

Citation: St. Marie v. B.C. S.P.C.A. et al
2005 BCSC 511

Date: 20050202
Docket: 65468
Registry: Kelowna

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Beames
February 2, 2005

BETWEEN:

NICOLE ST. MARIE and MICHEL PETULLI

PLAINTIFFS

AND:

**BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS, SPECIAL PROVINCIAL CONSTABLE BRADLEY KUICH, ATTORNEY
GENERAL OF BRITISH COLUMBIA**

DEFENDANTS

Counsel for Plaintiffs:

E.A. Gilmour

Counsel for B.C. SPCA:

D.P. Montrichard

Date and Place of Hearing:

February 2, 2005
Kelowna, B.C.

[1] **THE COURT:** I have before me today the matter of Nicole St. Marie and Michel Petulli as plaintiffs versus British Columbia Society for the Prevention of Cruelty to Animals and Special Provincial Constable Bradley Kuich. The pleadings also name the Attorney General of British Columbia as defendant, but I am told by plaintiffs' counsel that that is in error.

[2] The matter comes before me today by way of an 18A application brought on behalf of the defendants, and the motion seeks as its first head of relief, the balance of which is alternative relief, an order for final judgment, which I take it to be an order dismissing the plaintiffs' action against the defendants. The motion which brings the matter before me was prepared and dated December 20, 2004, and served on plaintiffs' counsel approximately at that same time or very shortly thereafter. It was actually filed on January 5, 2005. The motion is supported by eight, by my count, affidavits, all sworn on behalf of the defendants.

[3] Despite the passage of time since the preparation of the original notice of motion and service of the same on the plaintiffs' solicitors, the plaintiffs have taken no specific steps in response to the notice of motion. There has been no attempt to schedule examinations for discovery of any of the defendants, either an officer of the Society or the personal defendant himself. There has been no application brought before this court for a direction that there be cross-examination on affidavits of any of the affiants. There has been no affidavit response prepared by or on behalf of the plaintiffs in direct response to the notice of motion,

although, as I have already noted, affidavits were filed by the plaintiffs in August of 2004.

[4] In effect, the position of the plaintiffs' counsel, at this point in time, is that his clients are so impecunious that they have been unable to respond to the material; that from a comparison of the affidavit material filed in support of this motion and to the affidavits of his clients in August of 2004, I ought to find myself in a position where I cannot find the facts necessary; and that it would be just and convenient for the plaintiffs to be entitled to have a *viva voce* trial in this matter. It was only upon attendance at court today that plaintiffs' counsel indicated to defence counsel that he took the position that a Rule 18A disposition of this matter was inappropriate and would be unfair. That is the procedural background.

[5] The factual background is this: the defendants removed from the plaintiffs some 16 dogs on June 30, 2004. The June 30, 2004 removal of the dogs followed upon three previous attendances by the defendant society and its employees at the plaintiffs' property, and examinations on each occasion of the conditions that the dogs were in, the first two of which were in February of 2004 and the third of which was on June 17 or 18, 2004.

[6] The 16 dogs were removed pursuant to the provisions of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372, based upon the opinion reached by the personal defendant in this matter that the dogs were in distress, and that is ordinary distress as defined in s. 11 of the *Act*. Section 11 of the *Act* says that "if an authorized agent", and there is no question that Special Provincial Constable Bradley Kuich was an authorized agent, "is of the opinion that an animal is in distress and the person responsible for the animal (a) does not promptly take steps that will relieve its distress, or (b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter and veterinary treatment for it".

[7] In my view, there is a compelling body of evidence before me that the animals, collectively and individually, were in distress as defined in s. 11 of the *Act*. Each had different issues or combinations of issues, but there can be no question that there was sufficient evidence for Special Provincial Constable Kuich to arrive at the opinion that the animals were

in distress arising from a lack of water, a lack of food, a lack of proper shelter, and a lack of veterinary care. Having arrived at the conclusion that the animals were in distress, it follows that I am satisfied Constable Kuich acted reasonably in directing a removal of the animals and effecting a removal of the animals on June 30, 2004.

[8] Having arrived at that conclusion and looking, then, at the statement of claim in this matter which sets out the claim of the plaintiffs, I am satisfied that the plaintiffs have not made out a case for any of the relief sought in the statement of claim, and consequently I dismiss the plaintiffs' claim against the defendants.

"A.J. Beames, J."

The Honourable Madam Justice A.J. Beames