

**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**CIV-2016-054-000477
[2017] NZDC 16299**

BETWEEN

CASEY HELEN MARGARET BOYCE,
INSPECTOR, ROYAL NZ SOCIETY
FOR THE PREVENTION OF CRUELTY
TO ANIMALS

Applicant

AND

PADDY GEM MOUAT

Respondent

Hearing: 26 April 2017

Appearances: Mr K T van der Plas for the Applicant
No appearance for the Respondent

Judgment: 10 August 2017

RESERVED DECISION OF JUDGE L C ROWE

[1] The SPCA alleges that Paddy Mouat is a hoarder of animals, suffers ill health, and that these factors together led to a crisis point in 2016 when animals in Mrs Mouat's care were found to be in poor health, malnourished or living in unhygienic conditions.

[2] The SPCA took possession of Mrs Mouat's 46 animals on 18 and 19 May 2016. Some animals were humanely disposed of or sent for slaughter with Mrs Mouat's agreement. The remainder were re-homed or disposed of with Mrs Mouat's agreement after the SPCA filed an application for an order to dispose of the animals.¹

¹ Under s 136A of the Animal Welfare Act 1999

[3] The SPCA elected not to prosecute Mrs Mouat for offences against the Animal Welfare Act 1999 given her age and ill health. This was a compassionate and commendable decision on the part of the SPCA.

[4] The SPCA however brings an application for an enforcement order under s 143 of the Act to prevent similar animal welfare issues arising in the future.

Course of proceedings

[5] The application for an enforcement order was filed with the Palmerston North District Court on 23 November 2016. Amongst other things, it sought to restrict Mrs Mouat to ownership of one cat, which could not be replaced once it died or was disposed of, and sought a power of warrantless entry into Mrs Mouat's home by SPCA inspectors.

[6] This matter was first called before me on 1 December and Mrs Mouat appeared in person to vigorously oppose the application. I asked that the SPCA review the terms of the proposed enforcement order to ensure they could be lawfully imposed.

[7] The matter was recalled on 20 December where Mrs Mouat again appeared in person to vehemently oppose the application. The SPCA sought more time to review the application and the case was further adjourned over Mrs Mouat's objection.

[8] The matter was recalled on 31 January where the SPCA sought leave to proceed on an amended application seeking, amongst other things, to restrict Mrs Mouat's ownership of cats to three at any one time. The SPCA no longer sought a condition allowing warrantless entry to Mrs Mouat's home².

[9] Mrs Mouat again appeared in person and in vehement opposition.

[10] I granted the SPCA leave to file the amended application and made a direction for Mrs Mouat to file and serve a notice of opposition and any affidavits in response

² The Act contains powers of warrantless entry to premises other than dwellings or marae in any event under s127 and, in relation to compliance with enforcement orders, with the District Court's permission, under s145, and for dwellings and marae, by search warrant under s 131.

by 14 March with the matter to be allocated a telephone conference after that date at a time to be arranged by the Registrar. Mrs Mouat was advised to see a lawyer to assist her and, if she could not afford legal advice, to apply for legal aid or consult with the Community Law Centre. The Registrar sent notice of the telephone conference date to the parties on 1 February.

[11] Mrs Mouat did not file a notice of opposition or evidence as directed. Mrs Mouat filed an application in April for adjournment of the teleconference stating that she had a funeral to attend on the same day. The application was accompanied by a medical certificate to the effect that Mrs Mouat had been examined on 11 April 2017, had been “medically unwell” and would benefit from an extension of the upcoming court case.

[12] Mrs Mouat did not attend the teleconference on 26 April and could not be reached on the telephone number she had given to the Court.

[13] There being no explanation from Mrs Mouat for not complying with the timetable directions, I ordered that the application could proceed on an unopposed basis and allowed the SPCA to file further submissions or materials regarding the lawfulness of various restrictions sought by them by the 19 May. Submissions were filed on behalf of the SPCA in accordance with this direction.

[14] The Court received a letter from Mrs Mouat on 22 May explaining that she had been unwell, she had letters from various persons whom she wished to call as witnesses and she sought permission to file a notice of opposition.

[15] This proceeding is by way of originating application. The rules concerning interlocutory applications apply, including the requirements to file a notice of opposition and affidavits in opposition.³ As Mrs Mouat has not filed a notice of opposition, the question arises as to whether she should be given leave to do so.

[16] The granting of leave is a matter of discretion having regard to the justice of the case including:

³ District Court Rules 2014, Rule 20.17(f) and (g)

- (a) The extent of any delay in compliance.
- (b) The reasons for any noncompliance.
- (c) Whether there is an arguable defence available to Mrs Mouat.⁴

[17] The usual time for filing a notice of opposition and evidence is 10 working days after service of an interlocutory application.⁵ In this case, as Mrs Mouat represented herself, this was extended from the date on which the amended application was filed to almost seven weeks. Even then, Mrs Mouat had already had notice of the types of orders being sought by the SPCA, and the nature of the evidence in support, for over two months. Mrs Mouat had ample time from 23 November to 19 March to take advice, compile evidence and prepare and file a notice of opposition.

[18] While I accept Mrs Mouat periodically suffers ill health, she has given no reasonable explanation for not complying with the Court's timetable given the extended period of time allowed for her to do so. A letter sent to the Court almost a month after the proposed teleconference date, and more than two months after the date by which a notice of opposition was supposed to be filed, is not reasonable compliance.

[19] Mrs Mouat states in her letter that the SPCA told her that if she surrendered her animals they would "carry things no further". The SPCA had filed the application to dispose of the animals under s 136A. That application was withdrawn when Mrs Mouat agreed to surrender her animals. The SPCA decided to not prosecute Mrs Mouat. It is likely Mrs Mouat was told the SPCA would not prosecute her if she surrendered her animals. It is highly unlikely the SPCA would have given any assurance it would not seek an enforcement order in all of the circumstances.

[20] Even if the SPCA had suggested it would not bring further applications, this would not prevent the SPCA from reviewing matters and filing an application for an

⁴ Similar principles apply to a range of circumstances where there has been noncompliance with the rules of Court or with directions eg *Auckland City Council v Centro Construction Ltd*, HC Auckland CIV 2008-404-007696, 25/3/09 at [17] – [20]

⁵ Rule 7.17

enforcement order if the purposes of the Animal Welfare Act required it, unless there was an abuse of the Court's process. Mrs Mouat's assertions fall well short of showing that the Court's processes are abused by the SPCA bringing this application.

[21] Mrs Mouat raises concerns about the entry of her property and seizure of her animals in May while she was hospitalised. SPCA inspectors have powers to enter land, premises, including with police constables (as occurred here), seize animals found to be at risk of harm and to take photographs⁶. The evidence filed by the SPCA demonstrates that the SPCA carefully complied with all relevant requirements in relation to the entry of Mrs Mouat's property on various occasions throughout 2016, left the required notices and appropriately seized Mrs Mouat's animals when required to do so.

[22] Mrs Mouat's 22 May letter does not disclose an arguable defence to the SPCA's application.

[23] I accordingly decline Mrs Mouat's request to file a notice of opposition and proceed on the basis that the application is unopposed. This of course does not mean the application must wholly succeed if the basis for granting all or part of the order sought is not made out.

What are the parameters of an enforcement order?

[24] The SPCA seeks an enforcement order in the following terms:

- (a) Mrs Mouat may not own or exercise authority over more than three cats at any one time.
- (b) All cats owned by Mrs Mouat, or over which she exercises authority, are to be desexed and micro-chipped prior to being taken into Mrs Mouat's care.

⁶ See n 2

- (c) These cats must have access to the outdoors at all times unless instructed to the contrary by a veterinarian for health reasons.
- (d) These cats must have constant access to palatable water.
- (e) These cats must be fed an appropriate and sufficient diet for their species, namely a specific food which indicates that it is formulated to be consumed by cats, either in biscuit or wet form (meat).
- (f) These cats must remain in good health and, if at any time are observed to be showing:
 - (i) Signs of significant acute pain, suffering and distress; or
 - (ii) Signs of chronic pain, suffering or distress; or
 - (iii) Signs of rapidly deteriorating health; or
 - (iv) Serious injurythen immediate attention from a veterinarian or appropriately trained animal health practitioner must be sought.
- (g) If Mrs Mouat becomes unable to care, or fails to care, or chooses not to care for any of these cats, she must either sell or dispose of the cats.

[25] The Court's power to grant an enforcement order in these (or any) terms are governed by ss 143(1) and 144 of the Act which relevantly provide:

143 Application for enforcement order

- (1) An inspector may apply to the District Court for an enforcement order requiring any person to comply with the provisions of—
 - (a) this Act; or

(b) any regulations made under this Act; ...

144 Power to make enforcement order

The District Court may make an enforcement order on an application under section 143 only if the District Court is satisfied that the person in respect of whom the order is sought has been acting in contravention of the provisions of this Act or of any regulations made under this Act ...

[26] S 144 is a “gateway” provision in that the Court is only permitted to make an enforcement order when contravention of the Act or Regulations is established. The only explicit guide in the Act as to the content of an enforcement order is s 143 in that an inspector is restricted to applying for an order “requiring any person to comply with the **provisions** of” the Act or Regulations.

[27] The SPCA contends that the Court’s power to grant an enforcement order is broad and non prescriptive, providing a flexible and expedient mechanism to allow for the many and varied circumstances of non compliance. It is submitted the power accordingly does not expressly consider or prescribe any limitation on granting the conditions sought. I do not accept the Court’s power is as unfettered as this.

[28] A person subject to an enforcement order is required to comply with its terms. Failure to comply may allow entry to the respondent’s land or house without a warrant, seizure and sale of animals and prosecution for contravention of the enforcement order for which the maximum penalty is six months imprisonment.⁷

[29] Given the potential consequences of breach of an enforcement order, a Court must clearly identify the parameters of the enforcement order having regard to what is permitted by ss 143 and 144 of the Act.

[30] I accept counsel’s submission that ss 143 and 144 are a codification of the type of injunction granted in *Attorney-General v Pickering*⁸ where Doogue J held that the Court had jurisdiction to grant injunctions to restrain breaches of the criminal law (in

⁷ Sections 145 and 152

⁸ *Attorney-General v Pickering*, HC Hamilton, CP 24/98, 6/7/98, Doogue J

that case a breach of the Animals Protection (Code of Ethical Conduct) Regulations 1987) notwithstanding that criminal remedies were both available and unexhausted. His honour held, however, that the remedy would only be granted in circumstances where:

- (a) The criminal penalty provided is not effective or wholly ineffective in the circumstances to deter the unlawful conduct of the party whom it is sought to restrain; or
- (b) The party whom it is sought to restrain has evidenced a clear and unequivocal intention to continue to flout the criminal law; or
- (c) Unless the party in breach of the criminal law is stopped, there is a significant risk that widespread breaches of the law will be encouraged by others.⁹

[31] It follows from s 144 and *Pickering* that there must be a reasonable nexus between the terms of an enforcement order and the nature or context of the breach or breaches of the Act or regulations.

[32] Section 143 then requires the Court to identify the provisions of the Act or Regulations the respondent ought to be required to comply with having regard to the nature or context of the breach.

[33] In *Pickering* this was straightforward. The respondent was selling unlicensed animal remedies in breach of express regulations that prohibited this, and he appeared determined to continue to do so despite having been prosecuted and the prospect of further prosecution. The injunctive restraint was therefore that he was not permitted to sell or supply unlicensed animal remedies.

[34] The issue in this case however is whether the Court can impose requirements in an enforcement order that are not **provisions** of either the Act or regulations. This

⁹ At pp 6 and 7

issue particularly arises in relation to the proposed condition restricting the number of cats Mrs Mouat may own.

[35] There is no restriction in the Act on the number of cats a person may own or have in their care unless they are convicted of an offence under the Act and the Court makes a disqualification order.¹⁰

[36] The relevant regulations are the Animal Welfare (Companion Cats) Code of Welfare 2007.¹¹ The Code was established by the National Animal Welfare Advisory Committee and contains a set of minimum standards, which are the minimum necessary to ensure the purposes of the Act are met.¹² It also contains best practice recommendations which are described in the Code as:

... the best practice agreed at a particular time, following consideration of scientific information, accumulated experience and public submissions on the Code.

and that recommendations for best practice:

... will be particularly appropriate where it is desirable to promote or encourage better care for animals than is provided as a minimum standard.

[37] There is no restriction in the Code, either as a minimum standard or recommended best practice, of the number of cats a person may own or care for.

[38] A supplementary issue is whether recommendations of best practice are **provisions** in terms of s 143 that a person can be ordered to comply with in an enforcement order. This issue arises in relation to the proposed condition requiring Mrs Mouat to de-sex and microchip her cats. Neither is provided for in the Act or as a minimum standard in the Code. They are however recommended best practice in the Code.

¹⁰ Section 169

¹¹ The Code of Welfare is a regulation by virtue of s 79 of the Act and s 29(e) of the Interpretation Act 1999.

¹² Section 73(1)(a)

These issues are discussed below in relation to the specific conditions sought. Before doing so I need to be satisfied that the s 144 gate is open to allow an enforcement order at all.

Is the s144 gate open? Did Mrs Mouat contravene the Act or the Code?

[39] The evidence filed in support of the application is to the effect that, since 2011, SPCA has attended at least 13 animal welfare complaints for a range of reasons, and in relation to a variety of animals, belonging to Mrs Mouat.

[40] Complaints have included stock without sufficient access to water or shelter, ponies and donkeys with overgrown hooves, goats with foot rot and overgrown nails, over-fleeced sheep with recurring problems of fly strike, and illness in cats and kittens being bred at Mrs Mouat's property.

[41] In February 2016, SPCA inspectors again attended Mrs Mouat's property due to an animal welfare complaint. They found ponies and donkeys with severely overgrown feet to the point this affected their gait, and without sufficient water supply. Nine sheep were located that were in need of being shorn and one was in immediate need of fly strike treatment.

[42] Mrs Mouat did not respond to notices left at her property and SPCA returned with a farrier and a shearer to remedy the issues that had been found. When this occurred four out of the nine sheep required treatment for fly strike and, in addition to farrier work, six ponies required dental work.

[43] Mrs Mouat was spoken to in February and March 2016 where she indicated she had been in poor health, her financial situation had deteriorated and she had been unable to attend to her animals' needs. She objected to some of the proposed veterinary work but the SPCA and the vet engaged by them proceeded anyway as the vet considered it necessary to alleviate the animals' pain and distress.

[44] In May 2016, the SPCA received a complaint about Mrs Mouat's care of cats on her property. When the SPCA attended, nine Siamese cats were found in outdoor cages. The cages had not been cleaned and contained excessive faeces, inadequate water and, where there was water, it was contaminated with faeces and algae. The cats were in poor body condition. When one of the cats was required to be euthanized to end its suffering, it was found at autopsy to contain feline infectious peritonitis which is highly contagious amongst cats in crowded or unhygienic conditions.

[45] The SPCA also found ponies that required urgent pain relief and attendance by a farrier to overcome laminitis, plus five cattle in a paddock that had insufficient food and were in light body condition.

[46] Mrs Mouat was then in hospital and a family member was unable to care for the animals. It was at this point the SPCA took possession of the 46 animals belonging to Mrs Mouat.

[47] Mrs Mouat was released from hospital in August 2016 and agreed that the cattle seized by the SPCA could be sent to slaughter. The SPCA applied for an order to dispose of the remainder of the animals under s 136A of the Animal Welfare Act but that application was withdrawn when Mrs Mouat, after initial opposition, signed possession of the animals over to the SPCA.

[48] It is clear that throughout 2016, Mrs Mouat contravened ss 10 and 11 of the Animal Welfare Act in that she, being the owner of various types of animals, failed to ensure their physical, health and behavioural needs were met in accordance with good practice, and failed to ensure that her animals received treatment to alleviate unreasonable or unnecessary pain or distress.

[49] The Code was also substantially breached in that the cats kept by Mrs Mouat were not housed or cared for in a way to maintain healthy or acceptable body condition,¹³ did not have continuous access to palatable water,¹⁴ were not properly

¹³ Minimum Standard No 2

¹⁴ Minimum Standard No 3

housed in that they did not have appropriate areas for toileting,¹⁵ hygiene standards were inadequate¹⁶ and were not properly treated for signs of ill health.¹⁷

[50] The gate is open; I have the ability to make an enforcement order in terms of s 144 of the Act.

Can the enforcement order restrict the number of cats?

[51] The evidence clearly establishes that Mrs Mouat is a hoarder. Her property was found by SPCA inspectors to contain old cars full of items, caravans, farm gates, pot plants and household possessions stacked throughout her house. Mrs Mouat appeared equally to be a hoarder of animals.

[52] There is a logical connection between the large number of animals, and cats, owned by Mrs Mouat, and her inability to care for them leading to their poor health and condition in breach of the Act and Code.

[53] Despite the fact neither the Act nor the Code provides any restriction, guidance or recommendation as to the number of animals or cats a person may own except following prosecution, Mr Van der Plas for the SPCA submits the Court may nevertheless impose such a restriction in an enforcement order on the grounds that:

- (a) The Court's discretion as to the terms of an enforcement order is broad enough to address emerging societal issues of non-compliance such as animal hoarding.
- (b) The Court is not restricted to disqualification following prosecution in the same way Doogue J in *Pickering* was not prevented from issuing an injunction when prosecution remedies were available or unexhausted.
- (c) Such a restriction is consistent with the protective purpose of the Act in relation to the care of animals namely to ensure that owners of animals

¹⁵ Minimum standard No 4

¹⁶ Minimum Standard No 5

¹⁷ Minimum Standard No 7

and persons in charge of animals attend properly to the welfare of those animals.¹⁸ It is also consistent with the requirements of the Act and of the Code that animals owned by, or in the care of, a person must be looked after and treated in accordance with their needs, good practice and in a way that alleviates unreasonable or unnecessary pain or distress.

[54] In response to the first submission, it is not for the Court to frame orders as a development of social policy where that is not permitted by the Act. In the words of Chief Justice Spigelman of the NSW Supreme Court “It is not part of the function of any judge to amend legislation. The task of the Courts is to determine what Parliament meant by the words it used.”¹⁹ If animal hoarding is an emerging concern, the policy imperative to address this properly lies with Parliament or the National Animal Welfare Advisory Committee who are responsible for the review of the relevant animal codes of welfare. For reasons I will come to in relation to the proposed de-sexing or microchipping conditions, recommended best practice as to the maximum number of cats a person should own would probably be sufficient for enforcement order purposes.

[55] In response to the second submission, the injunction in *Pickering* restrained an activity that was itself an offence. Doogue J identified the Court’s jurisdiction as being “to restrain breaches of the criminal law”.²⁰ In this case, it is not an offence under the Act or Code to own more than a specified number of cats. A restraint on the number of cats goes further than to restrain a breach of the criminal law. *Pickering* is therefore not directly applicable.

[56] In making the third submission, Mr Van der Plas relies upon s 5(1) of the Interpretation Act 1999 which provides that “the meaning of an enactment must be ascertained from its text and **in light of its purpose.**”

[57] I am also aware there are cases where enforcement orders have been made restricting the number of animals a person may own.²¹ These cases however concern

¹⁸ Section 9(1)

¹⁹ Burrows and Carter, *Statute Law in New Zealand*, 5th ed at p313

²⁰ *Pickering* at p6

²¹ *Ministry of Agriculture and Forestry v Madden*, District Court Palmerston North, CIV-2010-054-

different animals for which different codes of welfare apply, and in some instances have been made by consent.

[58] The purposive approach advocated by Mr Van der Plas is consistent with the modern approach to statutory interpretation now favoured by the courts.²² It is said that “the courts’ avowed task is to cooperate with rather than frustrate the will of Parliament” consistent with democratic theory.²³ It may also be consistent with the “limited interstitial legislative authority [allowed to courts] as interpreter of the expressed will of Parliament” previously identified by Baragwanath J.²⁴

[59] In this case there is a very strong nexus between the breaches of the Act and Code and the number of animals Mrs Mouat had in her care. In a nutshell, she had more animals, and more cats, than she could cope with. In context, it would frustrate the purpose of the Act to not restrict the number of cats Mrs Mouat may own or have the care of at any one time by way of an enforcement order.

[60] It could be argued that, by providing a power of disqualification upon conviction, Parliament, in that way, established a mechanism of limiting animal ownership to meet its purpose of protecting animals from harm at the hands of persons who had breached the Act. There may however be very good, and in this case compassionate, grounds for preferring an enforcement order process over prosecution. I do not consider Parliament intended to require the SPCA to prosecute people such as Mrs Mouat as the sole means of achieving the purposes of animal protection in circumstances such as this.

[61] Mr Van der Plas’ purposive argument wins the day. Mrs Mouat will be limited to three cats at any one time.

000402, 30 November 2010; *Bay of Islands RSPCA v Albert*, District Court Kaikohe, NP 12/02, 10 December 2002 and *SPCA Canterbury v Fairbrother*, District Court Christchurch, CRI-2014-009-000667, 10 April 2014

²² Burrows and Carter, n 19 at pp 223 to 249

²³ Ibid at p237, referring to Sir Kenneth Keith’s Essay, *Interpreting Treaties, Statutes and Contracts*, OP No 19, NZ Centre for Public Law, 2009

²⁴ *Progressive Meats v Ministry of Health* (2006) 7 NZELC 98,487 at [30], see Burrows and Carter, n 19 at p 313

Can the enforcement order require that cats be desexed or microchipped?

[62] As noted, the Act contains no requirement that cats be desexed or microchipped and neither do the minimum standards in the Code.

[63] The Code however recommends as best practice that cats, other than those kept by a registered breeder for breeding purposes, should be desexed at or before puberty²⁵ and that cats should be identified with a microchip.²⁶

[64] In terms of s 143 of the Act, I consider that an enforcement order requiring any person to comply with the provisions of regulations under the Act includes, in context, a requirement to comply with recommended best practice in the Code where there is a reasonable nexus between the recommended best practice and the identified breach or breaches of the Act or regulations.

[65] Male and female cats were housed together in the cages found at Mrs Mouat's property. The veterinary evidence is that the cats' already poor body condition would have been considerably worsened if they had bred. Further, the care requirements for queens and kittens specified as both best practice and minimum standards in the Code²⁷ would, on the evidence, be beyond Mrs Mouat's ability to meet. Mrs Mouat was unable to meet the health and welfare needs of nine adult cats, and has previously been the subject of complaints in relation to her care of kittens.

[66] Desexing of cats in Mrs Mouat's care would also be consistent with the restriction on the number of cats I have held ought to be imposed.

[67] Microchipping has no direct connection to the health or welfare of domestic cats. It is concerned with their identification. In this case however identifying which cats belong to Mrs Mouat will allow monitoring of her compliance with the enforcement order. In that way it is also related to the future care and welfare of any cats she might take into her care.

²⁵ At clause 6.1

²⁶ At clause 9

²⁷ At clauses 6.2-6.4

[68] I accordingly find that an enforcement order may require a person to desex and microchip domestic cats and, in this case, such requirements are warranted.

Other conditions of the enforcement order

[69] The balance of the enforcement order terms sought by the SPCA are directly required by either ss 10 or 11 of the Act or by minimum standards of the Code.

[70] There is also a clear nexus between the proposed conditions and the breaches of the Act which gave rise to this application.

Outcome

[71] I accordingly make an enforcement order in the terms applied for as set out at paragraphs [24] (a) to (g) inclusive of this judgment.

L C Rowe
District Court Judge