

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2008-196

APR 15 2009

APRIL TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
	}	
Michael Rinaldo	}	DOCKET NO. 984-8-07 BnCr

Trial Judge: Katherine A. Hayes

In the above-entitled cause, the Clerk will enter:

Defendant appeals the district court's decision ordering the forfeiture of several dogs and cats that the court determined had been subjected to criminal neglect as defined by statute. We affirm.

After being called to defendant's home and observing several cats and dogs in deplorable condition, a Town of Bennington police officer obtained a search warrant authorizing the seizure of the animals. See 13 V.S.A. § 354(b)(2) (authorizing officer having probable cause to believe animals are being subjected to cruel treatment as defined in statute to obtain search warrant to enter premises and seize animals). The State charged defendant with ten counts of animal cruelty, in violation of 13 V.S.A. § 352(a)(4) (defining cruelty, in part, as depriving animals of adequate food, water, shelter, rest, sanitation, or necessary medical attention), and moved for civil forfeiture of the animals pursuant to 13 V.S.A. § 354(d) (authorizing State to institute civil forfeiture proceeding with respect to animals seized based on probable cause of cruel treatment). Forfeiture hearings were held on November 16, 2007 and March 21, 2008. Following those hearings, in which the State presented the testimony of three witnesses who had dealt with the seized animals, the district court ordered forfeiture of the animals based upon its determination that defendant had deprived the animals of adequate shelter and necessary medical care. Among other things, the court found, by clear and convincing evidence, that: (1) no less than thirteen dogs and cats were confined in a small, completely unventilated, and unsanitary mobile home with no operable windows; (2) all the animals were infested with parasites and fleas, and were suffering unnecessarily because of defendant's failure to provide adequate medical treatment; and (3) due to defendant's failure to provide adequate medical care and shelter for the animals, two animals died and another three were euthanized.

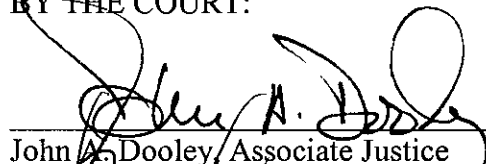
Defendant was represented by counsel at the forfeiture hearing, but has filed a pro se brief on appeal that fails to articulate any discernable claims of error. Generally, defendant laments that he has been subjected to slander by the witnesses' perjured testimony. Witness credibility, however, is not reviewed by this court, but is left to the assessment and judgment of the trial court. Defendant complains of hearsay, but directs us to neither examples of improper hearsay nor erroneous rulings on hearsay objections below. Defendant complains that the court admitted his photographs of the pets into evidence, but relied instead on State exhibits to find

neglect. Except for arguing that his photographs should have been more convincing, defendant does not explain how the court's judgment to the contrary was an abuse of discretion rather than the kind of judgment call ordinarily left to the trial court. Defendant fails to demonstrate that any of the court's findings or conclusions are clearly erroneous, or that the State failed to prove by clear and convincing evidence that the animals had been subjected to cruel treatment, thereby establishing a legitimate basis for forfeiture of the animals. See 13 V.S.A. § 354(f) (if State meets its burden of demonstrating cruelty to animals by clear and convincing evidence, court shall order immediate forfeiture of animals). Accordingly, we discern no basis for overturning the district court's forfeiture decision.

We also reject defendant's suggestion that the forfeiture decision should be overturned because the criminal charges were dropped following the district court's forfeiture decision. The statute plainly contemplates that the forfeiture of animals in a civil forfeiture proceeding is independent of the institution of criminal charges or imposition of criminal penalties for the offense of cruelty to animals. See 13 V.S.A. §§ 354(g)(1)-(g)(2)(A) (if defendant is convicted of criminal charges under this chapter "or if an order of forfeiture is entered against an owner," owner is required to pay for all reasonable costs incurred due to forfeiture; if defendant is acquitted of criminal charges and no civil forfeiture proceeding is pending, animals taken into custodial care shall be returned to defendant "unless the state institutes a civil forfeiture proceeding under this section within seven days of the acquittal").

Affirmed.

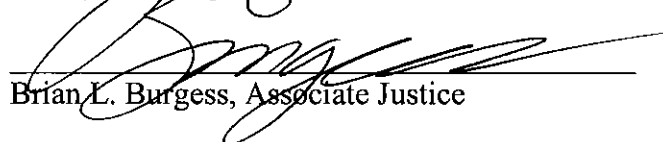
BY THE COURT:



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice