

Citation: ☼ R. v. Chrysler
2013 BCPC 0241

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File No: 177225-1
Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

DARCY CHRYSLER

**ORAL REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE M. GILLESPIE**

Counsel for the Crown:	L. O'Grady
Counsel for the Defendant:	N. Preovolos, agent for L. Rudovica
Place of Hearing:	Surrey, B.C.
Dates of Hearing:	December 3, 4, 5, 2012; January 25, March 6, 2013
Date of Judgment:	May 15, 2013

[1] THE COURT: Ms. Chrysler, you were found guilty by me today on Count 1 on file number 177225, being a person responsible for horses, that you did cause or permit the horses to be in distress, contrary to s. 24(1) of the PCA. I will not repeat all of the facts of this case; however, for the purpose of the record, I note that I found Ms. Chrysler guilty of this offence in relation to all five horses found on the property, although I accept Ms. Chrysler's evidence that Ozzie had only been on that property for one week prior to the offence being committed and that the remainder of the horses had been there along with her. She had been there with those horses for a period of six to eight weeks.

[2] Dr. Steinebach described the horses on a scale of 1 to 9, with 1 being emaciated and 9 being morbidly obese. The ideal score he referenced would be 4.5. He found that, upon examination, Ozzie was a 1 and what that meant was there were no fat stores present, visible hips, ribs, spinal column, nearly anything would be life-threatening; any extra cold even would potentially kill him because he was very susceptible to pathogens. Sassy was a 2.5 out of 9, Katie was a 1.5 out of 9, Bronco a 2 out of 9 and Pigeon a 2 out of 9.

[3] With respect to his general observations of the property, he found, and I accepted his evidence, that there were a constellation of factors present at the 16th Avenue property which resulted in these horses being in distress, including poor physical environment, a dirty barn that had not been mucked out in a long time, the presence of liquid and dry manure in the stalls, and a bog-like entrance to the barn. There was no straw or woodchips in the stalls, absence of any quantity of food, no evidence of mineral supplements, difficult and muddy access to the barn, absence of

fresh water in the paddocks and, therefore, the horses were consuming what he described as non-potable water. Even though there were some grass sources available, the paddocks, I found, were not being used for that purpose and there was an absence of any shelter in the paddocks. There were no blankets for these undernourished horses and, generally speaking, the paddocks in use were boggy, derelict. Fencing: there was the presence of hazards, boards with exposed nails, large quantity of fresh manure was strewn about and the water that was available to the horses in the paddock area was bad, interspersed with the manure. Generally, he observed poor body conditions, as I have noted, in the horses.

[4] Therefore, I concluded that the animals were in distress and that you were a person who was a person responsible for the animals, I noted in the course of my reasons that s. 1(3) of the PCA was more broadly worded than "owner" and also included "persons responsible." I noted in my reasons for judgment that the rationale for that legislation was to broadly interpret it to reflect society's concern that animals are dependent creatures who rely on human caregivers to provide them with the necessities of life, including food, water and adequate shelter, and that the PCA was broadly worded to reflect the vulnerability of animals and the need for those interested with their stewardship to be accountable for their well-being.

[5] In this case, I found that there was insufficient evidence to find that Ms. Chrysler had caused the distress but there was ample evidence to conclude, and I did find beyond a reasonable doubt, that she permitted the animals to continue to be in distress. I note with the evidence that I did accept and the particular words of Dr. Steinebach that those animals' existence, and that is the horses' existence, was a miserable one and

that in Ozzie's case, as Dr. Steinebach testified, a cold day could do him in given his lack of any reserve on his body.

[6] There was also evidence that I accepted that Ms. Chrysler herself testified that she would not contact the SPCA. She had an apparent animus towards them and, indeed, she was also aware of other agencies but she declined to involve them as well. Other animals were located on the property, including dogs, whose condition was generally described as being poor, although they were not found to be in distress. They were observed living or at least present in a muddy pen with food also sprinkled amongst manure and feces. The turkeys, who are not nocturnal, were living in a dark cage with excrement in it and what was observed to be dirty water. There was at least one cat in the trailer and a litter box that was apparently overfull, and another dog in there.

MS. CHRYSLER'S BACKGROUND

[7] I was not told her age in sentencing but my recollection of her evidence is that she is in her 50's. She is currently on a disability pension. Again, my recollection is there were issues with respect to fibromyalgia, which inhibited to a certain extent her ability to do a lot of heavy labour on that piece of property. She was in a relationship with Tim Stevenson for 20 years prior to this. She claimed that he owned the horses and was responsible for the condition that they were in. Mr. Stevenson testified and said that somebody was looking after those horses for a period of time on that property and that there was a lot of food being stolen. In any case, at the end of the day, she was found to be a person responsible for those horses. There is a 16-year old daughter

that Ms. Chrysler is the mother of and Mr. Stevenson is the father. They, as noted, are no longer together. She is currently living in a house with a partner on 64th and Fraser Highway area with one puppy, one cat and one bird that is not currently with her.

[8] She indicates, through counsel, that she is not opposed to a lifetime ban on horses but since she submits her dogs and cats were not part of the charges, and has not been convicted of causing those animals to be in distress, that she requires no ban regarding those domestic animals.

CROWN'S POSITION ON SENTENCE

[9] The Crown submits that the extent of neglect was profound and widespread and there was nothing in the environment conducive to the good health of any of the animals, not just the horses, but certainly the horses who were the subject matter of the charges. The Crown submits that Ms. Chrysler did not even take simple steps to alleviate some of the distress, including the presence of potable water available to the horses, mucking out stalls, removing hazards or placing the horses in the front paddocks where there was a food source or providing blankets or sustainable shelter. The attitude of the accused, Crown submits, demonstrated a complete ignorance of the basic requirements of horses. There was general neglect, apathy and a callous disregard for the needs of those horses. The Crown also submits a further aggravating factor is that the accused chose not to avail herself of any external support, including the SPCA because of personal previous dealings with the SPCA where there was a clear and obvious bias in the sense that Ms. Chrysler did not respect the SPCA nor wish to have any dealings with them, therefore, the Crown submits submitting her animals to

profound suffering. Ms. Chrysler also acknowledged that there were other agencies she could have called but did not.

[10] The Crown then points to the principles of sentence as being deterrence and denunciation and further points to the amendments in the PCA which increased the protections available in 2008 to animals who were in vulnerable situations. The Crown says that the range of sentence includes everything from a suspended sentence up to a fine and including jail and that a lifetime prohibition of owning animals is appropriate here for the aggravating reasons that Crown's pointed to. Crown, however, says that the appropriate sentence here, having regard to the principles of sentence, the aggravating and mitigating circumstances and the authorities provided, is a suspended sentence, pursuant to s. 89 of the *Offence Act* and ask that I place Ms. Chrysler on probation for two years with numerous conditions and that there also be a lifetime ban, pursuant to 24(3) in respect of all animals.

[11] Ms. Chrysler's counsel indicates that Ms. Chrysler acknowledges that the horses were in some distress, although the subject matter of the trial was not with respect to whether that was so but whether she had caused that or was responsible for the continuance of that and she did her best, given her circumstances that were limited both financially and legally, in terms of dispensing with those animals. The SPCA was not somebody whom she found to be a suitable person to take the animals given the circumstances that she noted occurred with respect to Star Man, her dog.

[12] In the circumstances, dealing then with the analysis and the imposition of sentence, I identify the aggravating and mitigating circumstances as follows. The

aggravating circumstances are the condition of the horses was very poor. One was noted to be a body condition of 2.5; the remainder were in the range of 2 and 1.5 and Ozzie was a 1, which is the poorest condition possible. However, I do note that Ozzie did only come into the possession of Ms. Chrysler the week before the SPCA attended. Ms. Chrysler did not avail herself of any immediate measures to alleviate the distress of the animals, including mucking out the stalls, providing a better supply or constant supply of water, food, shelter or blankets. Six to eight weeks' period of time for four of the five horses is a protracted period of time to continue as a person responsible to submit or expose those animals to continued circumstances of distress. Ms. Chrysler was unwilling to seek assistance due to the malice that she had towards the SPCA and declined to contact other agencies and, accordingly, the animals continued to suffer as a result of that relationship that she had with the SPCA.

[13] The condition of the other animals, including the dogs and the cats, were not found to be in distress and are not the subject matter of charges before me. However, the circumstances in which they were located, in particular, the dogs who were living or at least found in a pen that also had inadequate shelter, food was noted to be scattered on feces and they were dirty and also had some skin problems, and the turkeys who were living in a circumstance that was not suitable for them given that there was no light, the water was dirty and there was an abundance of excrement located. The circumstances in the trailer, while Ms. Chrysler indicated that she stayed there as well, were not certainly the best circumstances. In that situation, I infer that her attitude towards those animals certainly, in all of the circumstances, was not one that provided a

terrific standard of living for them and, while not in distress, demonstrated some disregard for their personal circumstances.

[14] In mitigation, Ms. Chrysler is a woman who is in her mid-50's. She has no prior criminal record and no indication that in that period of time she has ever had any other issues with respect to law enforcement. She has not been found to be responsible for putting those horses into the condition that they were found in the sense that she did not initially cause the distress but she has been found to have perpetuated it by virtue of permitting them to exist in that fashion for the six to eight weeks that she had care of the four of the five and the one week of Ozzie. She currently is on a disability pension and has some limited income as well as had some mobility of movement, although if that was so, probably she should not have accepted the task of taking care of those animals if she was not up to the task of doing so.

[15] In all of the circumstances, when I analyze the principles of sentence and consider the authorities that have been provided to me by Crown counsel, which include the four cases before me and an additional handout one, all of those cases identify that the predominant principles of sentence deal with denunciation, deterrence and, in some cases, rehabilitation. Given that Ms. Chrysler has no previous record, I must consider rehabilitation at least to some extent and balance the principles of sentence having regard to the aggravating and mitigating factors that I have identified. The circumstances are such that I highlighted in this decision, together with my reasons for judgment, that animals are dependent upon their caregivers, particularly domesticated animals who are at the whim and mercy, if you will, of the owners with whom they reside. The *Prevention of Cruelty to Animals Act* is in place in order to ensure that

those animals are maintained in a manner that they are provided with the necessities of life, which include shelter, water and food. In these circumstances, those were woefully absent for those horses.

[16] When I balance the principles of sentence, it seems to me that it is appropriate that I again be mindful that you, Ms. Chrysler, permitted the animals to continue in this state and that you were completely unwilling to contact any other agency or SPCA to assist you in what was clearly and evidently a situation that was untenable for these horses. However, I must also be mindful of the fact that you have been 50 or more years with no criminal record and that you are before the court for the first time for sentencing.

[17] In the circumstances it is appropriate, in my view, when I look at the principles of sentence, the authorities before me and the aggravating and mitigating factors, to suspend the passing of sentence for a period of two years, and I do so. The conditions that are appropriate are as follows: You will keep the peace and be of good behaviour. You will appear before the court as and when required to do so and you will notify the probation officer in advance of any change in your name or address and any change in your employment or occupation. Those are all the mandatory conditions under s. 89.1.

[18] Under 89.2, I also impose the following optional conditions that I believe are appropriate, having regard to the circumstances and the principles of sentence. You will report within 48 hours to the probation officer at 100 - 13545 64th Avenue in Surrey, British Columbia, and thereafter as and when directed. You will reside where directed

by your probation officer and you will not change that residence without the prior written permission of the probation officer.

[19] You are not to reside on any property where any domestic animal is present. If there are domestic animals that are present on that property, you have a period of one week to find alternate accommodations for those animals.

[20] You will perform community work service hours. You will perform 30 community work service hours under the direction and to the satisfaction of the community work service officer and the probation officer no later than, and I will give you a lengthy period of time to do that. You should be able to get those done within a year. Is that something that is suitable, Ms. Chrysler?

[21] MS. CHRYSLER: What was that?

[22] THE COURT: Be able to do 30 hours of community work service within a year?

[23] MS. CHRYSLER: In a year, yeah.

[24] THE COURT: All right. They will be done within a year from today's date. I think those are the conditions that were sought on this matter.

[25] With respect to s. 24(3) of the Act, Crown counsel has asked and made submissions that I prohibit you from possessing any animals for your lifetime. As I have noted, with respect to the horses, you take no issue with regards to the horses and I am going to prohibit you from owning, possessing, caring for or otherwise handling any horse for your lifetime.

[26] With respect to other animals it is appropriate, in my view, to prohibit you from possessing, owning, caring for or otherwise being in custody and control of those animals for a period of time. I say that because while the animals that were present at that location were not in distress, the manner in which the animals were found to be, and in particular the horses, demonstrate, in my view, general negligence in terms of dealing with those animals. You let them down in terms of what your responsibility is as a caregiver for animals. Part of the purpose of the PCA legislation is to provide enhanced protection to animals in those types of circumstances.

[27] In order to address that particular issue, I am going to prohibit you for a period of five years from owning, possessing, caring for or otherwise having in your custody and control any domestic animals, other than horses. That is for a period of five years. It is a lifetime ban on horses and a five-year ban on all other animals. There is a victim fine surcharge. I am not certain what that amount is, Ms. O'Grady.

[28] MS. O'GRADY: \$50.

[29] THE COURT: I also have no jurisdiction to waive that so I impose the \$50 victim fine surcharge. Do you need time to pay that fine, Ms. Chrysler?

[30] MS. CHRYSLER: The end of the month.

[31] THE COURT: Okay. I will give you two months' time to pay and they will give you a form to sign downstairs. Is there anything further?

[32] MS. O'GRADY: Will there be a condition of probation prohibiting her from possessing, owning or controlling any animals?

[33] THE COURT: Yes. She is not to reside at any property where any animals are present.

[34] As part of the probation order I will also include that you are not permitted, for the period of probation, from owning, possessing, caring for or otherwise having in your custody and control any animal for the period of probation. She will be provided with seven days to effect the orderly transport of animals that are currently in her custody and control to another location.

[35] MS. O'GRADY: Is there an enforcement provision as part of probation? In other words, is the SPCA allowed to attend at her home to ascertain whether she is complying?

[36] THE COURT: All right. I will put in place an enforcement condition. You are to present yourself in person to any peace officer attending your residence to determine -- sorry. What did you say? You wanted the SPCA to be able to inspect the outbuildings, or --

[37] MS. O'GRADY: No, to allow SPCA to inspect the residence for compliance and then dates and times would have to be specified as well, and that she present herself at the door upon --

[38] THE COURT: Well, I am a bit concerned about the degree of intrusion that permitting the SPCA to enter into somebody's residence unannounced.

[39] MS. O'GRADY: Very well, Your Honour.

[40] THE COURT: What I will say is she will present herself in person to any SPCA officer attending to her residence. I also want to put in a reasonableness aspect so if you can assist me with that. In other words, you will present yourself in person to any SPCA officer who has reasonable grounds to believe that you have animals in your residence. I put that in because I think in the circumstances there should be some enforcement clause but there should be some condition before the SPCA are attending. There is a long and fractious history between Ms. Chrysler and the SPCA, and also Mr. Stevenson, and it is not my intention to provide either group any further -- and I am not suggesting any wrongdoing on the part of the SPCA but I do think that there should be some protections afforded to Ms. Chrysler in the context of the probation order that permits the SPCA to attend to ensure compliance but that there is some basis. I will say "reasonable grounds to suspect" that animals are in the residence.

[41] MR. PREVOLOS: I would ask, Your Honour, that an additional limiting condition be placed on that inspection and that is that it only be conducted between the hours of 9:00 to 5:00. I wouldn't want her to have people attending at her residence after hours or unusual hours. I think that would be very intrusive.

[42] THE COURT: All right. I will put in place then between the hours of 9:00 a.m. to -- I think 9:00 p.m. is suitable, given that there is a requirement that there be reasonable grounds to suspect that there are animals in the premises.

[43] MS. O'GRADY: One other issue, Your Honour.

[44] THE COURT: Yes?

[45] MS. O'GRADY: On the ban under s. 24(3), a lifetime ban on horses, and you stipulated five years on any domestic animals. Would that apply to, for example, a wild animal held in captivity, like a ferret or a mink?

[46] THE COURT: I will just say "any animal."

[47] MS. O'GRADY: Any animal.

[48] THE COURT: Any animal, for five years.

[49] MS. O'GRADY: Other than horses.

[50] THE COURT: Yes. Any other questions?

[51] MR. PREOVOLOS: The only other concern I wanted to raise: Ms. Chrysler just mentioned to me that she will have to part ways, I guess, with her common law spouse, Rick, since he is the owner of a number of animals, I guess, that they have in that home. Is the intention that this order --

[52] THE COURT: She is not allowed to be in a residence where --

[53] MR. PREOVOLOS: Not to reside where any domestic animal is present, so even if it is under the care of the other person in the home, okay.

[54] THE COURT: In the circumstances of the case that was before me, there was certainly dispute about who was the person responsible that gave rise to an abdication, I found, of Ms. Chrysler's duties for those animals, and consequently, in my view, it is not appropriate that she be in a residence where somebody else is, in theory, the person responsible because there was a devolution of, and a finding ultimately by me,

that she was a person who was responsible and that while there was not evidence to say that she caused the distress, she continued to permit it to occur and consequently, in my view, it is appropriate that she not be in a residence where animals are present.

[55] MR. PREOVOLOS: The only other issue I noted is -- and I might be out of line in reasons -- but the reporting condition, I believe it is to report within 24 or 48 hours --

[56] THE COURT: 48 hours, and thereafter as and when directed.

[57] MR. PREOVOLOS: I'm just wondering whether that one is necessary, since she does not have a record, to be reporting on an ongoing basis to a probation officer for the next two years.

[58] THE COURT: I think in the circumstances it is an appropriate condition. I have declined to impose other aspects notwithstanding the manner in which I found the existence of a number of aggravated factors. For example, I have not imposed a fine given what I am given to understand is Ms. Chrysler's very limited financial circumstances. This is an offence for which a jail sentence could be considered given again the aggravating circumstances that I found. When I balanced the aggravating and mitigating circumstances, which include an absence of a record, but also the existence of an underlying disability, it seemed to me the appropriate way to balance those principles was to impose a suspended sentence for a period of two years and one of the aspects of that would be to be monitored in the community. I think that is appropriate.

[59] MR. PREOVOLOS: I suppose if it becomes an issue --

[60] THE COURT: She can always return to the court and --

[61] MR. PREOVOLOS: -- she can return and apply to have a variation of the order --

[62] THE COURT: Yes.

[63] MR. PREOVOLOS: -- if it is -- if that authority is being exercised unreasonably in her view. Thank you.

[64] THE COURT: Thank you.

(REASONS FOR SENTENCE CONCLUDED)