

NOTICE

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2016 IL App (4th) 150958-U
NO. 4-15-0958

FILED
August 11, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE CITY OF URBANA, an Illinois)	Appeal from
Municipal Corporation,)	Circuit Court of
Plaintiff-Appellee,)	Champaign County
v.)	No. 15OV695
VICTORIA GORDON,)	
Defendant-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's findings that defendant committed the offense of animal cruelty in violation of city ordinance.

¶ 2 In November 2015, plaintiff, the City of Urbana (City), filed a second amended complaint against defendant, Victoria Gordon, alleging she committed the offense of animal cruelty with regard to eight cats. At a bench trial, the trial court found the City proved its allegations by clear and convincing evidence. Thereafter, the court ordered defendant to pay various fines, fees, and costs, and it terminated her rights to the cats.

¶ 3 On appeal, defendant argues (1) the trial court's findings were not supported by the evidence and (2) no legal authority permitted the court to terminate her rights in the cats. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2015, the City filed a first amended complaint against defendant, alleging 32 counts of animal cruelty. For example, the City alleged defendant knowingly caused or permitted multiple cats to be kept in a manner that was unclean, unsanitary, and unhealthy. Further, the City alleged defendant knowingly caused or permitted multiple cats to be deprived of proper veterinary care or adequate sustenance. The City alleged defendant failed to have the cats vaccinated against rabies by a licensed veterinarian. The City also alleged defendant committed the offense of theft, claiming she knowingly obtained or exerted unauthorized control over "Jane," a feline belonging and registered to another person.

¶ 6 Also in October 2015, defendant filed a motion for the return of seized evidence, arguing eight cats were seized without due process. At the hearing on the motion, Michelle Carr, an animal control officer for the City, testified she received a report of felines in defendant's care that needed medical attention in late July and early August 2015. Carr obtained search warrants for two properties owned by defendant, including 1505 South Kinch Street and 2010 East Vermont Avenue. At 1505 South Kinch Street, Carr believed the City's cruelty to animal ordinance was being violated based on the unsanitary conditions. She stated she found newspapers on the floor soaked in urine and a litter box "caked with dried diarrhea and vomit." She observed dead and living insects throughout the home. She also saw bowls of curdled milk.

¶ 7 At the 2010 East Vermont Avenue residence, Carr believed the environment was unsanitary for cats. She observed newspaper on the floor "that the cats were using to go to the bathroom." Litter boxes did not have litter in them, and Carr observed urine, feces, and vomit on the floor. She also observed cat urine stains on the wall. In the entire house, Carr stated there was "an unbearable odor" of urine and a "very strong ammonia smell, and feces, and garbage." The refrigerator contained "old, rotting food," and it contained rust from "where the cats have

been urinating." Inside the freezer, Carr found a can of opened cat food that contained maggots. In an area near the kitchen, Carr found a green cushion "completely soaked in cat urine." A cat named Tweeter lived in a carrier that contained urine and feces.

¶ 8 Carr stated she seized eight cats and, for identification purposes, named them John, Jane, Tweeter, Rambo I, Duffy, Muffy, Rocky, and Rambo II. Carr testified regarding photos taken at the University of Illinois Veterinary Teaching Hospital. Carr stated Tweeter was "badly infested with fleas and he also had urine scalding from being left laying in his urine." Carr stated Tweeter was "very weak," "pretty much immobile," "very lethargic," and had to be euthanized.

¶ 9 Carr stated Muffy had hair loss on his back from a flea infestation. Every cat seized had a flea infestation, ear infections, and internal parasites. Duffy had an oral ulcer. Carr stated the cats were "obviously uncomfortable" and displaying aggression. She stated Tweeter, John, Rambo I, Rambo II, Muffy, and Jane were malnourished. The trial court denied the motion for the return of the cats.

¶ 10 In November 2015, the City filed a second amended complaint alleging 16 counts. The City alleged defendant knowingly caused or permitted the eight named cats to be kept in a manner that was unclean, unsanitary, and unhealthy. The City also alleged defendant knowingly caused or permitted the eight named cats to be deprived of proper veterinary care.

¶ 11 At defendant's bench trial, the parties stipulated that, if called, Carr would testify consistently with her previous testimony. Dr. Corinne Lawson, an emergency critical care resident at the University of Illinois Veterinary Teaching Hospital, testified as an expert in veterinary medicine. She evaluated eight cats taken from defendant's home in August 2015. She stated Tweeter arrived in a carrier, which was "quite filthy" and "had a very strong odor of

ammonia," and the cat had to be removed because he "didn't have the strength to rise himself." Dr. Lawson stated Tweeter had "a thick layer of urine" on him and "a diffuse flea dirt layer all over his body." Dr. Lawson stated Tweeter had been seen by a veterinarian within the previous three weeks due to seizure activity, which may have been caused by a toxic spray used by defendant. Muffy had "a large amount of debris and blood sort of crystallized" in his ear. Dr. Lawson stated Muffy had been diagnosed with a tumor in his right ear. Dr. Lawson found Rambo I to be "a severely thin animal," and he had a scab from scratching "excessively." John had "self-induced scabbing all around." Rambo II had a "cauliflower ear," where the ear swells and fills with blood due to trauma or infection. Jane also had a cauliflower ear, possibly caused by ear mites. Jane also showed evidence of flea barbering on the tail, where the hair was gnawed off. Duffy "had a pretty severe oral ulcer." All of the cats had tapeworms, roundworms, and ear mites. Based on a reasonable degree of professional certainty, Dr. Lawson opined the cats had not been receiving proper veterinary care.

¶ 12 Defense counsel called Carr to testify. She stated defendant had taken the cats to a veterinary facility, but "she generally refused treatment for them." Defendant told Carr she loved her cats and took very good care of them. On cross-examination, Carr stated defendant had taken the cats to the veterinarian on occasion but had a pattern of not following the treatment recommendations.

¶ 13 Defendant testified she lived at 1505 South Kinch Street and owned property at 2010 East Vermont Avenue. She stated she had canned cat food at both properties and she made sure the cats had plenty of water. She took the cats to the veterinarian, but she stated "they don't explain a lot of stuff." She never had the cats vaccinated because the veterinarians "never said anything about vaccinations." Other than Tweeter, defendant did not know there was anything

wrong with any of the cats or that they needed veterinary care prior to August 4, 2015. She also stated, in part, as follows:

"Every time I went to a doctor, a different doctor, they take another blood test, which they shouldn't do because they're taking more blood out of him. That's what's—that's what happened. I should've figured that one out myself, but that's all they wanted to do was take a blood test every damn time, and that's—that was bad—a bad thing to do."

¶ 14 Following closing arguments, the trial court found all 16 counts had been proved by clear and convincing evidence. The court stated, in part, as follows:

"The evidence most convincing first of all from Officer Carr describing the condition of the cats, and these are conditions that to anyone of common observation, because they've been able to see photographic evidence, here very detailed, sometimes graphic descriptions of the appearance of the cats, the odor of the cats, the perhaps dried urine, feces and other things encrusted upon the cats. And we have [defendant] who, as she says and all the testimony says, has daily observations of these cats, is in a position to observe these things, and doesn't take active steps to remedy those as I believe this ordinance makes her responsible to do. So she has knowledge, she has day-to-day observations of these cats and the condition that they're in, and I believe that that is a conscious awareness that she is causing them to be deprived of

proper veterinary care or placing—or she is causing them to be in unsanitary conditions.

Then even more convincingly is the testimony of Dr. Lawson, obviously the expert in the courtroom, the expert in veterinary medicine, and essentially describes a condition that with a reasonable degree of certainty could only have resulted from these cats not receiving proper veterinary care and being not in proper and sanitary conditions. That's what she observed, those are the conditions of the cats, and these are things that are observable not only to a vet but to someone who has day-to-day observation and experience with cats, as [defendant] does.

And really also with respect to conscious awareness, much of that is answered in [defendant's] own testimony. She has described cats, one, she described a cat that she thought may've had a stroke and couldn't walk, but she also described her interactions when at times she took various one or more—she didn't describe each veterinary experience but taking cats to the vets. What did she say? They always wanted to draw blood. It was the wrong thing. They always wanted to prescribe medicine, which perhaps didn't work. But particularly it's clear she didn't want the cats to be treated in the way that the vets were suggesting, and so she has an awareness of what's necessary for them. She declines, and I think it's consistent with the testimony that is

presented in part of Officer Carr's testimony, consistently declined suggestions of veterinarians for treatment. She may have, and in fact, I think it's true, she did disagree very much at times with how the vets wanted to treat the cats, but that's a conscious awareness of placing the cats in conditions that are (1), the evidence is really overwhelming that they were unsanitary, and (2), certainly convincing evidence that they were not being given proper veterinary care. So each of those have been proven by clear and convincing evidence."

¶ 15 In November 2015, the trial court held a dispositional hearing. The court terminated defendant's rights to the named cats. The court ordered that Muffy be euthanized. The court also ordered John, Rocky, Rambo I, and Rambo II be euthanized, if hospice care could not be found. The court prohibited defendant from owning any animals until further order of the court and not less than one year. The court ordered defendant to pay \$2,909.23 in medical costs, a \$175 impoundment fee, \$3,185 for boarding costs, and a \$400 fine. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 A. Sufficiency of the Evidence

¶ 18 Defendant argues the trial court's finding that she knowingly violated the animal cruelty ordinance was not supported by the evidence. We disagree.

¶ 19 Although a municipality's enforcement of an ordinance is quasi-criminal in nature, the case "is tried and reviewed as a civil proceeding." *Village of Plainfield v. American Cedar Designs, Inc.*, 316 Ill. App. 3d 130, 135, 775 N.E.2d 1002, 1007 (2000). A municipal ordinance violation must be proved by a clear preponderance of the evidence. *City of Peoria v.*

Heim, 229 Ill. App. 3d 1016, 1017, 594 N.E.2d 778, 780 (1992); see also Illinois Supreme Court Rule 578 (eff. Dec. 7, 2011) (stating "[t]he prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred").

¶ 20 "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12, 965 N.E.2d 393; see also *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1048, 710 N.E.2d 1242, 1248 (1999) (stating a trial court's factual determinations regarding an ordinance violation will be not reversed on appeal unless they are contrary to the manifest weight of the evidence). "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002). Where a question of law is involved, our review is *de novo*. *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 871, 906 N.E.2d 751, 781 (2009).

¶ 21 In the case *sub judice*, the City alleged defendant violated the ordinance relating to animal cruelty by *knowingly* (1) failing "to keep an animal in a clean, sanitary and healthy manner" and (2) depriving "the animal of proper veterinary care." City of Urbana Code of Ordinances § 4-6(a)(4), (5) (2007). Defendant argues she could only have acted knowingly if she was consciously aware the medical conditions and ailments of the cats were practically certain to be caused by her conduct. Section 4-5 of the Criminal Code of 2012 (720 ILCS 5/4-5 (West 2014)) defines "knowledge" as follows:

"A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

(b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his [or her] conduct."

"Knowledge may be inferred from the facts and the circumstances of the case." *People v. Strickland*, 342 Ill. App. 3d 566, 572, 795 N.E.2d 793, 798 (2003). Moreover, "defendants need not admit knowledge for the trier of fact to conclude that defendants acted knowingly." *People v. Melton*, 282 Ill. App. 3d 408, 417-18, 667 N.E.2d 1371, 1378 (1996).

¶ 22 Here, the City presented more than ample evidence that defendant committed the offense of animal cruelty. The evidence indicated defendant's houses were in unsanitary conditions. Carr testified the South Kinch Street residence had newspapers soaked in urine on the floor and bowls of curdled milk laying around. The East Vermont Avenue residence had feces and vomit on the floor. Urine soaked the walls, cushions, floors, and refrigerator. Rotting food was also found in the house. Carr stated the odor of urine was "unbearable," and the home had a "very strong ammonia smell, and feces, and garbage." Photo exhibits clearly show the filth

of the residence, including the accumulation of feces. These types of circumstances could not go unnoticed, and defendant made a conscious choice to house her cats in these deplorable conditions. No evidence indicated defendant lacked the mental capacity to appreciate her surroundings. The evidence also indicated defendant took the cats to the veterinarian and was told about the need to draw blood or prescribe medicine. Defendant, however, did not agree with the proposed treatments and left. Based on the testimony and the photographic evidence, the trier of fact could reasonably infer defendant knowingly failed to keep the cats in a clean, sanitary, and healthy manner, and she deprived them of proper veterinary care. Thus, we find the trial court's decision was not against the manifest weight of the evidence.

¶ 23 B. Termination of Defendant's Rights to the Cats

¶ 24 Defendant argues that, in the absence of a finding of a knowing violation of the animal cruelty ordinance, the trial court had no legal authority to terminate her rights to the cats. As we have found defendant knowingly violated the ordinance, we need not address this issue.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.