

IN THE COURT OF APPEALS OF IOWA

No. 8-225 / 07-0711
Filed May 14, 2008

BENTON COUNTY,
Plaintiff-Appellee,

vs.

PAUL UNDERWOOD,
Defendant-Appellant.

Appeal from the Iowa District Court for Benton County, Robert E. Sosalla,
Judge.

Paul Underwood appeals a district court order requiring him to reimburse
Benton County for the costs of maintaining livestock after Benton County seized
the livestock pursuant to Iowa Code section 717.2A (2007). **AFFIRMED.**

Philip A. Burian of Simmons Perrine PLC, Cedar Rapids, for appellant.

David C. Thompson, County Attorney, and Lisa M. Epp, Assistant County
Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Miller, JJ.

HUITINK, P.J.

Paul Underwood appeals a district court order requiring him to reimburse Benton County for the costs of maintaining his horses after Benton County seized the horses pursuant to Iowa Code section 717.2A (2007). We review for correction of errors at law. *Dubuque v. Fancher*, 590 N.W.2d 493, 495 (Iowa 1999).

I. Background Facts and Prior Proceedings

At the time pertinent to these proceedings, Underwood owned three male Belgian draft horses. The horses were boarded on property located in Garrison. Underwood did not reside at this location. On February 12, 2007, Underwood's son called the Benton County Sheriff's office and reported the three horses housed on the Garrison property were being neglected. He reported the horses were without water or feed.

That evening, a deputy went to the Garrison property. The deputy was only able to see two horses. One was inside a barn and the other was outside the barn. The only water available to the horses was frozen solid in plastic buckets. The deputy, with the aid of the Benton County Attorney, prepared an application for a search warrant. A judicial magistrate reviewed the application and issued a search warrant. On February 15, 2007, the deputy returned to the Garrison property accompanied by a veterinarian, the president of the Iowa Equine Rescue and Awareness League, and another deputy from the Benton County Sheriff's Department.

The group discovered three horses that were severely dehydrated and underweight. One of the horses was in obvious distress. None of the horses

had access to drinking water. The horses' hooves were neglected, and two of the horses' noses were injured from halters that had become embedded in their skin. The third horse's penis was extracted and apparently damaged by frostbite. One horse's leg was swollen and lame. Because there were no footprints in the snow surrounding the horse barn and the condition of the frozen water remained unchanged since his last visit, the deputy concluded that no one had been to the barn since he had investigated the complaint more than two days earlier.

Members of the group fed and watered the horses. In the meantime, the veterinarian prepared a handwritten report. On a body condition scale of one to ten, with one being the lowest possible score and five being the normal score, the veterinarian rated the horses as one, two and one-half, and three and one-half. The veterinarian's report stated the horses were neglected, severely underweight, and had untreated medical conditions. The report also recommended the horses be removed from the property. Once the deputy received this report, he began to make arrangements for someone to come and take the horses to an equine clinic for medical attention.

At the clinic, a separate veterinarian examined the horses and determined at least two of the horses had been neglected "for some time." The horses were left at the equine clinic for treatment. Despite the clinic's best efforts, one horse will likely need to have its penis amputated.

On February 27, the Benton County Attorney filed a petition pursuant to Iowa Code section 717.5 requesting the court set a hearing to determine whether the horses met the statutory criteria for "neglected livestock" and assess costs for maintenance of the animals. Underwood filed an answer raising three

“affirmative defenses.” He claimed (1) the matter was not commenced within ten days of the rescue as required by section 717B.5(3), (2) the notices required by section 717B.5(2) were not provided, and (3) he was not the sole owner of the horses and the ownership interest of Linda Underwood should be “recognized and protected.”

The matter proceeded to a trial to the court. The dominant issue at trial was whether the horses were actually neglected or abandoned. At the close of the State’s evidence, Underwood’s attorney made an oral motion to dismiss. He argued the horses were improperly taken because Underwood had not received notice prior to the removal and because the “law enforcement agency” did not determine the horses were abandoned prior to the removal. The district court denied the motion to dismiss.

On March 15 the district court entered a ruling finding the horses were neglected and properly rescued pursuant to section 717.2A. The court ordered the horses be sold or adopted to another party and that Underwood be responsible for \$4132.92 in fees for the care and maintenance of the horses, attorney fees, and investigative costs.

On appeal, Underwood does not contest the neglect finding. He only claims the district court erred by assessing him the costs of caring for the livestock because Benton County failed to comply with the statutory procedures for rescue of livestock found in section 717.2A. In support of this argument, he claims Benton County did not comply with the procedures required under section 717.2A(1)(c) because it did not provide him with notice prior to the removal and that public policy requires a reversal because “nothing was ‘on fire,’ no animal

was 'bleeding' in any sense, and there was no other reason that Benton County could not have paused, if only for a moment," to give him the opportunity to correct the concerns about the horses' welfare. He also claims, for the first time, that Benton County did not comply with the procedures required under section 717.2A(1)(c) because the "local authority" did not receive the required veterinarian written statement before the horses were seized and the "local authority" did not make the prerequisite findings regarding abandonment and permanent distress before the horses were seized.

II. Merits

Section 717.5(3) states the district court may order a person to pay reasonable attorney fees and expenses related to the investigation of a neglected livestock case and the expenses incurred in maintaining the rescued livestock so long as the livestock were rescued pursuant to section 717.2A. Sections 717.2A(1)(c)(1)-(3) set forth three alternate provisions under which law enforcement officers may rescue neglected livestock. In the present case, the district court concluded it could assess costs because the deputy properly rescued the horses under the third provision, section 717.2A(1)(c)(3). This section states:

Regardless of whether a criminal proceeding has commenced, the local authority may immediately rescue livestock without providing notice as otherwise required in this section. However, the local authority must receive a written statement from a veterinarian licensed pursuant to chapter 169, providing that in the veterinarian's opinion, the livestock is neglected. In order to rescue the livestock, the local authority must determine that the livestock has been abandoned or that no person is able or willing to care for the livestock, and the livestock is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

Iowa Code § 717.2A(1)(c)(3).

On appeal, Underwood argues that the court improperly assessed him the aforementioned expenses because he was not given notice of the section 717.2A proceedings prior to the time the horses were rescued. Because section 717.2A(1)(c)(3) expressly provides the rescue may be effectuated “without providing notice as otherwise required in this section,” we find this argument meritless. Likewise, we reject Underwood’s claim that public policy requires a reversal. The evidence indicates Underwood neglected these horses to such an extent that a veterinarian feared their severe hunger and dehydration, when combined with their unattended medical needs, placed them at risk to die in one-half day to two days if they were not provided with water. The deputy properly followed the veterinarian’s advice and transported the horses to a clinic for immediate medical attention.¹

Underwood’s remaining arguments focus on his newfound claim that the deputy who received the veterinarian’s written statement, determined the horses were neglected, and actually rescued the horses, did not constitute the “local authority” identified in section 717.2A(1)(c)(3). Underwood claims he should not be required to pay the aforementioned fees because the Benton County Attorney, not the deputy, was the local authority who should have received the veterinarian’s written report and determined whether to rescue the horses.

Underwood never raised the “local authority” issue before the district court, and the district court did not address this issue in its ruling. Our error

¹ We adopt the district court’s conclusion that the horses were distressed pursuant to section 717.2A(1)(c)(3) as our own.

preservation rule “requires that issues must be presented to and passed upon by the district court before they can be raised and decided on appeal.” *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995). Because Underwood did not raise this issue before the district court, we will not consider it now, for the first time, on appeal.

III. Conclusion

Having considered all issues raised on appeal, whether or not specifically addressed in this opinion, we affirm the decision of the district court.

AFFIRMED.