

SUPREME COURT OF YUKON

Citation: *Humane Society Yukon v. City of Whitehorse*,
2010 YKSC 66

Date: 20101108
S.C. No.09-A0055
Registry: Whitehorse

Between:

HUMANE SOCIETY YUKON and KEVIN SINCLAIR

Plaintiff

And

CITY OF WHITEHORSE BY-LAW SERVICES

Defendant

Before: Mr. Justice R.S. Veale

Appearances:

Carrie E. Burbidge

Counsel for the Humane Society Yukon and
Kevin Sinclair

Lori Lavoie

Counsel for the City of Whitehorse

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the Humane Society Yukon for an order that Trevor the dog shall remain in the care and control of the Humane Society Yukon under a behaviour management program supervised by Dr. Shelley Breadner, a veterinarian specializing in animal behaviour management.

[2] The City of Whitehorse applies to have the dog returned to By-Law Services to be euthanized, or in the alternative, that the dog be returned to the Humane Society Yukon as owner to be reassessed by Dr. Breadner on the terms set out in this Court's order dated August 6, 2009.

FACTS

[3] Trevor the dog is a three year old neutered male with a mixed breed of German Shepherd and Rotweiller.

[4] Trevor first came to the attention of By-Law Services on January 26, 2009, when he was found chained to a tree in a backyard. The chain had grown into Trevor's neck. He was immediately taken to a veterinarian for medical care.

[5] The owner was charged and convicted under the *Animal Control Bylaw*. He was fined \$500, ordered to pay the veterinarian charges and prohibited from having custody or control of an animal for two years. The former owner signed a Release of Ownership to the City to dispose of the dog as the City saw fit.

[6] Trevor recovered from his physical wound and was turned over to the Humane Society Yukon.

[7] On April 23, 2009, By-Law Services learned that Trevor had bitten a child without breaking the skin. By-Law Services advised the Humane Society Yukon to warn any proposed adoptee of Trevor's aggressive behaviour.

[8] The Humane Society Yukon entered into a Dog Adoption Contract on May 15, 2009, with a new owner who was advised of a prior snapping incident. Trevor in fact spent most of his time with the owner's brother.

[9] Trevor began to display aggressive behaviour and bit the owner, who described the behaviour as quite uncharacteristic of the dog. However, the aggressive behaviour escalated and the dog bit two of the owner's friends.

[10] The aggressive behaviour culminated on July 12, 2009, when Trevor viciously attacked a man delivering water to the brother's cabin. The attack was unprovoked and

the man's arm was seriously and painfully injured with six puncture wounds, accompanied by bleeding and bruising.

[11] The man had the additional concern that the dog had rabies but that proved not to be the case. Nonetheless, he took several days to recover from the injury.

[12] The owner and her brother immediately released the dog to By-Law Services who determined that Trevor should be destroyed in the interest of public safety, pursuant to s. 120 of *Animal Control Bylaw 2001-01*.

[13] On July 30, 2009, the Humane Society Yukon applied to this Court for ownership of Trevor, based upon a breach of the Dog Adoption Contract which required the dog to be returned to the Society.

[14] On August 6, 2009, this Court stayed the euthanasia decision of By-Law Services and returned the dog to the Humane Society Yukon under strict conditions including, amongst others, that the Humane Society Yukon have in place \$500,000 public liability insurance, warning signs, a secure enclosure and that a muzzle and leash be used when the dog was not in the secure enclosure. The order required the Humane Society Yukon, at their expense, to have the dog assessed by an independent animal behaviour specialist, mutually acceptable to the Humane Society Yukon and the City.

[15] The order drafted by the City and the Humane Society Yukon contained the following clauses:

9. If the results of the Specialist's assessment of the Dog are positive, in that it is concluded that the Dog can be rehabilitated, and the Humane Society is agreeable to rehabilitating the Dog according to the Specialist's plan of rehabilitation, at their expense, and after which it is concluded by the Specialist, upon reassessment of the Dog following the rehabilitation, that the Dog no longer poses a safety risk to the

public, the City shall withdraw its decision to euthanize the Dog.

10. If the results of the Specialist's assessment of the Dog are negative, in that it is concluded that the Dog cannot be rehabilitated, the Humane Society agrees to return the Dog to the City and to relinquish all ownership claims to the Dog.

[16] These clauses have been the basis of the management of Trevor since August 6, 2009. To a great degree the City and the Humane Society Yukon have worked cooperatively in pursuing the terms of this Order for more than a year, at great expense to both the City and the Humane Society Yukon.

[17] Dr. Breadner prepared an excellent report dated September 13, 2009, which concluded with the following:

I would deem Trevor to be a dangerous dog, based on his history and lack of displayed social interactions with humans, as well as his level of arousal from a normal human action and resultant lack of impulse control, and his perception of challenge or conflict where none is intended. **These behaviours are a lifetime condition, leaving Trevor as a dog that has potential to bite if he perceives a conflict.**
(emphasis already added)

[18] However, Dr. Breadner also said that this risk of Trevor biting a human again could be managed with strict controls such as muzzling and leashing at all times when the dog is not in a secure yard or kennel. Those conditions were placed in a court order dated November 16, 2009, which stayed the euthanasia decision while the Humane Society Yukon looked for a foster caregiver for the dog.

[19] Despite great efforts by the Humane Society Yukon, they have been unable to find a suitable foster caregiver that can meet the conditions in the order. There was one proposed foster caregiver residing in a Yukon First Nation, but the First Nation decided

not to accept the risk. The City insisted, quite correctly, that they would not release the dog to another jurisdiction without the consent of that jurisdiction.

[20] We are now at a stage where the City requests that the dog be euthanized or returned to the Humane Society Yukon on strict conditions to complete the behaviour management assessment of the dog under the supervision of Dr. Breadner and at the expense of the Humane Society Yukon. The Humane Society Yukon opposes the euthanasia and applies for the ownership and return of Trevor subject to the strict conditions of the previous court orders. The Humane Society Yukon is supported by Dr. Breadner in this application.

DISPOSITION

[21] I conclude that Trevor is a dangerous dog and will always present some risk to society, despite the best efforts of the Humane Society Yukon and an animal behaviour specialist. Dr. Breadner has consistently confirmed that there can be no guaranteed rehabilitation of Trevor but recommends behaviour management with strict conditions to ensure public safety. In fact, she does not use the word “rehabilitate” but rather speaks of behaviour management.

[22] Dr. Breadner advised that the Humane Society Yukon has provided behaviour management and safety measures to allow Trevor to maintain a healthy quality of life at the shelter. He has a secure run and regular walks duly muzzled and leashed. She stated that the dog can be maintained in this situation and recommends a Behavioural Management Program specifically for Trevor at the Humane Society Yukon.

[23] The decision of the City By-Law Services to euthanize Trevor was based upon its authority under s. 120 of the *Animal Control Bylaw* 2001-01 which reads:

Notwithstanding any other provision of this bylaw, where a Designated Officer considers it to be in the interest of public safety to do so, he may, with the consent of the owner if the animal is on the owner's property, or without consent if the animal is running at large, forthwith destroy any animal that is in contravention of this bylaw, whether or not such animal is deemed to have an aggressive or vicious temperament.

[24] The *Animal Control Bylaw 2001-10* also contains s. 116 permitting a judge "to destroy or otherwise dispose of" a dangerous dog.

[25] I am satisfied that By-Law Services had the authority to euthanize the dog when they received him from the owner. Having said that, more than a year has passed since that decision in a search for an appropriate foster home subject to conditions to protect the public as well as providing considerable behaviour training for the dog.

[26] I appreciate the weariness of the City with this process but I cannot agree to euthanizing the dog when there is a responsible owner, the Humane Society Yukon, prepared to care for the dog with all the safety conditions in place along with the supervision and management of Dr. Breadner. In other words, Trevor will be managed in the interests of public safety, whether or not a suitable foster home is ever found for him. Should a suitable home be found for the dog in the City's jurisdiction, the City must be notified so that By-Law Services can exercise its mandate under the Animal Control Bylaw, especially as it concerns public safety. Should a suitable home be found for Trevor outside the City, the local authority must consent and the provisions of this Order apply.

[27] I therefore order that Trevor the dog be returned to the Humane Society Yukon as owner, subject to the conditions set out below with the Behavioural Management Program of Dr. Breadner dated October 22, 2010, attached as a Schedule.

[28] The Humane Society Yukon is obligated to pay all costs and expenses associated with the care of Trevor and the fees and disbursements of Dr. Breadner.

[29] The conditions are as follows:

1. Trevor shall always be on a leash not longer than 6 metres in length for training, or 2 metres in length otherwise, when he is outside of the secure enclosure at the Human Society Yukon shelter and under the line-of-sight supervision of a trained handler approved by the Humane Society Yukon.
2. Trevor shall always wear a muzzle when he is outside of the secure enclosure, except for the purpose of eating or drinking inside Mike Grieco's home.
3. The Humane Society Yukon shall train and advise all handlers of the conditions of this Court order and impress upon them that no one, other than the Court, has the discretion to change, amend or disregard such conditions.
4. Liability insurance shall be put in place by Humane Society Yukon in the amount of \$500,000, naming the City of Whitehorse as an additional insured.
5. The Humane Society Yukon shall provide a secure enclosure on the shelter property for Trevor.
6. The Humane Society Yukon shall place signage that warns in writing and by symbol that there is an aggressive dog on the Humane Society Yukon property and any home where Trevor may be cared for. The warning signs shall be visible from nearest road or thoroughfare.

7. Trevor's handlers and the Humane Society Yukon shall report any breaches of this order to By-Law Services of the City of Whitehorse.

[30] The Humane Society Yukon shall deliver to By-Law Services of the City of Whitehorse all reports by Dr. Breadner and other behaviour management specialists.

[31] In the event that any of the above conditions are breached, the City may pursue its remedies under the *Dog Control Bylaw 2001-01*

[32] The terms of this order and any further issues may be addressed in case management by the parties, with or without counsel.

VEALE J.