

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

**ENTRY ORDER**

SUPREME COURT DOCKET NOS. 2006-231 & 2006-232

FEBRUARY TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
Jesse-Lynn Gentlewolf	}	
	}	DOCKET NO. 47-1-06 WmCr

Trial Judge: Katherine A. Hayes

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

Defendant appeals an order of the district court granting the State's motion for animal forfeiture pursuant to 13 V.S.A. ' 354(f) (permitting State to seek forfeiture where there is clear and convincing evidence that animal was subject to cruelty, neglect or abandonment).<sup>\*</sup> Defendant also filed a pro se appeal addressing other aspects of the proceeding. We affirm.

The district court found the following facts after an evidentiary hearing on February 14, 2006, and

continuing on March 8, 2006. Defendant was incarcerated in New Hampshire on or about Thanksgiving (November 24) of 2005, and remained incarcerated through at least December 2, 2005. During this time, police were called to check on the welfare of one of the dogs at defendant=s home. The individual who called also stated that she had seen the dog in poor condition at the defendant=s home a few weeks earlier, and feared that the dog was being neglected or abused. When the police officer arrived at defendant=s home for the welfare check, he saw several animalsCboth cats and dogsCthat were very thin and appeared otherwise unhealthy. He observed that there was no food or water available for the animals, and that the shelter provided was in poor condition. There did not appear to be anyone at the residence. The police obtained a warrant to search the residence and seize any abused or neglected animals. They arrived on December 2, 2005, with food and water for the animals and crates for transporting them. The condition of the exterior of the home on that date was the same as when the police officer made his first visit several days earlier. In addition, once inside the home, the officers found sixteen dogs and several cats. There was animal waste throughout the house. Some of the dogs inside the house were confined in crates; some of these crates were not large enough for the dogs. There was no food or water available for the animals.

The animals were examined by a veterinarian, who found that all of the cats suffered from long-term respiratory infections, all of the animals were dehydrated, and most were underweight. The veterinarian concluded that the animals could have deteriorated to their current condition only if they had not been receiving proper veterinary care or adequate shelter. She also determined that the animals= condition was caused by insufficient food, or by parasites, or by a combination of the two. The animals were infected with roundworms, hookworms, whipworms and tapeworms.

In granting the State=s motion for animal forfeiture, the court held the State to its burden of proof: to show by clear and convincing evidence that the animals it sought to obtain were Asubject to cruelty, neglect or abandonment@ as defined by the statute. See 13 V.S.A. ' 354(f). Animal cruelty is defined in part as Adepriv[ing] an animal which a person owns, possesses or acts as an agent for, of adequate food, water, shelter, rest, sanitation, or necessary medical attention.@ 13 V.S.A. ' 352(4). The court noted that Adefendant has provided adequate care to at least some of her animals, at some times in the past,@ and that she made Asome calls to try to arrange for care for her animals after she was incarcerated at Thanksgiving.@ But the

court also noted that no specific intent or malice is required to prove the offense, see State v. Gadreault, 171 Vt. 534, 536 (2000) (mem.) (holding that cruelty to animals is strict liability offense), and that the evidence presented was more than sufficient to show that defendant had committed the offense.

On appeal, defendant argues that while the language of the statute indicates that forfeiture is a civil penalty, under the circumstances of this case, forfeiture was excessively punitive. Specifically, defendant asserts that the forfeiture exceeded its remedial purpose because the State Aprovided no evidence that the problem was anything but temporary.@ In support of this argument, defendant cites Town of Hinesburg v. Dunkling, 167 Vt. 514 (1998). In that case we held that a civil penalty may not be Aexcessively punitive@ in its purpose or effect. Id. at 525. Where a civil penalty is excessively punitive, it should be subject to the heightened procedural protections that attend criminal penalties. Id. at 524.

Defendant=s argument fails for several reasons. First, there is no requirement in the statute that the cruelty or neglect extend over a particular period of time to constitute animal cruelty or to justify forfeiture. Second, there was, in fact, ample circumstantial evidence that the neglect preceded defendant=s incarceration in New Hampshire in the form of the veterinarian=s observations of the extensive health problems suffered by all the animals and the very deteriorated conditions in and around defendant=s home. Third, while defendant asserts that forfeiture was not shown to be Areasonably necessary to protect the animals,@ the evidence regarding the condition of the animals and their environment when they were foundCnamely, suffering from dehydration and lacking access to foodCshows such necessity. Defendant has not shown that forfeiture was Aexcessively punitive.@

Defendant raises a number of issues in her pro se appeal, although most appear to ask us to make findings of fact different from those made by the district court, and the exact nature of others is difficult to discern. To the extent defendant challenges the district court=s factual findings in support of the forfeiture ruling, we have addressed the adequacy of those findings above. We are bound by findings made by the trial court unless they are clearly erroneous. Here there was evidence to support the trial court=s findings. Defendant suggests that at least some of her discovery requests were improperly denied, but does not indicate how the

denial prejudiced the presentation of her case. The issue of whether the State may recover from defendant the costs incurred in dealing with the animals turns on resolution of the underlying criminal charge, which is still ongoing in the district court. Thus, any appeal of this issue is premature. Also premature are arguments related to defendant=s motion to suppress for lack of probable cause, which was filed after the ruling appealed here and is related to the criminal charge rather than the motion for forfeiture.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice

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\* Although animal forfeiture has been ordered, the underlying criminal charge of animal cruelty has not been decided, and proceedings are ongoing.