

CANADA

FILE: 02606608

PROVINCIAL COURT OF NEW BRUNSWICK

BETWEEN:

HER MAJESTY THE QUEEN

- and -

HARRY CHAPMAN and ESTER CHAPMAN

Judgment rendered by the Honorable Paul E. Duffie in the matter of a charge under s. 4(1)(b) of New Brunswick Regulation 2000-4, a regulation made under the *Society for the Prevention of Cruelty to Animals Act*, Chapter S-12 of the statutes of New Brunswick, in violation of s. 18 (1) of the said Act and contrary to section 18 (2) of the said Act.

BEFORE: Judge Paul E. Duffie

DATE OF HEARING: November 26th, 2008 and May 21st, 2009

PLACE OF HEARING: Grand Falls, New Brunswick

DATE OF DECISION: June 25th, 2009

APPEARANCES:

CROWN: Charles Couturier

DEFENCE: Terrance Lennihan

DUFFIE, Prov. Ct. J.

INTRODUCTION:

The Defendants, Harry Chapman and Ester Chapman, are charged jointly for operating a dog kennel under the name of Chapman Kennels while failing to provide adequate medical care to certain animals under their control.

After receiving a complaint, Mr. Don Langille, an animal protection officer under the *Society for the Prevention of Cruelty to Animals Act*, obtained a warrant to search the premises of the defendants and to seize any animal in distress.

Three animals were seized during the search and are presently the subjects of the charge in this case.

THE CHARGE:

1. The defendants are charged that on or about the 25th day of March, 2008, at or near Kilburn, New Brunswick, did, having possession or care and control of animals, to wit: three Dachshund pups, and one Maltese mix adult dog, fail to provide adequate care in accordance with section 4 (1) (b) of New Brunswick Regulation 2000-04, to wit: by failing to provide the animals with adequate medical attention under the *Society for the Prevention of Cruelty to Animals Act*, Chapter S-12 of the Statutes of New Brunswick and amendments thereto, and in violation of section 18 (1) of the said *Act*, thereby committing an offence under section 18 (2) of the said *Act*.

EVIDENCE OF THE CROWN:

2. On March 25th, 2008 Don Langille, an animal protection officer, for the S.P.C.A of New Brunswick, obtained an Entry Warrant pursuant to the *Entry Warrant Act*, *S.N.B.*, to enter upon the premises of Mr. and Mrs. Harry Chapman, the defendants, at 85 Kilburn Road, Kilburn, New Brunswick, and to search the said premises in accordance with the *Society for the Prevention of Cruelty to Animals Act*.
3. At the time, a kennel license had been issued by the Department of Environment and Local Government to Chapman Kennels at 85 Kilburn Rd. Kilburn, New Brunswick. The said license marked as Exhibit D-2 was renewed on April 22nd, 2008, a period after which the dogs had been seized.
4. On the day of the search and seizure, the animal protection officers present testified that the kennel was essentially a breeding kennel and at the time there were approximately three hundred and fifty dogs situated in different buildings on the site.
5. That three Dachshund pups were found in the main kennel.

6. That the Dachshund pups were young pups found with their anal rectum projecting out two inches, technically referred to as anal prolapse. One Dachshund appeared to show signs of distemper. The dog's head appeared cocked to one side and kept spinning in an uncontrollable fashion.
7. They also found one Maltese mix adult dog which appeared to have rotting flesh around its mouth and rotting teeth. The dog's breath was also very bad.
8. They found that there was a strong smell of ammonia, poor air quality and poor bedding and that there were other animals having some problems, but the kennel was addressing their needs.
9. As a result of the search, they felt the necessity for seizing three Dachshund pups and one Maltese mix adult dog so that they could receive veterinary assistance and thus the animals were transported to the Royal Road Veterinary Hospital in Fredericton, New Brunswick.
10. It was admitted that the pups had not been weaned from their mother; that they were not aware nor did they inquire from staff what treatment was being provided to the dogs. They also did not carry out any air quality test at the time of the seizure of the animals.
11. It was also admitted that a prolapsed rectum in dogs is not unusual and that, once on site, and after the seizure and removal of the dogs, they called Dr. Ted Morris, who is the defendants' veterinarian. Dr. Morris advised them that he had been made aware of the prolapsed rectal problem with the pups and that they should not have been removed. Since they had already been removed Dr. Morris advised that they should not be returned to the kennel due to potential infection.
12. Finally, the dogs were put in a crate and transported in the back seat of a pick-up truck to the Veterinary Hospital in Fredericton, New Brunswick.
13. The crown then called Dr. Susan McArthur who was declared an expert witness in the field of veterinary medicine and allowed to give opinion evidence.
14. Dr. McArthur testified that, along her husband, Dr. Jason McArthur, they operate the Royal Road Veterinary Hospital in Fredericton, New Brunswick. She said that she was contacted by the animal protection officers involved in this case and accepted, at their hospital, the animals seized on March 25th, 2008 at the Chapman Kennels.
15. Medical reports prepared by Doctors Susan and Jason McArthur on each animal were introduced. Upon the admission of the three Dachshund pups, Dr. Susan MacArthur diagnosed them with prolapsed rectum which was quite severe once they arrived at the hospital. Surgery was performed on all three pups in order to rectify their anal problems.

16. She also found that two of the pups had respiratory problems and she elected euthanasia for one of them because respiratory distress was increasing.
17. She further concluded that the cause of the prolapsed rectums was due to external and internal parasites and could be a viral problem as well. The signs of distemper in the Dachshund pup could have been due to a neurological problem or just behavioral problems. This was hard to diagnose. Eventually, this pup went to a foster home and is doing well.
18. As to the Maltese mix adult dog, she noted he was afflicted with a severe case of periodontal disease with a really bad odor emanating from its mouth. In fact, it was the worst case she had ever witnessed. This dog was treated the next day by her husband, Dr. Jason McArthur.
19. Dr. Jason McArthur was also declared an expert in veterinary medicine. He found the Maltese mix to have a severe case of periodontal disease and proceeded to remove tartar and wads of hair around the teeth. Many of the teeth literally fell out of their roots upon the removal of the tartar. Twenty teeth in all were removed and the dog remained with his three canine teeth as they were deemed to be clinically acceptable.
20. He observed that the Maltese mix had ulcers and canker sores in its mouth and thus had a severely inflamed mouth and severe mouth odor. He finally concluded in his report that this was a horrible case of periodontal disease that should have been attended to long ago. In his opinion, this dog was neglected.
21. The crown then called Donna Wareham, an employee who worked for Chapman Kennels who was present at the time of the search and seizure. Her duties, in general, were to feed, clean, administer medication and give general care to the dogs at the kennel. She reported directly to Ester Chapman.
22. Mrs. Wareham testified that the kennel was a breeding facility and operated on a seven day basis. The dogs were raised for resale. She said that the employees had daily chores to insure the proper care of the dogs and, any sick ones would be reported directly to Ester Chapman. If necessary, she would report same to Dr. Ted Morris' office. In her view, the overall kennel operations provided adequate care for all of the dogs. She went on to say that they provided the best care they could.
23. As to the Dachshund pups, she said that the rectum problems were identified and reported. They were advised to keep their bums clean and to administer Polysporin for moisture. If the problems got worse, they were to advise Mrs. Chapman.
24. As to the Maltese mix dog, she did notice the odor, although it had just started a week prior to the search and seizure, she had also advised Ester Chapman about this issue.

25. The crown then called Dr. James Goltz who was declared as an expert veterinary pathologist. He performed an autopsy on the Dachshund pup that had been euthanized at the Royal Road Veterinary Hospital. Dr. Goltz's diagnosis was pneumonia in the left middle lung lobe.
26. Dr. Goltz testified that this pup had a common infection which is difficult to treat. He said the pup's nasal infection was the most problematic. He could not offer opinion with regards to the care the pup received at the kennel nor could he say when the respiratory problems commenced.

EVIDENCE OF THE DEFENCE:

27. The defendants both testified that they had a system in place to care for all of the animals and that all of their needs were being met. Individual records were kept with regards to each dog as to their progress, medication, etc. Their evidence, the evidence of Mrs. Wareham, and the evidence of their employees, who were witnesses for the crown, confirmed that the animals were fed daily and also that their pens were cleaned daily or more if required and the animals were kept warm. Medication was administered when required and instructions for same were attached to each pen. They were advised to report any problems to Ester Chapman.
28. The evidence clearly established that Ester Chapman was the owner of the kennel and the person in charge. Suffice it to say that Harry Chapman's participation in the kennel was one of a role player attending to different tasks when his wife, Ester Chapman couldn't. Ester Chapman testified that, from an early age, she was an animal lover and she demonstrated she had a wealth of experience in farming, raising livestock and eventually opening her dog kennel in 2004.
29. Their evidence also established that they had invested approximately \$500,000.00 to set up their kennel. Photographs were introduced showing the facilities and the surrounding land which they qualified as being state of the art with an automatic water system, proper ventilation and good up-to-date buildings. They had four full-time and five part-time staff. Ester Chapman concluded that she had sufficient employees to properly care for the dogs.
30. With respect to the issues with the Daschund pups and the Maltese dog, she says that it was her first experience with the protracted rectums. The Daschund pups were to be weaned off the mother in another week and she felt panicked over the situation. Consequently, she consulted with her veterinarian, Dr. Ted Morris, and she was advised to administer Polysporin to keep the area moist and, if the rectums did not retract by themselves, she should bring the dogs in to see him once they were weaned off their mother. She admitted that the treatment did not work, but the dogs were seized before she could have them treated by the veterinarian.

31. As to the Maltese dog, she admitted that her staff reported that the dog had a bad smell. She visited the dog to check him out and could not find anything visibly wrong with the dog's teeth. She says it is common with small breeds to have problems with their teeth as they don't like to chew on bones. The dog exhibited no signs of being sick, and nothing in his records showed otherwise.
32. Ester Chapman testified that it was in her best interest to keep her dogs healthy, that she complied with the rules of the industry, did not cut corners, provided the very best in food and never had any prior trouble or complaints. She says her goal was to see to the good health and happiness of her dogs. Both defendants testified that this had to be so if the kennel was going to be successful in selling the dogs on the open market.
33. Dr. Ted Morris was declared an expert in veterinarian medicine. He says that he was the Chapman Kennels' veterinarian since it opened in 2004; however, he never took the opportunity to visit the kennel but had full confidence in Ester Chapman's ability to see to the care of her dogs.
34. Over the last four years, the kennel's personnel had made 156 visits to his office with various dogs to have them cared for. Some 1900 puppies were vetted by him before going on the market for sale and he says that he rarely rejected any puppies.
35. The arrangement he had with Chapman Kennels with respect to medical issues was that, if the medical situation was serious, the dog would be brought to his office, and all other general matters were dealt with by instructions giving over the phone.
36. In fact, he confirms that the day before the seizure of the dogs by the SPCA he was consulted in regard to the Daschund pups by phone and that he had prescribed that the pups be administered Polysporin manually from time to time and to bring them in if they got worse. In his opinion, the Polysporin would keep the area moist and would help to reduce the prolapsed rectums which would recede on their own.
37. He was not aware of the Maltese dog and feels that it was a gum infection that caused the teeth to fall out and that this was encountered frequently. He estimates that the Maltese was a working dog and would survive well with his K-9 teeth.
38. Dr. Morris also confirmed that, on the day of the seizure, he received a call from Mr. Donald Langille, the animal protection officer, at his office to talk about the two dachshund pups they had already seized. He advised Mr. Langille that the pups were under his care and testified that he was disappointed that Mr. Langille had removed the pups from the kennel. Mr. Langille, at the time, wanted to return the pups to the kennel; however, Dr. Morris advised him that it would not be appropriate to return them now once they had been removed due to other medical and safety reasons. He stated it was all a question of bio-security.

39. Dr. Morris believes that the pups should have been left with their mother and that to remove them and transport them to the clinic in Fredericton would have caused a lot of stress on the young pups.

THE ISSUE:

Did the defendants provide adequate medical attention to the dogs under their care and particularly to the Daschund pups and the Maltese dog in conformity with s. 4 (1) of Regulation 2000-04?

ANALYSIS:

THE PERTINENT SECTIONS OF THE REGULATION AND ACT:

REGULATION:

40. s. 4 (1) of the Regulation 2000-04 reads as follows: For the purpose of subsection 18 (1) of the Act, a person who has ownership, possession or care and control of an animal

(b) shall provide the animal with adequate medical attention when the animal is wounded or ill.

(Underlining is mine)

THE ACT: Society for the Prevention of Cruelty to Animals Act

s. 18(1) of the Act reads as follows: A person who has ownership, possession or the care and control of an animal shall provide the animal with food, water, shelter and care in accordance with the regulations.

s. 18(2) of the Act reads as follows: A person who violates or fails to comply with subsection (1) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category C offence.

41. The definition of “adequate” for our purpose can be found in Black’s Law Dictionary, Revised Fourth Edition, as:

“Sufficient; proportionate, equally efficient; equal to what is required; suitable to the case or occasion; satisfactory.”

42. The Code of Practice for Canadian Kennel Operations, Second Edition, 2007 outlines “General Health Care” at page 18 as follows:

“All dogs should be under the supervision of a consulting veterinarian (s) responsible for prevention and control of diseases, the provision of adequate veterinary care, and, if the need for euthanasia arises, provision of a humane, rapid death that minimizes fear and anxiety.

If a dog is sick, injured, in pain, or suffering, prompt and adequate veterinary care must be provided.

The key to disease control is early recognition of abnormalities in behaviour, hair condition, skin, etc. by those individuals who see the dogs or puppies on a day-to-day basis.

Regular grooming, appropriate to the breed, must be carried out.”

43. In this case, I find that the defendants met the standard of care required in the circumstances. I do so, first of all, because of the evidence of the employees who testified on behalf of the crown. Each one of them testified as to their duties and responsibilities and confirmed, in my view, the testimony of the defendants in that there was a system in place and proper records to care for the dogs. They did not complain about their working conditions or their inability to adequately provide for the animals due to lack of staff, medication, food or poor facilities. To the contrary their evidence helped to establish that adequate and proper operation methods and practices were being followed.
44. Secondly, it is clear from the kennel’s veterinarian, Dr. Ted Morris, that he had been informed about the issue with the Daschund pups and had provided a treatment plan for the kennel to follow. As he testified, “They were under my care”. Consequently, I cannot fault the defendants with respect to the care that was being provided to the Daschund pups at that time.
45. As to the Maltese dog, there is no question, after hearing the testimony of Dr. Jason McArthur who extracted the teeth from the dog, that the dog had a serious case of periodontal disease. One could wonder why staff, who had only recently advised the defendant, Ester Chapman, of this bad smell emanating from the dog’s mouth, didn’t recognize the deeper problems as well as why the defendant, Ester Chapman, did not properly assess the condition of the dog when she visited it after receiving the complaint. She testified that the dog did not appear to be sick and she didn’t recognize at the time the full extent of his dental problems.
46. In my view, I must give the benefit of the doubt to the defendants with respect to the Maltese dog. It is not as if the staff had complained for several weeks or several times to Ester Chapman about this. If that had been the case, then I believe, to meet the standard of care, she would have had to have the dog checked out by the veterinarian. Since the complaint was recent and the extent of the dog’s dental issues was not ascertained upon her first visit to check the dog, I must conclude that she acted properly in the circumstances even though she did not properly diagnose the situation at this first instance.
47. Finally, I accept Dr. Ted Morris’ evidence that, even though he never actually visited the kennel, he could say that it appeared to him that all was functioning

properly. He came to that conclusion over time as he inspected approximately some 1900 dogs from the kennel and treated several others. It was clear to him that Ester Chapman was properly caring for the dogs and meeting all their needs.

48. There is no question that this was a large operation which seemed to offend the SPCA officials characterizing the kennel as a puppy mill; however, Ester Chapman, was issued a kennel license (without any restrictions on the license) by the Department of Environment and Local Government which had been renewed on April 22nd, 2008 (Exhibit D-2) and thus had the legal right to operate the kennel. Furthermore, a complimentary letter (Exhibit D-1) was sent to the Chapman Kennels from the SPCA dated September 5th, 2007 and signed by P.E. Melanson, Chief Animal Protection Officer, a portion of which reads as follows:

“Your kennels were found to meet and in some cases exceeded the minimum requirements under the Act. Also noted during the inspection were the numerous improvements to the building since last year.”

49. The letter, along with the testimony of the employees and Dr. Ted Morris, in my view, supports the evidence of the defendants when they say that their facilities were more than adequate, that the food and care of the dogs were more than adequate and that adequate medical attention was provided when required on a timely basis. Photographs of the premises submitted at trial also confirmed these findings.

CONCLUSION:

50. I find that the defendants met all of their obligations under the Act, Regulations and Code of Practice for Canadian Kennel Operations, and I find them not guilty. Consequently, the crown has not met its burden of proof in that it did not prove beyond a reasonable doubt that the defendants did not provide adequate medical attention and care to the dogs named in the charge.
51. I do want to add that I would have found Harry Chapman not guilty regardless of my findings because, based on the kennel license, the defendants’ evidence and the evidence of the employees it is clear that the defendant, Ester Chapman, was the operator and owner of the Chapman Kennels and that the defendant, Harry Chapman, had only a supporting role and no ownership in the said kennel. Therefore, I find that the crown has not made out the charge against Harry Chapman and, consequently, would have dismissed it.

Dated at Grand Falls, New Brunswick, on June 25th, 2009.

Paul E. Duffie
Judge of the Provincial Court

