

Citation: British Columbia Society for
Prevention of Cruelty to
Animals v. Sudweeks et al
2002 BCSC 1892

Date: 20020604
Docket: L010988
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Morrison
June 4, 2002

BETWEEN:

**BRITISH COLUMBIA SOCIETY FOR PREVENTION OF
CRUELTY TO ANIMALS**

Plaintiff

AND:

**MARK SUDWEEKS, CHERYL SUDWEEKS, SHAYLA
WELLING, TRINITY BENNETT AND JANE DOE**

Defendants

Counsel for Plaintiff

D. Crerar, Esq.
D. Montrichard, Esq.

Counsel for Defendants Sudweeks

A. Zipp, Esq.

[1] **THE COURT:** This is an 18A application before me following the seizure by the plaintiff, the British Columbia Society for Prevention of Cruelty to Animals (which I will refer to either as "the Society" or the "SPCA") of some horses and dogs which the plaintiff alleges belong to the defendants, Mark and Cheryl Sudweeks, Shayla Welling, and Trinity Bennett.

[2] The plaintiff Society seeks several orders. First of

all, that the owners of the 30 horses and seven dogs that were seized from the property at Chilanko Lodge, which is located on Highway 20 near Anaheim Lake, Kleena Kleene, in British Columbia, that the owners of the animals that were seized, pay to the Society the costs that have been incurred by the Society with regard to the care and keeping of these animals from January 2001 to April 20th, 2002, and the costs of that total \$120,316.77.

[3] Secondly, the Society seeks an order that it be at liberty to apply for the balance of the costs incurred by the Society for the care of the animals from May 1st, 2002, until the end of the period during which the Society retains custody of the animals.

[4] Third, they seek an order for an interim injunction restraining the defendants from selling or otherwise disposing of the property at Chilanko Lodge until the issue of costs for rehabilitating and caring for the animals is resolved.

[5] And finally the plaintiff seeks costs of this application.

[6] First of all, there has been argument by counsel for Mark and Cheryl Sudweeks, Mr. Zipp, that this is not an appropriate case for resolution by way of Rule 18A, because there is conflict in evidence. He refers to extreme conflict of facts, and that there is not sufficient evidence on Rule 18A to resolve this matter in favour of the plaintiffs on a balance

of probabilities. And that it is unsuitable for disposition because of the conflict of evidence by way of Rule 18A, and Mr. Zipp has pointed particularly to the conflicting evidence of the experts, all of which has been filed by way of affidavit evidence.

[7] In my view this is an appropriate case for disposition by way of 18A. There are some conflicts, but from the evidence of the experts, it is apparent that they looked at the animals at different times, and I accept the evidence of the experts for the plaintiff as they had the clearest and best opportunities for viewing the animals at the time of seizure, which was January the 11th, and January 15th, 2001, and shortly thereafter.

[8] On January 11th, and then four days later, on January 15th, 2001, after receiving certain complaints, the manager of the Society in the Williams Lake area, accompanied by an officer of the RCMP, went to the Chilanko Lodge and ultimately seized 30 horses and seven dogs. One horse was destroyed immediately, on the advice of a veterinarian on the premises, and I assume that is not one of the 30 horses.

[9] I have read the material filed, it is somewhat voluminous, and I will not, for the sake of time, go into details; but I will say that on the evidence, I am satisfied, on a balance of probabilities, that the plaintiff has established that the animals were in distress and, in fact, I

find the evidence compelling.

[10] The owners of the animals were in Mexico at the time of the seizure. I'm not sure when they left the premises, but there is evidence that they took some pictures in late November 2000, of the animals, and they were there on the premises at that time.

[11] So it would appear that the owners were in Mexico for part of the winter, and the animals were left in care of a Brian Tetz.

[12] One of the affidavits filed on behalf of the Society says that:

A man who I believe to be Brian Tetz, who I believe is the foster child of the Sudweeks, was videotaping the activity at the time of the seizure, and the RCMP constable ordered Brian to feed the horses, and he got one round bale of hay and gave it to the horses.

[13] And I relate that for a point, in a moment, with regard to sections of the Act in question, the *Prevention of Cruelty to Animals Act*. But, as I say, I am satisfied that the animals were in distress and subject to seizure.

[14] One of the main issues before me is the question of ownership of the animals. Now, in Mexico were Mr. and Mrs. Sudweeks, Mark and Cheryl Sudweeks. Mrs. Sudweeks has a history of health problems within the last five years. One of their daughters, Trinity Bennett, and her husband, were also

in Mexico, as was another daughter, Shayla Welling, and her husband. Mr. and Mrs. Sudweeks claim that they are not the owners of the animals, but that their two daughters, Trinity and Shayla, are.

[15] In support of that, filed as Exhibit A of the affidavit of Mark Sudweeks, is an agreement dated November 17th, 1998 which says that:

We, Mark Sudweeks and Cheryl Sudweeks, parents of Trinity and Shayla Sudweeks, transfer ownership of the following horses to Shayla Sudweeks and Trinity Sudweeks respectively. The horses transferred to Shayla are agreed to by Trinity; the horses transferred to Trinity are agreed to by Shayla.

[16] All four persons signed that; some 24 horses are listed.

[17] At that time one of the daughters was 15 years of age, and I am uncertain as to the age of the other daughter. This is the evidence that Mr. and Mrs. Sudweeks seek to rely upon, amongst other sworn evidence, that they are not the owners of the animals but, rather, their two daughters are.

[18] Mark and Cheryl Sudweeks are owners of the lodge, and their residence has been given as both the lodge in British Columbia and also in Utah where they apparently have a home.

[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."

[20] One piece of evidence was Exhibit G in the affidavit of Francis Njinga, which is a handwritten statement saying, "I, Mark Sudweeks, give Brian Tetz permission to handle the transaction of getting my horses back." Signed, Mark Sudweeks.

[21] Now, Mr. Sudweeks has filed an affidavit this morning saying that the only reason he prepared that paper was that Darlene Tetz, who has lived with them for some five years, on and off, although he says she is not a daughter and they have never adopted her, that she had phoned him to say that he had to sign this, and that is the only reason he prepared that document, or signed that document.

[22] As I say, the evidence falls very short of establishing that exclusive ownership of the animals is with the two daughters. I am satisfied that the owners of the animals in question are both Mr. and Mrs. Sudweeks (Mark and Cheryl Sudweeks) as well as Trinity Bennett and Shayla Welling.

[23] The next issue is whether or not the seizure was required. I have already stated that in my view the animals were in distress and that the seizure was required. Counsel for the defendants raises the issue as to whether the seizures complied with section 11 of the **Prevention of Cruelty to Animals Act**, and I will work backwards, as Mr. Zipp did as well.

[24] The Society is claiming costs under section 20 of the Act. Section 20(1) says:

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.

[25] Section 11 of the Act says that:

If 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.

[26] The Society says that it took action pursuant to those sections.

[27] Section 10 of the Act is one that Mr. Zipp draws to our attention, which says that:

The Society may appoint an officer or an employee of the Society, or any other person, as an authorized agent for the purposes of this Act.

[28] Subsection 2 of that section 10 states that:

An authorized agent may exercise the powers of an authorized agent under this Act or any other law relating to the prevention of cruelty to animals, only if he or she has been appointed as a special provincial constable under the *Police Act*.

[29] And Ms. Caddy, whose evidence is before me, Sharon

Caddy's evidence establishes that she is the manager of the SPCA in the area and has been, I think, for a period of six years. I have no trouble inferring from the evidence that she is certainly an employee of the Society.

[30] Sections 21 and 22 I found of some interest. Section 21 says:

A peace officer must assist the authorized agents of the Society in enforcing this or any other law relating to the prevention of cruelty to animals.

[31] Section 22 says:

In a part of British Columbia in which the Society does not function through a branch or authorized agent, a peace officer who has jurisdiction in the part has and may exercise any of the powers of an authorized agent of the Society under this Act.

[32] Now, Ms. Caddy has testified in her affidavit that she is indeed a special provincial constable appointed under the **Police Act**, and I think that's s. 9 of the **Police Act** that provides for the provision of a special provincial constable. I am satisfied that this seizure did comply with section 11 of the Act. I think there is sufficient evidence to infer that Ms. Caddy was an authorized agent, and if she was not, the RCMP officer was present at the time of the seizure, and under ss. 21 and 22, he would have had authority to seize the animals, given the condition of the animals at that time.

[33] So on the issue as to whether or not the seizure complied with the provisions of the Act, I am satisfied that it did.

[34] Going back to, then, what the plaintiff seeks. There will be an order that the owners of the horses and dogs that were seized from the Chilanko Lodge pay to the Society the costs incurred by the Society with respect to these animals from January 2001 to April 30th, 2002, and that amount is \$120,316.77.

[35] The second order which the Society seeks is that the Society be at liberty to apply for the balance of costs from May 1, 2001 until the end of the period during which the Society retains custody of the animals.

[36] I am not prepared to grant that order. I would hope that this may be the time when the parties can reach some resolution with regard to the disposition and perhaps even hopefully the eventual return of these animals to their owners. The evidence is that when the owners were not present, when they were in Mexico for what I conclude is an extended time, they left what appears to be a foster child, a grown-up, though, in charge, and the animals were not properly cared for during that time.

[37] If the Society can be satisfied that the owners are back in residence and prepared to look after the animals in a proper way, then there would be no need for that second order. In any event, I do not think it is appropriate to grant that order at this time. And it may be it may not be necessary for the Society to incur further costs if the owners are ready,

willing, and capable. But I merely say that as a suggestion. I can make no order with regard to that, as really that issue is not before me.

[38] The third thing asked for by the Society is an order that there be an interim injunction restraining the defendants from selling or otherwise disposing of the property at Chilanko Lodge until the issue of costs, which I have just awarded, has been resolved. I will grant that order. There will be an interim injunction restraining the defendants from disposing of Chilanko Lodge until the matter of the costs referred to in this order have been satisfied or resolved.

[39] Perhaps I can hear from the parties on costs?

[40] **COUNSEL:** [Submissions on injunction]

[41] **THE COURT:** Yes, the usual undertaking.

[42] **COUNSEL:** [Submissions]

[43] **THE COURT:** Thank you.

[44] **COUNSEL:** [Submissions]

[45] **COUNSEL:** [Submissions]

[46] **THE COURT:** All right, thank you. I agree, counsel. All right, costs in the cause and hopefully matters can be brought to an end. Anyway, I appreciate counsel, thank you very much.

[47] **COUNSEL:** Thank you, My Lady.

[48] **COUNSEL:** [Submissions]

[49] **THE COURT:** Mr. Zipp, perhaps you could approve the form of the order for Ms. Welling and Ms. Bennett.

[50] **COUNSEL:** I can do that, My Lady.

[51] **THE COURT:** All right. There will be an order, then, that Mr. Zipp approve as to the form of the order on behalf of Mrs. Welling and Mrs. Bennett.

[52] All right, thank you.

"N. Morrison, J."
Madam Justice N. Morrison