular transaction where ownership changed hands. The Court should be open to modifying legal doctrines to reflect social realities, but it should not do so without considering the practical implications of the change.

[19] In this case, the appeal judge's approach would make it significantly easier to show that a pet is jointly owned in law. It would expand the scope of joint ownership. And this would be unfortunate in many ways, because the legal system is not well equipped to deal with the problems raised by joint ownership of dogs.

[20] A dog is "indivisible" and cannot simply be divided between the parties: *Simmonds v. Simmonds*, 2005 NLUFC 10, 247 Nfld. & P.E.I.R. 210 at para. 44. If a dog is jointly owned, the court will usually order one co-owner to buy the other out and pay compensation, as in *Simmonds*. It can also order the dog to be sold and the proceeds divided.

[21] This response is unsatisfying to many people who keep dogs as pets. Neither Ms. Harmina nor Mr. Baker wants Mya for her financial value. They want her as a pet and companion. The Court can declare them joint owners, but it cannot jointly give them what they want.

[22] What about the order under appeal, under which the dog alternates homes? Assuming for the moment that the Court *can* make such orders, they usually cause more problems than they solve. An order for sharing does not end the conflict. Instead it creates a regularly scheduled opportunity for conflict that recurs for the rest of the dog's life.

[23] Every time one party is late for the drop-off, or sick, or on vacation; when the dog is sick and vet bills need to be shared; when the dog is injured in one party's care—there is an opportunity for conflict. These opportunities can be particularly tempting for former romantic partners who end up in court litigating the ownership of a pet.

[24] The courts have extensive experience with this kind of conflict in child-custody disputes. For the parties it means stress, heartache, wasted time, legal fees. For the courts and for the public it consumes valuable judicial resources that could be used resolving other disputes.

[25] Courts have long been reluctant to make orders that require ongoing supervision for this reason: see e.g. *Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd.*, [1998] A.C. 1 (U.K.H.L.). This wide-ranging policy concern is not attenuated in the context of former romantic partners fighting over a beloved pet: it is amplified.

[26] While expanding the scope of joint ownership seems at first to be progressive and forward thinking, it is unlikely to be a kindness either for the parties or for the public. As Adjudicator Slone said at para. 6 of *Gardiner-Simpson v. Cross*, 2008 NSSM 78, “The worst result of all would be a conclusion that the dog is joint property.”

[27] The small claims judge was right to rely on the narrower traditional approach to determining ownership. I would uphold his conclusion that Mr. Baker is the sole owner of Mya.

[28] I would also note that, even on the broad view, the small claims judge's findings of fact about ownership were supported by evidence and deserved deference. An appeal court cannot presume that a relevant factor was not considered just because it was not named. Nor can it use subtle differences in the articulation of legal principles to set aside findings of fact and reweigh the evidence.

### **Could the Court Order a Constructive Trust?**

[29] This case was presented as a dispute about pet ownership, but it can equally be seen as a dispute about the fair division of assets among unmarried partners. That is a live and pressing concern for the courts: see e.g. *Dwyer v. Bussey*, 2017 NLCA 68.

[30] The appeal judge approached the problem of fair distribution by taking a flexible approach to the legal ownership of particular assets within cohabiting relationships. The currently accepted approach is quite different. The legal ownership of individual assets is determined by the traditional narrow legal rules: the couch I bought is mine, and the money in your chequing account is yours. But afterwards the courts look broadly at the whole picture through the lens of unjust enrichment. If one party is capturing an undue share of assets, the court orders compensation; if one party is walking away with individual assets that ought to be jointly owned, the court orders a constructive trust. See generally *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269.

[31] The substance of Ms. Harmina's claim fits neatly within the unjust enrichment framework. Mya was originally bought by Mr. Baker, but Ms. Harmina cared for her, fed her, walked her, trained her, and gave her affection. This work conferred a benefit on Mr. Baker at Ms. Harmina's expense. It is at least arguable that this constitutes unjust enrichment and that the basic requirements for a constructive trust are met: *Kerr* at paragraphs 36–45 and 50–53.

[32] Nevertheless, assuming that a case for unjust enrichment is made out, I would not impose a constructive trust on Mya in this case. (I do not want to decide this issue, for reasons that will appear below). A constructive trust remains a discretionary remedy, and for the reasons above it would not be appropriate to exercise the court's discretion to force Mr. Baker and Ms. Harmina to share a dog.

[33] Even if a constructive trust was appropriate, the small claims judge had no jurisdiction to impose one. A constructive trust is not an order for “debt”, “damages”, “specific performance of an agreement”, or the “recovery of personal property” under section 3(1) of the *Small Claims Act*, RSNL 1990, c. S-16. Instead, it is an equitable remedy changing the ownership of personal property.

[34] If the *Small Claims Act* did authorize a constructive trust, I would have serious doubts about its constitutionality. In *Re: B.C. Family Relations Act*, [1982] 1 S.C.R. 62 at 88–89, Laskin C.J.C., for the majority on this point, struck down a provision allowing a provincial court to grant exclusive possession of a matrimonial home because “adjudicating on proprietary rights” and “the disposition of family assets” is “more conformable to [the jurisdiction] exercised and exercisable by a s. 96 [superior] court than that which may be vested in a Provincial Court”.

[35] The appeal judge reasoned that rule 58.17(2)(d) of the *Rules of the Supreme Court, 1986*, which says that an appeal court can “make an order that is just”, gave her a broader jurisdiction to grant relief than the small claims judge had. This is contrary to the nature of an appeal court. As Green J.A. said in *Popular Shoe Store Ltd. v. Simoni* (1997), 163 Nfld. & P.E.I.R. 100 (Nfld. C.A.) at para. 33, “On appeal, the appellate court is limited to granting the relief which was within the jurisdiction of the trial court to grant in the first place.” This limitation is intrinsic to appeal courts and cannot be displaced by rules of procedure.

[36] When an inferior court is powerless to act, it can sometimes seek the aid of a superior court: *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78 at paras. 26–30. Perhaps in some case, a superior court sitting in appeal may conclude that it was an error for the court below not to seek assistance. I will leave that question for another day.

## **Damages**

[37] If Ms. Harmina has a claim in unjust enrichment, then failing a constructive trust she would be entitled to damages. As she did not claim damages, it would not be appropriate for me to finally decide whether she has a claim in unjust enrichment.

**Conclusion**

[38] I would allow the appeal, dismiss Ms. Harmina's claim, and would not disturb the no costs order of the appeal judge. As the issues are novel, I would also not order costs in this Court.

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C. W. White J.A.

I Concur: \_\_\_\_\_

M. F. Harrington J.A.

**Reasons of Hoegg J.A. (Dissenting in Part):**

[39] In this case Mr. Baker sought to have Mya returned to him under section 3(1)(d) of the *Small Claims Act*, RSNL 1990, c. S-16. While a Judge of the Small Claims Court has jurisdiction to return property, he or she has no jurisdiction to make orders respecting a regime for sharing the ownership of property. Because an appeal court is unable to expand upon the original court's jurisdiction respecting a case under appeal, as my colleague White J.A. explains at paragraph 35 above, I therefore agree with him that the Supreme Court Trial Division Judge, sitting in appeal, had no jurisdiction to order a regime for sharing Mya. However, I do not share my colleague's view that Mr. Baker's appeal respecting the ownership of Mya be allowed and that the trial Judge's order returning Mya to Mr. Baker be restored.

[40] Mya, a female dog, lived with Mr. Baker and Ms. Harmina for about two years. Despite the affectionate and long-standing characterization of dogs as "man's best friend", dogs are considered to be property in law. I do not disagree. Accordingly, the trial Judge in this case had jurisdiction to determine whether Mya, as property, ought to be returned by Ms. Harmina, who had possession of Mya, to Mr. Baker, if Mr. Baker established on the evidence that Mya was his property.



[41] Determining the ownership of the property in dispute is inherent in considering whether property ought to be returned to a claimant. Accordingly, the trial Judge had jurisdiction to determine, on the basis of the evidence and submissions of the parties, who owned Mya. In this case, the trial Judge had three options: either Mr. Baker owned Mya, or Ms. Harmina owned Mya, or Mya was jointly owned by both Ms. Harmina and Mr. Baker. Mr. Baker asserted that he owned Mya, and Ms. Harmina asserted that she and Mr. Baker jointly owned Mya.

[42] The trial Judge determined that Mr. Baker owned Mya, and he ordered that Ms. Harmina return her to him. The trial Judge's reasoning is found at paragraphs 8 and 9 of his decision:

[8] However, despite attachment issues, the issue is has the plaintiff established on the balance of probabilities that he was the owner of the dog. The plaintiff claims that he paid for the dog and the bill of sale notes the he is the owner of the dog. While some of the money to purchase the dog was fronted by the defendant, it appears from the evidence that the plaintiff repaid the defendant for any monies loaned to him. This is seen in the transactions of transfer of funds from the plaintiff to the defendant. While I recognize that the defendant signed for receiving the dog as owner, the preponderance of evidence supports the plaintiff's position that he purchased the dog. The fact that they both contributed to the upkeep of the dog after its purchase does not change the ownership of the animal.

[9] I also note that at no time did the plaintiff transfer by gift the ownership in the dog from himself to the defendant. Unlike the situation in the case of *Thompson v. Thompson*, [2005] B.C.J. No 3084 (B.C.S.C.), in which the court found that the husband had purchased the dog as a gift for his then wife, there is no issue of gift or transfer of ownership through gift in this case. While by agreement the dog remained in the primary company of the defendant, ownership did not transfer. As a result I find that the plaintiff has established to the degree necessary that he is the owner of the dog in question.

[43] Ms. Harmina appealed the trial Judge's order. On appeal, the SCTD Judge ruled that the trial Judge erred in determining that Mr. Baker owned Mya by failing to consider evidence material to ownership of Mya. The SCTD Judge determined that Mya was jointly owned.

[44] The SCTD Judge assessed the evidence at pages 45 to 46 of the transcript:

What was the evidence before Judge Flynn? Number one, it established that the bill of sale was in Mr. Baker's name. Number two, it established joint payment of expenses, albeit in conflicting amounts. Number three, it established shared care and responsibility for the dog. Number four, there was evidence from Harmina that the

parties had picked the dog out together and Mr. Baker did not contest this evidence after she testified. Finally, there was evidence the Ms. Harmina did not seek reimbursement of the expenses she incurred.

Against this evidence what did Judge Flynn decide? There are only two paragraphs in his decision dedicated to his conclusions. At paragraph 8, he says, “Mr. Baker paid for the dog and the bill of sale was in his name”. In the same paragraph, he rejects the relevance of contribution to expenses by Ms. Harmina. In paragraph 9, he addressed a different issue; namely, whether there was evidence of a gift.

[45] The SCTD Judge referred to *MacDonald v. Pearl*, 2017 NSSM 5, in which Adjudicator Richardson set out a non-exhaustive list of principles applicable to the ownership of a dog. The SCTD Judge then stated at pages 47 to 49 of the transcript:

Judge Flynn did not consider the issue of possession at all. He did not address Mr. Baker’s request that Ms. Harmina care for the dog while he was away. He did not address the relationship as a factor. He dismissed the relevancy of shared expenses. He made no reference to what happened to the dog after the relationship changed.

I find these combined omissions to represent a manifest error warranting the decision be set aside. So what is the correct conclusion of law to be drawn from the relevant evidence? The parties picked the dog out together while dating. The bill of sale was in Mr. Baker’s name and he had all communication with the breeder. Ms. Harmina shared expenses for the dog’s purchase, vet bills, and miscellaneous costs. Without seeking board or fees, Ms. Harmina cared for the dog exclusively while Mr. Baker worked in Alberta and later in Burin. Ms. Harmina did not seek reimbursement of any costs that she incurred for the dog, and when they broke up Ms. Harmina took the dog with her to her mother’s.

This evidence suggests joint ownership of the asset. A person who is not a joint owner would seek reimbursement of expenses and at the very least would charge boarding fees for the dog’s care. It was an error for Judge Flynn to reject evidence of payment of expenses as irrelevant. It was an error of Judge Flynn to misinterpret Ms. Harmina’s decision not to seek reimbursement as merely something that he did not have to address. It was material to the issue of ownership. It was an error for Judge Flynn to fail to consider the nature of the relationship, the care provided to the dog, and what happened to it on separation.

[46] The SCTD Judge went on to substitute her decision that Mya was jointly owned by Mr. Baker and Ms. Harmina for the trial Judge’s decision, as she was entitled to do pursuant to rule 58.17(2)(d) of the *Rules of the Supreme Court, 1986*.

[47] I agree with the SCTD Judge respecting the ownership of Mya. Let me explain why.

[48] Determining the ownership of family pets when families break apart can be challenging. Ownership of a dog is more complicated to decide than, say, a car, or a piece of furniture, for as my colleague observes, it is not as though animate property, like a dog, is a divisible asset. But dogs are more than just animate. People form strong emotional relationships with their dogs, and it cannot be seriously argued otherwise. Dogs are possessive of traits normally associated with people, like personality, affection, loyalty, intelligence, the ability to communicate and follow orders, and so on. As such, many people are bonded with their dogs and suffer great grief when they lose them. Accordingly, “who gets the dog?” can pose particular difficulty for separating family members and for courts who come to the assistance of family members when they cannot agree on “who gets the dog”.

[49] The issue in this case was simply whether Mr. Baker owned Mya or whether she was jointly owned. Ownership of Mya, as an item of personal property, passed through contract of purchase from the breeder to some combination of Mr. Baker and/or Ms. Harmina. Mr. Baker and Ms. Harmina were in a relationship, and had decided to get a dog and chose, together, Mya. People acquire personal property all the time, usually solely but sometimes jointly, with others, and in doing so, pay little attention to legal rules respecting exactly who is acquiring title to the property.

[50] The trial Judge based his decision on his finding that Mr. Baker had actually paid for Mya when she was purchased. The Judge’s theory, while not articulated, must have been that Mr. Baker took sole title under the contract with the breeder and that Ms. Harmina advanced money and took possession of Mya as an agent for Mr. Baker and not on her own behalf or the behalf of her and Mr. Baker. Who actually paid the breeder for Mya was in dispute, but it was not disputed that Ms. Harmina fronted the initial deposit of \$200 and paid \$500 toward the cost of Mya at the time of purchase, although Mr. Baker argued that he had paid Ms. Harmina back. Ms. Harmina acknowledged that Mr. Baker had reimbursed her money from time to time following the purchase of Mya, but she said the money was to cover expenses related to their setting up housekeeping together, which they did the month after they acquired Mya. Ms. Harmina specifically mentioned that Mr. Baker reimbursed her money to cover the cost of a chesterfield they purchased for their apartment. Nevertheless, and despite the trial Judge’s lack of reasons for accepting Mr. Baker’s version of the reasons for reimbursement, the trial Judge obviously accepted Mr. Baker’s evidence that the

money he transferred to Ms. Harmina following the purchase of Mya was reimbursement to her for her financial contribution to Mya's purchase. Although I may not have reached the same conclusion respecting who paid for Mya, I accept that the trial Judge was entitled to decide that Mr. Baker reimbursed Ms. Harmina her contribution to the purchase cost of Mya, and that his factual finding in this regard is owed deference. However, that factual determination, in my view, does not determine the ownership of Mya.

[51] The SCTD Judge, considering the evidence as a whole found that Mr. Baker and Ms. Harmina took title jointly. The SCTD Judge found that much evidence had not been considered by the trial Judge, as noted in the quote from her decision at paragraphs 44 to 45 above. Her theory must have been that both Mr. Baker and Ms. Harmina were purchasers under the contract with the breeder and that Ms. Harmina signed as owner for and took possession of Mya on behalf of both of them.

[52] Like the SCTD Judge, I am of the view that the ownership of Mya involved much more than a determination of who paid for her at the time of purchase. The ownership of a dog is a more complex and nuanced question than the ownership of, say, a bicycle. In this regard, I see the non-exhaustive list of principles to which the SCTD Judge referred, set out by Adjudicator Richardson, after a review of several cases, at paragraph 25 of *MacDonald*, as helpful and relevant to determining the ownership of a dog:

- 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:
  - 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;

- iii. The nature of the relationship between the people contesting ownership at the time the animal was first acquired;
- iv. Who purchased or raised the animal;
- v. Who exercised care and control of the animal;
- 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.

[53] In regard to these factors, I would emphasize that Mr. Baker and Ms. Harmina were in a relationship when they chose the dog together. In this regard, Mr. Baker testified that he resided with Ms. Harmina and Mya at Ms. Harmina's apartment during his six-day leave periods in the month or so between when Mya was acquired and when they moved into the apartment they rented together. I would also emphasize that the parties did not have an agreement respecting the ownership of Mya. As well, the uncontroverted evidence established that Mr. Baker and Ms. Harmina both initially contributed to the cost of Mya (while the trial Judge found that Mr. Baker ultimately paid for Mya, the intermingling of his and Ms. Harmina's finances shows that they were making financial decisions and expenditures in furtherance of their relationship), both shared expenses for her, and Ms. Harmina did not seek reimbursement for her contribution to Mya's expenses. Moreover, Ms. Harmina signed for Mya as her owner and took possession of her when she arrived in Newfoundland by air, and Mya stayed with Ms. Harmina from that day forward with or without Mr. Baker, including after they split up, until attempts were made to share Mya after their separation.

[54] The trial Judge took the approach that the evidence the SCTD Judge referenced in paragraph 45 above and the factors referenced in paragraph 52 above were irrelevant, thereby failing to consider and give proper effect to evidence material to the ownership of Mya.

[55] In my view he erred by misapprehending much uncontroverted evidence respecting the ownership of Mya. Misapprehension of evidence was explained by Rowe J.A. in *R. v. MacIssac*, 2013 NLCA 26, 335 Nfld. & P.E.I.R. 199 at para. 16:

The test for misapprehension of evidence was set out by Doherty J.A. in *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.), at paragraph 83:

A misapprehension of the evidence may refer to a failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to evidence.

[56] Accordingly, in my view the SCTD Judge correctly decided that the trial Judge erred by failing to consider the evidence that supported Ms. Harmina's ownership interest in Mya, which was acquired through contract by virtue of their joint purchase of Mya effected by their acting as agents for each other. The SCTD Judge had the jurisdiction to substitute her opinion that Mya was jointly owned and I would uphold her decision.

[57] I do not see the law of trusts as applicable in this case. Mr. Baker did not bring Mya into the relationship. While Ms. Harmina could have pleaded unjust enrichment as a defence to Mr. Baker's claim, remedies of unjust enrichment may be precluded by the limited jurisdiction of the Small Claims Court.

[58] On my analysis, I would deny Mr. Baker's appeal with respect to the ownership of Mya and uphold the SCTD Judge's finding that Mya is jointly owned by him and Ms. Harmina. I would also order Ms. Harmina to return to Mr. Baker his joint ownership interest in Mya. While the narrow jurisdiction of the Small Claims Court precludes a remedy that sets out a schedule for the shared ownership of Mya, the jurisdiction to return an interest in property, in this case Mya, exists. Mr. Baker's property interest in Mya can be vindicated by ordering that Ms. Harmina return possession of Mya to him on some mutually agreed basis and I would so order. If Mr. Baker and Ms. Harmina cannot agree between themselves how shared possession should work, they can file an originating application in the Supreme Court to resolve their differences like any two or more other litigants could do respecting a dispute over property.

[59] I must say something more. I am disturbed by the notion that courts should not spend their precious time and resources determining the ownership of dogs. Litigation over the ownership and possession of dogs is far from unknown to the courts, which is an indicator that the ownership and possession of dogs is very meaningful to people. In this regard, I emphasize the emotional bonds

between people and their dogs, and say that fair decisions respecting the ownership and possession of dogs can be much more important to litigants and to society than decisions respecting the ownership of a piece of furniture or a few dollars. Our civil and family courts are routinely engaged in cases of which the spoils are a whole lot less than a family dog. As a society we accept without question that our courts exist to resolve disputes that parties cannot resolve themselves. That is a hallmark of a just society and a justice system where the rule of law governs. While I do not wish my remarks to be interpreted as advocating or encouraging parties to litigate the ownership and possession of their dogs, I say there is no principled reason why people in a dispute over a dog cannot avail of the courts for assistance in resolving such a dispute.

[60] I agree with my colleague that the parties should bear their own costs.

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L. R. Hoegg J.A.