TRIBUNALS ONTARIO **TRIBUNAUX DÉCISIONNELS ONTARIO**

Animal Care Review Board **Commission d'étude des soins aux animaux**

Ontario

2024 ONACRB 115 (CanLII)

Citation: *Bigelow v. Chief Animal Welfare Inspector*, 2024 ONACRB 115

Date: 12/18/2024
File Number: 16299/ACRB

Appeal under section 38 of the *Provincial Animal Welfare Services Act, 2019*, S.O. 2019, c. 13.

Between:

Morgan Bigelow

Appellant

And

Chief Animal Welfare Inspector

Respondent

DECISION AND ORDER

Adjudicators: Mark Sraga, Member

For the Appellant: Morgan Bigelow, Self-represented

For the Respondent: Danielle Meuleman, Counsel

Heard by videoconference: November 19 and 20, 2024.

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BACKGROUND

[1] This is a matter concerning an appeal of the decision made by Animal Welfare Services ("AWS") to remove a large breed dog named Stella from Morgan Bigelow's (the "Appellant") residence located in Sundridge, Ontario.

[2] On September 26, 2024, AWS Inspectors Marie Jordan, Partick Gladu and Kimberly Young executed a warrant issued under s. 28(2) of the *Provincial Animal Welfare Services Act, 2019 (PAWS Act)* and entered the Appellant's residence. Following an inspection, AWS removed Stella from the Appellant's care and served a Notice of Removal (NOR) on the Appellant pursuant to s. 31(1)(a) of the PAWS Act. The NOR stated that a veterinarian advised removal was necessary to relieve Stella's distress, which was caused by "physical and psychological distress".

[3] After removal from the Appellant's residence, Stella was taken to Bay City Animal Hospital for an examination. The physical examination found nothing of note but that she appeared fearful of being touched and would flinch when touched.

[4] At the time of this hearing, Stella remained in the care of the Chief Animal Welfare Inspector.[1]

[5] On September 27, 2024, the Appellant appealed the NOR with the Animal Care Review Board (Board) and the matter proceeded to a videoconference hearing.

[1] On October 17, 2024, the Chief Animal Welfare Inspector served a Decision to Keep (DTK) an Animal in the Chief Animal Welfare Inspector's Care on the Appellant pursuant to s. 31(6)(a) of the *PAWS Act*. This matter is not the subject of this proceeding.

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ISSUE IN DISPUTE

[6] The issue in dispute in this matter is:

a) Was Stella in distress at the time of her removal on September 26, 2024? If so, was it necessary for the Respondent to remove Stella to alleviate her distress?

RESULT

[7] Based on the evidence before me:

a) I dismiss the appeal and find that Stella was in distress on September 26, 2024, and it was necessary to remove her from the Appellant's care to alleviate her distress.

EVIDENCE AND ANALYSIS

[8] For the reasons that follow, the Board finds that Stella was in distress on September 26, 2024, due to Stella being subjected to both physical and psychological abuse.

Was Stella in distress requiring removal?

Respondent's Submissions – Inspector Jordan's Testimony

[9] Inspector Jordan testified regarding her response to the complaint she had been dispatched to investigate on August 12, 2024, wherein a complainant advised AWS that the Appellant had left his dog unattended for over 24 hours in his apartment. The complainant further advised Inspector Jordan that the Appellant frequently left his dog alone for long periods of time and that there were several other people who had witnessed the Appellant punch, kick and hit Stella. The complainant also advised that the local by-law officers had knowledge of issues regarding the Appellant and his dog Stella.

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[10] On August 15, 2024, Inspector Jordan attended the Appellant's apartment accompanied by an Ontario Provincial Police officer (OPP) and spoke to the Appellant, advising him that AWS had received a complaint about him leaving Stella alone for long periods of time (over 24 hours) in his apartment and physically abusing Stella. Inspector Jordan stated that the Appellant responded by saying he never left Stella alone for more than 14 hours at a time and that he was never rough or mishandled his dog. Inspector Jordan further stated that she did observe Stella at the time of her attendance and that the dog was a large breed bulldog type mix and appeared to be healthy, and she saw no visible injuries or marks.

[11] After leaving the Appellant's residence, Inspector Jordan stated that while outside the Appellant's apartment building, she was directly contacted by another complainant who advised that they had several recordings of what they believed were instances of the Appellant abusing Stella, but that he could not find them at that moment. He had informed Inspector Jordan that he had also personally witnessed the Appellant whipping Stella with a leash in the hallway of their apartment building. Inspector Jordan said she told the complainant to contact her directly when they had located the audio recordings.

[12] On September 13, 2024, the complainant with the audio recordings called Inspector Jordan and advised her that he had an audio recording of the Appellant beating his dog and that he had found his other audio recordings. Inspector Jordan informed the complainant that Inspector Patrick Gladu would contact him to obtain the recordings.

[13] Inspector Jordan testified that after she and Inspector Gladu listened to the five audio recordings provided by the complainant, they found them to contain interactions between the Appellant and his dog that were violent in nature and that they decided they should speak to an AWS veterinarian, Dr. Bruce Robertson, regarding them.

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Inspector Gladu's Testimony

[14] Inspector Gladu testified that he forwarded the complainant's five audio recordings to Dr. Robertson. In addition, the Inspector advised Dr. Robertson of witness statements he had collected from three independent witnesses regarding the Appellant's treatment of Stella and told him where he could locate those statements in AWS' database.

[15] Inspector Gladu testified regarding the five audio recordings that he received from the complainant and had sent to Dr. Robertson. Inspector Gladu provided a summary of the five audio recordings and stated that the tone of voice used by the Appellant was disturbing, loud, violent in nature and that there appeared to be noises of an object striking the dog crate or walls along with what sounded like Stella being physically hit and the dog yelping.

[16] Inspector Gladu further testified that when AWS executed the warrant for the removal of Stella, they found her in a medium-sized dog crate that was padlocked shut. The Inspector also stated that the room in which Stella was kept was dark, with poor natural lighting. He further stated that the crate in which Stella was found was only suitable for temporary crating of a dog the size of Stella. He further testified that the crate had been damaged and was being held together by pieces of wire and that based on his previous experience the damage appeared to be caused by a dog trying to get out of the crate.

[17] Inspector Gladu stated that he needed to remove the wires that were securing the crate since the Appellant could not find the key for the lock. He further stated that when Stella was removed from the crate, she was very excited and a nice and friendly dog.

By-law Officer Bryan Austin's Testimony

[18] Municipal By-law Officer Austin testified that on April 26, 2024, he witnessed Mr. Bigelow bring Stella outside to relieve herself and when Stella appeared to resist

going back into the apartment building, he saw Mr. Bigelow kick Stella in her side and begin yelling and pulling on her leash.

Complainants' Testimony

[19] Two residents who reside in the same apartment building as the Appellant also testified regarding interactions they witnessed between the Appellant and his dog.

[20] The first complainant who resides in the apartment unit directly below the Appellant's testified that she often heard Stella being left alone for long periods of time and could hear Stella barking, whining, and banging on the crate trying to get out of it. She also testified that she could clearly hear the Appellant yelling and screaming at Stella, which she believed was sometimes related to the dog having relieved herself in the apartment.

[21] The other complainant who resides in the apartment directly across the hall from the Appellant testified that he started to notice the Appellant leaving Stella alone for extended periods of time – 20 hours or more. He also testified that he called the OPP and By-law Enforcement on several occasions starting in March 2024, due to the excessive noise of barking and whining being made by Stella.

[22] This complainant also testified regarding the audio recordings that they made of the Appellant's yelling, screaming, and hitting of either Stella or her crate and that the five audio recordings submitted as evidence in the hearing were ones that he made and provided to Inspector Gladu.

Dr. Robertson's Testimony

[23] Dr. Robertson testified that after listening to the audio recordings and reviewing the witness statements collected by Inspector Gladu, he had a good faith belief that Stella needed to be removed to alleviate her distress. On September 20, 2024, he advised Inspector Jordan in writing that it was necessary to remove

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Stella to alleviate her distress and signed a Certificate of a Veterinarian Advising the Removal or Euthanasia of Animal(s).

[24] Dr. Robertson provided his expert opinion on the impact that the verbal abuse that he heard on the audio recordings would have on Stella, who he believed to be the recipient of the angry verbiage by the Appellant. Dr. Robertson stated that in listening to the audio recordings, he could hear the Appellant yelling profanities in an agitated manner directed at Stella including threatening language of “choke … choke” and “I should beat you to death”. Dr. Robertson further stated that he could hear other noises on the audio recordings which he believed were consistent with objects being thrown or a dog crate being struck and sounds of claps or slaps.

[25] Dr. Robertson further testified about the impact of such treatment on Stella. Dr. Robertson explained that while dogs do not understand language, including the use of profanities, they do respond to the tone and volume of a person’s voice as well as a person’s body language. In this instance, Dr. Robertson was of the opinion that Stella understood that the Appellant, who is her caregiver, was angry due to the harsh tone and the loud volume used by the Appellant, and that this would create fear and anxiety for Stella.

[26] Dr. Robertson also explained that dogs “live in the moment” and angry prolonged outbursts do not help correct unwanted behaviour – they do not associate such outbursts and reactions to something they had previously done hours or even minutes before.

[27] Dr. Robertson testified that companion animals such as dogs are dependent on their caregiver for all their needs, such as food, water, shelter, exercise and companionship. When there are unexpected actions or behaviour such as angry, loud yelling or threatening actions, then this creates conflict and distress in the dog since they never know what to expect from their caregiver. He further advised that in his opinion, even if Stella was spoken to in a calm and loving manner by the Appellant but was also subject to multiple prolonged outbursts

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where the tone was angry and the volume was loud, these outbursts would result in distress for Stella.

Appellant's Evidence

[28] The Appellant provided no meaningful evidence or witnesses to contradict the evidence presented by the Respondent and at times during the hearing confirmed that he did yell at Stella, hit Stella, and hit her crate when Stella was in it. The Appellant further stated that he was dealing with a lot of personal relationship issues at the time that triggered his reactions towards Stella and brought out the "monster" in him.

[29] The Appellant testified that he loved Stella very much and wanted her returned to him, and that he was very sorry for his treatment of Stella.

Analysis

[30] The testimony of the Respondent's witnesses clearly establish that Stella was subjected to both verbal and physical abuse, including her being left along and confined to a crate for very long periods of time.

[31] The Appellant's own admission of his yelling and hitting Stella or her crate supported a finding that Stella was in distress.

[32] These facts are further supported by the contents of the five audio recordings that were submitted as evidence during the hearing which clearly demonstrated the Appellant yelling and using threatening language directed at Stella along with him hitting of either the crate in which she was in or Stella herself. These are the same audio recordings that Dr. Robertson relied on in making his determination to issue the Certificate of a Veterinarian Advising the Removal or Euthanasia of Animal(s) along with his expert opinion on the impact such behaviour would have on Stella.

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[33] I considered s. 1(1) of the *Paws Act*, which defines distress to include abuse or the animal being subject to undue physical or psychological hardship, privation or neglect. The evidence before me showed that Stella was subjected to both psychological and physical distress.

[34] An inspector has the authority to remove animals and issue NORs pursuant to Section 31(1)of the *PAWS Act,* for any animal found in distress. Distress is defined in s. 1(1) as a state of being:

> (a) in need of proper care, water, food or shelter,
>
> (b) injured, sick in pain or suffering, or
>
> (c) abused or subject to undue physical or psychological hardship, privation or neglect.

[35] Therefore, I find that issuance of the NOR and removal of Stella by AWS was warranted as Stella was in distress at the time of removal due to her being subjected to both verbal and physical abuse by the Appellant. This determination is supported by the fact that when AWS executed their warrant they found Stella inside a padlocked crate in a room with poor natural lighting.

ORDER

[36] Pursuant to the powers of the Board under s. 38(9) of the *PAWS Act*, the Board:

1. Dismisses the Appellant's appeal of the NOR and declines to order the return of the animal to the Appellant.

Released: December 19, 2024

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Mark Sraga, Member