

# **Spencer v. Placer County Animal Control**

**California Court of Appeal  
UNPUBLISHED, 2003 WL 1562600  
March 27, 2003**

## **Summary of Opinion**

Defendant animal control authority seized 28 of plaintiff Spencer's horses because they were malnourished. In a post-seizure administrative hearing, the judge upheld the seizure and refused to return the horses to plaintiff, a decision that was upheld by a trial judge. In this opinion, the Court of Appeals rejects the argument that the statute under which the seizures were made is unconstitutional because it places the burden on the horse owner to prove the seizures were valid. The statute places that burden on the seizing authority. Also, the evidence of malnourishment fully supported the action seizing the horses.

## **Text of Opinion**

This matter involves the seizure and retention, under Penal Code section 597.1 (section 597.1), of 28 malnourished horses used in a riding and training business. The owner of the horses, appellant Judi Spencer (Spencer), appeals from a judgment denying her petition for writ of administrative mandate. (Code Civ. Proc., § 1094.5.) The trial court, employing its independent judgment, agreed with the administrative hearing officer's decision. In line with section 597.1's requirements, the trial court and the administrative hearing officer found that respondents Placer County Animal Control and its chief (Placer) properly seized the horses based on a reasonable belief that very prompt action was required to protect the horses' health or safety, and that Spencer had not demonstrated that she could and would provide the necessary care for the horses. (§ 597.1, subds.(a), (f), (f)(4).)

On appeal, Spencer claims that section 597.1 is unconstitutional on its face and as applied in failing to place the burden on Placer to justify its seizure and retention of the horses. Spencer also claims the evidence is insufficient to support the findings noted above. We disagree with Spencer's claims and affirm the judgment. We will detail the facts in discussing the evidentiary sufficiency issues.

### **DISCUSSION**

1.

Taking a page from this court's decision in *Menefee & Son v. Department of Food & Agriculture* (1988) 199 Cal.App.3d 774 (Menefee), Spencer claims that section 597.1 is unconstitutional on its face because it fails to explicitly require the seizing agency to bear the burden of proof on all issues regarding immediate seizures. We disagree.

As pertinent, section 597.1 provides:

"(a) Every owner, driver, or keeper of any animal who permits the animal to be ... without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of

others, the officer shall immediately seize the animal and comply with subdivision (f) [postseizure hearing]. In all other cases, the officer shall comply with the provisions of subdivision (g) [preseizure hearing].... [¶] ... [¶]

"(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

"(1) The agency shall [serve] notice ... to the owner or keeper within 48 hours [of the seizure] .... The notice shall include all of the following: [¶] ... [¶]

"(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

"(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing ... within 10 days .... [¶] ... [¶]

"(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section. [¶] ... [¶]

"(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care."

In *Menefee*, we found former Food and Agricultural Code section 12648 (former section 12648) facially unconstitutional on due process grounds. (*Menefee*, supra, 199 Cal.App.3d at pp. 777, 783.) That statute authorized the Department of Food and Agriculture to seize a crop that had been treated with an unregistered hazardous poison, to hold the crop for 30 days, and to destroy it if the owner did not file a judicial action to contest the seizure within that period. (*Id.* at pp. 780, 782-783.)

We concluded in *Menefee* that former section 12648 suffered from "glaring [constitutional] deficiencies." (*Menefee*, supra, 199 Cal.App.3d at p. 781.) Most glaringly, it permitted "the [department] to seize the property of a person without any notice or opportunity to be heard ...." (*Ibid.*) The statute failed "to provide any hearing whatsoever" on the merits of the seizure. (*Id.* at p. 782.) We continued: "The fact that an owner may institute a judicial proceeding for the return of the property is simply no substitute for the requirement that an owner be accorded a fair hearing on the merits of the seizure. [Citations.] [¶] In any event, even if we concluded that the availability of a judicial action could serve as a substitute for an administrative hearing, we would still find section 12648 deficient...."

[Among other deficiencies,] it does not provide for the type of judicial hearing which would be essential to provide due process. In short, if a judicial proceeding is the owner's first and only opportunity to have a hearing on the merits of the seizure, then it is essential that the department be required to bear the burden of proof on all issues and the statute must so provide." (Id. at pp. 782-783, italics added.)

Section 597.1 does not suffer from the glaring constitutional deficiencies displayed by the statute at issue in *Menefee*. Most tellingly, section 597.1 provides for postseizure notice and hearing on the merits of an immediate seizure. (§ 597.1, subd. (f).) Section 597.1 resembles the revamped section 12648 that passed a limited constitutional review in *Sandrini Brothers v. Voss* (1992) 7 Cal.App.4th 1398 (*Sandrini*). The revamped section 12648 allows for an urgent, unnotified crop seizure, but requires subsequent notice to the owner of the grounds for the seizure and allows the owner to request a postseizure administrative hearing to contest the seizure. (Id. at p. 1402; see *Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 433-434 [71 L.Ed.2d 265] [due process may be satisfied with notice and an opportunity to be heard in a postseizure administrative hearing].)

*Spencer* recognizes that these notice and hearing distinctions between section 597.1 and the statute at issue in *Menefee* do not support her constitutional argument. She instead bases her constitutional attack on *Menefee's* language, highlighted above, that an administrative agency is "required to bear the burden of proof on all issues and the statute must so provide." (*Menefee*, supra, 199 Cal.App.3d at p. 783.) As *Spencer* argues, since section 597.1 does "not provide that the burden [i]s on the seizing agency[,] the statute must be found unconstitutional just as [former] section [12648] was held unconstitutional [in *Menefee*] because it did not require the seizing agency to 'bear the burden of proof on all issues.' "

The problem with *Spencer's* argument is that she has taken this burden language from *Menefee* out of context. *Menefee* prefaced this burden language by stating, "if a judicial proceeding is the owner's first and only opportunity to have a hearing on the merits of the seizure, then it is essential that the [administrative] department be required to bear the burden of proof on all issues and the statute must so provide." (*Menefee*, supra, 199 Cal.App.3d at p. 783.)

Under section 597.1, a judicial proceeding is not the animal owner's first and only opportunity to have a hearing on the merits of an immediate seizure. Section 597.1 provides for a postseizure administrative hearing on the merits of such a seizure. (§ 597.1, subd. (f).) And the judiciary reviews this administrative hearing--in fact, independently considers it if a fundamental right is involved, as here--pursuant to the administrative mandate review procedure of Code of Civil Procedure section 1094.5. (See *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 808, 810-811, 816-817, 823 (*Fukuda*); see also *Sandrini*, supra, 7 Cal.App.4th at pp. 1405-1406; 8 *Witkin*, Cal. Procedure (4th ed. 1997) Extraordinary Writs, §§ 273-275, pp. 1073-1077.) In this way, there are two stages at which a determination may be made that animals have been seized wrongfully. (See *Sandrini*, supra, 7 Cal.App.4th at p. 1405.) The case for explicitly requiring the administrative agency to bear all burdens is less compelling in this two-stage administrative/judicial context.

In any event, burdens are properly allocated in section 597.1. An immediate seizure under the section encompasses two basic issues: whether the seizure was reasonably justified; and whether the animal can be returned to its owner. As for the first issue, an immediate seizure may take place only when the seizing "officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others[.]" (§ 597.1, subd. (a), italics added.) This language logically places the burden for demonstrating those reasonable grounds on the seizing agency. This is borne out by additional language in section 597.1 on immediate seizure, including that the seizing agency must provide the animal owner "with the opportunity for a postseizure hearing to determine the validity of the seizure" (§ 597.1, subd. (f)), and must give the owner a notice for that hearing specifying the "authority and purpose for the seizure ... including the time, place, and

circumstances under which the animal was seized" (§ 597.1, subd. (f)(1)(C)).

As for the second issue, concerning the animal's return, section 597.1 states that if it is determined in the postseizure hearing that the immediate seizure was justified, "the animal shall not be returned to its owner until the [seizure and care] charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care." (§ 597.1, subd. (f) (4), italics added.) Under this language, the owner obviously has the burden of demonstrating that he or she can and will provide the care that a returned animal requires; this is the only logical spot for this burden. As Placer observes, the animal owner is the only person in a position to know and show that he or she is able to provide for the animal. (See *Sanchez v. Unemployment Ins. Appeals Bd.* (1977) 20 Cal.3d 55, 71 [burden of proof may be placed on the party with knowledge on the particular point at issue].)

We conclude that section 597.1 is not facially unconstitutional regarding the burden of proof on immediate seizures.

## 2. Applied Constitutionality

Spencer contends the administrative hearing officer unconstitutionally applied section 597.1 by placing the burden of proof on her rather than on Placer. She claims Placer had the burden to prove that the seizing officers had a reasonable basis for the seizure, that the horses were physically unfit, and that she could not and would not provide the necessary care. Spencer is mistaken in part.

As we just noted, Placer had the burden to show the seizure was reasonable and Spencer--if physically unfit horses were to be returned to her--had the burden to show she could and would provide the necessary care for them. A seized animal may also be returned if the seizing agency or hearing officer determines that the animal is physically fit, and the seizure and care charges have been paid. (§ 597.1, subd. (f)(4).) This fitness issue did not receive a lot of explicit attention here, given the evidence that Placer presented regarding the unfit condition of the horses at the time of the postseizure hearing, a hearing held too soon after the seizure to allow the horses the time required to become fit.

Contrary to Spencer's assertion, the administrative hearing officer did not misallocate the burdens of proof. The record shows the hearing officer was well versed and experienced with section 597.1 postseizure hearings. The hearing officer noted that the first determination in such a hearing is the "justification of the seizure itself"--"whether there was reasonable cause" for the seizure. To show this, said the hearing officer, "the seizing officer" must have determined that the animal was not being properly cared for and was in "immediate danger." "And then secondarily," said the hearing officer, is the question of return--"if ... [it is] determine[d] the animal [is] fit or possible release ... back to the owner depending on if the animal is fit, or whether the owner can demonstrate that she can reasonably take care of the animals." The hearing officer's comments align with the burdens of proof we noted earlier.

Spencer makes three points in arguing that the administrative hearing officer misallocated the burden of proof: the officer had her present evidence first; the officer acknowledged that it was Spencer's "motion" since she had requested the postseizure hearing; and Placer's counsel misallocated the burden of proof throughout her closing argument. However, the hearing started with one of Spencer's witnesses because the witness had a flight to catch. In any event, Spencer's initial presentation of evidence did not equate to carrying the burden of proof improperly. As for the "motion" comment, after the close of evidence, the hearing officer called for closing arguments; in response, Placer's counsel asked "[w]hose motion is this?", and Spencer's counsel replied that he thought it was his motion. Lastly, Placer's counsel, in her closing argument, properly placed the burden of proof on Spencer only with regard to the issue of whether Spencer was able to provide the necessary care for the horses.

We conclude the administrative hearing officer did not unconstitutionally apply the burdens of proof under section 597.1.

### 3. Substantial Evidence

Finally, Spencer contends the decision upholding the seizure and retention of the horses is not supported by the evidence. We disagree.

When, as here, the trial court is required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal of the trial court's determination is the substantial evidence test. (Fukuda, *supra*, 20 Cal.4th at p. 824.) Under the substantial evidence test, the judgment is affirmed if there is any substantial evidence contradicted or uncontradicted which will support the decision. (Foreman & Clark Corp. v. Fallon (1971) 3 Cal.3d 875, 881.)

Spencer owned a horse training and riding business in Louisiana when she decided to move back to her home state of California in November 1999. Spencer testified that she took five of her horses with her initially on November 15, and entrusted the care of her remaining 20-plus horses, all of whom were in great shape, to some colleagues in Louisiana. These colleagues, Spencer testified, failed to adequately feed the horses, prompting her to bring them from Louisiana to California at the end of January 2000. Placer countered with evidence that the horses' malnourished state was Spencer's doing, by presenting documentation that Spencer initially boarded her then nearly starving herd in California on December 5, 1999.

In mid-December 1999, Spencer transferred the horses to a 126-acre pasture in Lincoln. In June of 2000, Placer received a complaint about the horses' thin condition and the fact that Spencer had stopped paying rent on the Lincoln property. Placer investigated but did not see a need to pursue the matter extensively. That same month (June 2000), Spencer had to move the horses after a lease dispute with the pasture's owner.

In late August 2000, Placer received another complaint that Spencer had around 30 horses on her four-acre residence in Roseville; the complainant was concerned about the weight of the horses. Placer ascertained that the property was actually 3.7 acres and could accommodate only six horses. Placer confirmed that Spencer had a veterinarian (Dr. Kris Bartow), and provided some dietary suggestions. A sample of five horses was scored pursuant to a body condition evaluation (this is a system that uses a scale of 1 to 9, with 5 being optimal weight, 1 being skin and bones, 2.5 being very skinny, and 9 obesely overweight); the horses scored 3 to 4.

Placer received two additional complaints regarding Spencer's "thin" horses in early September 2000, and also became aware that one of the horses had died (apparently from colic). In response, Placer gave Spencer a preseizure notice on September 8, ordering her to have a veterinarian check the horses within 72 hours. Spencer did not think that veterinarian services were necessary.

On September 12, Dr. Bartow evaluated the horses and provided a feeding plan tailored to their age and ability to feed. The plan had written and verbal components: the written part emphasized a blander grass hay diet to enhance bulk and prevent the onset of colic from rich food, and stated the number of times per day the horses should be fed; in his verbal comments, Dr. Bartow said that food should always be available (free feeding). Bartow evaluated the horses' body condition; the scores ranged generally between 2 and 4.

Placer then frequently checked on the feeding of the horses during October 2000. Many of these checks disclosed that no hay was available for the horses. At times, horses were eating bark, tree leaves or dirt.

On November 6, 2000, Placer seized Spencer's 28 horses. Two of the horses required emergency

veterinary care. Of the remaining 26 horses that were seized, Dr. Bartow gave 10 of them a body condition score of 1.5, 8 of them a score of 2, and 6 a score of 2.5 (the final two scored respectively a 3 and a 4). Dr. Bartow considered a score of 2.5 to be "very skinny," "very underweight." Dr. Bartow opined that the horses "absolutely" could not safely remain with Spencer on November 6; they had to be removed. Photographs of some of the horses were admitted into evidence, displaying their malnourished plight.

Spencer defended, by noting that Dr. Bartow's September 2000 new feeding plan (changing the diet to grass hay), his inconsistent written and verbal instructions for that plan, and Placer's insistence that Spencer adhere strictly to the written instructions (which did not explicitly mention free feeding), caused the horses to decline; consequently, there was no reasonable basis for their seizure. Placer countered each of these points. Evidently the horses, after seizure, gained weight after being fed under the same plan. Everyone understood that free feeding was part of the plan. And Placer did not make Spencer adhere only to the plan's written component. In addition, Placer presented evidence that Spencer inadequately fed the horses in Louisiana in late 1999 and in California before the September 2000 feeding plan was instituted; that monitoring of the plan disclosed similar inadequacies; and that Spencer apparently altered some documents to show that she had purchased more food under that plan than was the case.

We conclude there is substantial evidence to support the trial court's findings that Placer had reasonable grounds for immediately seizing the horses on November 6, 2000, and that Spencer did not demonstrate that she could and would provide the necessary care for the animals. (§ 597.1, subs.(a), (f), (f)(4).)

In closing, we must consider two requests for judicial notice. Subsequent to the postseizure administrative hearing, Spencer was criminally prosecuted and convicted under section 597, but was granted a new trial. (See § 597.) The People have appealed the order granting the new trial (People v. Spencer, C041920). Spencer requests that we take judicial notice of her motion for new trial and supporting exhibits lodged in connection with that appeal because they tend to show that her horses lost weight due to the inadequate feeding plan that Placer ordered her to follow. We decline Spencer's request. Our job here is to review the trial court's performance regarding the postseizure hearing under section 597.1, not the criminal trial under section 597; the postseizure hearing considered the merits of the feeding plan. (See Fukuda, *supra*, 20 Cal.4th at p. 824.) We also decline Placer's request to take judicial notice of pending orders in Spencer's criminal case prohibiting the return of the horses to her.

#### DISPOSITION

The judgment is affirmed.