CASE TRANSLATION: **BULGARIA**

Case citation:
Decision No 50

Name and level of the court:
Haskovo District Court, Civil Division, II appellate civil panel

Date of decision:
20 January 2018

Chairman: **Gospodinka Peycheva**

Members of the court:
Toshka Ivanova and Irena Avramova

Bulgaria; Civil Procedure Code; formation of contract; electronic evidence; exchanges via social networking website; proof

DECISION No.50

City of Haskovo, 20.01.2018

Haskovo District Court, Civil Division, II appellate civil panel, at a public hearing on the twenty-fourth of January two thousand and eighteen composed as follows:

CHAIRMAN: Gospodinka Peycheva

MEMBERS: Toshka Ivanova and Irena Avramova

With secretary G.K. considering the report by junior judge Irena Avramova in court file No. 825 in the year 2017 for the purpose of deciding, whereas:

The proceeding is under the procedure of Art. 258 et seq. of Civil Procedure Code (CPC)

By decision № 292 dated 20.10.2017, in court file 363/2017, the Regional Court – Dimitrovgrad ordered T.H.R. to pay to D.M.M. the amount of BGN 200 representing the equivalent of a young dog of the Pekingese breed, as well as BGN 192.30 – legal costs. The court dismissed the remainder of the claim for the sum of BGN 60 representing the value of the veterinary procedures as unfounded.

An appeal has been filed by T.H.R. against the decision of First Instance for the part where the claim brought before it has been upheld with a complaint that the decision is wrong and unlawful. It is submitted that the whole range of evidence collected in the case leads to the conclusion that the claim is unfounded and unproven. It is alleged that the printout of Facebook messages exchanged between the parties is not a valid proof as an objection in this regard was made with the reply to the statement of claim. In view of the arguments put forward in the appeal an annulment of the contested decision and adjudication of a new one to reject the claim in its entirety is sought. Costs are claimed.

A reply to the appeal by the appellant D.M.M. has been filed through her attorney I.I. within the statutory time limit with which the arguments put forward in the appeal are disputed and a confirmation of the decision of First Instance is sought.

Having regard to the submissions and arguments of the parties and after assessing the evidence gathered in the case pursuant to Art. 235, Para 2 in connection to Art. 12 of the CPC, the Court finds the following:

According to Art. 269 of the Civil Procedure Code, the Appellate Court rules ex officio the validity of the decision and the admissibility of the appeal – in the contested part, as in other matters it is limited in the context of the arguments put forward in the appeal. The decision of First Instance is valid and admissible.

The appeal has been filed within the time limit provided for in Art. 259, Para 1 of the Civil Procedure Code, by a legitimate party and against a judicial act subject to appeal, for which it is legally admissible. Having been examined in its merits the appeal is unfounded.

The proceedings under court file No. 363/2017 on the inventory of Dimitrovgrad District Court were initiated by a claim filed by D.M.M. on the legal basis of Art. 79, Para 1 of the Obligations and Contracts Act for conviction of T.H.R. to hand over one of its own newly born dogs of the Pekingese breed or to pay the equivalent amounting to BGN 200, as well as the cost of veterinary procedures in the amount of BGN 60.

In the case, it was undisputedly found that the appellant T.H.R. is the owner of a seven-year-old

female dog of the Pekingese breed, and the appellant has a male specimen of the same breed, born on *** Furthermore, it is not disputed between the parties that D.M.M. is a veterinarian and that she performs procedures for artificial insemination of dogs in her laboratory in the town of Dimitrovgrad.

From the printouts of a Facebook correspondence, it was found that an arrangement between the parties had been made for the breeding of their dogs, and after birth one of the newly born had to be handed over to the appellant M. It is also clear that the appellant has decided to keep the offspring for herself but has offered to pay the equivalent of a young Pekingese dog subsequently, at the amount of BGN 200 demanded by the appellant M., the appellant refused to comply with the agreement and pay the amount.

In the course of the proceedings of First Instance, verbal evidence was gathered through the interviews of witnesses A.N.Y. and M.R.D. From their testimony, it is found that usually when dogs are bred, even artificially, the owners agree that after the young ones become 30-40 days old, one of them is given to the owner of the male dog. Both witnesses say that they have proceeded in this way with the appellant M. more than once.

From the cynological expert evidence heard and unchallenged by the parties and accepted as competent, it is found that the market value of a young dog of the Pekingese breed with parents without a pedigree, as in the present case, varies between BGN150 and BGN300. The expert states that it is a common practice that when a female dog is bred, a puppy of the future offspring to be owed to the male dog's owner, this agreement being made during the act or after the birth of the young dogs.

In thus established factual basis, the court draws the following legal conclusions

The main dispute in the case is focused on the matter of proving the agreement reached between the parties, the default of which has given rise to the present claim. In particular, the crediting of the online correspondence between the parties presented in paper form, on which, along with other evidence in the case, the determining court has set out its reasoning on the merits of the dispute.

The present appellate panel finds the complaints put forward in the appeal in regard to the said evidence as unfounded on the following considerations: Firstly, as correctly accepted by the District Court, the printout of the exchanged by the parties messages on Facebook constitutes an electronic document in the sense of Art. 3, Para 1 of Electronic Document and Electronic Trust Services Act (EDETSA). The same corresponds to the definition given in Art. 3, item 35 of Regulation (EC) No 910/2014, namely an "electronic document" means any content stored in electronic form, in particular a text or sound, visual or audiovisual recording. Therefore, the presenting of a certified copy of these electronic statements by the party complies with the requirement of Art. 184, Para 1 of the CPC.

Next, indeed, in the reply to the appeal, the defendant – the current appellant, has taken measure on the correspondence submitted by Facebook and has objected to its admission as evidence in the case. At the same time, the submission made lacks any reasoning, except challenging the authenticity of the document under the procedure of Art. 193 of the Code of Civil Procedure or, respectively, its requesting in electronic form – Art. 184, Para 1, sentence 2 of the CPC. Only in the event of a challenge to the authorship of the electronic statement is the court obliged to inform the parties and allow it to be proved. Given the lack of a duly challenge, the court of First Instance correctly referred to the provision of Art. 4 of the EDETSA, according to which the author is the person who is named in the statement as its performer. In this sense, as evidenced by the printouts of Facebook messages, electronic statements originate from the parties to the case. On these grounds, the Appellate Court finds that the electronic document submitted in paper form constitutes valid evidence within the meaning of the CPC.

In the light of the foregoing, and after an overall assessment of all the evidence gathered in the case, it was established that the parties had reached an agreement for the breeding of the dogs of the Pekingese breed owned by them and the handing over of one of the newly born to the appellant M., which the appellant R. failed to fulfil, and the latter refused to pay its cash equivalent. The present appellate panel finds the conclusions of the Court of First Instance regarding the merits of the claim in this part as correct, lawful and well-founded and therefore fully shares its factual and legal findings. In view of the alternative claim in the claim and the prior consent of the appellee to obtain the cash equivalent of a small dog of the Pekingese breed, the District Court has

rightly awarded the equivalent of the dog at the claimed amount of BGN 200, which falls within the range of market value determined by the expert.

Based on these considerations, the decision of First Instance shall be confirmed in the contested part and the appeal lodged shall be dismissed as unfounded. As regards the rejected claim for payment of the amount of BGN 60 representing the value of the veterinary procedures for artificial insemination of dogs, this part of the judicial act has not been appealed and has therefore entered into force and is not subject to review at this instance.

With this outcome of the case, on the grounds of Art. 78, Para 3 of the CPC in favour of the appellant D.M.M. her costs in the appeal proceedings at the amount of BGN 300, representing a lawyer's remuneration, should be awarded.

On the grounds of the above the Court

DECIDED

CONFIRMS Decision No. 292 dated 20 October 2017, issued under court file No 363 on the inventory for 2017 of the Dimitrovgrad District Court, in the appealed part, with which T.H.R., PIN ****** ****, with address: ***, is ordered to pay to D.M., PIN ********** **********, with the address: ***, the amount of BGN 200 /two hundred/, representing the equivalent of a small dog of the Pekingese breed, as well as BGN 192.30 /one hundred ninety-two levs and thirty cents / - legal costs.

ORDERS on the grounds of Art. 78, Para 3 CPC T.H. R., PIN **********, with address: ***, to pay to D.M., PIN **********, with an address: ***, the amount of BGN 300 /three hundred/ representing the costs of lawyer's fees incurred in the proceedings.

The decision is final and cannot be appealed.

Chairman: Members:

Commentary

By

Kalina Ruseva

In Decision 50 / 20.01.2018 of District Court – Haskovo, the Bulgarian court found that the messages exchanged over the social media website called Facebook constitute a valid electronic document. It was claimed by the defendant that the printout of messages exchanged between the parties over social media is not a valid proof.

The court correctly stipulated that the messages exchanged by the parties on social media constitute an electronic document in the sense of article 3, para 1 of The Electronic Document and Electronic Trust Services Act (EDETSA). Article 3, para 1 of EDETSA corresponds to the definition set in article 3, item 35 of Regulation (EC) No 910/2014 which states that 'electronic document' means any content stored in electronic form, in particular text or sound, visual or audio-visual recording.

When a document is presented to the court as evidence, it may also be presented in a printout, certified as 'true copy' by the party, but in such case, upon request, the party is required to present the original document in electronic form. According to the provisions of article 184 of the Bulgarian Code of Civil Procedure, the electronic document may be reproduced on paper as a copy certified by the party. Upon request, the party is required to submit the document electronically. The electronic document is treated as a written document by the law. This means that in all cases where the law requires written form, it will be considered met if an electronic document has been created. Therefore, a certified copy of the electronic statements exchanged on Facebook complies with the requirements of Bulgarian law and may be qualified as valid evidence according to Bulgarian Code of Civil Procedure.

The court practice (Order № 414 of 10 May 2012 on case № 852/2011 of the Supreme Court of Cassation) in Bulgaria also follows the same understanding that the electronic messages exchanged between the parties represent electronic statements on the basis of article 2 EDETSA, and may serve as evidence for the conclusion of a contract, thus the court has correctly found that a valid contractual relationship between the parties had been reached.

The appellant did not object to the authenticity of the messages during the trial at first instance trial, but only objected to their admission as evidence. The interested party can challenge the veracity of a document at the latest with the response to the claim. When the document is presented during the court hearing, the party may contest the evidence until the end of the hearing. Failure to object leads to the loss of the opportunity to do so later. Hence the court of first instance found that the evidence valid, and since the authorship was not challenged, it has correctly admitted it under the provisions of article 4 of the EDETSA, according to which the author is the person who is named in the statement as such. The Appellate Court confirmed these actions.

The case confirms that a legally binding agreement can be constituted with a correspondence over social media.

Kalina Ruseva is a Legal Associate at the Law and Internet Foundation, Bulgaria

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