

STATE OF MINNESOTA
COUNTY OF ANOKA

FILED
Jane F. Morrow
Court Administration

NOV 24 2009

Anoka County, MN
Clerk of Court

DISTRICT COURT
TENTH JUDICIAL DISTRICT
CASE TYPE: FOREFEITURE

Court File No. 02-CV-09-8151

[REDACTED]

Petitioner,

vs.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Multiple Cats and Dogs,

Respondent.

The above-captioned matter came on for hearing before the undersigned Judge of the Anoka County District Court for the District of Minnesota on November 17th, 2009, on Plaintiff [REDACTED] request for an order granting the return of animals seized pursuant to Minn. Stat. Ch. 343 et seq. Susan E. Sheely of Barna, Guzy & Steffen, Ltd., appeared on behalf of the seizing jurisdiction, City of Columbia Heights. Plaintiff [REDACTED] appeared pro se.

At the hearing, the Court heard testimony from Petitioner and several other witnesses. At the conclusion of the hearing, the Court allowed the record to remain open until 4:00 p.m. on November 20, 2009, so that Petitioner could submit additional veterinary records and both parties could submit written final arguments. Both parties submitted written argument and the Court received additional veterinary records from Petitioner. The matter was then taken under advisement on November 20, 2009.

Based upon the files, records, evidence and testimony in the record, the Court makes the following:

FINDINGS OF FACT

1. On October 28th, 2009 a peace officer from the City of Columbia Heights, Investigator Jason Piehn, and a Humane Society Investigator from the Golden Valley Humane

Society, Investigator Keith Streff, executed a search warrant which had been signed by an Anoka County judge for a residence located at [REDACTED] in the City of Columbia Heights, Anoka County, Minnesota (the "Premises"). The search warrant authorized officers to seize animals found to be kept in violation of licensing laws and ordinances, or in violation of Chapters 343, 346 or 347.

2. Present at the time of execution of the search warrant were the homeowner, [REDACTED] her daughter [REDACTED] and [REDACTED] son [REDACTED]
3. The only person claiming an interest in the seized animals is [REDACTED] ("Petitioner").
4. The search warrant was based in part on [REDACTED] September 11, 2009 report to Columbia Heights Police regarding a disagreement with his mother over the number of cats she possessed. [REDACTED] reported that he had been pleading with her to get rid of the more than twenty cats at the residence for months. [REDACTED] believed that his mother was unable to care for that many animals properly.
5. The search warrant was sought, in part, based upon at least eight prior reports of Petitioner having too many animals, unlicensed animals, and animals kept in unsafe and unsanitary conditions during 2008 and 2009.
6. In executing the search warrant, the investigators found a total of thirty-six (36) felines of varying ages and genders, and two (2) mixed-breed canines, inside the Premises.
7. Both Officer Piehn and Investigator Streff noted a strong and distinct odor of urine and feces upon entering the residence. The court finds based upon their credible testimony and the photographs admitted into evidence that the interior of the Premises was strewn with food items, clothing, garbage, debris, and a significant amount of animal urine and feces were present on the floors throughout the Premises.
8. The condition of the Premises is currently such that it is unfit for human or animal housing due to the extremely filthy, unsanitary and cluttered condition of the dwelling. As a result of the unsanitary conditions inside the Premises, the building inspector temporarily condemned it as unfit for human habitation.
9. A total of thirty-eight animals were seized pursuant to the search warrant and placed with the Golden Valley Humane Society.

10. Investigator Keith Streff of the Golden Valley Humane Society provided the notice of the right to a hearing pursuant to Minn. Stat. § 343.235, subd. 3(a) by leaving a copy of the notice with [REDACTED] a resident, and owner, of the Premises on October 28th, 2009.
11. [REDACTED] (“Petitioner”) served her request for a hearing on the disposition of the seized animals pursuant to Minn. Stat. § 343.235, subd. 3(b) and posted a bond in the amount of \$7,800.00 as required by Minn. Stat. § 343.235, subd. (d).
12. Petitioner is currently living with her aunt in the City of Robbinsdale, Minnesota and she cannot provide housing at this time for all of the seized animals. Petitioner testified that her aunt would be willing to provide housing only for “Jake”, the older dog seized. No evidence was presented that Petitioner’s aunt would be willing to house any of the other animals seized.
13. Petitioner testified that she plans to place all of the felines on a rural or farm property. The court finds that this testimony is not credible based upon its vagueness, and Petitioner’s lack of any specific placement plans including location, owner of the premises, lease agreement, or plans for feeding and care of these animals.
14. Petitioner produced no evidence that she is financially capable of caring for any of the seized animals. There is no evidence that Petitioner is employed or has any source of income, other than borrowing funds from her mother as she did to obtain the necessary bond in this case.
15. Petitioner has no plan for the care of Winston, the younger adult dog, if he were returned to her care.
16. The staff veterinarian for the Golden Valley Humane Society, Julie Stellar, DVM, examined the animals seized from the Premises. Based upon her testimony which the Court finds to be credible and based upon her experience as a veterinarian, the court finds that the majority of the felines were suffering from Upper Respiratory Infection, and many of the felines were underweight, dehydrated, and showing evidence of ear mite infestation and/or ear infections, urine scald, skin lesions, and flea infestation.
17. Dr. Stellar also examined the two dogs removed from the Premises. Based upon her credible expert testimony, the court finds that the younger Staffordshire Terrier breed dog (“Winston”) is healthy. With respect to the older, black, mixed-breed dog (“Jake”), the

court finds that he had visible tumors on his body, some of which were painful to touch, he appeared to be suffering from arthritis and cataracts and was not social. Dr. Stellar credibly testified based upon her experience that the tumors were inconsistent with buckshot, and that the dog's skin showed ulceration from prolonged contact with the ground and lack of mobility.

18. ██████████ stated to the Investigators at the time the animals were seized that she was treating Jake "holistically" and could not recall when she last took him to be examined by a veterinarian.
19. Dr. Stellar concluded that based on the prevalence of the Upper Respiratory Infection, that the felines had likely not been vaccinated in accordance with commonly accepted veterinary medical standards and that the health conditions they were suffering from were consistent with being kept in unsanitary, overcrowded conditions.
20. Given the animals' coat condition and general body condition, Dr. Stellar also concluded that the felines did not have consistent access to adequate amounts of food and water to meet their needs, and were not treated for fleas.
21. Based upon the credible expert testimony of Dr. Stellar, the court finds that all but one of the felines had previously suffered from ear mites or ear infections, 33 of the 36 felines had at least one sign of upper respiratory infection, and 25 of the felines had multiple signs of upper respiratory infection.
22. Based upon the credible testimony of Dr. Stellar, the court finds that 20 of the felines had live fleas or evidence of prior flea infestation, 5 of the felines had skin conditions indicative of urine scald, 5 of the felines had skin lesions and hair loss consistent with fights and overcrowding, and 20 of the 36 felines were underweight. In addition, 22 of the felines were slightly dehydrated.
23. Based upon Dr. Stellar's credible testimony, the court finds that all of the felines were fearful, timid, and lacked socialization.
24. With the exception of recent records showing 2009 flea prevention treatments for the dogs, none of the veterinary records demonstrate that Petitioner is capable of adequately caring for the animals. Specifically, the remaining veterinary records concerning the dog Jake date back to 1996 and 1998 and are not relevant to his current deteriorated physical condition. None of the veterinary records submitted demonstrate that any felines have

received necessary vaccinations. The remaining record submitted showed only a single cat was vaccinated for rabies in 2001, over eight years prior to the seizure. The lack of any recent record of vaccinations and the evidence of rampant upper respiratory infection among the felines corroborates Dr. Stellar's opinion that the felines were overcrowded, underfed, and unvaccinated.

25. The court finds that the search warrant authorizing the seizure of animals from the [REDACTED] residence was based upon probable cause to believe that Petitioner was harboring animals in violation of Minnesota animal neglect and abuse statutes.
26. The court finds that all of the felines seized are not physically fit.
27. The court finds that the dog "Jake" is not physically fit.
28. The court finds that the dog "Winston" is physically fit and shows no signs of neglect or abuse despite having lived in overcrowded conditions. This likely due to his relatively young age (approximately age 2 years per flea treatment records).
29. None of the adult animals seized from the Premises were properly licensed as required by Columbia Heights Ordinance 1490-8.101(A).
30. The court finds that Petitioner is either incapable of, or unwilling to provide the care required by law for all 36 felines seized from the Premises. Petitioner has failed to prove by a preponderance of evidence that she is capable of providing the care required by law for the felines.
31. The court finds that Petitioner is either incapable of, or unwilling to provide the care required by law for the dog "Jake". Petitioner has failed to prove by a preponderance of evidence that she is capable of, or willing to provide the care required by law for Jake.
32. The court finds that Petitioner has failed to prove, by a preponderance of evidence, that she is capable of and willing to provide the care required by law for the dog "Winston". Although Winston is physically fit, Petitioner produced no evidence of Winston having received a rabies vaccination or other routine veterinary care over the past two years -- with the exception of flea and tick prevention -- and has no plans for appropriate housing for the dog should he be returned by the court. In addition, Petitioner's history of hoarding animals in unsanitary conditions demonstrates that she is not capable of providing the necessary care for even an otherwise healthy animal.

CONCLUSIONS OF LAW

1. The City of Columbia Heights' seizure and impoundment of the animals (36 cats and 2 dogs) from the Premises was substantially justified by law pursuant to Minn. Stat. § 343.21 and 343.22. Specifically the court concludes that the search warrant was based upon probable cause to believe that violations of the animal abuse and neglect and/or animal licensing laws were being violated and evidence of the violations would be found within the Premises. The seizure of the animals was justified because they were found being kept in a residence which was condemned as unfit for human habitation, were overcrowded, and because, with the exception of Winston, they appeared to be sick, underweight, and underfed, all in violation of Minn. Stat. § 343.21, Subds. 1, 2 and 7.
2. Minn. Stat. § 343.235, Subd. 3(c) provides that the district court may authorize the return of animals seized upon a finding that (1) the animal is physically fit; and (2) the person claiming an interest in the animal can and will provide the care required by law for the animal.
3. The person claiming an interest in a seized animal is liable for all actual costs of care, keeping, and disposal of the animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full or a mutually satisfactory arrangement for payment must be made between the municipality and the person claiming an interest in the animal before return of the animal to the person. Minn. Stat. § 343.235, Subd. 3 (d).
4. Based upon the above findings of fact, Petitioner shall be entitled to the return of the dog "Winston" upon payment of all costs of care associated with the dog's seizure and boarding since the date of seizure.

Based upon the foregoing, the Court makes the following:

ORDER

1. The City of Columbia Heights and Golden Valley Human Society may immediately humanely dispose of all of the adult and juvenile felines seized from [REDACTED] on or after October 28, 2009.

2. The City of Columbia Heights and Golden Valley Humane Society may immediately humanely dispose of the adult dogs known as "Jake" and "Winston", seized from [REDACTED] on October 28, 2009.
3. Petitioner is liable to the City of Columbia Heights for all costs associated with the care, keeping and disposal of all animals seized from the Premises on or after October 28, 2009.
4. A copy of this Order shall be mailed by the Court Administrator to both parties, which shall constitute due and proper service.

IT IS SO ORDERED.

BY THE COURT:

Dated: Nov-24, 2009


The Honorable Kristin Larson
Judge of District Court