

Citation: Baker v. BCSPCA,
2006 BCSC 1982

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20061020
Docket: S100940
Registry: New Westminster

Between:

Tamara Baker

Plaintiff

And:

The British Columbia Society for the Prevention of Cruelty to Animals

Defendant

Before: The Honourable Mr. Justice Grist

Oral Reasons for Judgment

In Chambers
October 20, 2006

Counsel for Plaintiff

M. Airton

Counsel for Defendant

D. Montrichard

Place of Trial/Hearing:

New Westminster, B.C.

[1] **THE COURT:** The petitioner challenges the seizure of 14 dogs, 2 cats and a tortoise from her care by the respondent society following the issuance of a search warrant under s. 13(2)(a) of the *Prevention of Cruelty to Animals Act*.

[2] The petition is brought under the *Judicial Review Procedure Act* and asks for a court order declaring that the warrant was obtained in breach of charter sections 7 and 8, return of the animals and a declaration that the Petitioner is not responsible for the costs associated with the seizure of the animals and their subsequent care.

[3] The Society first received complaints about animals in Ms. Baker's care in February 2006. At the time she kept approximately 35 dogs, along with other animals including horses, goats and sheep, on her property in Langley. Most of the dogs were kept in runs or kennel-like facilities located on the premises. Apparently she boarded some of the dogs. Others were kept for breeding purposes. A few were pets. A number of these animals were left with her when her common law husband was told to leave the premises after the RCMP attended as a result of a domestic dispute.

[4] The first SPCA inspection was on February 23rd, 2006. Constable te Boekhorst, a special provincial constable appointed under the act, inspected the 35 dogs and several horses on the site. He found that the dogs, with a few exceptions, were in fair to good body condition. Two were under weight. The horses were also within that range, except for one he judged to be thin. The dog runs, however, were

found to be contaminated with fecal matter and water containers were contaminated with debris.

[5] The constable issued a number of orders made under the act, stipulating veterinary care for the underweight animals and that actions be taken to ensure clean and sanitary conditions.

[6] On the next inspection, February 27th, 2006, appropriate action appears to have been taken to clean the kennels, but by March 6th, the fencing was again noted to be dirty. On March 16th, there was again excessive fecal matter and the dogs seen at the site appeared to have lost weight. Constable te Boekhorst ordered Ms. Baker to provide sufficient food and clean shelter.

[7] On March 20th, Ms. Baker surrendered a number of dogs, a cat and some kittens to the Society. These dogs were underweight, and the kittens were infested with fleas.

[8] On the same day, the premises were inspected and a number of dogs remaining on the site appeared to be underweight and several apparently had medical problems. The constable also noted a dead sheep and that at least one of the other sheep was emaciated. A post-mortem subsequently performed on the dead sheep noted generalized debilitation associated with nutritional deficiency and secondary parasitic infection.

[9] On March 23rd, Ms. Baker again surrendered a number of animals, including 17 dogs, an emaciated horse and a number of sheep. On this day, orders were

made for provision of food, clean water and sanitary conditions for the remaining dogs, along with specific veterinary care.

[10] On inspection the next day, five dogs were found still without shelter and one without water. A further order was given in regards to these animals. Of the dogs surrendered on March 23rd, veterinary examination determined they were all emaciated, had dental disease and had fecal matter in their coats. Some had wounds and some were lame. The horse and sheep were also emaciated and had other health problems.

[11] Inspections continued through April and into May with further concerns arising in respect of animals on site and further orders were made in relation to the care of the dogs, cats, horses, a parrot and some fish kept by Ms. Baker.

[12] On June 19th and July 6th, Ms. Baker cancelled inspections. A further visit for July 13th was cancelled. The constable, in his evidence, says that he said able to arrange and conduct an inspection for July 17th. This is disputed by Ms. Baker as she says she was unavailable and away from the property on that day.

[13] The constable's report, however, is quite detailed as to his actions and observations on that day, none of which are specifically challenged by Ms. Baker. The foundation for her denial is that he says he inspected on a day and at a time she says she would have been at work. No work records were produced to support this, and I find it most likely that the inspection did occur as indicated in the constable's evidence.

[14] The results of the inspection again confirmed unsanitary conditions, dogs that were significantly underweight and had conditions requiring veterinary care.

[15] The chronology of inspections and orders given since February was set out in an information to obtain a search warrant, and a warrant was subsequently issued by a justice of the peace on July the 21st, 2006. The constable and others assisting him attended on that date. He found that the various animals ultimately seized were in distress and they were taken into the Society's care.

[16] A veterinarian, Dr. Steinebach, examined the animals for the Society on July 23rd and July 26th. Subsequently Dr. Geertsema, a veterinarian instructed by Ms. Baker, examined many of the same animals on August the 3rd and 7th, 2006. The Society has given notice of disposition in respect of the animals seized, and Ms. Baker has made submissions asking for their return. The Society decided that return of the animals would likely result in their further distress and proposes to put the remaining animals up for adoption. Five of the puppies seized have subsequently died from parvovirus.

[17] Ms. Baker's submissions were focused on the legality of the July 21st issuance of the search warrant and the subsequent seizure, and no case was advanced for judicial review of the procedure resulting in the Society's decision not to return the animals to her.

[18] The case dealing with the search warrant evokes charter sections 7 and 8 and the three-fold test of legality under **Collins** cited by Madam Justice Ross in **Van**

Dongen v. The Society for the Prevention of Cruelty to Animals. In accordance with ***Collins***, the validity of a search and seizure subject to a Charter challenge depends on whether the procedure is authorized by law, the law itself is reasonable and if the manner in which it was carried out was reasonable.

[19] Here I think the Charter really need not be engaged. The search warrant was clearly issued as a warrant under s. 13(2)(a) of the act and the seizure was effected after the special constable determined the animals were in distress, an action prescribed under s. 13(1)(a) of the act. There is no case advanced to strike these statutory provisions and no substance to a contention there were serious deficits in how the warranted search and subsequent seizures were carried out.

[20] Rather the issues raised on the facts presented bring into question by way of judicial review, firstly, the actions of the justice of the peace in issuing a warrant for inspection under s. 13(2)(a) of the statute; and secondly, the subsequent decision of the special constable to seize the animals under s. 13(1)(a), again of the same statute.

[21] The first is a question of sufficiency of the information to obtain. Specifically whether the information contained in the material submitted by the constable is judged sufficient for the justice of the peace to have, acting judicially, come to the conclusion that there were reasonable grounds to believe there were animals in distress on the premises.

[22] The second is the question of whether there was evidence presented on the search allowing the constable to conclude that the animals seen were in fact in distress and that the person responsible for them would not take steps to relieve their distress if so ordered by the constable or that person could not in the circumstances, be expected to take reasonable steps. In respect of that last proposition, the law is indicated in **R. v. Sudweeks** [2003] B.C.J. No. 3022.

[23] The step taken to actually seize the animals is dependent on this last conclusion, a decision which can also be the subject of judicial review, the standard of review again being reasonableness. None of this directly invokes the Charter. Reasonableness is the explicit standard for issuance of the warrant and also the standard indicated at law in respect of the actual decision to seize.

[24] Here Ms. Baker disputes the observations of Constable te Boekhorst. Her affidavit and affidavits in support from others who observed the animals and the care she provided attest to animals that were generally healthy and receiving good care. These assurances, however, do not stand the scrutiny of veterinary analysis of the surrendered and seized animals. Dr. Steinebach found these animals to be generally emaciated, infected with parasites and some showing the effects of long standing untreated medical conditions.

[25] The petitioner says the reports by Dr. Steinebach should be discounted in light of Dr. Geertsema's more favourable observations. Dr. Geertsema is, however, ambiguous in his conclusions. He says at page 2 of his report:

In my opinion, Dr. Steinebach has accurately reported his findings on the dogs in question. I have not confirmed all his findings, but they seem reasonable and consistent with my more cursory examinations.

[26] He goes on to say that notwithstanding he found a few dogs in obviously poor condition that on the whole the majority of the dogs looked quite normal. He says that he was somewhat surprised that so many normal animals would be included in the seizure. However, he then concedes that he was not privy to any prior interactions between the SPCA and Ms. Baker.

[27] On balance I prefer the evidence of Dr. Steinebach who has had a more extensive involvement in this matter and was able, as Dr. Geertsema concedes, to conduct a more extensive and timely investigation. This evidence gives strong support to the veracity of Constable te Boekhorst's observations as contained in the information to obtain the warrant. These findings support a reasonable belief there were animals in distress and hence issuance of the warrant.

[28] Further Dr. Steinebach's examinations corroborate the observations of Constable te Boekhorst in respect of the animals actually seized as being animals in distress within the meaning of the statute.

[29] Lastly, in light of the long history of this matter and the many orders given requiring adequate food, water, shelter, sanitary conditions and veterinary care which were either not complied with or prompted only short term improvements, the constable was entitled to conclude that after this history, Ms. Baker could not reasonably be expected to then take proper steps for the animals' care.

[30] Ms. Baker, as she indicates in her affidavit, was in difficult personal circumstances which no doubt contributed to her lack of ability to care for the animals. Nonetheless, the fact the animals were in distress is clear and the Society's actions were appropriate. Accordingly, the petition is dismissed.

[31] Costs would ordinarily follow the event at Scale 3.

(Submissions)

[32] THE COURT: Well, I hear you, but I think that in the usual course, costs should go. In a case such as this, the ordinary scale would be appropriate. I do not see significant material here that would dissuade me from that award of costs. Accordingly, costs at Scale 3 to the respondent.

“W.G. Grist, J.”
The Honourable Mr. Justice W.G. Grist