

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-317

AUGUST TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Bennington Circuit
	}	
Stephen M. Dufresne	}	DOCKET NO. 18-7-09 Bncm

Trial Judge: John P. Wesley

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

Defendant appeals from an order requiring him to forfeit two of his dogs due to animal cruelty. We reverse.

Defendant owns two dogs. In July 2009, he was charged with two counts of cruelty to animals.* Shortly thereafter, the State filed a request for a civil forfeiture order, alleging that defendant deprived the dogs of adequate food, water, sanitation, and/or necessary medical attention in violation of 13 V.S.A. § 352(4). At the hearing, a police officer testified that he went to defendant's home to investigate a burglary that had occurred there. As soon as he entered the home, he noticed a very strong smell of urine and feces. The floor of the home was covered in debris. He also noticed heavy saturation marks on the floor where animals had obviously urinated or defecated, causing the heavy stench. The officer saw a dog, which was filthy, lying on an equally filthy couch. He observed that the dog appeared thin. A second dog was tied up on the porch. Both dogs smelled of urine and feces; their coats were very dirty and one dog's coat was covered in brown flecks. The officer saw no food or water for the animals either inside or outside. The officer was concerned for the animals' wellbeing and he obtained a warrant to seize the animals. The State introduced photographs taken by the officer of defendant's home and the animals. A veterinarian and several other witnesses also testified at the hearing.

At the close of the hearing, the court made findings on the record. It found this a close case, but ultimately concluded that the State met its burden to show, by clear and convincing evidence, that the animals in question were subjected to cruelty, neglect, or abandonment as defined by 13 V.S.A. § 352. The court credited the police officer's testimony, noting that he was a trained and experienced officer who had conducted numerous cruelty to animal investigations. Thus, it found that the animals had very strong odors of urine and feces, as did defendant's house, and that there was carpeting inside the house that was impregnated with urine. The court found that this satisfied the definition of unsanitary conditions. The court noted that the

* These charges were dismissed by the State in October 2009.

veterinarian who examined the dogs after they were seized (and after the dogs had gone swimming) testified to a moderate odor of urine, which was consistent with the officer's observations.

The court explained that the term "sanitation" was defined by statute as the "maintenance of clean conditions for indoor and outdoor enclosures to minimize health hazards, including periodic cleanings to remove excretions or other waste materials, dirt and trash." 13 V.S.A. § 351(9). The court found that whatever effort defendant had made to clean his home, it was not sufficient to prevent his floor, where the dogs were kept, from being unsanitary. The court acknowledged that the animals appeared bright and alert. Nonetheless, it found that the balance tipped by clear and convincing evidence in favor of forfeiture because, in addition to the unsanitary conditions, there was a further suggestion or inference that out of those unsanitary conditions and in connection with some carelessness, both dogs suffered from ear conditions, including dirt in their ears, yeast infections, and an inflamed ear. Although the veterinarian could not say if these conditions had lasted for a day or longer, the court found from the evidence that this condition was likely to have been there for considerably longer than a day. For all of these reasons, the court concluded that the State met its burden of proof. The court issued a written order, and this appeal followed.

As an initial matter, we reject the State's assertion that this case is moot. "In general, a case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." Houston v. Town of Waitsfield, 2007 VT 135, ¶ 5, 183 Vt. 543 (mem.) (quotations omitted). While the dogs have apparently been returned to defendant, the existence of the court's forfeiture order leaves defendant liable for "all reasonable costs incurred by the custodial caregiver for caring for the animal[s], including veterinary expenses." 13 V.S.A. § 354(g)(1). Defendant thus retains a legally cognizable interest in the outcome of this appeal.

We therefore turn to the merits. Defendant argues that the court committed clear error in finding that the dogs were "regularly probably" in contact with urine and that yeast in their ears was consistent with living in unsanitary conditions. He also maintains that the court's findings do not support its conclusion that the dogs were subjected to cruelty by being deprived of adequate sanitation.

Our review of the trial court's decision is deferential. Even where, as here, "the standard of proof is clear and convincing evidence, we will uphold trial court findings as long as there is substantial evidence to support them although they are contradicted by credible evidence." Vt. Women's Health Ctr. v. Operation Rescue, 159 Vt. 141, 147 (1992). We agree with defendant that the evidence does not support the court's conclusion that the dogs were deprived of adequate sanitation under 13 V.S.A. § 352(4). Thus, we do not reach his remaining arguments.

As the trial court recognized, the term "sanitation" is defined by statute as "the maintenance of clean conditions for indoor and outdoor enclosures to minimize health hazards, including periodic cleanings to remove excretions or other waste materials, dirt and trash." Id. § 351(9). The evidence in this case did not show that the dirty and cluttered condition of defendant's home presented a health hazard to the animals. The veterinarian testified that yeast infections were common in dogs, particularly in long-eared dogs like basset hounds. She stated that she could not tell if the dogs' ears had been cleaned recently or not, and she observed no

physical discomfort in the dogs. She did not testify that the dogs' ear conditions were caused by their living conditions, and we find no evidence in the record to support the court's finding in this regard. As to any other potential health hazards, the veterinarian stated that it would be very difficult to know whether an animal would be bothered by living in an environment such as that found in defendant's home. She indicated that urine scald might develop if an animal was lying in urine and could not escape it, but she found no indication of urine scald here. Because there was insufficient evidence to show that the condition of defendant's home presented a health hazard to his dogs, we must reverse the court's decision.

Reversed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice