

IN THE COURT OF APPEALS OF IOWA

No. 1999-135 (9-351) / 98-1622

Filed October 15, 1999

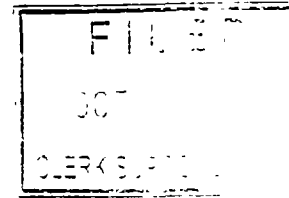
GRUNDY COUNTY, IOWA,

Plaintiff-Appellee,

vs.

DEAN ALVIN MOELLER,

Defendant-Appellant.



Appeal from the Iowa District Court for Grundy County, Jon Fister, Judge

The defendant appeals from a district court order finding he had neglected 153 dogs and one cat, and ordering him to reimburse Grundy County. **AFFIRMED.**

Barry S. Kaplan of Fair all, Fair all, Kaplin, Hoglan & Condon, Marshalltown, for appellant.

Bradley J. Harris Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel, and Vaitheswaran, JJ.

VAITHESWARAN, J.

The Grundy County district court concluded that Dean Alvin Moeller neglected certain animals. The court ordered him to reimburse Grundy County for the costs of maintaining the animals after they were seized. Moeller appeals. We affirm.

I. Background Facts and Proceedings

Moeller was in the business of raising dogs for resale to pet stores and breeders. On July 10, 1998, a Grundy County deputy sheriff went to the Moeller farm, served Moeller with a search warrant, and began an inspection of the property, along with a member of the local Humane Society and Dr. Lori Cherney, a licensed veterinarian. The deputy sheriff seized 153 dogs and one cat and placed them in the care of the Humane Society. The Grundy County Attorney then filed a petition at law for disposition of neglected animals pursuant to Iowa Code section 717B 4. Following an evidentiary hearing, the district court found that the animals had been neglected and ordered Moeller to pay the county \$13,353.82, to cover its debt to the Humane Society.

II. Scope of Review

Moeller suggests that review of this case is de novo. Grundy County maintains that our review is for errors of law, because this matter was filed as a law action and no motion was made to transfer the matter to equity. We agree with the county. It is established that where no objection is made to trying causes of action at law, review will be for errors of law, even if the matter could have been tried in equity and

reviewed de novo. See Iowa Code § 611.12 (1997); *In re Estate of Todd*, 585 N.W.2d 273, 275 (Iowa 1998).

In a law action, we are bound by the trial court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial if a reasonable mind could find it adequate to reach the same findings. *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 427 (Iowa 1996). We view the evidence in the light most favorable to upholding the judgment. *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 59 (Iowa 1999). A district court's legal conclusions are not binding on appeal. *Wilson v. IBP, Inc.*, 589 N.W.2d 729, 730 (Iowa 1999).

In light of these standards of review, we decide the following issues: 1) whether the district court erred in concluding that the seized animals were neglected; 2) whether the statute authorized the district court to approve seizure of all the animals without express, case-by-case findings of neglect with respect to each animal; and 3) whether the statute authorized the district court to order payment of expenses associated with maintenance of all the animals.

III. Challenge to Animal Neglect Conclusion

Moeller first contends that the district court incorrectly held him liable for animal neglect. Under Iowa Code section 717B.3 (1997), a person may be liable for "animal neglect" if that person impounds or confines an animal and 1) fails to supply the animal with sufficient quantities of food and water; or 2) fails to provide a confined dog or cat with adequate shelter; or 3) tortures, deprives of necessary

sustenance, mutilates, beats, or kills an animal by any means which causes unjustified pain, distress or suffering.

The district court found:

Some dogs were thin from malnutrition and some had distended stomachs evidencing the presence of tape or round worms. Some animals were provided moldy food, some had no water, and there was evidence that some were eating their own waste. Some dogs suffered from fly bites, others had skin irritations indicating disease and some suffered from diarrhea. Eight out of ten dogs tested suffered from undiagnosed and untreated heart worms. A number of the animals had inadequate shelter from heat, others had inadequate bedding, bad ventilation, and inadequate light. According to the testimony of the veterinarian, all of these animals were at risk in one way or another and if any particular animal was not showing the immediate signs of neglect, it was only a matter of time before those signs would appear.

The court concluded that the animals were suffering from lack of appropriate care and there were no satisfactory assurances that the problems could be remedied.

Iowa Code section 717B.3 prohibits denial of food, water or shelter. The district court found that Moeller deprived the animals of these basic necessities. These findings are supported by substantial evidence and, accordingly, are binding on this court. We find no error in the court's conclusion that the animals were neglected.

IV. Authority to Seize All Animals

Moeller next contends that, where more than one animal is seized, Iowa Code section 717B.3 requires a court to make a finding of neglect with respect to each animal. We reject this contention. Although Iowa Code section 717B.3 makes reference to "an animal," nothing in that provision or in the remainder of the chapter requires a district court to hear evidence and make separate findings with respect to

each animal. In this case, the deputy sheriff seized 154 animals. The district court adopted the veterinarian's opinion that, although there were variations in the degree of harm, all the animals were at risk. That general finding was sufficient to establish neglect of all the animals. *Cf. City of Dubuque v. Fancher*, 590 N.W.2d 493, 494-95 (Iowa 1999) (noting that a veterinarian concluded after examining seven of 284 rabbits that the entire colony needed to be euthanized).

V. Disposition Authority

Moeller's final contention is that the district court should not have required him to pay for maintenance of all the animals. Initially, we note that Iowa Code section 717B.4 gives a court considerable latitude with respect to disposition of neglected animals. *Johnson County v. Kriz*, 582 N.W.2d 759, 761 (Iowa 1998). Because we affirm the district court's conclusion that all the seized animals were neglected, we conclude that the court's order requiring Moeller to reimburse the county for care of all the animal also was not erroneous. We affirm the district court.

AFFIRMED.