

IN THE IOWA DISTRICT COURT FOR WORTH COUNTY

WORTH COUNTY, IOWA,
PLAINTIFF

)
) Case No. CVCV012607

VS.

)
) ANSWER TO PETITION FOR
) FINDING THREATENED STATUS,
) CUSTODY AND DISPOSITION
) PURSUANT TO IOWA CODE
) §717B.4

BARBARA J. KAVARS,
RESPONDENT.

COMES NOW, Respondent, Barbara J. Kavars, by and through her undersigned attorney, Michael G. Byrne, and in Answer to the Petition for Finding Threatened Status, Custody and Disposition Pursuant to Iowa Code §717B.4, states as follows:

1. Paragraph 1 is admitted.

2. Paragraph 2 is denied. This Court does not have jurisdiction over the matter pursuant to Iowa Code Section 717B.4(1) as the value of all animals seized by the Worth County Sheriff's Office, (specifically 154 dogs and 4 cats listed in paragraph 3 below) are worth more than \$10,000. The estimated value of all dogs exceeds \$50,000.

3. Paragraph 3 is denied in that the search warrant SWSW000360 was issued and authorized under Iowa Code Section 717B.2, according to the detailed description of evidence / property to be seized which is animal abuse, not animal neglect. No copy of the warrant and receipt for items seized was left with the Respondent at time of execution of the warrant as to all but nine dogs and 4 cats. Though the warrant endorsed by the Magistrate, SWSW000362 also refers to animal neglect, it specifically again refers to a violation of Iowa Code Section 717B.2 which is animal abuse. The Magistrate failed to provide verification of probable cause for finding of abuse or neglect in violation of the Iowa Code based upon information provided by

the affiant in support of the search warrant, as those allegations reflect licensing standards under Chapter 162 of the Iowa Code and not denial of adequate food or water to jeopardize the life of the animal. That SWSW000361 fails to articulate any law violation for which probable cause can be found.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied for lack of information.

6. Paragraph 6 is denied in that Respondent did not voluntarily surrender legal ownership of any dogs or animals taken from the premises on November 12, 2018. Respondent was not informed of her legal rights and submitted to the demands of lawful authority and apparent color of law exercised by ASCPA in working with the Worth County Sheriff's office in the execution of the warrant.

7. Paragraph 7 - the Rescued Animals listed in Exhibit C are admitted to be the only animals defined as Rescued Animals for the purpose of this hearing. No other notice of other animals being subject to this court proceeding was provided.

8. Paragraph 8 is admitted but Respondent states that this admission is not to be construed as a denial of continuing legal ownership of the other animals seized under color of law by Worth County authorities while Respondent was under duress and threatened loss of all animals if she refused to sign the Relinquishment Agreement for Animal(s) as presented to her at the time by law enforcement.

9. Paragraph 9 is neither admitted nor denied for lack of information.

10. Paragraph 10 is admitted in that the value of the Rescued Animals identified in Exhibit C is conceded to be under \$10,000 but the value of all animals seized exceeds \$50,000.

RESCUE AND DISPOSITION OF THREATENED ANIMALS

11. Paragraph 11 is neither admitted nor denied for lack of information upon which to formulate a belief.

12. Paragraph 12 is neither admitted nor denied with respect to the 13 animals in Exhibit C for lack of information.

13. Paragraph 13 is admitted in that Iowa Code Section 717B.4 requires the local authority to file a Petition within ten days of the removal of the rescued animals and the Respondent further states that the purpose of this Code Section is to return the animals not found to be “threatened” under Iowa law to the owner.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted and Respondent affirmatively states that “threatened animal” is specifically denied by Iowa Code 717B.1(9).

16. Paragraph 16 is admitted as to the code section definition. Respondent denies that any of the 13 animals subject to this proceeding were subject to animal neglect as defined by Section 717B.3 in that sufficient food and water were furnished on a daily basis, adequate shelter was provided for a dog of this breed, and that the animals had all necessary sustenance defined by Iowa Code Section 717B.1 to mean food, water, or nutritional formulation customarily used in the production of livestock, which would be inapplicable to these animals.

17. Paragraph 17 is denied in that the Respondent provided sufficient quantity of food or water on a daily basis and gave them adequate shelter for their breed, and Respondent argues that “adequate shelter” is not a basis for neglect unless it specifically threatens the necessities of life for the animal in question. Respondent

further states that Iowa Code 717B.3 deals with the issue of causing unjustified pain, distress, or suffering only as mutilation, beating, or killing of an animal as to “unjustified” pain, distress or suffering.

COSTS

18. Paragraph 18 is admitted.

19. Paragraph 19 is denied. Award of cost for care of Rescued Animals is inappropriate due to the holding of Johnson County v. Kriz, 582 NW 2d 759, (Iowa 1998). Respondent acknowledges that Plaintiff does not seek reimbursement for costs under this Petition.

20. Paragraph 20 is denied.

CONDITION OF THE PREMISES AND ANIMALS

21. Paragraph is answered in its subparts as follows:

- A. Paragraph A is denied. The animals were kept in kennels with adequate food and water provided on a daily basis. No mechanism to keep drinking water heated above freezing was present, but unfrozen water was provided on at least a daily basis sufficient to maintain the animals properly. The kennels were adequate to provide for the care of a Samoyed breed who are biologically able to handle the temperature and conditions in which the animals were maintained. All animals had covered kennel opportunity to avoid rain or sun. Fallen branches throughout the property have nothing to do with the care of the animals. Overcrowding of kennels is not a basis for animal neglect under 717B.3 as it does not relate to food, water, adequate shelter from the elements or “necessary sustenance” as provide by the Code.
- B. Respondent asserts that the Court may not consider condition of other dogs except the nine dogs identified in this Petition. This paragraph does not specify what animals suffered what and therefore is an improper portion of the Petition and should be stricken.
- C. Respondent denies that the conditions of the residence were unsafe for human or animal habitation and that no action against the Respondent on the condition of the home was taken by authorities. Respondent acknowledges that food was available and utilized for the animals in the

home. Respondent acknowledges that litter boxes were full in the basement, but were also in the basement bedroom where the cats had access. The conditions identified by the Plaintiff in this paragraph do not relate to food, water, or sustenance. Respondent asserts that Worth County is making unspecified standards for care of breeding animals the primary issue in this case rather than the statutory definitions of adequate food, water, and sustenance.

22. Paragraph 22 is denied for lack of information as no reports of ASPCA licensed veterinarian have been provided. Specific paragraphs with regard to A through I for Rescued Dogs are addressed as follows:

- (1.) No food was present at the time the "raid" took place by Worth County law enforcement officials, however, it was 7:00 a.m. and animals had not yet been fed for the day. Water was also to be supplied at the same time the food was provided on a daily basis.
- (2.) The Purina Scale is not a determination of neglect and ideal weight is not required for an animal not to be neglected.
- (3.) Whether an animal is pregnant or has been bred in the past has no bearing on whether the animal is neglected.
- (4.) Mats in the coat are not issues of neglect and do not constitute denial of food, water, or necessary sustenance.
- (5.) Moderate dental disease is common in older dogs and younger dogs had good dental hygiene.
- (6.) Dirty coats, or overgrown nails do not constitute animal neglect.
- (7.) The existence of a prior wound, rather than an existing wound, is irrelevant to the issue of neglect.

Paragraph 22 is further answered as to paragraphs J through M, cats, as follows:

- (1.) A senior cat is likely to have low body weight because of age.
- (2.) Discharge from the eyes is not asserted to be related to necessary sustenance, food or water denial.
- (3.) Upper airway noise consistent with an upper respiratory infection is not identified as related to food, water, or "necessary sustenance." No upper

respiratory infection requiring medical intervention had yet been identified as it had lasted only a short period of time.

- (4.) Matted fur and overgrown nails are not related to issues of neglect.
- (5.) Aging cats, all over the age of 15, do not have the best of bodily functions but have been carefully and adequately maintained by the owner to avoid the statutory definition of neglect.
23. Paragraph 23 is denied.

PRAYER FOR RELIEF

WHEREFORE, the Respondent, Barbara J. Kavars, respectfully prays that after a hearing the Court dismiss these proceedings against her and determine that none of the animals in question are "threatened" animals and order the return of all said Rescued Animals to the Respondent forthwith.

Respectfully Submitted,

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ATTORNEY FOR RESPONDENT

Original Efiled

STATE OF IOWA)
)SS:
CERRO GORDO COUNTY)

I, Barbara J. Kavars, being first duly sworn upon oath, do depose and state that I am the Respondent in the foregoing Answer to Petition for Finding Threatened Status, custody and Disposition Pursuant to Iowa Code section 717B.4, that I have read such Answer and the information set forth therein is true as I verily believe.


Barbara J. Kavars

Subscribed and sworn to before me by the said Barbara J. Kavars on this 28th day of November, 2018


Notary Public for the State of Iowa

