

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Camping v. B.C. SPCA***
2006 BCSC 1640

Date: 20060724
Docket: 06-16088
Registry: Williams Lake

Between:

Chris Camping

Petitioner

And:

British Columbia SPCA

Respondent

Before: The Honourable Mr. Justice Preston

Oral Reasons for Judgment

July 24, 2006

C. Camping

Appeared on his own behalf

Counsel for the Respondent

D. Montrichard

Place of Hearing:

Williams Lake, B.C.

[1] **THE COURT:** These proceedings arise out of the seizure of a number of dogs on May the 15th, 2006. The dogs were seized pursuant to s. 11 of the ***Prevention of Cruelty to Animals Act***, R.S.B.C. 1996, c. 372. That section reads as follows:

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.

[2] Section 13 deals with the authority of an authorized agent to enter into premises on the basis of a warrant, and section 14 with the authority to enter onto premises without a warrant.

[3] The background, briefly, is that Mr. Kokoska, an officer of the respondent (the "Society") attended at the premises of Mr. Camping on May the 10th, 2006. He made observations concerning the dogs on the premises. They can conveniently be divided into two categories. The first category is that of two dogs that were tethered to doghouses close to the residences on the property. The second category of dogs was a group of animals that were located at some distance from the residence. Some of them were tethered and others were not. There were 48 adult dogs in that group. Both groups of dogs were seized by the respondent. The seizure took place,

as I indicated, on May 15th, 2006, on the basis of a warrant that had been obtained, relying on an information to obtain sworn by the respondent's officer on May 10th.

Background

[4] On May 10th, Mr. Kokoska, left a message on Mr. Camping's property, indicating that he had inquiries about the animals on the property. Mr. Camping then phoned and left a message for the constable on Mr. Kokoska's answering machine. The nature of that message is described by Mr. Kokoska in his affidavit as follows:

On May 11th, 2006, I, at approximately 8:15 p.m., received a message on my office telephone message machine. The petitioner stated he had received the notice and that he did not want to speak with the Society. None of his animals were in distress, but the situation was as it has had always been, that if we could find an acceptable veterinarian to confirm that he would talk to the veterinarian.

[5] Mr. Kokoska deposes to the following observations that he made on the May 10th visit. He said:

While walking about the kennel area I made the following observations:

(a) The majority of the dogs within the kennel area were running loose and were not approachable.

(b) One dog, a black and white adult, had a pronounced limp, located in its front left leg.

(c) One young puppy had severe mange covering its entire body, with patches of fur missing from its head and body.

(d) A female adult dog also had a significant amount of fur missing from its body, and a skin condition on her underside that appeared to be similar to the mange I had already observed on the pup as described in the previous subparagraph.

(e) Another adult dog was actively and persistently scratching at its neck so that its body was patchy, with exposed skin mostly on the

underside which looked red and inflamed, so that I believe that it was possible that this dog was infected with parasites.

(f) Approximately 20 doghouses were apparently being used to shelter the dogs being kept within the kennel area, and eight doghouses were apparently not being used, having been tipped end-over-end. The dogs with houses were being kept on six- to eight-foot chain tethers affixed to their doghouses.

(g) There were skeletal remains, apparently belonging to a bovine, consisting of a skull, leg bones and vertebrae located within the kennel area.

(h) There was no food available for, or accessible to, any of the dogs being kept within the kennel area.

(i) There was almost no water available to the dogs being kept within the kennel area, so that in particular, some doghouses had tin cans that were either attached to the doghouses, or nearby, and when I looked into ten of the cans I saw that nine of them held no water at all and that one of them held about one inch of water, with three centipede-type bugs moving about in the water.

(j) There were several thin-looking dogs, including two dogs tethered in a separate fenced-in area, both of which appeared to me to be emaciated, and as I was watching, one adult dog near this area defecated and a thin, runny stool was expelled.

[6] When Mr. Kokoska returned on the 15th of May, with the search warrant and a number of assistants, (there were 11 in all, including a doctor of veterinary medicine), he made the following observations:

(a) Approximately 20 of the dogs were tethered to box-type houses, while the remainder were running loose and avoiding all human contact.

(b) Most of the dogs that I could see on the premises were in very thin body condition, so that in many cases the dogs' hip bones were visible and protruded from their bodies.

(c) Many of the dogs had moderate to severe skin conditions, so that their fur was missing in patches and the exposed skin was red, flaky and inflamed, and the lesions were apparent on their body.

(d) The only water that was apparently available to the dogs consisted of a few rusted cans containing an inch or two of water, and these cans had insects swimming within them.

(e) There were many faecal piles throughout the kennel area, and very large accumulation of faeces around the tethered dogs.

(f) There was apparently no food available for any of the dogs.

(g) One adult female sled dog was emaciated and had a severe skin condition, and her nails were so badly overgrown that they had curled upwards and had begun to grow into the pads of her feet.

[7] Mr. Kokoska's affidavit goes on to deal, in particular, with one dog that he designates as dog number 28. He says of that dog:

At approximately 1:00 p.m., I observed a dog that the investigators had identified as dog number 28 located within the doghouse on the premises. I saw that this dog was showing a terribly neglected injury to its neck. Dog number 28 was on a chain attached to a leather collar. The collar was grossly embedded into its neck. I saw that there was a gaping wound surrounded by oozing pus and dead skin. Dr. Cook indicated to me that she had examined dog 28, and that in her opinion the only humane treatment for it was euthanasia.

[8] I note that the dog was later euthanized.

[9] On the basis of his observations, Mr. Kokoska deposes that he formed the opinion that the animals were in distress. He concluded that on the basis of the reply by Mr. Camping in the telephone message, that Mr. Camping had no intention of promptly taking steps to relieve the animals' distress. Having formed that opinion, he apprehended the animals.

[10] Mr. Camping has answered the observations and contentions of Mr. Kokoska at length in a number of unsworn submissions that he has provided today — something in the order of 50 pages in all. I will give some examples of some of the points made by Mr. Camping in those submissions. He says that, "The dogs were

fed and watered regularly." He says that the "insects" that Mr. Kokoska saw were, in fact, small freshwater shrimp and, rather than being a contaminant, were a food source for the dogs. Overall, Mr. Camping's position is that the dogs were well taken care of, well nourished, provided with adequate water, and that the actions of the respondent were an overreaction to the evidence that was provided by the inspection of the premises in which the dogs were housed.

[11] He does not deal satisfactorily with dog number 28.

[12] I will focus, to some extent, on the condition of dog number 28. It was clear that that dog was in agonising distress. The photographs that accompany Mr. Kokoska's affidavit testify eloquently to that. Mr. Camping's explanation was that a month and a half before the seizure, he had noticed that this dog was in this condition, and intended to euthanize the dog very shortly after the time that the dog was seized.

The Petition

[13] The first question that is raised by the clear wording of the petition is, that the seizure was illegal. The remedy sought by Mr. Camping is that all dogs seized be returned to him.

[14] The petition also claims that the disposition procedure was unconstitutional. However, Mr. Camping abandoned that aspect of the petition at the hearing.

[15] The Society is content that I imply a further purpose to the petition — a claim for a judicial review of the decision of Ms. Moriarty, general manager of Cruelty

Investigations for the respondent. That decision is the subject of a June 1st, 2006 letter by her to Mr. Camping.

[16] The procedure that led to Ms. Moriarty's decision arises from *Pieper v. British Columbia Society for the Prevention of Cruelty to Animals*, a decision of Mr. Justice Powers, delivered November 25th, 2004. He dealt with a similar set of circumstances, and noted that the legislation that governed seizures, the *Prevention of Cruelty to Animals Act*, did not provide for a review or appeal of a decision of the SPCA to dispose of the animals.

[17] The provisions for disposition in the **Act** are set out in sections 18 and 19. They read:

18: If an animal is removed from the custody of its owner under section 11, and taken into the custody of the Society the Society may destroy, sell or otherwise dispose of the animal 14 days after the Society has given notice to the owner in accordance with section 19.

[18] Section 19 reads:

19: The notice referred to in sections 17(b) and 18 must be in writing, and:

(a) mailed to or served personally on the owner, or

(b) if it cannot be mailed to or served personally on the owner, published at least three times at two-day intervals in a newspaper circulating in the area in which the animal was taken into custody.

[19] Because the **Act** was silent on a review procedure, Mr. Justice Powers imposed a requirement for a hearing in these circumstances, and said at paragraph 26 of the judgment:

Some of the factors that might be considered in determining the nature of the hearing under this **Act** would include the following:

1. prior dealings between the Society and the person from whom the animals are seized,
2. communications between the Society and the person from whom the animals are seized,
3. responses to seizures and communications and the ability or willingness of the individual to respond or remedy the concerns,
4. the circumstances leading to the seizure itself,
5. the number and value of the animals seized,
6. the type of animals, whether they are livestock or commercial property, or whether they are personal pets,
7. the cost of retaining the animals and the need to dispose of them quickly,
8. the ability to dispose of them in a reasonable time.

[20] The notice that was given to Mr. Camping led to a response by him which triggered a hearing by Ms. Moriarty. I am satisfied that she had before her submissions from both Mr. Camping and his wife, and a considerable body of evidence concerning this seizure. She also had information concerning the history of dealings between Mr. Camping and the BC SPCA, including information concerning a seizure of some 70 dogs from him in 2004.

[21] I have reviewed Ms. Moriarty's decision. I am satisfied that she took relevant considerations into account. She mentioned the prior dealings between the Society and Mr. Camping. She satisfied herself that Mr. Kokoska reasonably formed the opinion that the animal were in distress. The notice of disposition had been served on Mr. Camping. She had ample evidence of the circumstances leading to the

seizure, the number and value of the animals seized, and the contact between Mr. Kokoska and Mr. Camping in the lead-up to the seizure of the animals.

[22] I will now deal with the first issue under s. 11 of the **Act**, was the seizure valid? Mr. Kokoska obtained a search warrant from a Provincial Court judge on May the 11th, on the basis of a substantial information to obtain. There is no suggestion Mr. Kokoska is not an authorized agent or that he was not acting under the provisions of a valid search warrant. The only real issue is whether he had reasonable grounds to believe that Mr. Camping would not promptly take steps to relieve the animals' distress.

[23] I am satisfied, when I compare the conditions under which the animals were housed on the day that he first visited, May 10th, 2006, and the time of the exercise of the warrant, May 15th, 2006, along with the content of the telephone message from Mr. Camping, that he did have grounds upon which he could believe that Mr. Camping would not promptly take steps to relieve the animals' distress, and certainly in the case of one of the animals, to relieve egregious distress, or, as the **Act** defines it, critical distress.

[24] On that basis, I am satisfied that the seizure was lawful.

[25] Turning to the next issue, that is, whether the decision of Ms. Moriarty should be set aside on judicial review, there is no indication that Mr. Camping was denied natural justice in the course of the proceedings conducted by Ms. Moriarty. Accordingly, I dismiss the petition for judicial review.

[26] I am satisfied that the petition fails in its entirety. The respondent will have its costs of these proceedings on scale 3.

[27] The requirement that Mr. Camping approve the form of this order is waived.

[28] I am going to require that Mr. Montrichard undertake to file an order dismissing the petition and awarding costs to the Society on Scale 3 in accordance with my reasons for judgment, and to provide by mail to Mr. Camping, forthwith after the entry of the order, a copy of the order.

"B.M. Preston, J."
The Honourable Mr. Justice B.M. Preston