

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Carmen T. Mullen, Circuit Court Judge

Lynne Van House, ...Appellant,

v.

Colleton County, ...Respondent.

Appellate Case No. 2017-001017

FINAL BRIEF OF RESPONDENT

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SC Court of Appeals

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Statement of Issues on Appeal

Respondent disputes the myriad of issues as cited in Appellant's initial brief. The case at bar was decided by an Order from Magistrate Elbert O. Duffie enforcing a settlement agreement between the parties. That decision was upheld by The Honorable Carmen T. Mullen. Therefore the only issue properly before the Court is whether the two lower courts erred in that holding.

Statement of the Case

The following statement of the case is mainly comprised of excerpts (and summaries thereof) from the 21 page magistrate's return.

On May 31, 2016 a hearing was held in the Colleton County Magistrate Court pursuant to a written Request for Seizure from Colleton County dated May 15, 2016 and Request for Custody Hearing dated May 17, 2016 to determine whether cause exists for seizure of certain animals. Reginald McNeil, Director of the Colleton County Animal Control Department, appeared on behalf of Colleton County. Attorney Benjamin C.P. Sapp appeared on behalf of Lucille Lynne VanHouse. (appellant herein) Mr. Sapp advised the Court that appellant waived her appearance at the hearing and he would be speaking on her behalf.

Mr. Sapp informed the Court that an evidentiary hearing was not necessary because appellant consented that there was probable cause for removing her animals from her property. He advised the Court that he and his client had seen photographs and spoken with Deputy Taylor. He stated that it was a horrible situation. He advised the Court that his understanding is that appellant can only have 24 animals on her property pursuant to the Colleton County Code of Ordinances and that she is violation of that code. Attorney Sapp advised that appellant waived her rights to the other 49 animals and she consented to a finding of probable cause to remove the animals from her property.

Mr. McNeil advised the Court that 68 dogs and cats were removed in total. Mr. Sapp stated that appellant consents to the animals remaining in the custody of the County. The Court was also advised that a court date was scheduled for June 21, 2016 for the Magistrate level charges brought

against appellant. Deputy Taylor stated that care costs for the animals was approximately \$15,000.00. Attorney Sapp stated that he discussed the issue with Trice (employee of ColletonCounty animal control) and Trice advised him that if appellant relinquished the animals the care providers would waive the reimbursement for the care cost. Trice confirmed this.

Mr. Sapp stated that he wished to preserve appellant's right to request return up to 24 of the dogs to her so that he could discuss with her whether she wanted to seek return of the 24 dogs or relinquish all of the dogs in order to have the care cost fees waived. Mr. Sapp advised the Court and parties that he would let animal control know appellant's intentions by the end of the week as to whether she will request custody back of some of the animals. All parties agreed to these terms on the record. Thereafter, on June 1, 2016, the Court issued its written order confirming the agreement of the parties.

Mr. Sapp then notified Officer McNeil, Deputy Taylor, and Trice to let them know that Appellant was agreeing to relinquish all of the animals in exchange for waiver of the \$15,000.00 restitution and dismissal of the Magistrate charges. He represented to these individuals that he had authority from VanHouse to act on her behalf. In reliance on Sapp's representation the Magistrate level charges were dropped. An email from Sapp's office dated Friday, June 3, 2016 was sent to Trice confirming relinquishment of all of the animals in exchange for a waiver of restitution. Trice responded "yes" to the agreement. Then Trice sent an email asking if the agreement was effective immediately and Sapp's office responded by email "yes."

On June 14, 2016 the Magistrate Court received a detailed letter from appellant outlining several concerns with the matter of difference with her attorney. The Court treated the letter as a motion to reconsider the Court's order of June 1, return some of the animals to appellant, and make a determination whether the search warrants issued were legal. The Court scheduled a hearing to address

these issues for June 21, 2016. Present at the hearing were Reginald McNeil, Deputy Jody Taylor, Colleton County Animal Control employee Ashley Vitello, Michelle Reed, Mary Campbell, Shelia Ellis, Talulah Trice, Lori Campbell, Frannie Derthoffer, attorney Benjamin C.P. Sapp, and appellant.

At the onset of the hearing, Mr. Sapp moved to be relieved as counsel for appellant due to differences that had arisen. Attorney Sapp stated that he talked with appellant the day after the first hearing and she agreed it would be in the best interest to release the dogs given there were criminal charges. He then stated appellant subsequently filed the written letter requesting the Court reconsider its order and that he had not seen the letter. Appellant consented to the motion to have Mr. Sapp relieved as her attorney. The Court granted the motion with the consent of the parties.

Appellant was sworn under oath by the Court and gave testimony and argument related to her motion to reconsider the Court's order of June 1, return some of the animals, and make a determination whether the search warrants issued were legal. The hearing was ended prematurely because of a health issue that unexpectedly arose with her son in the courtroom. EMS was called to the scene and appellant's son was transported via EMS to the hospital. Due to the emergency circumstances the hearing was adjourned by the Court until a later date.

The hearing resumed on July 12, 2016. Present was Reginald McNeil, appellant, Deputy Jody Taylor, Colleton County Animal Control Officer Ed Spears, Talulah Trice, and Michelle Reed. Appellant was sworn under oath and continued her testimony and argument.

The hearing reconvened on July 20, 2016. Director Reginald McNeil of the Colleton County Animal Control Shelter was present along with attorney E.W. Bennett, Jr. who advised the Court he would be representing Colleton County in the matter going forward. Appellant was also present.

Prior to continuing with testimony and argument related to appellant's motion for reconsideration and return of some of her animals, Mr. Bennett made a motion for a hearing to

determine whether there was an enforceable settlement agreement between the parties entered into during the week of May 31, 2016. Mr. Bennett stated it was his understanding that an agreement was reached between appellant through her attorney Mr. Sapp and Colleton County. Appellant was to relinquish control of all of the animals and Colleton County agreed to dismiss all 10 outstanding Magistrate level citations. Mr. Bennett stated that the Magistrate level citations were in fact dismissed by McNeil. Mr. Bennett also stated that the County had waived \$18,000.00 in treatment costs related to the animals. In response, appellant stated she never saw emails between attorney Sapp and the County. She did acknowledge hiring Mr. Sapp and giving him a \$500.00 retainer. Magistrate Duffie determined that an evidentiary hearing was appropriate on the County's motion to determine whether there was an enforceable settlement agreement.

Colleton County then called attorney Benjamin C.P. Sapp and after being duly sworn he testified as follows. He was representing appellant on a probate matter when the issue regarding the animals came about. Appellant retained him to represent her on this issue regarding the animals and paid him a \$500.00 retainer. He was also representing her with regard to the 10 Magistrate level citations she received.

Sapp stated that he and appellant met and discussed the matter at length regarding the initial seizure held on May 31, 2016. Sapp stated that she was very upset and agreed that Sapp should attend the seizure hearing in her absence. Sapp testified that prior to the hearing he met with Deputy Taylor, the Animal Control Officer, representatives from Hilton Head Humane Society, and representatives from Beaufort County that were providing services to the animals. He stated that the County and the service providers were going to levy \$15,000.00 in restitution for animal care costs against appellant. Prior to the hearing date Sapp arranged an interview with himself, appellant and Deputy Taylor. Appellant gave a statement at that time. Deputy Taylor showed Sapp pictures and it was "pretty disturbing stuff."

At the seizure hearing Sapp stated he could not agree to anything that day and would talk with appellant the next day with regard to resolving the matter. The following day he called appellant and told her what happened. Appellant was upset, however, she agreed that it would be in her best interest to relinquish all of the animals.

Sapp testified he notified the Court, Deputy Taylor, and Animal Control Officer McNeil about the agreement. He stated that it was his opinion that relinquishment of custody of all of the animals was in her best interest and they would deal with any General Sessions criminal charges later on. Sapp testified appellant authorized him to enter into a binding agreement to relinquish all of the dogs in exchange for a waiver of the \$15,000.00 in restitution and dismissal of the Magistrate level tickets. Mr. Sapp called Officer McNeil, Deputy Taylor, and Trice to let them know that appellant was agreeing to relinquish all of the animals in exchange for waiver of the \$15,000.00 restitution and dismissal of the Magistrate charges. He represented to these individuals that he had authority from appellant to act on her behalf. In reliance on Sapp's representation the Magistrate level charges were dropped.

An email from Sapp's office dated Friday, June 3, 2016 was sent to Trice confirming relinquishment of all of the animals in exchange for a waiver of restitution. Trice responded "yes" to the agreement. Then Trice sent an email asking if the agreement was effective immediately and Sapp's office responded by email "yes."

Plaintiff's Exhibit #1 which is 5 pages of emails was admitted into evidence over objection by appellant on the grounds that she had no knowledge of the emails.

The County began its case in chief on the original motion hearing by presenting Dr. Mary Campbell as a witness. After being duly sworn under oath Dr. Campbell testified as follows. She is the owner and veterinarian at Port Royal Veterinary Hospital. She received her degree from Michigan State University Veterinary School. She has 25 years' experience as a veterinarian with 7 years in Port Royal.

She is certified in veterinary forensic science. She has assisted in about 25 abuse cases. She has been qualified and testified as an expert 10 times in Court.

The County made a motion to qualify Dr. Campbell as an expert in the field of veterinary science and she was qualified by the Court without objection. Campbell testified that she assisted in the treatment and removal of appellant's animals. She testified that the smell resembled a septic tank. She saw 5 cat remains. There was a cage of decomposed birds and bird skeletons. There was a cage with a dead cat. There was a cage with a skeletonized guinea pig. Campbell testified she had never encountered anything like this before. She was shocked at the number of remains. There were bones scattered 20 to 30 yards around the area of the burial pit. It did not appear to her there any attempts to bury the animals. There were tracks in the pens where the dogs were circling and pacing. This indicated they were under stress and had lack of exercise. The smell around the area made her eyes burn. Campbell testified cleanliness was absent and there was a huge amount of fecal matter, standing water, and debris on the property. Campbell did not find any dishes with food in them. These were the worst accommodations she has ever seen. Campbell testified in a situation there were dead animals in pens with live animals, the live animals likely ate the dead animals. Campbell testified she treated the most severely needy of the live animals which was about 12 to 15. She examined most all of the others.

Plaintiff's Exhibit No. 7 entitled, "Nestle Purina Body Conditioning System" was admitted into evidence without objection. Campbell testified this system is designed to be an objective way to assess and score animal body condition. In this case there were dogs in the range from 1 to 4. She treated the dogs that scored 1's and 2's. The dogs were emaciated, ribs and hips were easily visible, matting was $\frac{3}{4}$ of an inch thick and the dogs had to be anesthetized to be shaved and treated. The dogs were covered in fleas and 3 to 4 different species of ticks. The dogs has intestinal parasites. The dogs were not receiving enough caloric intake. She had no doubt the animals were ill-treated. It is her recommendation as a veterinarian that appellant never receive the animals back due to the appalling conditions and filthy

conditions of the animals. Campbell testified the property is not suitable to keep animals. Photographs of these conditions were admitted.

The hearing was reconvened on July 27, 2016. Attorney Bennett informed the Court and parties that he had been advised that all the animals had been adopted out, spayed and neutered. The Court heard arguments from both parties related to the County's motion to enforce settlement agreement. After hearing the argument of the parties, the Court found the settlement agreement to be in existence, valid, and binding upon parties and granted the County's motion to enforce the terms of the settlement agreement. In accord, the Court dismissed appellant's motions for reconsideration and return of the animals to her. The Court issued its Order Enforcing the Prior Settlement Agreement and Dismissing Respondent's Motion to Reconsider Order issued by this Court on June 1, 2016 and Motion to Return to Respondent Some Animals Previously Seized by Colleton County. Thereafter, Appellant timely filed a Notice of Appeal. Her initial Appeal to the Circuit Court was denied by The Honorable Carmen T. Mullen by Order dated March 22, 2017. This Appeal followed.

Argument

Magistrate Duffie correctly ruled that the appellant and Colleton County had entered into an agreement to resolve the custody of the animals herein.

Appellant admits that she hired Mr. Sapp to represent her with a \$500 retainer. *R. p. 180*. She agreed to have Mr. Sapp attend the hearing for her. *R. p. 181*. Mr. Sapp informed the Court that an evidentiary hearing was not necessary because Appellant consented that there was probable cause for removing her animals from her property. He advised the Court that he and his client had seen photographs and spoken with Deputy Taylor. He stated that it was a horrible situation. He advised the Court that his understanding is that appellant can only have 24 animals on her property pursuant to the Colleton County Code of Ordinances and that she is violation of that code. Attorney Sapp advised that appellant waived her rights to the other 49 animals and she consented to a finding of probable cause to remove the animals from her property. . *R. p. 175-176*

At the seizure hearing Mr. Sapp stated he could not agree to anything that day (as to the 24 remaining animals) and would talk with appellant the next day with regard to resolving the matter. The following day he called appellant and told her what happened. Appellant was upset, however, she agreed that it would be in her best interest to relinquish all of the animals. . *R. p. 176*

Sapp testified he notified the Court, Deputy Taylor, and Animal Control Officer McNeil about the agreement. He stated that it was his opinion that relinquishment of custody of all of the animals was in her best interest and they would deal with any General Sessions criminal charges later on. Sapp testified appellant authorized him to enter into a binding agreement to relinquish all of the dogs in exchange for a waiver of the \$15,000.00 in restitution and dismissal of the Magistrate level tickets. **Mr. Sapp called Officer McNeil, Deputy Taylor, and Trice to let them know that appellant was agreeing to relinquish all of the animals in exchange for waiver of the \$15,000.00 restitution and dismissal of the Magistrate**

charges. He represented to these individuals that he had authority from appellant to act on her behalf. In reliance on Sapp's representation the Magistrate level charges were dropped. . *R. p. 181 (emphasis added)* An email from Sapp's office dated Friday, June 3, 2016 was sent to Trice confirming relinquishment of all of the animals in exchange for a waiver of restitution. Trice responded "yes" to the agreement. Then Trice sent an email asking if the agreement was effective immediately and Sapp's office responded by email "yes." *R. p. 181*

Pursuant to the settlement agreement the County dismissed all of the magistrate level warrants resulting from this seizure. *R. p. 183*

Additionally Colleton County waived several thousands of dollars in fees for care of the animals and adopted the surviving ones out. *R. p. 179-180*

Respondent would ask This Court to consider *Shelton v Bressant* 439 S.E. 2d, 833 "We uphold and reaffirm the long standing rule that a client is bound by his attorney's actions in the settlement of a case. "Acts of an attorney are directly attributable to and binding upon the client. Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the settlement." *Arnold v. Yarborough*, 281 S.C. 570 at 572, 316 S.E.2d 416 at 417[312 S.C. 185] (Ct.App.1984) (internal citations omitted).

Additionally, appellant asks this Court to grant her five enumerated prayers for relief:

1. \$5,147,150.00 in restitution
2. A "re-affirmation" of the grandfathering of her property
3. A public retraction to the news media of various items
4. A full expungement of her records and the destruction of all evidence seized
5. Name and all other information of the person whom made the initial complaint

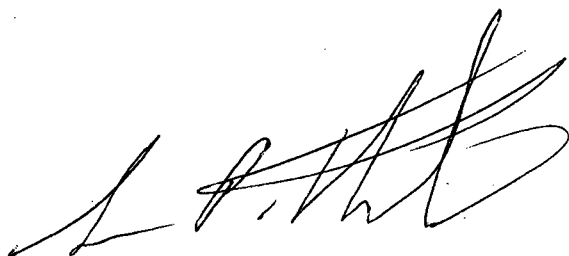
Respondent respectfully submits that the Appellant's prayers for relief are improper as to this Court.

Finally, the bulk of the appellants arguments seem to rely on the premise that animals are property, have no "rights", and can therefore be treated in any way she deems fit. This premise is faulty and contrary to state law. S.C. Code sections 47-1-10 et al set forth criminal and civil penalties for the cruel treatment of animals including depriving them of adequate care.

Conclusion

Respondent would ask that This Court dismiss this appeal for the reasons as set forth above.

Respectfully submitted this 16th day of March, 2018

A handwritten signature in black ink, appearing to read 'S. P. Thornton', with a large, stylized flourish at the end.

Sean P. Thornton

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