

Citation: B.C.S.P.C.A. v. Sudweeks et al.
2002 BCCA 493

Date: 20020823
Docket:

CA029870

Registry: Vancouver

**COURT OF APPEAL FOR BRITISH
COLUMBIA**
ORAL REASONS FOR JUDGMENT
BEFORE THE HONOURABLE

Madam Justice Huddart

August 23, 2002

IN CHAMBERS

BETWEEN:
BRITISH COLUMBIAN SOCIETY FOR PREVENTION OF

CRUELTY TO ANIMALS
RESPONDENT

(PLAINTIFF)

AND:

MARK SUDWEEKS, CHERYL SUDWEEKS, SHAYLA WELLING,

TRINITY BENNETT and JANE DOE
APPELLANTS

(DEFENDANTS)

A.H. Zipp
D. Montrichard

appearing for the Appellants
appearing for the Respondent

[1] **HUDDART, J.A.:** On 4 June 2002, Madam Justice Morrison ordered the defendants to pay the costs of care of 30 horses and seven dogs taken into custody on 11 January 2000, under s. 11 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372. The defendants seek an order staying execution of her order until their appeal is heard. The parties agree that a *Voth* order would be appropriate in this case if there is a reasonable possibility of success on an appeal such that a stay can be justified. Thus the only question on this application is whether the appellant has shown a reasonable possibility of success on the appeal.

[2] Section 11 provides:

11 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.

[3] In a well constructed and articulated submission, counsel for the defendants put forward three grounds for appeal. All come to allegations of errors in findings of fact. The first ground is that the trial judge erred in her finding that the manager of the B.C.S.P.C.A shelter in Williams Lake was an "authorized agent" within the meaning of s. 11 of the *Act*. The trial judge inferred she was from the evidence of her position with the Society, and of her appointment as a special provincial constable under the *Police Act*, R.S.B.C. 1996, c. 367. In the absence of any contrary evidence I can see no possibility that a division of this Court would interfere with that factual conclusion.

[4] The second ground of appeal is that the trial judge ignored the defendant's submission that the plaintiff had not fulfilled the second condition for a lawful seizure. From the entirety of the trial judge's oral reasons it is apparent she concluded Brian Tetz, the person responsible for the seized animals on the day of their seizure had not been caring properly for them for some time, and that the owners were in Mexico for an extended period of time. In these circumstances it is not surprising the trial judge did not consider it necessary to expressly set down her reasons for concluding that the feeding of a bale of hay to the horses at the instruction of an R.C.M.P. officer was not sufficient to establish that Mr. Tetz was willing and able to take steps to relieve the animals' distress. I am not persuaded that there is a reasonable possibility any division of this Court would accede to that submission.

[5] The third ground of appeal is that the trial judge erred in placing the onus on the defendants to establish their ownership of the horses and dogs. The animals were all located on the ranch owned by Mark Sudweeks and his wife, Cheryl Sudweeks. The Sudweeks presented evidence that they had transferred 24 listed horses to their daughters in November 1978, when the daughters were teenagers. The trial judge did not consider that agreement, signed by all four of them, established the daughters owned the 30 seized horses. She concluded on all of the evidence, including a document Mr. Sudweeks signed authorizing Mr. Tetz "to handle the transaction of getting my horses back", that the four Sudweeks family members were owners for the purposes of the *Act* of the seized animals. There being evidence to support that finding there is no reasonable possibility a division of this Court would accede to this ground of appeal.

[6] It follows that the application for a stay of execution is dismissed.

[7] The defendant also seeks leave to appeal. In my view, leave is not required, this being an appeal from a final order following a summary trial under Rule 18A. Apparently there is some question about the continuing cost of care. Counsel had agreed that the terms of the **Voth** order, if I had granted a stay of execution, would include a continuing payment of \$6,000 per month into court to secure the continuing costs of care. In my view, if there are further costs of care after the date of judgment of the trial judge it is for the Society to seek them in whatever way they may be advised.

[8] Costs follow the event.

"The Honourable Madam Justice Huddart"