

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

v

Lower Court File No. 01-4409-GC
File No. 02-5866-AV (Consolidated)
HON. PHILIP E. RODGERS, JR.

EDWIN KASBEN, KRIS KASBEN,
JAMES HALL, BARBARA KINTNER,

Claimants,

and

WILLIAM KASBEN and JANET BAUMAN,

Claimants/Appellants.

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Attorney for Plaintiff/Appellee

William G. Burdette (P49174)
Attorney for Claimant/Appellant Janet Bauman

William Edwin Kasben
Claimant/Appellant in Pro Per

DECISION AND ORDER ON APPEAL

This is an appeal from a forfeiture proceeding brought pursuant to MCL 5.931. The Claimants/Appellants appeal the final orders of the District Court entered on February 15, 2002, March 15, 2002 and April 3, 2002 forfeiting their interests in 53 horses. On March 24, 2003, the Court heard the oral arguments and took the matter under advisement. The Court now issues this written decision and order and, for the reasons stated herein, affirms the trial court.

Between the two of them, the Appellants raise four issues on appeal:

- I. Whether the trial court erred by ordering the forfeiture of the horses **after** the defendant was convicted for a violation of MCL 750.50.
- II. Whether the trial court erred by ordering the forfeiture of all fifty-three (53) horses when Appellant Kasben was convicted of violating MCL 750.50(2) with respect to only thirteen (13) horses.
- III. Whether the trial court erred by combining the forfeiture hearing and the criminal action and whether combining the proceedings violated Appellant Bauman's due process rights and whether the trial court's decision to allow Appellant Bauman to offer additional evidence cured the due process violation.
- IV. Whether the trial court erred by holding that the Sheriff's sale was valid.

The Court will address each of these issues separately.

I.

Whether the trial court erred by ordering forfeiture of the horses **after** the defendant was convicted for a violation of MCL 750.50.

On November 5, 2001, Appellant Kasben was arrested and charged with numerous counts of animal cruelty in violation of MCL 750.50(2). Pursuant to MCL 750.53, all of the horses found in his keeping or custody were seized. On November 21, 2001, the Prosecutor filed a Complaint for Forfeiture pursuant to MCL 750.50(3). The trial court decided, for reasons of judicial economy, to hear the criminal case and the civil forfeiture case at the same time and consolidated the two matters. After Appellant Kasben was convicted, the trial court held two additional days of hearings on the forfeiture. Ultimately, the trial court ordered all 53 of the horses that were under Appellant's care, custody and control forfeited.

Appellant Bauman contends that MCL 750.50(3) provides that the prosecutor may move for forfeiture "prior" to trial on pending criminal charges and, therefore, precludes the prosecutor from moving for forfeiture **after** the criminal trial or conviction of the person charged with violating MCL 750.50(2).

MCL 750.50(3) provides:

If an animal is impounded and is being held by an animal control shelter or its designee or an animal protection shelter or its designee or a licensed veterinarian pending the outcome of a criminal action charging a violation of this section or section 50b, **before final disposition of the criminal charge, the prosecuting attorney may file a civil action in the court that has jurisdiction of the criminal action**, requesting that the court issue an order forfeiting the animal to the animal control shelter or animal protection shelter or to a licensed veterinarian before final disposition of the criminal charge. The prosecuting attorney shall serve a true copy of the summons and complaint upon the defendant and upon a person with a known ownership interest or known security interest in the animal or a person who has filed a lien with the secretary of state in an animal involved in the pending action. The forfeiture of an animal under this section encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of the crime. Upon the filing of the civil action, the court shall set a hearing on the complaint. The hearing shall be conducted within 14 days of the filing of the civil action, or as soon as practicable. The hearing shall be before a judge without a jury. At the hearing, the prosecuting attorney has the burden of establishing by a preponderance of the evidence that a violation of this section or section 50b occurred. If the court finds that the prosecuting attorney has met this burden, the court shall order immediate forfeiture of the animal to the animal control shelter or animal protection shelter or the licensed veterinarian unless the defendant, within 72 hours of the hearing, submits to the court clerk cash or other form of security in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of initial impoundment to the date of trial. If cash or other security has been submitted, and the trial in the action is continued at a later date, any order of continuance shall require the defendant to submit additional cash or security in an amount determined by the court to be sufficient to repay all additional reasonable costs anticipated to be incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal until the new date of trial. If the defendant submits cash or other security to the court under this subsection the court may enter an order authorizing the use of that money or other security before final disposition of the criminal charges to pay the reasonable costs incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of impoundment to the date of final disposition of the criminal charges. The testimony of a person at a hearing held under this subsection is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this subsection does not waive the person's constitutional right against self-incrimination. An animal seized under this section or section 50b is not subject to any other civil action pending the final judgment of the forfeiture action under this subsection. [Emphasis added].

Everyone agrees that this forfeiture provision was amended to allow the prosecutor to file a forfeiture petition before final disposition in the criminal case in order to protect local animal

care providers as well as local units of government from having to absorb huge financial burdens imposed by cases involving large numbers of animals, as well as, to ensure that ownership of the animals does not remain in legal limbo during possibly prolonged criminal animal cruelty proceedings. The Court disagrees, however, with Appellant's contention that this provision precludes the Prosecutor from moving for forfeiture **after** conviction.

In any event, this issue is not before the Court because the Prosecutor filed her Complaint for Forfeiture on November 21, 2001, well before final disposition in the criminal case. The Prosecutor satisfied the literal reading of the statute called for by the Appellant.

The decision of the trial court to forfeit the horses **after** the conviction of Appellant Kasben is affirmed.

II.

Whether the trial court erred by ordering the forfeiture of all fifty-three (53) horses when Appellant Kasben was convicted of violating MCL 750.50(2) with respect to only thirteen (13) horses.

Both Appellants argue that the forfeiture order is excessive because it forfeits 53 horses when Appellant Kasben was found guilty of animal neglect as to only 13 horses. In other words, it is their position that only one horse can be forfeited for each violation of the animal cruelty statute.

MCL 750.53 specifically provides for the seizure of "all animals and fowls found in the keeping or custody of the person arrested" for a violation of MCL 750.50(2). Furthermore, based on this Court's review of the record, there was more than adequate evidence presented by the Prosecutor to show by a preponderance of the evidence that the entire herd did not receive adequate care from any of the Appellants in violation of MCL 750.50(2). The trial court's herd analysis was a pragmatic and realistic solution to the treatment of "all animals in the keeping or custody of the

person arrested.” Thus, the trial court was authorized to and in fact was compelled to forfeit all 53 horses.

The trial court’s decision to forfeit all 53 horses is affirmed.

III.

Whether the trial court erred by combining the forfeiture hearing and the criminal action and whether combining the proceedings violated Appellant Bauman’s due process rights and whether the trial court’s decision to allow Appellant Bauman to offer additional evidence cured the due process violation.

Appellant Bauman contends that she was denied due process of law because the trial court combined the criminal prosecution of Appellant Kasben with the civil forfeiture proceeding. She argues that the forfeiture procedures of MCL 750.50(3) specifically require a separate hearing.

It is important to note that MCL 750.50(3) requires the prosecuting attorney “to serve a true copy of the summons and complaint for forfeiture upon the defendant and upon a person with a known ownership interest or known security interest in the animal.” Although the Complaint for Forfeiture was filed on November 21, 2001, it was not until January 18, 2002, during the course of the trial, that Appellant Bauman testified that she had an interest in the subject horses. The Complaint for Forfeiture was subsequently amended to include her alleged interest and the trial court held additional hearings so that she could present evidence in opposition to the forfeiture. At the forfeiture hearing on March 15, 2002, Appellant Bauman expressly stipulated that prior testimony taken in the case could be considered in the forfeiture portion of the case, even though she was not a party at that time. She also conceded that she was not asserting an innocent owner defense.

From the record, it is clear that Appellant Bauman was aware throughout the proceedings that the Complaint for Forfeiture was pending and that the proceedings had been combined. It is also clear that the trial court went to great lengths to afford Appellant Bauman the opportunity to challenge the forfeiture of the horses once her alleged interest in the horses was revealed. For Appellant Bauman to now claim that her due process rights were violated is disingenuous, at best.

Although it may have been better in an ideal world for the trial court to have kept the proceedings separate, no harm resulted from the trial court combining the proceedings in the interests of judicial economy. The decision of the trial court to combine the proceedings is affirmed.

IV.

Whether the trial court erred by holding that the Sheriff's sale was valid.

On April 12, 2002, the Sheriff conducted a sale of the horses at public auction by sealed bid. The horses were sold to the highest bidders, who happened to be the various care givers, for the amount of their alleged liens for the costs incurred in caring for the horses since their seizure. Appellant Bauman contends that the trial court erred by finding that this sale was valid because the sealed bids did not provide a "full and free opportunity for competition among bidders."

MCL 433.16 governs the sale of animals at public auction. It requires (1) notice and (2) sale to the highest bidder. The Appellant has failed to prove that either of these requisites were not met in this case. The decision of the trial court is affirmed.

CONCLUSION

For the reasons stated herein, the decisions of the trial court are affirmed. The forfeiture proceeding, although complicated by the number of criminal charges against the Appellant Kasben and by its consolidation with the criminal trial, was nonetheless fair. Appellant Bauman's due process rights were not violated. The trial court properly forfeited all 53 horses in the herd. The horses were sold at public auction as contemplated by the statute and the sale was valid.

The Order of Forfeiture is affirmed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 7/18/03