

IN THE COURT OF APPEALS OF IOWA

No. 7-194 / 06-0801
Filed August 22, 2007

LINN COUNTY,
Plaintiff-Appellee,

vs.

OLIN ANDREWS and WENDY ANDREWS,
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, David L. Baker,
Judge.

Defendants appeal a district court order that found they neglected livestock and ordered them to reimburse Linn County for the costs on maintaining the animals after they were seized. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellants.

Harold L. Denton, County Attorney, and Angie M. Wilson and Jason Burns, Assistant County Attorneys, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ. Baker, J., takes no part.

ZIMMER, J.

This appeal arises from the seizure of livestock pursuant to Iowa Code chapter 717 (2005). The district court determined Olin and Wendy Andrews neglected their livestock and ordered the Andrews to reimburse Linn County for the costs of the rescue and maintenance of the animals. We affirm in part and reverse in part.

I. Background Facts & Proceedings.

During the latter part of February 2005, the Linn County Sheriff's Department received a report that animals were being neglected on the property of Olin and Wendy Andrews near Palo, Iowa. Following an investigation, a search warrant was issued which allowed law enforcement personnel and licensed veterinarians to enter the Andrews' property.

On March 2, 2005, deputies of the Linn County Sheriff's Department executed the search warrant at the Andrews' farm. The deputies were accompanied by Howard Mitchell, the animal control officer and cruelty investigator for the Cedar Valley Humane Society; Dr. Dan Campbell, the chief staff veterinarian for the Animal Rescue League of Iowa; and Dr. Jennifer Doll, a veterinarian. Based on their observations at the Andrews' property, Mitchell, Dr. Campbell, and Dr. Doll all determined the animals at the property had not received adequate care. The animals did not have sufficient water and most did not have sufficient food. The deputies seized horses, goats, sheep, pigs, dogs,

and cats.¹ The veterinarians prepared reports summarizing their findings after the animals were removed and forwarded those reports to Linn County.

Linn County subsequently filed a petition for disposition of neglected livestock, pursuant to Iowa Code section 717.5. The county asked the district court to determine whether the livestock met the statutory criteria to be considered neglected livestock and requested the court to assess costs to the Andrews for the maintenance of the animals. The Andrews denied the allegations of the county's petition.

Following a contested hearing, the district court concluded the animals were neglected. The court also determined the animals had been properly rescued under the applicable law, and ordered the Andrews to pay \$7721.26 for the rescue and maintenance of the animals. Later, Linn County filed an application for additional costs stating there were expenses which had not been included in the original request. Following another hearing, the court ordered the Andrews to pay an additional \$12,504.64 for the care of the rescued animals.

The Andrews have appealed the orders entered by the district court. They contend the court erred by upholding the seizure of all the livestock taken from their property, "because some of the animals seized were not at risk and should not have been taken." The Andrews also contend the district court erred by assessing them costs for the care of the livestock because the county failed to comply with the applicable statutory procedures for rescuing livestock.

¹ This appeal concerns only the livestock owned by the Andrews. The disposition of the dogs and cats owned by the Andrews is not at issue in this appeal.

II. Standard of Review.

Our review is for the correction of errors at law. Iowa R. App. P. 6.4. In a law action, we are bound by the district court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(a).

III. Seizure of Animals.

We first address the Andrews' claim that the district court erred in upholding the seizure of all the animals taken from their property because there were animals on their property that were not neglected. The Andrews argue that animals which showed no signs of neglect should not have been seized. For the reasons which follow, we affirm the district court on this issue.

Our legislature has enacted laws to protect livestock from neglect. Iowa Code section 717.2(1) defines animal neglect as follows:

A person who impounds or confines livestock, in any place, and does any of the following commits the offense of livestock neglect:

- a. Fails to provide livestock with care consistent with customary animal husbandry practices.
- b. Deprives livestock of necessary sustenance.
- c. Injures or destroys livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

Animals that have been neglected, as defined by section 717.2(1), may be rescued by law enforcement officers. Iowa Code § 717.2A(1).

In this case, after carefully considering the evidence presented, the district court found "[t]he animals rescued pursuant to Chapter 717 were not provided with care consistent with customary animal husbandry practices and the Andrews deprived the livestock of necessary sustenance both with respect to feed and

water, but especially water.” There is substantial evidence in the record to support the district court’s findings.

When officers arrived to serve the search warrant, all of the livestock present on the property were without water. In addition, all of the livestock, except the horses, were without food. The testimony of Drs. Campbell and Doll makes clear that none of the livestock, with the possible exception of one cow, were being cared for in a manner consistent with customary animal husbandry practices. The opinions expressed by Drs. Campbell and Doll were confirmed by the testimony of two independent veterinarians who examined some of the horses shortly after the livestock was seized. The fact that a small percentage of the horses seized were of adequate body weight does not undermine the district court’s conclusion the animals were neglected pursuant to chapter 717. Because the district court’s findings are supported by substantial evidence, we find no error in the court’s conclusion that the animals were neglected.

IV. Assessed Costs.

The Andrews also contend the district court erred by assessing them the costs of caring for the livestock because Linn County failed to comply with the statutory procedures for rescue of livestock found in section 717.2A(1).

The expenses for rescuing and maintaining neglected livestock may be assessed pursuant to section 717.5(3), which provides:

A court may order a person owning the neglected livestock to pay an amount which shall not be more than the expenses incurred in maintaining the neglected livestock rescued pursuant to section 717.2A, and reasonable attorney fees and expenses related to the investigation of the case. . . . The moneys shall be paid to the local authority incurring the expense.

Under the statutory scheme established by our legislature, law enforcement officers may rescue neglected livestock under three alternative provisions found in section 717.2A(1)(c). First, section 717.2A(1)(c)(1) provides that if a criminal proceeding has not been commenced, the local authority must obtain a written statement from a veterinarian, provide notice to the owner, and give the owner the opportunity to respond. Second, section 717.2A(1)(c)(2) governs seizure if a criminal proceeding has been commenced, and provides that the local authority must receive a written statement from a veterinarian. Finally, section 717.2A(1)(c)(3) provides that livestock may be rescued upon a written statement from a veterinarian if the livestock have been abandoned or are “permanently distressed” regardless of whether criminal proceedings have been commenced.

In this case, the district court properly concluded that the requirements of the first and third provisions of section 717.2A(1)(c) had not been met. Neither party disputes this conclusion on appeal. The court then determined Linn County had properly followed the procedures for rescue of neglected livestock found in the second provision, section 717.2A(1)(c)(2), which requires: (1) the commencement of a criminal proceeding and (2) a written statement given to the local authority by a licensed veterinarian providing that, in the veterinarian’s opinion, the livestock is neglected. In concluding that the requirements of section 717.2A(1)(c)(2) had been met, the court noted that a search warrant had been issued and the matter had been referred to the county attorney. The court concluded that it was “clear that the wheels of justice had begun to turn.”

The Andrews take issue with the court's conclusion. They claim a criminal proceeding had not been commenced against them at the time the animals were seized, and they argue that the provisions of section 717.2A(1)(c)(2) were not followed by the county. Upon review of the record, we conclude the Andrews' argument has merit.

In Iowa, criminal proceedings may be commenced by filing a complaint with a magistrate. Iowa Code § 804.1; *State v. Nelson*, 390 N.W.2d 589, 591 (Iowa 1986). In determining whether criminal proceedings have commenced, we consider whether the prosecutorial forces of the state have focused on an individual, and whether the state has committed itself to prosecute. *State v. Johnson*, 318 N.W.2d 417, 435 (Iowa 1982). Criminal proceedings have not commenced if a case is still in an investigatory stage. *See id.*

The record in this case reveals that on February 22, 2005, a citizen provided a voluntary statement and photographs to the Linn County Sheriff's Department alleging the Andrews' animals were being neglected. Based on this evidence, Deputy Pat Brady made an application for a search warrant. A judge approved the search warrant application and a warrant was issued. The warrant was executed on March 2, 2005. At the hearing on the county's petition for disposition of neglected livestock, Deputy Brady testified as follows:

Q. At the time that the search warrant was obtained from Judge Baumgartner, no criminal proceedings had been initiated against Mr. or Mrs. Andrews, had they? A. Not that I'm aware of, no.

Q. And no proceedings had been initiated when the seizure took place on March 2nd, 2005; is that also correct? A. I believe you're correct there.

We conclude criminal proceedings had not commenced at the time law enforcement officials rescued the livestock from the Andrews' property. In its brief on appeal Linn County states, "The State was committed to prosecuting the Appellants for animal and/or livestock neglect *if* there was adequate evidence seized during the execution of the search warrant." (Emphasis added.) This statement demonstrates that the execution of the search warrant was part of the investigatory stage of this case. See *id.* In addition, it confirms that criminal proceedings would not be pursued unless the search warrant revealed adequate evidence of neglect.

As we have mentioned, section 717.2A(1)(c)(2) applies "[i]f a criminal proceeding has been commenced against the person owning or caring for the livestock" In this case no criminal proceeding had been commenced against the Andrews at the time the animals were rescued. Therefore, we conclude Linn County failed to properly follow the procedures for the rescue of neglected animals under section 717.2A(1).

We next consider what effect, if any, the County's failure to follow the procedures found in section 717.2A(1) has on this case. The Andrews do not argue that the court lacked authority to make a disposition of the livestock at issue here based on the county's failure to comply with one of the three alternatives for seizure. In *City of Dubuque v. Fancher*, 590 N.W.2d 493, 496 (Iowa 1999), our supreme court made clear "a challenge to the propriety of the seizure of neglected animals does not impact the authority of the city to file a petition for disposition or the jurisdiction of the district court to hear and decide

the petition.” However, the *Fancher* case did not resolve the issue of whether a court may order payment for expenses only in those circumstances where the animals have been properly seized under controlling statutory authority. *Id.* at 496 n.1.

This brings us to the final issue we must address. The Andrews contend it was error for the trial court to assess costs for the care of livestock when Linn County failed to comply with the rescue procedures found in 717.2A(1)(c). The county argues that costs may be assessed even if the county did not comply with the rescue procedures established by the legislature.

While the disposition of neglected livestock is not dependent upon the proper removal of the animals, a different statutory provision applies to the assessment of expenses. The disposition of neglected livestock is provided for in section 717.5(1), and this section does not require that the livestock have been rescued under section 717.2A. Section 717.5(1) provides for the “disposition of livestock neglected as provided in section 717.2.” On the other hand, section 717.5(3) provides for the payment of “expenses incurred in maintaining the neglected livestock *rescued* pursuant to section 717.2A” (Emphasis added.) Thus, section 717.5(3) specifically applies when animals have been rescued under statutory procedures. Section 717.5(3) does not provide for the payment of expenses in situations other than when animals have been rescued pursuant to section 717.2A. We conclude section 717.5(3) does not provide for the assessment of costs for the care of neglected livestock that were not rescued pursuant to the procedures set forth in section 717.2A.

In this case, the parties agree Linn County did not follow the procedures for the rescue of animals found in sections 717.2A(1)(c)(1) or (3). We have also determined the circumstances in this case did not meet the criteria for rescue set out in section 717.2A(1)(c)(2) because a criminal proceeding had not been commenced at the time the livestock were seized. Because the procedures of that statute were not properly followed, we determine the livestock in this case were not rescued pursuant to section 717.2A. In this situation, section 717.5(3) does not provide for the payment of expenses. Accordingly, we conclude the district court erred in requiring the Andrews to pay the expenses of maintenance of the animals based on this section.

In its brief on appeal, Linn County asserts, “[e]ven if the Court finds that costs cannot be assessed pursuant to Iowa Code section 717.5, nothing prohibits the District Court from assessing costs for maintenance of livestock seized in this manner under principles of fairness and equity.” The record reveals this issue was not presented to or decided by the district court. Accordingly, we conclude it has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

V. Conclusion.

We conclude the district court should be affirmed in its finding that the livestock which were rescued were neglected under Iowa law. We also affirm the district court’s determination that all of the animals that were rescued were subject to disposition under section 717.5(1). We conclude, however, that under the specific statutory language of section 717.5(3), the district court could not

assess expenses for the maintenance of the animals because they had not been properly rescued under section 717.2A(1).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.