

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY RAY MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

November 18, 2008

No. 279108

Tuscola Circuit Court

LC No. 05-009636-FH

Before: Gleicher, P.J., and Kelly and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of animal cruelty (failure to provide adequate care), second offense, MCL 750.50(2)(a), (4),<sup>1</sup> and 11 misdemeanor counts of animals running at large, MCL 433.12. Defendant stood trial jointly with his wife, Sharon Mitchell, who was convicted on identical charges. On June 2, 2006, the court ordered defendant placed on a 12-month delay of sentence, and on May 30, 2007, the court sentenced defendant to 12 months' probation. Defendant was also fined \$300 on the animal cruelty count, and \$100 for each of the 11 misdemeanor counts. We reverse.

I. Facts

The question in this case revolves around defendant's ownership of the horses, and not the treatment (or lack thereof) that they received. Thus, our recitation of the facts adduced at trial will focus on the ownership issue, and there was some testimony pinpointed on the issue. For example, defendant's wife, Sharon, testified that she owned six horses. At trial, defendant claimed no ownership interest in any of the horses. However, when police interviewed defendant's stepson, Scott Stiegemier, about the horses, Stiegemier stated that defendant and Sharon owned the horses.<sup>2</sup> Similarly, when Tuscola County Sheriff's Department Deputy

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<sup>1</sup> The Legislature revised MCL 750.50 in 2007, effective 2008. 2007 PA 152.

<sup>2</sup> However, Stiegemier subsequently testified that he did not actually know defendant and Sharon's finances. He also testified that defendant never wanted anything to do with the horses.

Michael Mattlin interviewed Sharon, she indicated that she and her husband had six horses. On direct examination, however, Sharon testified that she owned the three horses, paid for them and cared for them. Both defendant and Sharon also testified that defendant had made it clear to her that he wanted nothing to do with the horses. Testimony reflected that defendant had no involvement in feeding or caring for the horses since 2000, other than one time in 2005 when he delivered hay bales on a trailer his wife had just purchased. Although defendant is a licensed farrier (blacksmith) and an equine dentist, he no longer engages in that business and never performed any work on these horses.

From January through September of 2005, Sharon kept the horses on an 18-acre field that she rented from Viola Cobb. Defendant was not involved in the negotiations for renting the field, and his name was not on the rental agreement. During the time the horses were in the field, two women, Amber Shavrioch and her mother Autumn, helped Sharon care for the horses; Amber was in the process of buying three of the horses. The three women fed the horses hay, which they placed on the ground, and grain, which they placed in buckets.

In the early summer of 2005, the women noticed that one of the horses, named Bubbles, was thin. They consulted a veterinarian, who recommended a supplement called Weight Gain. They began feeding Bubbles twice a day with Weight Gain and other food supplements, and they recorded the feedings in a logbook. They also placed Bubbles in a separate pasture from the other horses. Bubbles gained weight over the summer. Defendant recommended to his wife that she should have Bubbles's teeth checked.

The remaining testimony related to how the horses were treated. At the conclusion of the bench trial, the trial court found defendant guilty as noted above. On the issue of defendant being an owner under the animal cruelty statute, the trial court ruled that defendant was a "person" under the statute because he and his wife were a "partnership":

[I]f you'll read the statutes of the State of Michigan, individuals charged as persons who are responsible for the care of horses in the definitions of the statute, a person is a partnership.

It just so happens [sic] to be in our state if someone joins somebody else in holy matrimony it becomes a partnership. You can't say well that's hers, that's mine.

The court later reiterated,

I mean this stuff about he doesn't own or have a possessory interest, or takes an interest in the horses, or have title to, or paid for them, care for, carries no weight because the legislature has in effect, I'm sorry, they've taken that question out of my hands, and it's strict, it's strict liability on ownership.

The court concluded,

[t]hey're defining an owner. The law says it's a partnership. And using your example if your wife did come home and she purchased the horse on Monday,

and if it were inadequately cared for on Thursday, you can be criminally liable for that neglect under the statute.

## II. Analysis

Defendant first argues that the trial evidence never established any partnership or other ownership that would make defendant liable for his wife's treatment of the horses. Therefore, defendant argues, the trial court erroneously determined that defendant was jointly liable for his wife's conduct. Defendant presents the issue as a challenge to the weight of the evidence, which this Court reviews for clear error. MCR 2.613(C). The issue also presents a question of statutory construction, which this Court reviews de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

This appeal presents two issues of statutory construction: (1) whether the animal cruelty statute holds a husband criminally liable for his wife's treatment of animals, and (2) whether the animals running at large statute holds a husband criminally liable when his wife's animals are running at large.

### 1. Animal Cruelty

The animal cruelty statute, MCL 750.50(2) reads in pertinent part as follows:

An owner, possessor, or person having the charge or custody of an animal shall not do any of the following:

- (a) Fail to provide an animal with adequate care.

The statute defines "person" as "an individual, partnership, limited liability company, corporation, association, governmental entity, or other legal entity." MCL 750.50(1)(g). The statute does not define the term "owner."

The trial court determined that the statute held defendant liable as part of a marriage partnership regardless of whether defendant ever had charge or custody of the horses. Accordingly, the trial court did not make any findings as to whether defendant had exercised any control or ownership over the horses. The fact that he was married to Sharon, who unquestionably did own the horses, was enough for the trial court to conclude defendant was in a partnership with Sharon, and thus a "person" under MCL 750.50(1)(g).

In our view, the trial court misconstrued MCL 750.50(2) because it misunderstood the modifying clause "having the charge or custody of an animal." The modifying clause directly follows the word "person." The verb "have" is defined in part to mean to "posses the characteristic of." *Random House Webster's College Dictionary* (1997). "Charge" is defined in part to mean "[t]o impose a duty, responsibility, or obligation on." *The American Heritage Dictionary* (1996). As such, the modifying clause means that along with owners and possessors of animals, persons characterized as being responsible for or having the custody of an animal are also liable if they "[f]ail to provide an animal with adequate care." Thus, whether defendant had

“charge or custody” of the horse was relevant, yet the court made no such finding. Instead, the trial court focused on the term “partnership,” concluding that because defendant and his wife are marital partners, and because the term “person” includes the category “partnership,” defendant is responsible for the acts of his wife. This reading effectively ignores the modifying clause, in essence rendering all individuals involved in a partnership or a corporation liable for conduct by one member of the partnership or corporation regardless of whom within the corporation has responsibility for or custody of the animal in issue.

A possible, though not plausible, alternate construction would be that the modifying clause applies to all three antecedents, such that owners and possessors, as well as persons, are liable if they have charge or custody of animals. This construction, however, is inconsistent with the general rule of statutory construction that a modifying clause applies only to the last antecedent. See *People v Pigula*, 202 Mich App 87, 90; 507 NW2d 810 (1993) (noting that rule applies unless subject matter or dominant purpose requires a different interpretation). In the case at bar, defendant cannot be responsible under either statutory construction without evidence demonstrating beyond a reasonable doubt that he owned the horses, or that he had custody or control over them.

The great weight of the evidence indicated that defendant did not own the horses. Both defendant and his wife definitively testified that defendant did not own the horses. Although Mattlin testified that Sharon told him she and her husband had six horses, Mattlin did not elaborate as to whether “having” the horses included any ownership by defendant. Further, Sharon denied telling Mattlin that she owned the horses with her husband. Even though defendant’s stepson testified that he vaguely remembered telling an officer that defendant and Sharon owned the horses, the stepson further testified as follows:

Q. Is it your opinion that in fact [defendant] owns the horses or could others own the horses?

A. I really have no need to be in their financial status. But what I seen [sic] he wants nothing to do with the horses.

Defense counsel asked Tuscola County Sheriff’s Department Deputy Steven Anderson about defendant’s ownership:

Q. At all such times when you were talking with Mrs. Mitchell and you asked her if, yes along the line if she had horses, and she owned horses, it was always her response that it was hers, she never mentioned her husband [defendant] at all did she?

A. No.

Anderson further testified that he never saw defendant on the horse property.

Veterinarian Luhning testified that defendant “was around” when he worked with the Mitchells “years ago,” but that defendant was not present when he treated Bubbles. While

defendant's name was on the veterinarian's bill, along with Sharon's name, Sharon testified that she paid all of the expenses regarding the horses.

Amber Shavrioch, who was in the process of buying three of Sharon's horses, testified as follows:

*Q.* And have you ever observed, or have you personally—do you know if [defendant] has any interest in those horses at all?

*A.* He takes no interests that I'm aware of.

*Q.* To your personal knowledge has it ever been represented to you that he owns any of the horses?

*A.* They've always been Sharon's horses that I'm aware of.

*The Court:* How do you know that, the proof of ownership of those horses?

*A.* I consider it the care of the horses.

Shavrioch testified that there was no title or ownership certificate for the horses, but that she would have a bill of sale when she completed her purchase. Shavrioch's mother testified that she saw defendant at the property twice in the fall of 2005: once to drop off or pick up keys, and once to bring bales of hay.

James Benjamin saw defendant's wife at the property after the preliminary hearing, but never saw defendant at the property. Lorenda Jensen could not identify defendant as being one of the individuals that gathered the horses from her property. Scott Knudsen, the horses' farrier, had not seen defendant at the property. The tenant of the house on the property, Darlene Demroese, saw women on the property daily, but never saw defendant on the property.

Given the lack of proof that defendant owned the horses, coupled with a proper reading of the statute, we hold that the trial court erred in finding defendant guilty of inadequate care of animals.

The plain words of the statute also do not impose vicarious or strict liability upon spouses who are not an owner, possessor, or person having the charge or custody of an animal. In *People v Johnson*, 104 Mich App 629, 633; 305 NW2d 560 (1981), this Court set forth the guiding principle in reading criminal statutes:

A criminal statute is to be construed according to its language and not beyond it. Where a statute is drawn to be confined in its operation to certain persons, or persons having a certain intent or quality, it should be enforced according to those terms. Here, the phrase "as owner or otherwise" refers to the fact that a person having charge or custody of an abused animal may be held liable without regard to ownership. To hold an owner liable without proof that he had charge or custody would result in vicarious liability for those acts of cruelty committed by the person with actual charge or custody. [(internal citation omitted).]

Here, although marriages have been referred to as “partnerships,” *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (2005), it has not been through application of a legal definition of partnership. The legislative definition of partnership is “an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit . . .” MCL 449.6(1). *Byker v Mannes*, 465 Mich 637, 644; 641 NW2d 210 (2002). There was no evidence presented to the trial court that defendant and his wife were carrying on any business for profit with respect to the horses. The assertion by the people that because the horses were purchased during the marriage required a finding that defendant also owned them is not only based upon speculation<sup>3</sup>, but also transfers a family law concept into a non-analogous criminal law context. Accordingly, defendant could not be held responsible under the statute as an owner or person.

## 2. Animal running at large

The animals running at large statute is clear with regard to the vicarious liability of persons other than owners: non-owners are liable only if they willfully and knowingly enabled an animal to run at large. The statute reads in part as follows:

(2) The owner of an animal shall not permit or enable his animal to run at large in this state.

(3) A person other than the owner of an animal shall not willfully and knowingly enable an animal to run at large in this state.

(4) A person who violates this section is guilty of a misdemeanor. [MCL 433.12.]<sup>4</sup>

The term “owner” is defined for purposes of the statute as “a person who has a right of property in an animal, a person who keeps or harbors an animal or has it in his care, or a person who permits an animal to remain on or about the premises occupied by him.” MCL 433.11. Based upon the statute, defendant cannot not be held responsible under the statute for allowing the horses to run at large unless defendant is an owner within the meaning of the statute, or defendant “willfully and knowingly” enabled the horses to run at large.<sup>5</sup> As discussed above, the

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<sup>3</sup> Sharon testified that she paid for the horses. A spouse can own separate property if she utilizes her own money to purchase property and then solely cares for and manages the property without commingling it. See *Reeves v Reeves*, 226 Mich App 490, 494-497; 575 NW2d 1 (1997).

<sup>4</sup> The felony information alleges that defendant “did permit or enable and/or willfully and knowingly enable a horse to run at large.” The Information did not allege that defendant owned the horses. Defense counsel and the court addressed the allegation without reference to the statute’s ownership distinction.

<sup>5</sup> The trial court specifically found that neither defendant did anything willfully or intentionally towards or against the horses.

evidence at trial neither established that defendant owned the horses, nor that defendant “enabled” the horses to run at large.

Finally, as to MCL 433.12(3), the prosecution neither argued nor presented evidence that defendant willfully and knowingly enabled the horses to run at large, so defendant could not be convicted under that subsection of the statute. As the trial court noted when ruling on defendant’s motion for directed verdict:

If all the charges required the scienter of willfulness, that is a state of mind of willfulness, that is knowingly and intentionally permitting these specific acts, this case would be over with. That would be the end of it.

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There’s not one scintilla of evidence that shows that the owners of these horses intentionally injured, inflicted pain, or intentionally allowed them to gallop about.

For these reasons stated, we reverse defendant’s convictions.

/s/ Elizabeth L. Gleicher  
/s/ Kirsten Frank Kelly  
/s/ Christopher M. Murray