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SC Court of Appeals

STATE OF SOUTH CAROLINA)
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 COUNTY OF CHESTER)
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 STATE OF SOUTH CAROLINA)
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 VS.)
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 JORDAN JAMES JOHNSON)
 DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT: 2017-GS-12-152 (15 counts)
 WARRANT NO.S: 2016A1210400041 et.al (total 116 warrants for Ill Treatment of Animals)
 ORDER FOR CUSTODY OF SEIZED ANIMALS PURSUANT TO S.C. CODE §47-1-120 and S.C. CODE §47-1-150(c)(2)

On September 23, 2016, Chester County Sheriff's Office received a complaint regarding animals running at large from a property located at 5693 Richburg Road, Richburg, South Carolina, 29729. Chester County Animal Control (hereinafter CCAC) responded to this location and found dozens of Doberman Pinschers living on this property without adequate food, appropriate shelter, and water. The condition of the property was in severe disrepair and piles of dog feces were everywhere. Many of the dogs were emaciated and had obvious scars and injuries covering their bodies. Some of the dogs had mange and other skin conditions. Based on the conditions of the environment the dogs were living in and the concern that immediate veterinary care may be required, CCAC removed the dogs from this location. On that same date, CCAC sought 116 warrants against the Defendant for animal cruelty/ill-treatment for each dog removed and then also sought an additional 81 warrants for his failure to have the dogs vaccinated for rabies. The Defendant was indicted on 15 counts of animal cruelty/ill-treatment on January 17, 2017, under S.C. Code §47-1-40(B). Because of the large number of dogs seized, the CCAC shelter was not equipped to provide housing for all of them, therefore, there was an outreach to reputable foster organizations to assist with the placement of these dogs pending the disposition of the case. The

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dogs have been in the custody of these documented foster facilities while also undergoing all necessary veterinary care. All of this has been at a huge expense to Chester County, the fostering organizations, and the multiple veterinary hospitals treating the dogs. These dogs were seized as evidence of the crime of animal cruelty/ill-treatment as charged against the Defendant. Prior to January 23, 2017, no hearing was requested by either party pursuant to S.C. Code §47-1-150(c)(2).

On January 23, 2017, the State prepared to call this case to trial against the Defendant on true-billed indictment 2017-GS-12-152. Prior to the commencement of the trial, Defendant indicated to the court, by and through his attorney, William Frick, that he would enter a "no contest" plea to the indictment on fifteen counts of misdemeanor animal cruelty and ill-treatment in exchange for a probationary sentence and forfeiture of his ownership in the dogs specifically identified in said indictment. The State indicated that it would dismiss the remaining warrants against the defendant in exchange for his plea with the stipulation that the dismissal would not be dispositive of the placement of the remaining dogs seized on September 23, 2016, and that an evidentiary hearing was appropriate on the issue. The defense made a motion for a hearing pursuant to S.C. Code §47-1-150(c)(2) to address these matters. The State reiterated its position to challenge Defendant's motion to have the remaining dogs returned to him, therefore, the court scheduled the evidentiary hearing to be held on January 25, 2017. Both the State and Defense agreed to present all their respective evidence, through witnesses, veterinary records, pictures, and other documents to assist the court in making its decision.

Evidentiary Hearing – January 25, 2017

Through agreement of the Defendant and the State, the defense agreed to waive and allow the State to proceed first at the evidentiary hearing. The State called Officer Wendy Glenn to the stand. Officer Glenn is the supervising officer for the CCAC team and has worked in that position

since 2015. Officer Glenn confirmed that the purpose for entering the Defendant's property on September 23, 2016, was in response to a complaint for animals running at large and based on an outstanding bench warrant for the arrest of the Defendant for an unpaid ticket with Chester County. The bench warrant was issued by the Chester Magistrate Office on April 7, 2016. Officer Glenn confirmed that this was not the first-time Defendant was approached for animals running at large from his property and that CCAC had encountered the Defendant in the past for such complaints. On the date in question, Officer Glenn testified that upon arrival she saw approximately 40 or more Doberman Pinschers in a fenced-in area next to a red roof barn and this area was covered in dog feces and urine. The State provided an aerial view of the property in Court's Exhibit #1 to provide a visual guide to the layout of the property. The Defendant was not seen at that time and the officers believed he was not on the property. Officer Glenn and her team realized this was an exigent circumstance, based on the physical condition of the dogs and their inadequate living conditions, therefore, immediate removal was necessary to seek appropriate shelter and veterinary care. As CCAC started to remove the dogs, they found a "graveyard" of dog bones near the main dog living area around the red roof barn. They also found "caskets" with dog carcasses stacked inside. The environment was unsanitary and dangerous for the dogs. At some point during the seizure, the Defendant emerged from the red roof barn and another 40 dogs ran out into the open area. The Defendant was disheveled and covered in dog feces. He was placed under arrest for the outstanding bench warrant and the CCAC officers continued their rescue efforts of the dogs on site. In total, 116 dogs were seized and removed from the Defendant's care on September 23, 2016.

Officer Glenn and her team photographed the property and documented the living conditions of the dogs seized from the Defendant on that date. First of all, it was undisputed that

the Defendant was the sole caretaker of all 116 dogs. Secondly, it was undisputed that the pictures taken on September 23, 2016, and entered in evidence as State's Exhibit 1, clearly and accurately depicted the condition of the property on that date when the dogs were seized. Thirdly, it was undisputed that the Defendant was staying in the red roof barn with the dogs at the time of his arrest. Finally, it was undisputed that there were only empty bags of dog food found on the property on that date and this was documented in the pictures. Officer Glenn also testified that despite efforts by multiple veterinarians, some local and others out of state, to treat some of the dogs removed from the Defendant, many died from untreated medical conditions. Many more required immediate attention for other non-life threatening conditions such as ringworms, hookworms, Demadex (mange), pyometra, eye and ear infections, and other symptoms of physical neglect resulting from their living conditions while in Defendant's care.

The State submitted documentation of the extensive medical expenses incurred by multiple veterinary hospitals in treating the seized dogs for their various ailments. According to invoices and vet records, the total cost documented at the time of the hearing was approximately \$107,000.00. (See State's Exhibits 4,5, and 6) The State offered this evidence as further documentation of Defendant's failure to adequately care for the needs of the dogs, resulting in substantial and costly medical neglect.

The State then called Dr. Benton Gwinn, a veterinarian from Palmetto Veterinary Medicine and Care in McConnells, South Carolina, to testify as an expert witness in veterinary medicine. He was qualified as an expert in this field without objection from the defense. Dr. Gwinn testified that he personally treated 10 of the dogs seized from Defendant's property. One of the dogs, Miracle, had to be euthanized because she had bone cancer at such an advanced stage that she could not be saved. He also testified that he had to perform surgery on one of the females for a

condition he diagnosed as pyometra, which is an infection in the uterus that could be fatal if left untreated. Dr. Gwinn confirmed that all the dogs he came into contact with had various skin conditions that were non-life threatening, however, would result in discomfort to the dogs and be considered neglect. Dr. Gwinn did admit to the defense, however, that none of the dogs were suffering from heartworms, which he found to be remarkable given their living conditions, and that their body conditions were not listed as poor on a body scale. This would indicate that the dogs were eating, however, he couldn't confirm what they were eating. He only physically examined 10 of the dogs brought to him for treatment so he couldn't give an opinion as to the body condition of the other 106 dogs seized.

The State then questioned Dr. Gwinn regarding the condition of the property and the dogs seized from that location on September 23, 2016. Dr. Gwinn admitted that in preparing for court he had the opportunity to review the pictures taken by CCAC and subsequently entered as evidence as State's Exhibit #1 during this hearing. In his expert opinion, he stated that the living conditions he saw for the dogs were not acceptable, were unsanitary, and could be detrimental to their health. He stated that the disposal of dead dogs by the Defendant in caskets or in a "graveyard" could lead to disease and unsanitary conditions for the living dogs. Dr. Gwinn further opined that in his expert opinion one person, such as the Defendant, could not adequately care for 116 dogs and that his attempt to do so would result in neglect. Dr. Gwinn was then asked if in his expert opinion, he would recommend returning the 116 dogs to the Defendant in the conditions that were present on September 23, 2016. Dr. Gwinn responded that he would not and, furthermore, that even a team of four veterinarians would be unable to properly care for that many dogs. Dr. Gwinn opined that from his review of all the pictures of the living environment and

seeing the conditions of the dogs seized, he did not believe the Defendant could adequately care for them on or about September 23, 2016.

The State called its two final witnesses to the stand who both became involved with this case to assist in the rescue efforts through CCAC. Christine Herbold and Debra Phelps are both members of reputable dog rescue organizations who responded to the overwhelming needs by CCAC to find appropriate placements for those dogs on September 23, 2016. First, Christine Herbold testified regarding her response to the call for help by CCAC on that day. Herbold had an extensive background in dog breeding and care. She's a member in good standing with the Doberman Pinscher Club of America (DPCA) and has bred Dobermans since 2005. Herbold is the South Carolina liaison for Doberman rescue operations in the Southeast. Throughout her career, she's responded to rescue needs for puppy mills and hoarding situations where she helped place the dogs removed from these environments into approved foster homes. Herbold testified that this was the worst case she'd ever experienced in her career. Herbold stated that the mere number of dogs removed was unheard of for a breeding environment. In her experience, even the best and well-funded breeders would only have 10 to 15 dogs on site at one time. The Defendant's environment for raising and breeding the Dobermans was wholly inadequate, unsanitary, and unsafe.

Herbold testified that she arrived at the CCAC facility on the same day the dogs were being removed and brought to the shelter. She personally witnessed the scars and wounds present on the dogs. She recalled the poor condition of the female dogs she saw with drooping stomachs and wounds. Herbold testified that she had several dogs placed throughout the Southeast in approved foster homes. The dogs were identified, pictures taken, and follow ups done, to document veterinary care and progress for each. She then provided this information to CCAC for their

records. According to Herbold, four of the dogs placed in foster homes unfortunately died as a result of lack of care and neglect from their prior living conditions with Defendant. Herbold confirmed that the dogs she took and had placed through her organization all suffered from the same conditions documented by Dr. Gwinn, such as ringworms, Demadex, hookworms, and scarring. Herbold opined that the Defendant did not abide by nationally recognized standards for reputable breeders through the DPCA and overall the conditions for his dogs were inadequate and unacceptable.

Herbold provided veterinary documentation stating that the total amount of necessary care for the treatment of the dogs rescued by her organization was \$92,163.52. She stated the care was ongoing and that many of these dogs will always have scars from the neglect.

The final witness for the State was Debra Phelps who testified that she also arrived at the CCAC shelter on September 23, 2016, in response to a call for help to rescue and place the dozens of Dobermans being removed from Defendant's property. Her organization is Project Safe Pet, a non-profit entity whose purpose is to assist in rescue missions such as the one unfolding in Chester County. Phelps testified that her focus was on the puppies and the "momma" dogs because they were the most vulnerable at the time and needed to be removed first. Phelps described the scene at the CCAC shelter that day as "chaos". She acknowledged that the officers were doing everything they could with the resources available to them, but that it was an overwhelming situation for the officers trying to maintain control of the rescue mission.

The Defense then presented its case to the court. First of all, the Defense provided a witness list and character letters on behalf of the Defendant for the court to review. The defense acknowledged that many of the witnesses also provided character letters and were not able to testify as to the conditions on or about September 23, 2016, and as such would not be called to

testify as their information would be reviewed by the court in the letters provided. The court clearly acknowledged that these letters would be taken into consideration, however, the sole issue before the court was not the character of the Defendant, but whether he was fit and able to adequately care for the dogs seized from his property on or about September 23, 2016. The Defendant was then called to the stand to testify regarding the facts of this case. Defendant stated that he has bred Dobermans for over 30 years and that he worked on perfecting the bloodline of the dogs in his care. He said he did most of the veterinary care for the dogs himself and treated them with Ivermectin to prevent heartworms which was documented in Defense Exhibit #4. He further stated that this medicine also helped with certain skin conditions that his dogs were suffering from at the time of the seizure. If the dogs required more extensive medical treatment, he took the dogs to licensed veterinarians in the area with whom he had done business over the years. One of the local vets he used was Dr. Chappell at Carolina Place Animal Hospital. Defendant did admit that he docked the dogs' tails himself but sought a veterinarian to crop their ears.

The Defendant stated that when CCAC came to his property on September 23, 2016, it had been about three weeks since the grass was cut but since he had taken the previous day off, the fenced in area where the dog feces was piled up had not been raked. He also stated that he had two workers helping him on a regular basis, Keith Dye and Javard Edmonds, and identified them for the court in the courtroom. Those two workers were not present at the property on or about September 23, 2016. Defendant stated these workers were helping him repair the kennels and clean up the area for an upcoming AKC certification visit.

The Defendant disputed the State's contention that he was not providing adequate food for the 116 dogs in his care. He did affirm that he was the sole caretaker of 116 dogs on the property.

He testified that he spent on average \$700.00 a week in dry dog food and that he purchased a special dry food for the puppies in his care. He failed to provide receipts or documentation of this expense. He further stated that there were several spigots around the red roof barn area and that there was plenty of fresh water available for the dogs to drink.

The Defendant testified that throughout the years he had never received a complaint about any problems with his dogs other than when he moved to Chester. The complaints from Chester involved his dogs running at large but nothing for ill treatment or neglect. He further stated he believed the reason for these complaints came from a disgruntled neighbor, who also happened to be a family member, who didn't want him to run a kennel across the road from the family member's home.

On the day in question, Defendant stated he was sleeping in the red roof barn with about 40 of his dogs. He woke up and walked out where he was confronted by the CCAC officers. He went with the officers without any resistance on that day and remained in jail unable to post bond since that time. Defendant stated that he reviewed the discovery in this case and was upset by how CCAC grouped his dogs together at the time they were seized. He stated that the females should not have been placed with the males and he presented pictures to this effect to the court. Defendant stated some of the fight wounds on the dogs were from the dogs fighting after they were taken into custody by CCAC. He also stated that some of the old scars were on dogs he had rescued that were injured before he got them. He introduced Defendant's Exhibits #1 and #2 to show the dogs intermingled at the CCAC shelter.

The Defendant was then cross-examined by the State. The State clarified that the property being used by the Defendant on September 23, 2016, was not owned by him and was owned by his mother. The State produced a letter, in State's Exhibit #9, signed by Defendant's mother which

showed he was no longer allowed to live on the property with his dogs and asking him to seek help. The State also confronted the Defendant about his ability to own and run his kennel and sell puppies from the property and provided documentation through State's Exhibit #8, showing the Defendant was denied a license by Chester County Zoning Board to legally operate such an operation in 2013. Defendant had no current documentation to refute this decision and only offered that he was legally able to sell the puppies if he did so "off the property."

The State then questioned the Defendant about the medical neglect of the dogs seized from him. On direct examination, Defendant indicated that one of the veterinarians he worked with and trusted was Dr. Chappell at Carolina Place Animal Hospital in Richburg, South Carolina. Defendant denied the dogs were being neglected, and in response the State impeached his testimony, through its Exhibit #7, which was a letter from Dr. Chappell on behalf of Carolina Place Animal Hospital documenting the care of 21 Dobermans removed from a hoarding situation involving Mr. Jordan Johnson and this current case. State's Exhibit #7 further indicated these dogs required rabies vaccinations, treatment for upper respiratory infections, Demodectic mange, and other medical issues estimated at a cost of approximately \$8,500.00.

Finally, the State questioned Defendant about his testimony regarding the American Kennel Club and his relationship with them. Defendant indicated he was in the process of having his kennel on Richburg Road visited by a representative from the American Kennel Club for approval of his facility for breeding and selling Dobermans. The State impeached the Defendant by presenting Exhibit #3 AKC Compliance Report showing he failed an inspection in 2011 by AKC while living in Swansea, South Carolina, and running a kennel in Lexington County. The Defendant was documented to have 79 adult dogs at that time and 39 puppies. In the areas of noncompliance, it was noted the fencing was inadequate, one of the litters was co-mingled, two of

the dogs had bite wounds, the shelter was unacceptable for the dogs, and the appearance of the kennel was unclean with fecal matter and debris. The Defendant failed to present documentation in response to this line of questioning to refute this evidence or to show he was now in compliance with AKC requirements.

Law/Analysis

In South Carolina, our legislature provided safeguards under the Cruelty to Animals laws in Title 47, Chapter 1, by enacting penalties for animal neglect and cruelty as well as enacting procedures for the proper removal and placement of animals seized because of allegations of criminal conduct under the laws. *See*, S.C. Code §§ 47-1-40(a) and (b); 47-1-120; 47-1-150(c)(2). The violation of S.C. Code §47-1-40 allows animal control officers and/or law enforcement to arrest an individual for the offenses of animal neglect, cruelty, and/or torture. Then under S.C. Code §47-1-120 when a person is arrested for a violation of this chapter an agent of any society incorporated for the prevention of animal cruelty may place the animal(s) into the custody of police or sheriff of the county where the incident leading to arrest took place. This initial response and procedure for placing animals believed to be neglected serves the immediate need to seek care and attention to rescue the animals at issue. However, to maintain, impound, and officially remove the animals from the owner's possession, the charging agency must allow the owner to have a hearing under S.C. Code §47-1-150(c)(2) to determine if the owner is fit to have custody of the animal(s) and if he can provide adequately for them. The purpose of the evidentiary hearing today regarding the case of *State v. Jordan J. Johnson* is for the court to decide the sole issues raised under S.C. Code §47-1-150(c)(2), which are Defendant's ability to provide adequately for the 116 dogs removed from his care and whether he is fit to have them in his custody.

The Supreme Court decided this very issue in State v. Martin, 662 S.C.2d 406, 378 S.C. 113, (2008), regarding the requirement of a post-seizure hearing to be held regarding the care and placement of the seized animal(s). In the Martin case, the facts were very like the current case at hand. A magistrate awarded custody of some 60 horses to the S.C. Awareness and Rescue for Equines (SCARE) and further ordered that the animals were to remain on the property as deemed necessary by SCARE agents. *Id.* at 113. The State failed to petition for a hearing pursuant to S.C. Code §47-1-150(c)(2) within three days of the horses' seizure to determine if the owners were "fit to have custody of the animal". *Id.* at 114. The owners appealed this decision and while waiting for a hearing, they were indicted on 60 counts of ill treatment of animals. The owners were, thereafter, convicted of four counts, but acquitted on the other 56 counts. *Id.* The four horses from the convictions were forfeited, but no decision was made as to the custody of the other 56 horses. *Id.*

In Martin, the Supreme Court analyzed the law for placement of seized animals under S.C. Code §47-1-150(c)(2) while also balancing the need to protect animals alleged to be neglected and/or abused. The Supreme Court held that despite the statute being "confusingly drafted", it did require a post-seizure hearing when animals are seized and removed from a person's care and control pursuant to that statute section. *Id.* at 115.

The current case at issue is similar to the Martin case, however, there is one markedly different fact that distinguished it procedurally from the Supreme Court's ruling in Martin, which was Defendant's continued incarceration during the pendency of this case. In such situations, S.C. Code §47-1-120, controls the placement of seized animals and requires the sheriff's office in the arresting county to assume the custody of those animals while Defendant remains in custody. Despite that distinguishing fact, once the Defendant pled "no contest" to the 15-count indictment

on January 23, 2017, then it was uncontested that a post-seizure hearing was required to determine the fate of the remaining 101 Dobermans seized and maintained by CCAC since September 23, 2016. In this case, just as in Martin, the 15 dogs listed in the indictment pled to by the Defendant were forfeited to the State, however, the remaining 101 dogs needed to be addressed by the Court pursuant to S.C. Code §47-1-150(c)(2), to determine Defendant's fitness to have custody of the dogs and his ability to adequately care for them.

The Court was both the finder of fact and the law during the evidentiary hearing held on January 25, 2017. After hearing testimony from both the State and the defense, review of 27 exhibits, and an analysis of the applicable statutes and case law regarding this matter, the Court makes the following findings of fact:

1. The Defendant was the sole caregiver of 116 Doberman Pinschers on property owned by the Defendant's mother, Louise Jordan.
2. CCAC had a history with the Defendant and responded to calls regarding animals running at large from the property, resulting in a ticket being issued.
3. Defendant had an active bench warrant for his arrest issued in April 2016 for failure to pay a ticket.
4. On September 23, 2016, CCAC responded to a complaint regarding animals running at large from Defendant's property and sought to serve the outstanding bench warrant.
5. Upon entering the property, over 116 dogs were found, in overgrown weeds, feces covered ground, inadequate supplies of food, inadequate supplies of clean water, and with varying medical conditions requiring veterinary attention.

6. Pictures taken by CCAC clearly documented the unsanitary and unsuitable living conditions of the 116 dogs in Defendant's care on September 23, 2016. Those pictures further documented:
 - a. Trash piles in open areas where the dogs could access them;
 - b. Dead dog carcasses and bones on the property;
 - c. Empty bags of dog food with no current food located on the property;
 - d. Skin conditions and scarring requiring medical treatment;
 - e. Piles of dog feces and a stream of dog urine in the dog's living area;
 - f. Several empty water buckets, and many buckets with only unclean water.
7. Dr. Gwinn treated some of the dogs rescued by CCAC and he also reviewed the pictures documenting the condition of Defendant's property taken on September 23, 2016. In his expert opinion, he stated the dogs showed different levels of physical and medical neglect while in Defendant's care. In conclusion, Dr. Gwinn's expert opinion was the dogs should not be returned to the Defendant based on the inadequate and unsuitable living conditions on September 23, 2016. Furthermore, Dr. Gwinn opined it was neglect for any one person to care for 116 dogs.
8. The Defendant was notified by his mother (the legal owner of the property) in a letter dated October 10, 2016, that Defendant was no longer allowed to enter that property and he could not have dogs on the property. See State's Exhibit #9
9. The Defendant's sole income was earned through breeding his Dobermans and then selling the pure-bred puppies; however, the evidence showed he was no longer in good standing with the American Kennel Club (AKC) as a breeder for the sale of these puppies. See State's Exhibit #3.

10. The Defendant requested a business license in February 2013 with the Chester County Zoning Board to allow him to build and run a dog kennel and training facility on the property 5693 Richburg Road in Chester County. The Board voted unanimously to deny the license and Defendant's appeal of that decision was also denied. See, State's Exhibit #8.

11. The Defendant provided no evidence of current or future income to support his ability to provide appropriate shelter, food, and/or sustenance of the 101 dogs if they were returned to him.

Based on the foregoing findings of fact, I make the following conclusions of law:

The State and defense were entitled to an evidentiary hearing regarding the final custody of the remaining 101 Dobermans removed from Defendant's care on September 23, 2016. The Defendant failed to convince the court by the greater weight or the preponderance of the evidence, and the State presented clear and convincing evidence that the conditions of the property and the physical conditions of the dogs in Defendant's care were inadequate and unsuitable at the time of their removal. Furthermore, the Defendant was not fit to adequately care for 116 dogs without the dogs succumbing to degrees of physical and medical neglect. It is, therefore, the conclusion of this Court that the 101 dogs seized from Defendant on September 23, 2016, be forfeited to the State for adoption and/or other appropriate disposition but none of the dogs shall be returned to the Defendant or any of his agents.

AND IT IS SO ORDERED.


L. Casey Manning
Presiding Circuit Court Judge

Date: February 9, 2017
Chester County, South Carolina

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