

1 Elizabeth J. Honaker
2 HONAKER LAW FIRM
3 208 N. 29th St., Suite 206
4 P. O. Box 2236
5 Billings, Montana 59103-2236
6 (406) 254-7172
7 (406) 256-1881 (fax)
8 honakerlaw@aol.com (email)

CLERK OF THE
DISTRICT COURT
CARTER, MONTANA

2009 SEP 4 PM 4 32

FILED

57 DEPUTY

9 Attorney for Plaintiffs

10 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

11 PENNY S. RONNING and KELLY
12 DENNEHY,

) Cause No. DV 09-1235

) JUDGE: SUSAN P WATTERS

13 Plaintiffs,

) COMPLAINT AND DEMAND FOR JURY
14 vs.) TRIAL

15 COUNTY OF YELLOWSTONE OF THE
16 STATE OF MONTANA and NATIONAL
17 ENGLISH SHEPHERD RESCUE,

Defendants.

IN RE THE MATTER OF JOY and LOVE.

18 Plaintiffs, Penny S. Ronning and Kelly Dennehy, through counsel, Elizabeth J. Honaker,
19 for their complaint against Defendants, County of Yellowstone and National English Shepherd
20 Rescue, Inc., state and allege as follows:

21 1. Plaintiffs, Penny S. Ronning and Kelly Dennehy, at all times mentioned hereto,
22 were individuals with their place of residence located in Yellowstone County, Montana.

23 2. Defendant, County of Yellowstone, State of Montana ("Yellowstone County"), is,
24 and at all times pertinent hereto was, a subdivision of the State of Montana, existing under the laws
25 of the State of Montana, with its principal office in Billings, Yellowstone County, Montana, and
took all actions complained of in this action on behalf of the State of Montana.

1 3. Defendant National English Shepherd Rescue ("NESR") now is and at all times
2 mentioned was, a foreign corporation under 501(c)(3) of the Internal Revenue Code doing
3 business and performing services in the State of Montana, with its principal headquarters located
4 in Olalla, Washington.

5 4. Venue is proper pursuant to Mont. Code Ann. 25-2-121(a) and (b).

6 FACTUAL ALLEGATIONS

7 5. On or about January 2, 2009, Plaintiff Penny S. Ronning ("Penny") began as a
8 volunteer to assist at the Yellowstone County fairgrounds in caring for the dogs ("Kapsa dogs")
9 seized in the raids at Linda Kapsa's property that took place in December 2008.

10 6. Penny attended a dog handler class on January 9, 2009 and immediately thereafter
11 became a dog handler for certain Kapsa dogs, including Joy, Love, Eddy and Happy. Joy is an
12 approximately two-year old female English Shepherd. Love is an approximately ten-year old
13 female English Shepherd. For seven and one-half months, Penny volunteered with and for the
14 Kapsa dogs on an average of six hours a day, seven days a week, and missed less than seven
15 days over the entire seven and one-half month period.

16 7. Plaintiff, Kelly Dennehy ("Kelly"), began as a volunteer to assist at the
17 Yellowstone County fairgrounds in caring for the Kapsa dogs in early February 2009. Kelly
18 became a co-handler with Penny of the dogs known as Joy and Love from the time she
19 completed the dog handler class. Kelly volunteered two to three hours a day and averaged two
20 and one-half days a week.

21 8. Joy obviously progressed with Penny as her main handler over the months they
22 were working together. Within months, she excelled at the agility course and walked well on a
23 leash and a bond of trust had been formed. Love was already a social dog and became more so
24 with Penny and Kelly as her handlers.

25 9. On or about July 8, 2009, Linda Kapsa entered into a plea agreement in her
criminal case with the State of Montana, negotiated and executed by two deputy county attorneys.

1 for Yellowstone County, wherein the parties agreed that they would join in a Petition for
2 Disposal of Evidence, seeking an appropriate rescue group with "adoption preference to be given
3 to volunteers currently providing care to the seized animals." (Plea Agreement, p. 4.) On July
4 14, 2009, the parties subsequently entered into a Joint Petition for Disposal of Evidence, again
5 executed by the two deputy Yellowstone County Attorneys, indicating it was the Petitioners'
6 intent that the "volunteers who have provide [sic] care for the dogs for the last seven months,
7 receiving a preference to adopt the dogs." (Joint petition, p. 2.)

8 10. The Kapsa dogs were subsequently released to Defendant NESR. However,
9 certain officials and employees of Yellowstone County and Operation New Beginnings
10 continued to exercise a level of control over the adoption process and provided input to influence
11 the adoption process.

12 11. Penny submitted an adoption application to NESR to adopt Joy, Love, Eddy and
13 Happy. Kelly submitted an adoption application to NESR to adopt Love.

14 12. During the course of Yellowstone County's custody of the Kapsa dogs, Penny had
15 complained to Yellowstone County officials about the lack of supplies for the dogs, and the
16 necessity of the volunteers to purchase supplies for the dogs. In early July 2009, Penny was
17 asked to participate as a neutral party in Linda Kapsa's final walk-through of her dogs at the
18 fairgrounds because of concerns that certain dogs were missing and to inform Ms. Kapsa as to
19 which dogs had potential adopters. Before that day, Penny had never talked with or met Linda
20 Kapsa. Penny joined another volunteer, as well as a paid employee of Operation New
21 Beginnings, a county deputy sheriff, and Linda Kapsa and her counsel, and remained positive
22 about all of the dog handlers during the walk-through.

23 13. On or about July 31, 2009, Penny was notified by the President of NESR that she
24 would not be getting Joy. Heather Houlihan with NESR informed Penny that there would be no
25 discussion. NESR told Penny that her application had "red flags" because her answers were

1 "laudatory" towards previous animals she had owned during her life. After a five-minute
2 interaction with Joy, NESR determined that Joy had not progressed and was not adoptable.

3 14. After a volunteer/NESR meeting on August 1, 2009, Kelly was quoted by the
4 Billings Gazette as saying it was beyond her comprehension how a person (Penny) could be
5 treated like that. Kelly also complained to members of NESR about Penny not being allowed to
6 adopt Joy.

7 15. On August 14, 2009, while Penny was walking Joy at the fairgrounds,
8 Yellowstone County animal control came to get Joy to transport her elsewhere. Penny complied
9 in loading up Joy in a crate in the county vehicle, and they drove off. That was the last day
10 Penny saw Joy or Love.

11 16. That same evening, Yellowstone County Sheriff's Deputy O'Donnell came to
12 Penny's parents' home as a messenger for Yellowstone County Lieutenant Schieno, and told
13 Penny not to return to the Yellowstone County fairgrounds or to the Moore Lane facility where
14 some Kapsa dogs were kept. He warned Penny that if she did not stay away, she would be
15 arrested for trespass or disturbance of the peace. Penny had never caused any disturbance at the
16 fairgrounds.

17 17. A former dog handler has now adopted Happy, and another dog handler was
18 allowed to adopt Eddy. Neither Penny nor Kelly was allowed to adopt Love. NESR said that
19 Love was the purest of the bloodline and the most intelligent Kapsa dog. To the best of
20 Plaintiffs' knowledge and belief, a member of NESR wished to keep Love. Penny's adoption
21 application for Joy was denied. After putting in over one thousand volunteer hours, Penny was
22 ousted from the Yellowstone County fairgrounds without Joy or Love.

23 **COUNT ONE – BREACH OF AGREEMENT**

24 18. Plaintiffs restate and reallege Paragraphs 1 to 17 of the Complaint as if
25 fully set forth herein.

1 19. Linda Kapsa entered into the plea agreement, as well as the petition for disposal
2 of evidence, with the State of Montana through two Yellowstone County deputy attorneys,
3 wherein it was agreed in both agreements that the volunteers that had handled certain Kapsa dogs
4 would be given preference in their adoption. The promise that the volunteers would be given
5 preference was the overriding factor in Linda Kapsa's decision to enter into the plea agreement
6 and the petition for disposal of evidence rather than proceeding to jury trial.

7 20. Being long-term volunteers and dog handlers for certain Kapsa dogs, Penny and
8 Kelly were third party beneficiaries to the agreements for the certain dogs they had applied to
9 adopt.

10 21. Yellowstone County apparently transferred ownership of the Kapsa dogs to the
11 NESR through an agreement or memorandum of understanding. It was necessary in any
12 agreement that Yellowstone County require NESR to honor the provision that the volunteers be
13 given preference for the dogs for which they had cared.

14

15

16

17

18

19

20

21

22

23

24

25

22. Yellowstone County of the State of Montana is in breach of the plea agreement and petition for disposal of evidence with Linda Kapsa, and, accordingly, in breach of these agreements with Penny and Kelly as third party beneficiaries to these agreements for not causing NESR to follow its obligation in these agreements. In addition, Yellowstone County continued to exercise some control and provide input to the NESR with regard to the adoption of the Kapsa dogs.

23. NESR is in breach of its agreement as an assignee or transferee of the agreements between Yellowstone County and Linda Kapsa in not giving Penny and Kelly preference in adopting Joy and Love.

24. Plaintiffs are entitled to specific performance of the agreements and for the possession of Joy and Love to be immediately taken and delivered to the Plaintiffs. Any compensation for the nonperformance of these agreements would not afford adequate relief to the Plaintiffs and specific performance is required.

25. Plaintiffs are entitled to damages to compensate them for their costs in compelling Yellowstone County and NESR to perform under the agreements.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For specific performance of the agreements and for immediate possession of Joy and Love to be delivered to the Plaintiffs.
2. For damages, according to proof, in compelling the Defendants to perform under the agreements;
3. For costs of suit, including reasonable attorney's fees; and
4. For such other and further relief as the Court deems just and proper under the instances.

DATED this 3rd day of September, 2009.

HONAKER LAW FIRM

Elizabeth

Elizabeth J. Houaker
208 N. 29th St., Suite 206
Billings, MT 59101
Attorney for Plaintiffs