

STATE OF MAINE
ANDROSCOGGIN, ss.

DISTRICT COURT
LOCATION: LEWISTON
Docket No.: CV-19-448

STATE OF MAINE,
ANIMAL WELFARE PROGRAM,

v.

KATHLEEN O'CONNELL,

DEFENDANT.

**ORDER REGARDING
POSSESSION OF ANIMALS
UNDER 17 M.R.S. § 1021 (3)
AFTER SHOW CAUSE
HEARING**

The State of Maine, Animal Welfare Program (“the State”) seized 82 cats from Kathleen O’Connell (“the owner”) on November 5, 2019. The show-cause hearing set for November 19, 2019, was continued by agreement to January 30, 2020. The show-cause hearing was further continued on Defendant’s motion to February 27, 2020, when the presentation of evidence commenced. The parties agreed that additional hearing time was required, but trial time was in very short supply within the region. The pandemic curtailment of trials ensued. The show-cause hearing was finally scheduled and completed on June 15 and 16, 2020. The evidence was fully presented and considered.

The Court regrets the length of time the Court held the case under advisement. The evidence was voluminous and challenging, and the subject matter falls lower in priority than cases involving children.

The Court heard testimony from:

- Kathleen O'Connell, the owner
- Dr. Ezra Steinberg, Maine Veterinary Medical Center
- Angela Rogers, District Humane Agent; State of Maine, Animal Welfare Program
- Dr. Rachael Fiske, Assistant State Veterinarian, Maine Department of Agriculture, Conservation, and Forestry
- Dr. Stephanie Robataille, DVM, Lisbon Road Animal Hospital
- Heidi Jordan, Jordan Farm Livestock Rescue
- Dr. Andrine Belliveau, formerly of Animal Emergency Clinic of Mid-Maine

The Court admitted and considered scores of exhibits.

The Court finds and orders as follows:

1. Under Title 17 M.R.S. § 1021 (3), the burden is on the owner to show cause why the animal[s] should not be seized permanently or disposed of humanely.

2. If it appears that the animal[s] ha[ve] been abandoned or cruelly treated by [their] owner or the animal[s] [are] maimed, disabled, diseased, dehydrated, malnourished or injured, the court shall:
 - A. Declare the animal[s] forfeited and direct the applicant or other suitable person to take possession of and provide for the animal[s], or order [their] sale, adoption or placement;
 - B. Order the animal[s] to be disposed of humanely if a veterinarian determines that, given reasonable time and care, the animals['] recovery is doubtful or that the animal[s] [are] diseased or disabled beyond recovery; or
 - C. If appropriate, allow the animal[s] to be returned to [their] owner.

17 M.R.S. § 1021 (3). (2020)

3. Under Title 17 M.R.S. §1021 (6) provides for a lien for expenses “reasonably incident to taking an animal into custody” against the owner unless a complaint is dismissed for lack of merit. Here, the State seeks a lien for \$178,629.80 as of the end of trial.
4. Title 17 M.R.S. §1021 (5-B) imposes a temporary possession ban on an owner of an animal seized under Section 1021, prohibiting possession of any animal after seizure and before a hearing. Violation of the ban is a civil violation with a maximum \$200 fine each day.

5. Kathleen O'Connell, the owner, lives in Wales, Maine, in a large farmhouse with multiple barns on a 500-acre farm. She has always had cats on the farm. She lives with her elderly father, who suffers from dementia. She considered herself a farmer for 20 years, working with dairy cows, draft horses, and sheep. She once worked at The Animal Center in Turner. She prefers natural or home remedies to treat illness and infestation. For example, she prefers plant-based treatments for feline upper respiratory infections and mineral oil for ear mites.
6. On July 31, 2019, the State's District Humane Agent served the owner with a form notice to comply. The notice required the owner to have one cat, Harriet, seen by a veterinarian within 48 hours for an apparent upper respiratory infection. It also required the owner to have all cats vaccinated for rabies within seven days. The agent wrote on the notice, "I have visualized and heard at least of 21+ cats. Cats must be vaccinated within 7 days. I can help with spay and neutering if we can get down to a manageable amount." Preprinted on the notice is the text: "Failure to do so may result in impoundment of the specified animal(s)."
7. On August 1, 2019, the owner brought Harriet to the Animal Emergency Clinic of Mid-Maine for treatment by Dr. Belliveau. Dr. Belliveau

examined Harriet and administered or prescribed clavamox, MilbeMite, and Terramycin for upper respiratory infection and ear mites.

8. On November 5, 2019, the State obtained a warrant, entered the owner's property, and seized 82 cats. At least 44 cats were left at the owner's farm on November 5. No particular differences in health or living conditions distinguish the cats that were seized from the cats that were left behind. The State's agents simply could not catch the cats they left behind in the several hours they were at the owner's residence. The State's agents apparently did not return to the owner's farm on a different day to capture or even check on the cats they left behind.
9. The cats had adequate food and water. The water and food bowls were adequately clean.
10. In the areas the owner was aware the cats were living, the living conditions were humanely clean for animals under Maine law. Maine law does not require that animals live in sanitary conditions, it applies the same standards for living conditions for all animals, and it does not distinguish between animals that live in a human home and those that live in other structures.
11. The State's agents testified about smelling ammonia on November 5, 2019, and Dr. Fiske used a device made by Sensidyne that measures

ammonia levels through colorimetric analysis. Dr. Fiske testified that both the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) publish standards for threshold ammonia levels above which humans should not be exposed for eight-hour days. The NIOSH standard is 25 parts per million (ppm) and the OSHA standard is 40 ppm. Dr. Fiske obtained two colorimetric readings in different areas of the owner's home. The readings were eight and ten ppm.

12. The evidence that has given the Court the most pause and concern is regarding the medical condition and treatment for the cats upon their removal from the owner's farm. The photographs of the cats show many with significant discharge from the nose and eyes, indicating upper respiratory infection. Many had ear mites. Some had skin conditions that looked irritating. Some had injuries. (There is no evidence whatsoever that the owner caused the injuries.)

13. Maine law allows owners of animals broad discretion on whether and how to treat animal medical conditions.

14. The State has placed most of the cats at Jordan Farm Livestock Rescue where they receive State-approved care. Heidi Jordan estimated that the cats receive about 105 hours per week of cleaning, care, and attention

from staff and volunteers at Jordan Farm. The cats are treated with modern veterinary medicine as necessary. The care provided for the cats at Jordan Farm is more than adequate under the law. Still, the cats' quarters smell of ammonia, and the cats get upper respiratory infections.

15. The Court finds that the owner has shown cause why the cats should not be seized permanently, as follows:

- a. Other than the failure to vaccinate many of the cats for rabies, the owner has not violated the permissible standards of care for the cats.
- b. The State's action and inaction has forced the owner to literally bet the farm on her defense.
 - i. As to the State's action in seizing the cats, a judgment other than dismissal for lack of merit exposes the owner to a lien for the cost of care. The sum sought by the State is unfair, in the Court's view.
 - ii. As to the State's inaction in failing to seize or make other provision for the remaining cats, it significantly undermines the State's position that the owner was mistreating or depriving the cats of necessary care and treatment, and it unfairly exposes the owner to additional civil penalties.

16. The cats shall be returned to their owner as soon as it can reasonably be arranged, consistent with the health and safety of the cats.

17. The State's case regarding these cats is dismissed for lack of merit.

The docket entry shall be: "Case dismissed for lack of merit. Animals to be returned to owner."

September 25, 2020



Charles A. Dow, Judge
Maine District Court

JUDGMENT ENTERED:

9/28/20