

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***BCSPCA v. Baker***,
2007 BCSC 1717

Date: 20071130
Docket: S070214
Registry: Vancouver

Between:

**British Columbia Society
For the Prevention of Cruelty to Animals**

Plaintiff

And:

Tamara Baker and Walter Baker

Defendants

Before: The Honourable Mr. Justice Preston

Reasons for Judgment (In Chambers)

Counsel for the Plaintiff

Donald P. Montrichard

Counsel for Walter Baker

Duncan K. Magnus

Date and Place of Hearing:

July 27, 2007
Vancouver, B.C.

[1] This is an application by the plaintiff, the British Columbia Society for the Prevention of Cruelty to Animals (“BCSPCA”), for judgment pursuant to Rule 18A against the defendant Walter Baker. The proceedings were stayed against the defendant Tamara Baker by operation of the **Bankruptcy and Insolvency Act**, R.S.C. 1985, c. B-3 upon her assignment into bankruptcy on February 7, 2007.

[2] Mr. Baker’s daughter, Tamara Baker, resided on a rural property (the “Premises”) owned by Mr. Baker in Aldergrove and kept a commercial animal kennel there. On July 21, 2006, the BCSPCA seized the animals kept on the Premises. The lawfulness of the seizure was dealt with in proceedings before Mr. Justice Grist of this Court in **Baker v. BCSPCA**, 2006 BCSC 1982, 155 A.C.W.S. (3d) 1006. He found that the animals seized by the BCSPCA were in distress and that its actions in seizing the animals were appropriate.

[3] The proceedings before me relate only to the seizure of 14 dogs and 2 cats (the “Animals”). In this action, the BCSPCA seeks to recover from Mr. Baker the costs of housing and treating the Animals following seizure. It is the BCSPCA’s position that Mr. Baker is an “owner” of the Animals within the contemplation of s. 20 of the **Prevention of Cruelty to Animals Act**, R.S.B.C. 1996, c. 372 (the “**Act**”).

[4] Section 20 of the **Act** reads, in part, as follows:

20 (1) The owner of an animal taken into custody under section 11 is liable to the society for the costs incurred by the society under this Act with respect to the animal.

Factual Background

[5] Mr. Baker lives in Vancouver. He leased the Aldergrove Premises to his 28 year old daughter Tamara. Ms. Baker kept animals on the Premises for breeding, as a commercial boarding kennel, and as pets. She was apparently chronically short of funds. She was unable to maintain the payments to her father under the lease. She often required financial assistance to retain the services of veterinary doctors as well as other assistance from her father. Mr. Baker attended the Premises on three to five occasions per week and assisted his daughter in the management of the Animals.

[6] Ms. Baker would likely fall within the definition of “owner” under the **Act**, although that issue is not before me.

[7] The issue is whether Mr. Baker is an owner under the **Act**.

The Law

[8] **Wynne v. Dalby** (1913), 29 O.L.R. 62, 13 D.L.R. 569 (Ont. S.C.), aff’d 30 O.L.R. 67, 16 D.L.R. 710 (Ont. C.A.) [**Wynne** cited to O.L.R.] concerned an action for damages for personal injury. At trial, the holder of a conditional sale contract that reserved ownership to the holder until all payments were made under the contract was held not to be an “owner” for the purposes of the **Motor Vehicle Act**, R.S.O. 1914, c. 207. On appeal, Chief Justice Meredith, in upholding the trial decision, observed at 72:

The word “owner” is an elastic term, and the meaning which must be given to it in a statutory enactment depends very much upon the object the enactment is designed to serve.

[9] Ownership of animals has been considered in a statutory context in a number of cases.

[10] In **British Columbia Society for Prevention of Cruelty to Animals v. Sudweeks et al**, 2002 BCSC 1892, [2002] B.C.J. No. 3270 (QL) [**Sudweeks** cited to BCSC], stay of execution refused in 2002 BCCA 493, 116 A.C.W.S. (3d) 327, parents who travelled to Mexico left horses and dogs in the care of an adult foster son. They were held to be owners after the animals were seized by the society. They had transferred their ownership of the seized horses to their teenage daughters some two years before the seizure. Madam Justice Morrison concluded at para. 19:

In my view, the evidence falls short of establishing exclusive ownership of the animals to the two daughters. I am satisfied, from all of the evidence, that all four persons in question are owners of the animals within the general meaning of the term “owner”.

[11] There was evidence before Morrison J. that Mrs. Sudweeks had signed a document after the seizure authorizing her foster son “to handle the transaction of getting my horses back”.

[12] In two criminal cases: **R. v. Paish**, [1977] 2 W.W.R. 526, 1 W.C.B. 172 (Prov. Ct.) and **R. v. Heynan** (1992), 136 A.R. 397, 18 W.C.B. (2d) 521 (Prov. Ct.), the courts held that notwithstanding corporate ownership, an individual exercising

dominion and control over animals on behalf of a company could be held to be an owner pursuant to the **Criminal Code of Canada**, R.S.C. 1985, c. C-46.

[13] In **R. v. Elder-Nilson**, 2006 ONCJ 408, 71 W.C.B. (2d) 678, the defendant was a dog owner charged under a number of sections of the **Dog Owners' Liability Act**, R.S.O. 1990, c. D-16. Some or all of the provisions imposed liability on the owner of the animal. The defendant's pit bull had been permitted to run at large, unmuzzled and had been involved in a dogfight. In finding the defendant liable, the trial judge observed at para. 228:

Based on the evidence of the defendant given at the interim hearing regarding the seizure of the dog, it appears that there is a pattern of moving dogs from place to place or transferring legal ownership of them so that the concept of ownership in the technical legal sense of registered title, has been reduced to simply a more practical matter, of having possession of, and responsibility for the animal with the consent of the owner. The issue seems to be more one of who has possession and control of the dog at any particular time. This somewhat free ranging, common law concept of ownership actually works quite well for interpretation purposes, given the structure and the intent of the statute as well as the bylaws as these are both directed towards legislating effective control over the animals, to promote the safety of the public and ensure the proper treatment of the animals themselves. In this sense, the person with possession of the dog is the one exercising control with the permission of the actual registered owner and thereby takes on the duties and responsibilities of the dog, and has all of the rights of the owner short of selling the dog and keeping the consideration for their own use. On this basis, this person together with the registered owner who delegates those duties to the person with actual possession and immediate control, must both be liable, if the legislation is to properly function in an environment where possession and control is passed to persons who look after dogs for the legal owners, and legal ownership changes rather freely.

[14] There is a practical recognition in the cases that an animal may have more than one owner and that legal title in the conventional sense is often not an important indicator of ownership.

Discussion

[15] Mr. Montrichard, counsel for the BCSPCA, relies upon these authorities to provide an underpinning for his submission that the word “owner” in the **Act** must be given a broad definition both because of the treatment accorded the definition in the authorities and to achieve the objectives of the **Act**. He submits that persons in Mr. Baker’s position must be caught by the definition of “owner” in the **Act**:

(a) to reflect the objects and purposes of the Act; and

(b) so that the Act can properly function in an environment where ownership, possession, custody, care, control and dominion over animals changes rather freely.

[16] He contends that an analysis of the authorities and a study of the structure of the **Act** support the conclusion that ownership of animals is an elastic concept that should be dealt with on a case-by-case basis and determined by the application of a number of indicia of ownership. The indicia that he contends can be drawn from the cases are:

- ownership of the land on which the animal is kept;
- residence and/or presence on the land on which the animal is kept;
- participation in the care and maintenance of the animal;
- awareness of the condition of an animal;
- payment of the expenses related to the care and maintenance of the animal;

- relationship between alleged owners;
- capacity of an alleged owner;
- documentary evidence; and
- other evidence particular to the unique circumstances of the case.

[17] However, the **Act** explicitly contemplates two relationships between an animal and a person: that of a “person responsible” and that of an “owner”.

[18] The **Act** uses the term “person responsible” in defining the offence of causing or permitting an animal to be in distress in s. 11 of the **Act**. That term is defined in section 1(3) of the **Act**:

1(3) For the purposes of this Act, a person responsible for an animal includes a person who

- (a) owns an animal, or
- (b) has custody or control of an animal.

[19] The definition of “person responsible” in the **Act** clearly includes an owner within the larger category of “person responsible”. However, s. 20 of the **Act** only imposes liability for the BCSPCA’s costs against an owner. It would appear that the intent of the drafters of the legislation was to limit financial liability to the narrower category of owners.

[20] No definition of owner is provided by the **Act**.

[21] *The Shorter Oxford English Dictionary*, 3d. ed., S.V. defines “owner” as follows:

One who owns or holds something; one who has the rightful claim or title to a thing.

[22] On the basis of this dictionary definition and in the context of the facts before me, the question that arises is, “Did Mr. Baker own, hold or have a rightful claim to the dogs?” It is common ground that he did not have title to them.

[23] Mr. Baker assisted his daughter in her operation of the kennel. She was the person to whom the owners of the dogs had transferred custody and control. In my view, on these facts Mr. Baker could, at most, be said at times to be a person responsible for the dogs. When he was, he was subject to the offence provisions of the **Act**. However, the section of the **Act** that imposes financial responsibility does not impose it on a person responsible for animals.

[24] As E.A. Driedger notes in *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

This statement of the law was cited with approval in ***Bell ExpressVu Limited Partnership v. Rex***, 2002 SCC 42 at para. 26, [2002] 2 S.C.R. 559.

Conclusion

[25] The objective of the **Act** is the prevention of cruelty to animals. It provides for the seizure of animals in circumstances where their well-being is threatened (ss. 10-19). It makes it an offence for a person responsible for an animal to cause or to permit the animal to be or continue to be in distress (s. 24). It provides that owners

of animals taken into custody under the **Act** will be liable to the BCSPCA for expenses incurred by the society when exercising its powers under the **Act** in respect to an animal (s. 20).

[26] The scheme of the **Act** and its object, as expressed by the wording and structure of the **Act**, seek to further the goals of the **Act** by creating the category of “person responsible” and imposing upon those persons a quasi-criminal penalty if they contravene the **Act**. It also creates the category of “owners” who are made responsible by the **Act** for the costs borne by the BCSPCA in carrying out its duties under the **Act**. I conclude that the interpretation of the word owner in its ordinary grammatical sense is consistent with the object and scheme of the **Act**.

[27] If Mr. Montrichard’s submissions were to be given effect, the distinction between the definitions created by the **Act** would be blurred and confused.

[28] For these reasons, I am satisfied that Mr. Baker does not fall within the category of persons created by s. 20 of the **Act** who are liable for the costs of the BCSPCA. The action against him is dismissed.

[29] Mr. Baker is entitled to his costs on scale B.

“B.M. Preston J.”

The Honourable Mr. Justice Preston