

Thousands of Exotic Animals Seized in Arlington: A Case Study

TMCEC Pre-Conference
(Apr. 18, June 21, 2010)

PRESENTERS:
Linda R. Frank,
 Asst. City Attorney & Chief Prosecutor, Arlington
David S. Johnson,
 Asst. City Attorney & Prosecutor, Arlington

Overview of Presentation

- I. Law of Animal Cruelty Hearings
- II. Procedure & Legal Issues
- III. Arlington Animal Seizure case, U.S. Global Exotics, Inc. & the Shaws

I. Law of Animal Cruelty Hearings

- 1. Relevant Statutory Law
- 2. How animal cruelty process begins
- 3. The hearing
- 4. Outcomes of the hearing
- 5. Court costs
- 6. Appeal

Relevant Statutory Law

- o Texas Health & Safety Code (HSC) chapter 821, subchapters A & B; sections 821.001 to -025

How does the animal cruelty hearing process begin?

- o What does "cruelly treated" mean?
- o HSC 821.021: "Cruelly Treated" includes:
 - (1) tortured,
 - (2) seriously overworked,
 - (3) unreasonably abandoned,
 - (4) unreasonably deprived of necessary (a) food, (b) care, or (c) shelter,
 - (5) cruelly confined, or
 - (6) caused to fight with another animal.

How does the animal cruelty hearing process begin? [cont'd]

- o HSC 821.022(a): If peace officer or animal control officer believes animal was cruelly treated, officer may apply for a warrant to seize animal.

How does the animal cruelty hearing process begin? [cont'd]

- o HSC 821.022(b): If PC that animal was cruelly treated, magistrate will issue warrant and set hearing w/i 10 days to determine if animal was cruelly treated.

How does the animal cruelty hearing process begin? [cont'd]

- o HSC 821.022(c): officer executing warrant shall impound animal and give written notice of hearing to owner.

The Hearing

- o Have the hearing, as scheduled by the court, within 10 days.

What happens if the owner is found to have cruelly treated the animal?

- o HSC 821.023(d): If the owner cruelly treated animal, owner is permanently divested of ownership of animal and the court can do one of three things ...

What happens if the owner is found to have cruelly treated the animal? [cont'd]

1. Order a public sale of animal by auction;*
2. Order animal given to a nonprofit animal shelter, pound, or society for the protection of animals;* or
3. Order animal be humanely destroyed if best interests of animal or public health and safety would be served.

* HSC 821.023(f): If court orders animal sold or given to a shelter, court may also order animal spayed or neutered at the cost of the receiving party.

What happens if the owner is found to have not cruelly treated the animal?

- o HSC 821.023(g): court shall order animal returned to owner if court finds owner did not cruelly treat animal.

What about the costs incurred during the hearing?

- o HSC 821.023(e): Upon finding that owner cruelly treated animal, the court shall order owner to pay all court costs, including costs of:
 1. investigation;
 2. expert witnesses;
 3. housing and caring for animal during impoundment;
 4. conducting public sale if ordered by court; and
 5. humanely destroying animal if court orders.

What if owner wants to appeal municipal court's finding?

HSC 821.025(a):

- o Owner may appeal municipal court's order to county court or county court at law.
- o To perfect appeal, within 10 calendar days of order being issued, owner must file (1) notice of appeal & (2) appeal bond*
 - *Appeal bond amount determined by municipal court; needs to be adequate to cover estimated expenses incurred during appeal process.

What if owner wants to appeal municipal court's finding? [cont'd]

HSC 821.025(a) [cont'd]:

- o Within 5 calendar days after notice of appeal and appeal bond filed, municipal court delivers copy of transcript to appellate court.
- o Appellate court shall dispose of appeal within 10 calendar days after receiving transcript.
- o No further appeals.

- o Whole appeal process should take no longer than 25 (10+5+10) days

What if owner wants to appeal municipal court's finding? [cont'd]

- o HSC 821.025(b): While appeal is pending, animal may not be:
 1. sold or given away; or
 2. destroyed, unless necessary to prevent animal's undue pain or suffering.

II. Procedure & Legal Issues

1. Seizure Warrant
2. Styling the case
3. Animal owned by a business
4. The hearing: preparation, process, owner's presence
5. Applicable rules: TRE? TRCP?

II. Procedure & Legal Issues

6. Right to a Jury Trial?
7. Double Jeopardy & higher-level criminal charges
8. Court costs
9. Appeal:
 - a. form of appeal bond;
 - b. standard of review;
 - c. jurisdiction of appellate court

Seizure Warrant

HSC 821.022(a)

- o Ask officer to submit proposed seizure warrant to you or another attorney for the city before presenting to magistrate.
- o Make sure probable cause for cruelty is clear and strong. List specific reasons and facts why owner cruelly treated animal.
- o At hearing, owner's attorney may try to challenge validity of probable cause as outlined in warrant.

Seizure Warrant

HSC 821.022(a)

- o If multiple animals, list why all animals cruelly treated.
- o Explain why conditions as a whole constitute cruelty to all animals.

Styling the Case

Proper styling:

- o "In re: (animal/description of animal)"
 - USGE case: "In re: Approximately 27,000 Animals Seized on December 15, 2009"

Improper styling:

- o "State of Texas vs. (Owner)"
- o "City of (name) vs. (Owner)"
- o "In re: (Owner)"

**Animal Owned by a Business:
Notice of Hearing**

- If ownership of animal lies with business, proper styling ensures that owner's attorney cannot cause as many any problems.
 - USGE case, case originally styled "City of Arlington vs. Jasen and Vanessa Shaw"
 - Shaws' attorneys claimed USGE owned animals and business not properly served with notice of hearing
 - Bus. Orgs. Code 2.11, 5.255: pres., VP, and reg'd agent of corporation are agents of business to receive notice.

**Animal Owned by a Business:
Notice of Hearing**

- If employee or agent of business treats animal cruelly or is aware of cruelty to animal, can knowledge or acts be applied to business?
- Yes, HSC 821.004

Preparing for Hearing

- Once seizure warrant executed, maximum of 10 days to prepare for hearing.
- Contact investigating officer(s), and maybe get expert witnesses.
- Expert witnesses can testify about: what a healthy or unhealthy animal looks like, animal behavior, etc.

Process of Hearing

How does hearing proceed?

- o Not much guidance in HSC 821. Presumably, similar to traditional trial in municipal court.
- o HSC 821.023(c): Any interested party entitled to present evidence at hearing.

Owner's presence at hearing

What if owner does not attend hearing?

- o Hearing can still proceed. HSC 821.022(c) only requires that owner be provided with written notice of time and place of hearing.
- o In USGE case, Jasen and Vanessa Shaw did not attend the hearing.

What Rules Apply?

Texas Rules of Evidence?

- o Likely Yes.
- o TRE 101(b). These rules govern civil ... proceedings ... in all courts of Texas, except small claims courts.

What Rules Apply?

Texas Rules of Evidence [cont'd]

- "The Rule" – TRE 614, Exclusion of Witnesses
- Exceptions - The Rule does not apply to:
 - "An officer or employee of a party in a civil case ... that is not a natural person designated as its representative by its attorney," TRE 614(2); or
 - "A person whose presence is shown by a party to be essential to the presentation of the party's cause," TRE 614(3)

What Rules Apply?

Texas Rules of Civil Procedure

- Yes, in justice courts
- No, in municipal courts (arguably)
 - TRCP 2: "These rules shall govern the procedure in the justice, county, and district courts of the State of Texas in all actions of a civil nature"
 - Tex. Gov't Code § 29.002: "... A reference in state law to a 'corporation court' means a 'municipal court.'"

Right to a Jury Trial?

- Arguably, No.
 - But see...
 - *Granger v. Folk*, 931 S.W.2d 390 (Tex. App.—Beaumont 1996)
 - *Pine v. State*, 921 S.W.2d 866 (Tex. App.—Houston [14th Dist.] 1996)

Right to a Jury Trial? [cont'd]

Legislative Intent

- o No clear right to jury trial found in HSC 821.
 - o HSC 821.023(d): If the court finds that the animal's owner has cruelly treated the animal...
 - o HSC 821.023(e): A court that finds that an animal's owner has cruelly treated the animal...

Right to a Jury Trial? [cont'd]

U.S. Constitution

- o No right to jury trial under 7th & 14th Amendments b/c they don't apply
 - 7th Amendment guarantees right to jury trial for suits at common law where value in controversy exceeds \$20.

Right to a Jury Trial? [cont'd]

U.S. Constitution

- 7th Amendment not incorporated through 14th Amendment to the states.*
- Even if 7th & 14th Amendments did apply, an animal cruelty hearing is a *cause in equity*, not a "suit at common law."

*Lucas v. United States, 757 S.W.2d 687 (Tex. 1988) citing Minneapolis & St. Louis R.R. Co. v. Bombolis, 241 U.S. 211, (1916); & Curtis v. Loether, 415 U.S. 189 (1974)

Right to a Jury Trial? [cont'd]

Texas Constitution

- Article I § 15: "The right of trial by jury shall remain inviolate."
- Article V § 10: "In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury."

Right to a Jury Trial? [cont'd]

Texas Constitution

- Article I § 15: "The right of trial by jury shall remain inviolate."
- Article V § 10: "In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury."

Right to a Jury Trial? [cont'd]

Texas Constitution Art. V § 10

- Animal cruelty hearing not in district court (only justice or municipal court)
- Article V § 10 does not apply

Right to a Jury Trial? [cont'd]

Texas Constitution Art. I § 15

- o Possibly applicable, but arguably not.
- o Texas Supreme Court: Under Art. I § 15, right to jury trial attaches in any matter or similar matter for which there was right to jury trial in 1876 when Constitution was passed.

Right to a Jury Trial? [cont'd]

Texas Constitution Art. I § 15

- o Right to jury trial guaranteed...
- 1) Suit for civil penalties for violation of injunction under DTPA, *State v. Credit Bureau of Laredo, Inc.*, 530 S.W.2d 288 (Tex. 1975)
- 2) Will contest in probate, *Cockrill v. Cox*, 65 Tex. 669 (Tex. 1886)
- 3) Suit for declaratory judgment on validity of water system revenue bonds, *Hatten v. City of Houston*, 373 S.W.2d 525 (Tex. Civ. App.—Houston 1963)

Right to a Jury Trial? [cont'd]

Texas Constitution Art. I § 15

- o Right to jury trial guaranteed...
- 4) Common law debt action for unpaid sales commissions and expenses, *Halmans v. Transource Polymers, Inc.*, 914 S.W.2d 189 (Tex. App.—Fort Worth 1996)
- 5) Sanity determination, *White v. White*, 196 S.W. 508 (Tex. 1917)

Right to a Jury Trial? [cont'd]

Texas Constitution Art. I § 15

- o No right to jury trial ...
 - 1) Assessment of civil penalties for violations of environmental law, such as Clean Air Act and regulations of natural resources of aquifers, *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993) & *Barshop v. Medina County Underground Water Conservation District*, 925 S.W.2d 618 (Tex. 1996)

Right to a Jury Trial? [cont'd]

Texas Constitution Art. I § 15

- o Art. I § 15 right to jury trial only applies to causes at law, not to causes in equity, *State v. Credit Bureau of Laredo, Inc.*, 530 S.W.2d 288 (Tex. 1975) & *Cockrill v. Cox*, 65 Tex. 669 (Tex. 1886)
- o Animal cruelty hearing under HSC 821 is cause in equity, not cause at law.

Double Jeopardy

- o Municipal court finds cruelty by owner at hearing. Does double jeopardy preclude higher-level criminal charges?

- o **No**, *State v. Almendarez* 301 S.W.3d 886 (Tex. App.—Corpus Christi 2009)

Double Jeopardy

- o Double jeopardy does not bar remedial civil proceedings based on same offense as prior criminal prosecution, or vice versa, *State v. Solar*, 906 S.W.2d 142, 146 (Tex. App.—Fort Worth 1995)

Double Jeopardy

- o Civil proceedings for same circumstances:
 - do not bar criminal prosecution if civil proceedings are remedial.
 - bar criminal prosecution if intent or effect of civil proceedings are criminally punitive.
 - *Rodriguez v. State*, 93 S.W.3d 60, 67 (Tex. Crim. App. 2002), quoting *Hudson v. United States*, 522 U.S. 93, 99 (1997)

Double Jeopardy

- o *Hudson* factors to determine if double jeopardy applies...
 - 1) Whether sanction involves affirmative disability or restraint;
 - 2) Whether it has historically been regarded as punishment;
 - 3) Whether it comes into play only on finding of *scienter*;
 - 4) Whether its operation will promote traditional aims of punishment-retribution and deterrence;

Double Jeopardy

- o *Hudson* factors to determine if double jeopardy applies [cont'd]...
 - 5) Whether behavior to which it applies is already a crime;
 - 6) Whether alternative purpose to which it may rationally be connected is assignable for it; and
 - 7) Whether it appears excessive in relation to alternative purpose assigned.

Double Jeopardy

- o Effect of HSC 821, i.e. monetary restitution to animal services agency and divestment of ownership of animal, is not criminally punitive.
- o Municipal Court's finding of cruelty at HSC 821 hearing does not trigger double jeopardy and does not bar criminal prosecution of owner.

Assessing courts costs to owner under HSC 821.023(e)

- o Ask court for brief hearing on costs after cruelty hearing if court finds owner cruelly treated animal

Appeal

Appeal Bond, HSC 821.025(a)

- o Amount = anticipated cost of caring for animal for maximum 25 days
- o Form of Bond
 - NOT a criminal defense attorney appearance bond
 - Should be conditioned on outcome of appeal, not on owner's appearance
 - See sample appeal bond form

Appeal

De Novo review?

- o **Yes**, if appeal taken from justice court; see *Granger & TRCP 571-574*
- o **Yes**, if appeal taken from municipal court (not of record); Code of Crim. Proc. art. 45.042(b)
- o **No**, if appeal taken from municipal court of record; Gov't Code § 30.00014(b)

Appeal

What court can accept appeal?

- o Appeal taken from municipal court of record; see *In re: Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2006)
 - Appeal of dangerous dog determination under HSC 822, not animal cruelty hearing under HSC 821

Appeal

What court can accept appeal? [cont'd]

- o HSC 822.0421: owner of alleged dangerous dog may appeal municipal court's decision in same manner as appeal from other cases from municipal court.
- o Gov't Code 30.00014: defendant has right of appeal from judgment of municipal court of record. *County criminal courts* have jurisdiction of appeals from municipal court of record. If no county criminal court, *county courts at law* have jurisdiction of appeal.

Appeal

What court can accept appeal? [cont'd]

- o Specific statutory jurisdictional provision control over general jurisdictional statute, *State ex. rel. Curry v. Gilfeather* 937 S.W.2d 46, 49 (Tex. App.—Fort Worth 1996)
- o HSC 822.0421 (general): appeal in same manner as other appeals from municipal court
- o HSC 821.025 (specific): appeal to county court or county court at law

III. Arlington Animal Seizure case,
U.S. Global Exotics, Inc. & the Shaws
