

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Haughton*,
2013 BCSC 1683

Date: 20130816
Docket: 88396
Registry: Kamloops

Regina

v.

Carol Elaine Haughton

Before: The Honourable Mr. Justice Dley

On appeal from: A decision from the Provincial Court of British Columbia,
dated November 5, 2012, *R. v. Haughton*, 2012 BCPC 505

Oral Reasons for Judgment

Counsel for the Crown (Respondent):

J Gold

Carol Elaine Haughton appeared on her own
behalf:

Place and Date of Trial/Hearing:

Kamloops, B.C.
August 14 & 15, 2013

Place and Date of Judgment:

Kamloops, B.C.
August 16, 2013

[1] **THE COURT:** Ms. Haughton was convicted of failing to provide adequate care for her dogs and cats.

[2] Ms. Haughton was away from her home and had left her son to care for the animals as she had done on prior occasions. This time her son failed to properly care for the animals and had them live in conditions best described as "filth and squalor."

[3] Ms. Haughton had been charged in a three-count Information alleging various offences between June 7, 2009 and June 13, 2009.

[4] In Count 1, Ms. Haughton was charged that, being the owner, she did wilfully permit to be caused unnecessary pain and suffering or injury to animals contrary to s. 445.1(1)(a) of the *Criminal Code* (the "Code"). Ms. Haughton was acquitted of that charge during the Provincial Court trial.

[5] In Count 2, Ms. Haughton was charged that as the owner or the person having custody or control of domestic animals (dogs and cats), abandoned them in distress or wilfully neglected or failed to provide suitable and adequate food, water, shelter, and care for them contrary to s. 446(1)(b) of the *Code*. Ms. Haughton was convicted of that offence.

[6] In Count 3, it was alleged that Ms. Haughton, being the person responsible for animals did cause or permit them to be or continue to be in distress contrary to s. 24(1) of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372. Ms. Haughton was convicted of that offence. That offence was conditionally stayed based on the rule against multiple convictions.

Background Facts

[7] Ms. Haughton lived in a rural area where she had livestock and bred Great Danes. She cared about her animals and had taken steps to ensure that they were taken care of when she was away from the property.

[8] On June 7, 2009, Ms. Haughton left to work on her ranch in Alberta. She expected to be away for about five days. She asked her estranged husband who agreed to look after the livestock. She had her son, Jason, look after the dogs and cats.

[9] Jason had been around animals all his life and had previously cared for the animals many times. Ms. Haughton had no concerns about his ability to care for the animals. Jason knew where she was and was able to contact her.

[10] The animals were kept in and around Ms. Haughton's home. Ms. Haughton was messy. It got worse after she left.

[11] The dogs had the run of the house. They defecated and urinated in the house. Jason did little, if anything, to clean up.

[12] Ms. Haughton's estranged spouse and his friend, Dennis Copeland, were at the property on June 7 and saw the mess. Mr. Copeland made a complaint to the SPCA on June 9. On June 13, the SPCA, armed with a warrant, came onto the property and removed the animals. Although the animals were found not to be in distress, the living conditions were abysmal.

[13] The Provincial Court trial judge found that the living conditions were neither suitable or adequate and said the following at paras. 199-200:

[199] Despite all my other findings, though, the environment in which these animals were kept during Ms. Haughton's absence was neither suitable nor adequate. Although the evidence shows that both dogs and cats had complete run of the house and could evidently come and go at will, the house was filthy. I am mindful that the animals were not trapped in this filth and squalor, but were able to come and go – with the exception of one tom cat. The fact remains that the animals did stay on the property. It was their home and they had complete run of it. It was filthy. The presence of such large quantities of urine and feces, the stench in the house and the garbage strewn throughout the kitchen created an environment that was neither suitable nor adequate shelter or general care.

[200] I convict Ms. Haughton on Count 2 for failure to provide adequate care and Count 3 for causing or permitting the animals to be or continue to be in distress by reason of them being kept in unsanitary conditions.

Discussion

[14] Ms. Haughton argues that there was no analysis done regarding her duty as the owner of the animals. Ms. Haughton says that she did what was reasonable in having the animals cared for. Ms. Haughton says that the trial judge failed to address her obligations as the owner as compared to the obligations of a custodian of the animals.

[15] On a summary conviction appeal, the following rules apply:

1. an appellate court is not to reassess evidence at trial, but it is appropriate to review the record to determine whether the trial judge properly directed herself to the evidence relevant to the issues;
2. a review of all the evidence is necessary in order to determine whether the trial judge's findings can be supported by the evidence;
3. an appeal court is not to substitute its own finding unless the trial court's conclusions are unreasonable or cannot be supported by the evidence;
4. in order to determine whether the decision was unreasonable or not or not supported by the evidence, an appellate court must re-examine and, to some extent, re-weigh the evidence;
5. a misapprehension of the evidence does not render a verdict unreasonable; and
6. the test for reviewing the reasonableness of a verdict is whether a properly instructed jury acting judiciously could have reasonably rendered the verdict: *R. v. Pomeroy*, 2007 BCSC 142, paras. 25-38.

[16] The buildup of animal excrement occurred while Ms. Haughton was away. The trial judge referred to the evidence of Dr. Greenwood at para. 70:

[70] Dr. Greenwood noted that leaving animal feces around could facilitate the ongoing cycle of parasitism which causes the leaching of nutrients and general immune comprimization. She said the amount of feces was not ideal for sanitary and hygiene reasons. There was a lot of it, both in diarrhea and formed state. In her view, it was not something that happened overnight. Dr. Greenwood felt that the urine and feces had to have built up over a week or

perhaps two. Ms. Haughton had been gone for four days by the time Dr. Greenwood attended, which generally accords with the build-up observed.

[17] I note that even though the findings of the trial judge were not challenged, there was a mistake in the sense that Dr. Greenwood did not attend until June 13, which was some six days after Ms. Haughton had left for Alberta.

[18] The following passages in the trial judge's reasons indicate that she was of the view that Ms. Haughton acted reasonably in leaving the animals in the custody of Jason: paras. 73-75:

[73] Jason Haughton said that the house was not too bad in the beginning. It got a lot worse through the week. There was not a lot of feces on the carpet on the first night. He tried to keep up with the mess but he did not have a lot of time having just come off work. Anything dangerous was taken out of the house and he cleaned up as much as he could in a small amount of time. He said that his mother usually cleaned thoroughly when she came home so he just did the basics. Occasionally, he would take a shovel and toss as much as he could. He would dispose of it outside on the farmland. I do not believe him. From the time Ms. Leake attended to the time the dogs were seized, it appears that no cleaning had been done of most litter boxes and none of the paper laid out for the dogs had been removed or changed. Only one litter box appeared to have been cleaned recently. That is hardly enough for 13 cats if they were all indoors.

[74] Jason Haughton said the house was pretty messy. The 18 puppies had made a significant mess in it. They were not toilet trained and went wherever they wanted.

[75] He said his mother would not expect him to do the cleaning but would do a good cleaning herself when she came back. It defies comprehension that he would think it was alright to leave such a horrible mess for his mother's return.

[19] At para. 189, the trial judge said the following:

[189] Ms. Haughton had left her son in care of her dogs and cats while she was away. He was familiar with them and had grown up with them. It was reasonable for her to do so. He said he attended to them every day, doing a head count and topping up the food and water as needed. It is inconceivable, but he did not clean up the animal waste. He left it to his mother for her return, and she expected him to do so.

[20] The concluding words, that "he left it to his mother for her return and she expected him to do so," I infer to mean that the trial judge concluded that Ms. Haughton expected Jason to clean up the mess (I should emphasize that,

throughout the appeal, Crown counsel was eminently fair in referring to passages either in the evidence or in the decision of the trial judge to ensure that all of the steps taken by Ms. Haughton were properly referred to). Crown counsel conceded that the quoted passage likely referred to the fact that Ms. Haughton expected Jason to clean up the waste and not wait for her return.

[21] The passages that I have referred to indicate that the trial judge was of the view that Ms. Haughton had done what she thought was proper in having the animals cared for. That conclusion is supported by the evidence.

[22] On April 26, 2012, Ms. Haughton testified and the following evidence was neither challenged or contradicted; page 45, lines 34 to 41:

Q Did you give him any instructions before you left, any special instructions or anything ...

A Oh, no, he's -- I mean, he grew up with them. He knows how to look after them. They've all been looking after them for years. In the 14 years of going out to Alberta, never once have I ever come home and found an empty food or water dish, ever.

On page 46, lines 12 to 34:

Q Would you be able to approximate or estimate how many times per year he would look after the dogs?

A Oh, when I was with my husband, he -- he would look after them, and we separated in 2006 so it was after that only and -- and then I think James was still living at home then, so it was only the last couple of years.

Q Would --

A And I don't think I hauled a lot of hay in those two years, because I was feeding cattle in Alberta, or the neighbour was feeding them for me.

Q All the times that he's looked after the animals, have you ever come back to discover that he hasn't been looking after the animals?

A Never.

Q Has that ever occurred?

A Never, he's very responsible.

Q Okay. Do you and him keep in touch while he's looking after the animals?

A Yeah. I -- he calls me if there's a problem, or I call him if I'm going to be longer than expected. I let him know when I'm coming home and [that's] what's going on, so we communicate.

[23] It is, therefore, inconsistent that the trial judge would find Ms. Haughton guilty of failing to provide adequate care.

[24] I find that the trial judge failed to differentiate between the duties of an owner and those of a custodian as set out in s. 446(1)(b) of the *Code*. Ms. Haughton was neither wilful nor reckless as contemplated by s. 429(1) of the *Code* in her decision to trust the animals with her son.

[25] Ms. Haughton did what was reasonable under the circumstances. When she left for Alberta, the animals were placed into the care of an experienced and trusted custodian. The fact that the custodian failed to keep up his end of the bargain cannot make Ms. Haughton criminal liable for his acts.

[26] Accordingly, I find Ms. Haughton not guilty of Count 2.

[27] The Crown conceded that a conviction was wrongfully entered with regard to Count 3 because the verdict depended upon a definition of "duress" that was not in force at the time of the offence. Ms. Haughton is acquitted of that charge.

[28] There were arguments raised by Ms. Haughton regarding the issuance and execution of a search warrant. In light of my ruling that the appeal is granted, I do not find it necessary to deal with those matters.

[29] The result is that the appeal is allowed and acquittals will be entered.

“S.D. Dley, J.”

DLEY J.