

IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01060 COA

IN THE MATTER OF CUSTODY OF  
NEGLECTED AND ABANDONED ANIMALS  
CAROL W. KNIGHT APPELLANT

v.

MISSISSIPPI ANIMAL RESCUE LEAGUE APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. DENISE OWENS

COURT FROM WHICH APPEALED: HINDS COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT: JOHN BARRON

MICHAEL MARKS

ATTORNEY FOR APPELLEE: JAMES MINGEE

NATURE OF THE CASE: PERSONAL PROPERTY

TRIAL COURT DISPOSITION: INJUNCTION ISSUED AGAINST APPELLANT; FULL CUSTODY GRANTED TO THE APPELLEE

MANDATE ISSUED: 8/19/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

DIAZ, J., FOR THE COURT:

On November 14, 1994, The Mississippi Animal Rescue League (the League), the appellee, filed a complaint for custody of neglected and abandoned animals in the Hinds County Chancery Court against Carol Knight (Knight). A hearing was held where the Chancellor granted the League's request for immediate custody, without notice, and furthermore, a temporary restraining order was granted, and a hearing for a preliminary injunction was set for November 23, 1994.

At the November 23, 1994, hearing, the Chancellor found that the horses were so deprived of necessary sustenance and medical attention the situation required immediate intervention. Therefore, the Chancellor granted the League's request for a preliminary injunction. Knight was allowed to visit the horses up to three times a week, accompanied by a representative from the League. She was allowed to petition the court for custody of the horses once found to be restored to health prior to any trial on the merits of the claim.

On February 8, 1995, the League sought an emergency order to euthanize a horse which they discovered to have suffered a broken shoulder. The Chancellor ordered that the horse be x-rayed, and that if it was in fact suffering from a broken shoulder, then it should be euthanized under anaesthesia. An x-ray apparently revealed a broken shoulder and the horse was euthanized on February 9, 1995.

On June 28, 1995, after a trial on its merits, the Chancellor found that the horses were originally found in such a serious state of neglect as to have been constructively abandoned, and therefore granted the League's request for permanent custody. Aggrieved from the judgment, Knight appeals to this Court asserting the following issues: (1) that the Chancellor overstepped her authority in granting full custody of the horses to the League, (2) that the Chancellor erred in finding that Knight had constructively abandoned the horses, and (3) that the Chancellor erred in granting full custody when a less drastic remedy could have been imposed. Finding no reversible error, we affirm the judgment.

#### FACTS

The complaint stated that the League discovered approximately thirty (30) horses on two parcels of land that were in dire distress and were in need of immediate emergency care. The horses belonged to Carol Knight. Ms. Knight testified that she underwent two back surgeries, one in 1993 and another in 1994, and that she was unable to walk from March 1994 through June 1994. During that time, she testified that she had made arrangements for someone to take care of the horses.

After they were seized, the horses were examined by Dr. Timon Dukes, veterinarian for the League, who testified that the horses were severely underweight and malnourished. Many of the horses were suffering with seriously neglected hooves which, if left unattended, would result in the horses being permanently crippled. Indications on the hooves showed evidence that the horses were starving. A couple of the horses were suffering from severe wounds; one had a punctured eye, and another had an infected shoulder wound which had apparently not been properly treated.

The Chancellor found that the horses had been so neglected as to have been constructively abandoned and that the League was a proper custodian for the horses. The Chancellor specifically found that Knight's failure to provide necessary care for the animals was long-standing, and not the temporary result of her illness.

## DISCUSSION

### I. JURISDICTION

Knight asserts that the Chancellor exceeded her authority by granting permanent custody of the horses to the League. Knight cites to Section 97-41-3 of the Code, which states:

Any sheriff, constable, policeman, or agent of a society for the prevention of cruelty to animals may kill, or cause to be killed, any animal found neglected or abandoned, if in the opinion of three respectable citizens it be injured or diseased past recovery, or by age has become useless.

Miss. Code Ann. § 97-41-3 (Rev. 1994). Knight argues that this statute does not give the courts the authority to determine whether an animal has been abandoned or neglected. Knight maintains that the statute would have only conferred upon the court the authority to restrain Knight from interfering with the League's initial attempt to provide emergency care to the horses. We find no merit to this line of argument.

The Mississippi Constitution confers jurisdiction to the chancery courts all matters in equity. Miss. Const. art. 6 § 159(a). Where the chancery court has exercised its equity jurisdiction, it may proceed to a complete adjudication of the suit and award all appropriate legal and equitable remedies. *Leaf River Forest Products, Inc. v. Deakle*, 661 So. 2d 188, 193 (Miss. 1995). In the present case, the League presented the testimony several witnesses, (two of whom were veterinarians) as well as the Director of the League, who all testified that the horses were in dire need of emergency intervention and care. The court acted within its power in granting custody to the League. There is no merit to this issue.

### II. HORSES WERE CONSTRUCTIVELY ABANDONED

Knight argues that the Chancellor erred in finding that the horses were constructively abandoned. Knight concedes that at the time of their seizure the horses were in poor condition, but argues that Knight in no way abandoned the horses.

Our standard of review of a chancellor's findings is well settled. "Findings of a Chancellor will not be disturbed or set aside by this Court on appeal unless we are of the opinion the decision made by the trial court was manifestly wrong and not supported by substantial, credible evidence, or unless an erroneous legal standard was applied. *Estate of Haynes v. Steele*, No. 93-CA-01237-SCT, 1997 WL

80932 (Miss. Feb. 27, 1997). In her bench opinion, the Chancellor found that the horses were constructively abandoned. Despite the fact that Knight was recovering from back surgery and could not care for the horses herself, the court found that the horses had not been under the best care even before Knight's illness. Her finding was consistent with the evidence presented at the trial.

Several witnesses testified to the conditions where the horses were kept, as well as the physical conditions of the horses themselves when they were initially found. Dr. Timon Dukes, veterinarian, testified that the horses were suffering from severe malnutrition and were dehydrated. Several of the horses were suffering from critical complications caused by malnutrition. They were infested with parasites, and their hooves were not properly taken care of and showed signs of malnutrition. Dr. Dukes testified that if the hooves were not properly treated, the horses would become crippled. He testified that the situation needed immediate intervention. Our review of the record reveals no manifest error made by the Chancellor. There is no merit to this issue.

### III. CUSTODY TO THE LEAGUE

Finally, Knight contends that the Chancellor erred in granting full custody of the horses to the League. Pursuant to the statute cited above, the League is given the authority to destroy any animal found neglected or abandoned. Accordingly, the court did not overstep its authority in deciding not to destroy the animals but, instead, to grant full custody to the League.

The statute grants the court authority to kill neglected or abandoned animals--which would be the ultimate possession. Contrary to Knight's argument, because the statute gives the Chancellor the authority to destroy neglected or abandoned animals, surely it allows the Chancellor the discretion to impose less drastic and humane remedies. It is elementary that equity has jurisdiction to afford relief in any case where redress is proper and no specific authority exists at law. Griffith, *Mississippi Chancery Practice* § 24 (1991). Because the court found that the horses were historically not receiving proper care even before Knight's illness, in equity, the court acted within its grant of authority by granting full custody of the horses to the League in order to place the horses up for adoption.

**THE JUDGMENT OF THE HINDS COUNTY CHANCERY COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

**HERRING, J., CONCURS WITH SEPARATE WRITTEN OPINION, JOINED BY BRIDGES, C.J., THOMAS, P.J., HINKEBEIN AND PAYNE, JJ.**

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HERRING, J., CONCURRING:

I agree with the majority in all respects in this case. However, I feel it is necessary to elaborate on the obvious gap which exists in our statutes concerning cruelty to animals. According to the present state of our law, there are no real guidelines setting forth procedures for taking animals from owners who, through intentional acts or pure neglect, have mistreated their animals. Sections 97-41-1 through 97-41-19 of the Mississippi Code of 1972, as amended, provide penalties for those caught being cruel towards animals and provide a means by which a local sheriff may put a dying and suffering animal to death. However, Mississippi law is silent on what is to be done with neglected animals, which are otherwise healthy or which can be brought back to health, where their owners have been criminally convicted of being cruel to them.

Other states, such as Wyoming, Texas, and Tennessee, have authorized the taking of the animals which are mistreated by their owners by local animal rescue associations. *See* Wyo. Stat. § 6-3-203(h) (1977); Tex. Health & Safety Code Ann. § 821.022 (1995); Tenn. Code Ann. § 39-14-202 (1996). Generally, these other jurisdictions provide that owners may be divested of their ownership rights to their animals if convicted of the crime of being cruel to such animals. While Mississippi does not have such a statute, the chancellor, acting pursuant to her powers in equity, was correct in dispossessing Ms. Knight of the horses involved.

**BRIDGES, C.J., THOMAS, P.J., HINKEBEIN AND PAYNE, JJ., JOIN THIS SEPARATE WRITTEN OPINION.**