

IN THE IOWA DISTRICT COURT FOR WORTH COUNTY

WORTH COUNTY, IOWA,
Plaintiff,

vs.

BARBARA J. KAVARS,
Respondent.

CASE NO. CVCV012607

PLAINTIFF'S BRIEF

COMES NOW, Kelsey A. Beenken, Assistant Worth County Attorney, and for Plaintiff's Brief, hereby states the following:

I. INTRODUCTION

On November 12, 2018, the Worth County Sheriff's Office ("WCSO") executed lawfully-issued search warrants at Respondent's residence where 154 Samoyed dogs and 4 cats were found. Respondent voluntarily and in writing surrendered 145 of the Samoyed dogs to the WCSO. The WCSO rescued an additional 9 Samoyed dogs and 4 cats (the "Rescued Animals") pursuant to the procedure provided by Iowa Code §717B.5. Plaintiff subsequently filed a Petition for Disposition with this Court within 10 days from the date of rescue pursuant to Iowa Code §717B.4. A hearing on the Petition began on December 3, 2018, and concluded on December 4, 2018. Plaintiff presented overwhelming evidence that the 13 Rescued Animals were neglected, rendering them "threatened animals" that should remain under Plaintiff's custody for disposition in any manner deemed appropriate. Respondent failed to provide credible or sufficient evidence to the contrary.

II. STATEMENT OF FACTS

The facts in this matter were presented via testimony and evidence submitted during the court hearing and are uncontroverted as described except where noted.

Owner and Respondent Barbara Kavars (B.K.) testified that she has bred Samoyeds since 1998, and she began to struggle with the size of her breeding operation after her husband was diagnosed with a brain tumor in 2014. He died in June of 2017. After that, Respondent stated that she attempted to reduce the number of dogs by donating approximately 78 to the Humane Society.

However, she testified that she spayed and/or neutered only five dogs over a period of nearly four years despite the fact she knew the operation was more than she could handle and fully knowing that spaying and neutering would effectively limit or prohibit additional breeding. Further, she did not separate males and females of breeding age throughout that same four-year period. (B.K.)

Deputy Andy Grunhovd (A.G.) of the Worth County Sheriff's Office testified that he became aware of concerns regarding White Fire Kennels, the business owned by Respondent in rural Manly, Iowa, in early 2018 after being alerted by representatives from area animal humane agencies of potential neglect. Deputy Grunhovd initially visited Respondent's property and viewed her kennels and dogs on March 27, 2018. He observed that the dogs had no unfrozen water and very little food. Deputy Grunhovd testified that Respondent commented to him that she did not provide water to the dogs on a daily basis in the winter because they preferred to eat snow and ice. (A.G.) Respondent testified, however, that she did not say she did not provide daily water but did admit making the comment that the dogs liked to eat snow and ice. (B.K.)

During the initial visit, Deputy Grunhovd viewed three injured Samoyeds – one with an injury to its back, one with an injury to its tail and one with skin injuries. (A.G.) Respondent told Deputy Grunhovd that she “didn't think they were that bad,” but the deputy ordered Respondent to obtain veterinary treatment for the dogs within 72 hours. The dog with the tail injury required surgery but died following the surgery. (A.G.)

Deputy Grunhovd returned to the property several times, to include visits in April, May, July, September, October and November, and he consistently observed kennels covered with feces and mud, debris on the property, visibly skinny dogs, no water and little food on these occasions. He encouraged Respondent to remedy the problems but found the number of dogs remained large, and the conditions did not improve over time. (A.G.) When Deputy Grunhovd visited, Respondent voluntarily allowed him on the property but did not let him inside her residence. However, he smelled an overwhelming odor of ammonia coming from the home even while standing outside during the repeated visits. (A.G.)

On November 6, 2018, Deputy Grunhovd went to Respondent's property and found her dragging a dog in a blue tarp upon his arrival. He believed initially the dog was dead but later determined the dog was alive but seriously injured. The dog was covered in mud and smelled strongly of feces. Deputy Grunhovd testified that he observed no fresh blood or other indicators that the wound was brand new. Deputy Grunhovd loaded the dog, named Yaeger, into

Respondent's car so that she could drive him to the veterinarian. Yaeger died at the veterinarian's office a day or two later. (A.G.) Respondent told Deputy Grunhovd that Yaeger was attacked by one or more aggressive dogs that jumped from another kennel by climbing on a downed tree. (A.G.) During one or more visits, Respondent told Deputy Grunhovd that she could not take some of her dogs to the veterinarian as she could not catch them because they were fearful. She told him further that she could not take others to the veterinarian because she physically could not load them into her car. (A.G.)

Deputy Grunhovd began discussing the situation with representatives of the ASPCA in or around July of 2018 because his department did not have resources to handle the investigation and potential rescue on its own. Assistance from the ASPCA was delayed when responders had to divert from the case to provide assistance to animals in the South following two hurricanes during late summer and early fall, testified Kyle Held, (K.H.) lead investigator with the ASPCA. (K.H.)

Deputy Grunhovd and Mr. Held went to Respondent's home the morning of November 12, 2018, and Deputy Grunhovd witnessed Respondent discuss with Mr. Held the opportunity to surrender any or all of her animals. (A.G.) Mr. Held made no promises or threats to Respondent in order to encourage or obtain her voluntary surrender of some of her dogs. (A.G., K.H.) Respondent ultimately decided to voluntarily surrender all but 9 dogs and 4 cats, which she personally selected. (A.G., Plaintiff's Exh. 7) Mr. Held did not promise Respondent that she could keep the 9 dogs and 4 cats she did not surrender and instead Respondent was advised that the matter would be determined by the Court. (A.G., K.H.) Members of law enforcement consulted with an Iowa-licensed veterinarian on the scene, Dr. Michelle LaCoste, before determining that the 9 dogs and 4 cats were "threatened animals" and proceeded to rescue them. (A.G.) Immediately following the rescue of the "threatened animals," Deputy Grunhovd personally served Respondent with Notice of the rescue and an inventory of the animals that were rescued. (A.G., Plaintiff's Exh. 5 & 6)

During the November 12, 2018 visit, it was observed by Deputy Grunhovd, Mr. Held and Dr. Elizabeth Pearlman (E.P.), ASPCA forensic veterinarian, that the kennels on the property contained very little food and no water – just ice. (A.G., K.H., E.P., Plaintiff's Exh. 23) No heated dog bowls were located on the property. (K.H.) There were deep groove marks in ice buckets indicating that dogs were working hard to lick the ice in an attempt to become hydrated. (K.H., Plaintiff's Exh. 30) Mr. Held, who has been working in the field of animal cruelty investigations for nearly two decades, testified that he had only seen this a couple of times before and thought it

was quite significant. (K.H.) As Dr. Pearlman testified, ice and snow do not provide an adequate source of hydration for any breed of dog, as the ice can burn a dog's tongue when it licks it, and the dog's body must use extra amounts of energy to convert these forms into water. The breed of dog is irrelevant; even Huskies running the Iditarod are provided liquid water rather than snow for hydration, as snow is acknowledged as an ineffective source of hydration. (E.P.)

Older puppies were crowded into small kennels with five to eight in each pen or "cage" and no access to an outside run. Young puppies and a mother dog inside a barn also had no run access. (K.H., Plaintiff's Exh. 28) One heat lamp covered in cobwebs and not in use was located despite that there were puppies in kennels. (E.P.) About 16 pregnant dogs were removed from the property, and about 37 puppies had been born so far to the dogs currently cared for by the ASPCA in a matter of less than three weeks. At the time of the hearing, there were still approximately six pregnant dogs that had not yet given birth. (E.P.)

Feces, urine and mud covered the floors, ground and walls of kennels and runs throughout the property. (A.G., K.H., E.P.) There were large amounts of debris, including empty packages and bottles, throughout Respondent's home. (A.G., K.H., E.P., Plaintiff's Exh. 3 & 27) The debris covered all surfaces in the home. A litter box in the basement was overflowing with feces into a second cardboard box, and buckets of used cat litter were located nearby. (K.H., A.G.) The smell of ammonia was overpowering inside the home. (A.G., K.H., E.P.) The fumes from urine within the home and kennel burned the throats and eyes of responders. (A.G., K.H., E.P.) Dr. Pearlman testified that according to the Guidelines of Standards in Animal Shelters, the level of ammonia acceptable for a shelter environment is 2 ppm. Dr. Pearlman further testified that according to OSHA, the level of ammonia detectable to human beings is 5 ppm, meaning the level of ammonia in Respondent's home and property was more than double the shelter standard. (E.P.) Four cats and four dogs were found to be living inside the residence. Urine- and feces-soaked pads covered the floors in the home, and floors were wet from urine and feces. (A.G., K.H., E.P., Plaintiff's Exhibit 3 & 27) The residence was not fit for animals or humans to live in, and law enforcement would have removed any children or dependent adult should they have found any there. (A.G.) Investigators found maggots in some of the paper documentation seized from the residence. (K.H.) One bowl of water was present for all eight animals, and that water bowl had debris floating in it. (A.G., K.H.)

One dog in the home, Miles, could not stand or walk. Miles was soaked from laying in a pool of his own urine and was also determined to be dehydrated, emaciated with a Purina Scale body condition score of 1/9, and suffering from grade 3 out of 4 dental disease. There was discharge coming from his eyes and debris in his ears. His right testicle was about twice as large as his left, and he suffered from severe muscle wasting. Miles was determined to be in critical condition. He was taken to a veterinary clinic for immediate care and was humanely euthanized due to his suffering and grave prognosis within a couple days. (E.P.) When asked about Miles' condition, Respondent told Deputy Grunhvd that she did not believe Miles was in pain. (A.G.)

Dr. Pearlman either examined or was present for exams on all thirteen Rescued Animals. (E.P.) As their examinations were not conducted until after they received food and water, with the exception of Miles as described above, they could not be adequately tested for dehydration. All of the Rescued Animals had overgrown nails which causes their paws to hit the ground and/or floor in an unnatural fashion leading to discomfort, possible future arthritis issues and problems with gait. (E.P.) Some animals had evidence of flea dirt, which is an indicator of poor husbandry and lack of proper veterinary care, as it demonstrates that a prior flea infestation occurred due to lack of flea preventative, and such infestations cause discomfort. Some dogs had visible parasites hanging or emerging from their rectums. (E.P.)

The veterinary examinations of the animals confirmed that the animals were indeed neglected (E.P.) Those animals with a body condition score of 3 or less indicate that the animal was not receiving adequate nutrition. (E.P.) The cause of such inadequate nutrition can be from insufficient quantities of food being provided; intestinal parasites, which would be attributed to unsanitary shelter conditions; or untreated health conditions. (E.P.) Of all the animals on the premises, at least 73 of the animals had a body condition score of three or under. (E.P.)

Dr. Pearlman testified that an energetic, athletic dog could potentially score a 4/9 but that a 3/9 or below is quite unhealthy and evidence of neglect. (E.P.) At least three animals had a body condition score of 1, which is considered emaciated. (E.P.) Respondent testified that she was unaware she had any emaciated dogs on the property. (B.K.) One of the emaciated dogs, identified as 2038-1B-1, was pregnant and was being housed separately from any other animals. (B.K., Plaintiff's Exhibit 23, pg. 51) Respondent testified that she did not know the dog was emaciated despite the fact she was aware the dog was pregnant and had clearly housed the dog in a separate enclosure. (B.K., Plaintiff's Exhibit 23, pg. 51) Severe matting, dental issues, eye conditions,

evidence of prior wounds, flea dirt, ear infestations and overgrown nails are all relevant to neglect as these conditions are evidence of poor animal husbandry, lack of veterinary care and unsanitary environmental shelter conditions. Further, pain, distress, or suffering can result from failure to properly care for animals. (E.P.)

Plaintiff's Exhibit 9 is a detailed snapshot of each of the Rescued Animals and the observations made during the veterinarian examinations and on-scene shelter conditions. Dr. Pearlman discussed each of the Rescued Animals at length and testified that all the Rescued Animals suffered from untreated medical ailments and/or neglectful conditions. Although Plaintiff's Exhibit 9 is quite detailed, it is important to note some of the testimony that was provided that is not specifically in Exhibit 9 with regard to the Rescued Animals.

Dr. Pearlman testified that rescued dog identified as A73 likely experiences pain when he eats due to the exposed nerve in his tooth. (E.P.) The fractured tooth is easily visible and did not require one to be a veterinarian to spot and diagnose. The dog may experience discomfort due to the extensive size of the mats. (E.P., *see* Plaintiff's Exh. 9 & 10) Rescued dog identified as B321 had a body condition score of 3/9 on the Purina Scale, which is evidence of neglect (E.P.) He has moderate dental disease likely to cause pain, and there is severe matting behind his ears, on his tail and under his collar, which likely causes him discomfort. (E.P., *see* Plaintiff's Exh. 9 & 11)

Rescued dog identified as B322 is pregnant and thin, with a body condition score of 3/9, despite her pregnancy. As she is pregnant, she should have been over-conditioned rather than so thin to prepare to whelp puppies. (E.P.) Because of her poor body condition, her body was breaking down its own muscle to keep the growing puppies alive. (E.P.) She also suffers from dental disease at grade 3 of 4, likely to cause her pain and discomfort. This level of dental disease is preventable with symptoms easy to recognize, as the teeth are yellow and brown, and halitosis is present. Dr. Pearlman's expert opinion is that this dog's health and the health of her puppies are at risk if she is returned to her original environment. (E.P., *see* Plaintiff's Exh. 9 & 12)

Rescued dog identified as B323 is lean with a body condition score of 4/9 on the Purina Scale and has dental disease at a grade 2 of 4. There were feces present, which indicates likely health issues. (E.P., *see* Plaintiff's Exh. 9 & 13) Rescued dog identified as B324 is thin, with a body condition score of 3/9 on the Purina Scale. A mild heart murmur was detected, and the dog should be under veterinary care for such. (E.P., *see* Plaintiff's Exhibit 9 & 14) No evidence was provided that the dog is under veterinary care.

Advanced dental disease is present in rescued dog identified as B325, at grade 3 of 4, with pulp exposure of the upper left canine tooth, heavy tartar and wear to canine teeth. This is of special concern, as the pulp exposure indicates that the dog likely suffers extreme pain from this dental disease. The severe matting on this dog likely causes pain or discomfort. (E.P., *see* Plaintiff's Exh. 9 & 15) Rescued dog identified as C9, who was housed in the private residence, suffers from severe dental disease at grade 4 of 4, which causes obvious pain. (E.P., *see* Plaintiff's Exh. 9 & 16)

Rescued dog identified as C10 was housed inside the private residence on the premises. The dog is severely matted throughout her head, neck and trunk, and fecal matter is present at her tail, which may be evidence of poor nutrition as it indicates that proper stools did not form. The mats were so extensive that they likely pulled on her skin, causing her to suffer pain. (E.P., *see* Plaintiff's Exh. 9 & 17) Rescued dog identified as C11 was housed inside the private residence on the premises. Grade 3 of 4 dental disease is present and causing pain, as she appeared in pain during the examination. A lack of pigment on her nose indicates a prior wound. The undercoat is one large mat, and a mat on the tail measures 6X4 inches and contains numerous seeds, burrs and fecal matter. All four feet are stained from prolonged contact with urine and feces. On the left side of her chest there is a matted area with dark brown crusts that is evidence of a wound. The wound appeared to have been traumatic in nature, likely caused by either a bite suffered in a dog fight or from an environmental hazard, such as sharp wire fencing. (E.P., *see* Plaintiff's Exh. 9 & 18)

Rescued cat identified as C12, is thin, with a body condition of 3/9 on the Purina Scale and suffers from grade 2 of 4 dental disease with six teeth missing and one fractured, which likely causes her pain. The cat has alopecia on her front legs consistent with over-grooming. Over-grooming is often caused by a stressful environment. (E.P., *see* Plaintiff's Exh. 9 & 19) Rescued cat identified as C13 is very thin, with a body condition score of 2/9 on the Purina Scale. (E.P., *see* Plaintiff's Exh. 9 & 20) Rescued cat identified as C14 had discharge coming from both eyes. Discharge from the eyes may be caused by the very high ammonia levels and unsanitary conditions. (E.P., *see* Plaintiff's Exh. 9 & 21) Rescued cat identified as C15 is overweight, with a body condition score of 6/9 on the Purina Scale. (E.P., Plaintiff's Exh. 9 & 22)

All four cats suffered from an eye condition that led to watery eyes, which was likely due to the urine fumes in the home in which they were sheltered, as all the cats' eyes cleared a short time after being removed from the home. (E.P.) All four cats also suffered from upper respiratory infections, which also now appear clear. (E.P.) The most likely cause is that they have been

removed from the environment containing urine, feces and dirt on the floor and walls, the overloaded litter box and ammonia fumes in the air. (E.P.)

Dr. Pearlman, qualified as an expert in veterinary medicine, rendered her opinion that each of the Rescued Animals had been subjected to neglect while under Respondent's care. (E.P.) Mr. Held also opined that the Rescued Animals were neglected. (K.H.) Dr. Pearlman visited the Rescued Animals again prior to the hearing on the Petition in this matter. (E.P.) She observed a substantial improvement in all of the Rescued Animals after being out of Respondent's care for just over two weeks. (E.P.)

Respondent testified that she believes all of her animals are in general good health. (B.K.) Dr. Pearlman's uncontroverted expert opinions along with the observations made by Deputy Grunhovd and Mr. Held directly rebut Respondent's testimony. (E.P., A.G., K.H.) Respondent further admitted that although she believes routine veterinary care would be every three years, her animals did not consistently receive routine veterinary care every three years. (B.K.) In fact, Respondent could not articulate when or how often the animals received veterinary care. (B.K.) Finally, Respondent testified that she does not intend to breed the Rescued Animals if they are returned. (B.K.) However, on cross examination, Respondent could not definitively state whether she was going to spay and/or neuter the animals nor how she would stop any breeding. (B.K.)

III. LEGAL ISSUES

A. Standard of Proof

A hearing to determine if an animal is a threatened animal for purposes of disposition is a civil proceeding, and it is separate and distinct from any criminal proceeding. IOWA CODE §717B.4(2). Therefore, the standard of proof in this matter is a preponderance of the evidence. Iowa R. App. P. 6.904(3)(f). "Preponderance of the evidence is evidence that is more convincing than opposing evidence." Iowa Bar Ass'n, *Iowa Civil Jury Instructions* 100.3 (available at <http://iabar.net>). No higher burden of proof has been established for this type of proceeding.

B. Compliance with Rescue Procedure Under Iowa Code §717B.5

Respondent alleged in her Answer that the search warrant and subsequent rescue were unlawful. (Respondent's Answer ¶3, filed November 28, 2018). Although the Plaintiff

affirmatively states that the rescue operation in this case was lawful and compliant with the applicable statute, the issue is irrelevant. Compliance with the rescue statute is not a prerequisite to the dispositional proceeding. *City of Dubuque v. Fancher*, 590 N.W.2d 493, 495 (Iowa 1999). In *Fancher*, the Court clearly held that the nature of the seizure or rescue of neglected animals has no bearing or impact on the ability of the local authority to file a petition for disposition nor does it impact the court's jurisdiction to hear and decide the petition. *Id.* at 496. Therefore, compliance with the rescue statute is a non-issue in this matter.

C. Voluntary Surrender of Animals

Respondent alleged in her Answer and provided testimony that her surrender of all but nine dogs and four cats was involuntary. (Respondent's Answer ¶6, filed November 28, 2018). However, Respondent never pled this issue as a counterclaim and instead merely denied the Plaintiff's allegation that surrender was voluntary. Additionally, Respondent's prayer for relief only requested the return of the "Rescued Animals." Both Plaintiff's Petition and Respondent's Answer address only the thirteen animals at issue in this dispositional hearing as the "Rescued Animals." (Plaintiff's Petition, filed November 22, 2018; Respondent's Answer, filed November 28, 2018). Therefore, the issue of voluntary surrender is not properly before this Court. Plaintiff maintains that the surrender was indeed voluntary.

D. Threatened Animal

The purpose of a dispositional hearing under Iowa Code §717B.4 is for the Court to determine if the animals are "threatened animals." To make such a determination and subsequently order disposition be given to the local authority, the Plaintiff must prove that the animal is either abused as defined by Iowa Code §717B.2, or neglected as defined by Iowa Code §717B.3, or tortured as defined by Iowa Code §717B.4. In the present case, Plaintiff alleges that the animals are neglected and therefore will disregard abuse and torture for purposes of this brief. To prove neglect, Plaintiff must prove by a preponderance of the evidence any one of the following:

1. The animal is confined and is not supplied with a sufficient quantity of food, or
2. The animal is confined and is not supplied with a sufficient quantity of water, or
3. A dog or a cat is confined and is not provided with adequate shelter, or

4. The animal is confined and is deprived of necessary sustenance, which causes the animal unjustified pain, distress or suffering.

IOWA CODE §717B.3(1). The neglect statute is nuanced. It is important to note a number of observations based upon the plain language of the statute:

1. The statute does not require that the deprivation of food or water or inadequate shelter lead to any harmful result of any kind – neither injury nor distress – to the animal.
2. The adequate shelter requirement within the statute applies solely to dogs and cats, signifying legislative intent to provide *extra* protection to these particular species.
3. The sustenance requirement is separate and distinct from the food and water requirement and is linked to pain and suffering, signifying legislative intent that it be interpreted, despite its lack of definition, to include veterinary care among other things. The Court “will not interpret statutes in a way that makes portions of them meaningless.” *State v. Palmer*, 554 N.W.2d 859, 865 (Iowa 1996). “Statutes should not be construed so as to make any part of it superfluous; therefore, we presume the legislature enacted each part of the statute for a purpose and intended that each part be given effect.” *State v. Howard*, 610 NW 2d 535, 537 (Iowa Ct. App. 1999). In the present case, to interpret “sustenance” to mean only food, water, and shelter would render the sustenance requirement totally meaningless and superfluous because food, water, and shelter had already specifically been addressed in the neglect statute. *See* IOWA CODE §717B.3. Therefore, it must mean more than food, water, or shelter.

Therefore, Plaintiff meets its burden as to each Rescued Animal if it proves by a preponderance of the evidence that said animal was *either* deprived of sufficient water *or* of sufficient food *or* – since each is either a dog or cat – of adequate shelter, with no additional conditions required. *Alternately*, Plaintiff meets its burden if it proves by a preponderance of the evidence that a Rescued Animal was deprived of necessary sustenance, which caused that animal unjustified pain, distress or suffering. Of course, Plaintiff may prove more than one element regarding an animal.

Further, the statute makes no provision for the court to consider future behavior of the Responsible Party when determining whether an animal is a “threatened animal.” Therefore, it is appropriate to construe that the legislature considered that remedial actions taken by a Responsible

Party following the rescue of one or more “threatened animals” are not relevant, likely because such actions are a reaction to the exercise of authority during a time of court-imposed scrutiny.

While the question of whether a particular set of circumstances relating to the care of specific animals constitutes neglect is clearly one of fact, Iowa courts provide some guidance on this issue. In *Fancher*, discussed above regarding procedural issues, police and an animal warden for the City of Dubuque discovered hundreds of rabbits in unclean cages in and around the owner’s home. Many of the cages had no food or water, and a foul odor permeated the premises. The conditions of the rabbits indicating neglect included matted fur, abscesses, chewed ears, bacterial infections and parasites. The court indeed found the animals to be neglected, deemed them “threatened animals,” and ordered their disposition to the local authority. *City of Dubuque v. Fancher*, 590 N.W.2d 493, 495-96 (Iowa 1999). Quite notably, the Court in *Fancher* specifically found that evidence relating to sanitation and cleanliness was relevant in determining neglect and the appropriate disposition. *Id.* at 496. This indicates that adequate shelter includes cleanliness and sanitation.

The Supreme Court of Iowa upheld a District Court’s ruling in a disposition hearing involving neglected monkeys in *Johnson County v. Kriz*, 582 N.W.2d 759 (Iowa 1998). The District Court found neglect after considering testimony that the building in which the monkeys were housed contained trash, feces all over the floor and that the air was permeated with the stifling odor of ammonia. The monkeys also suffered from health issues, some severe, and some died. *Id.*

Because there is little case law regarding dispositional hearings, it is important to also review criminal proceedings because the same exact statutory definition is used. In an unpublished opinion, the Court in *State v. Pontious*, 2002 Iowa App. LEXIS 1360, 2002 WL 31882852 (Iowa App. 2002), analyzed the distinction between animal neglect as a simple versus serious misdemeanor, with the latter requiring a showing that the neglect resulted in serious injury or death. The Court upheld a jury verdict for simple neglect based on evidence that the defendant’s neighbors testified that the defendant’s dog and her puppies appeared poor-looking and thin, and the puppies’ ribs were visible, and that the defendant fed the dogs only a few times per week. An Animal Rescue League employee testified that a puppy was thin, sad looking and generally not well cared for. Another individual testified that the mother dog was a little underweight, very timid and in below-average health. *Id.*

The *Pontious* Court continued its analysis between simple versus serious misdemeanor when considering which level of guilt was appropriate for the defendant who failed to obtain veterinary care for his puppy that had been stricken by a car. During this analysis, the Court briefly addressed the term “sustenance” found in Iowa’s neglect statute, when it assumed “without deciding” that the term sustenance includes not only food and water, but also veterinary care and treatment. *Id.*

The term “sustenance” was again considered in an unpublished 2003 criminal case, in which a defendant responsible for caring for his sister’s dog that required daily medication was convicted of animal neglect after the dog was discovered dead and decomposed. The defendant admitted to an investigating officer that he knew the dog was ill and required medication for treatment and that he failed to provide such. *State v. Rudolph*, 2003 Iowa App. LEXIS 1068 (Iowa App. 2003).

Finally, a District Court’s order for costs following its order of disposition of dogs to the Local Authority after their rescue from a kennel was upheld in *Black Hawk County v. Jacobsen*, 2002 Iowa App. LEXIS 730, *2, 2002 WL 1429365 (Iowa App. 2002). In that matter, the District Court considered testimony from a veterinarian that during an inspection of the respondent’s kennels she noted that the odor was overwhelming, the cages were not cleaned, the area around the cages was also very filthy, and the cages had an inadequate water supply. *Id.*

The facts and circumstances relied upon by Iowa courts to constitute findings of neglect, discussed above, echo and sometimes equal those in our instant case. This Court could base a ruling of neglect due to lack of sufficient water based on testimony from Deputy Grunhovd that on his numerous random visits at various times during spring, summer and fall he discovered little to no water for the Samoyed dogs and puppies on the property, coupled with evidence that four dogs and four cats shared one bowl of water inside the home, and that water contained debris.

A similar finding could be made regarding sufficiency of food, especially when coupled with the dogs’ and cats’ body condition scores. The stench of ammonia and feces on the ground and floor, even without considering anything else, render the shelter for these dogs and cats – whether they lived outside or in the home – not adequate. It is clear from the Iowa cases discussed above that our courts analyze more than just walls and a roof when considering shelter; breathable air and cleanliness within also matter when a Court is determining whether shelter is adequate or not. Finally, Respondent admitted to Deputy Grunhovd that she cannot transport some of her dogs

to the veterinarian, whether due to their fear or their weight. Several have suffered and do suffer from ailments and injuries, some resulting in death. Indicators of lack of routine veterinary care are rampant, from their overgrown nails to flea dirt to matted coats. This lack of necessary sustenance, in dog after dog and cat after cat, has indeed resulted in unjustified pain, distress and suffering.

IV. CONCLUSION

Although one could certainly sympathize with Respondent for the loss of her husband and business partner, there is no legal or moral justification for the neglect endured by the Rescued Animals at issue in this case. The evidence of neglect is overwhelming. Respondent knew for nearly four years that her operation was too much for her to handle, yet she took little to no legitimate steps to resolve the issues of continued breeding, which led to an impossible number of animals for one person to properly manage. The issue before the Court is whether the Rescued Animals are or were neglected, not whether Respondent can now properly care for the animals. Plaintiff has established by a preponderance of the evidence that the Respondent is the responsible owner of the Rescued Animals, the Rescued Animals were confined, and the Rescued Animals were indeed neglected.

In determining the credibility of the witnesses in this matter, it is important to note that the Plaintiff's witnesses all have significant expertise in their respective fields, have no personal benefit to gain in this matter, and all testified thoughtfully and consistently. Respondent, however, has obvious personal benefit to gain in this matter. Further, her testimony shows that she may either be testifying untruthfully or, alternatively, that she truly is not capable of properly caring for animals. That is evidenced by the fact she is apparently unable to identify emaciated dogs and testified that she believes, despite all the evidence to the contrary, that her animals were in good health.

The Court should consider the overall poor body condition scores of the animals along with consistent testimony that food was not present or accessible when determining if the Rescued Animals were provided with adequate food. Regarding adequate water, the Court should certainly consider the consistent and repeated observations testified to by Deputy Andy Grunhovd that there was rarely accessible water available on the premises over the nearly eight-month period leading

up to the rescue and including the day of the rescue. The Court should further consider Mr. Held's testimony regarding the lick marks and holes in the frozen water buckets showing that the animals were trying to access water but were unable to because frozen water is, quite obviously, not accessible water. The issue of adequate shelter requires consideration of the deplorable conditions both inside and outside the residence, along with the numerous health conditions likely linked to the unsanitary conditions. Finally, in determining whether necessary sustenance was provided and if not, whether pain, distress, or suffering occurred, the Court should consider Dr. Pearlman's extensive *uncontroverted* testimony and expertise regarding medical care. After a consideration of all of the evidence, the Court should render the Rescued Animals as Threatened Animals and order disposition to Plaintiff.

Dated this 10th day of December, 2018.

/s/ Kelsey A. Beenken
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