

Webb v Chief Constable of Avon & Somerset Constabulary: An Overview

By Graham Gilbert

On 20 December last year, the High Court (Administrative Division) handed down judgement on Mr Joshua Webb's appeal against a decision of the Bristol Crown Court to make a Conditional Destruction Order ('CDO') for the destruction of Mr Webb's dog, Sky. The Crown Court had, in turn, overturned the decision of Bristol Magistrates' Court to order the immediate destruction of Sky. The Appeal was allowed and the case remitted back to the Crown Court for reconsideration of who was in charge of Sky.

Background

Sky is a pit-bull type dog, a breed prohibited under the Dangerous Dogs Act 1991. In 2013, Mr Webb obtained an exemption certificate for her which contained a number of conditions, including that Mr Webb must maintain third party liability insurance covering any injury Sky may cause and that she be kept at Mr Webb's address save for 30 days in a 12-month period. Mr Webb complied with these conditions until 2015, when he moved to Australia and placed Sky in kennels with Mrs Barbara McCann and her daughter. Sky's insurance lapsed, and she was not at Mr Webb's address, so she was seized by PC Henrys of Avon & Somerset on 21 April 2016. Her destruction was ordered by the magistrates on 16 June 2016.

Mr Webb appealed against this decision. The Crown Court quashed the destruction order and replaced it with a CDO, which provided that Sky be destroyed unless she was placed on the Index of Exempted Dogs within 2 months. In doing so it initially concluded that Mrs Barbara McCann was a fit and proper person to be in charge of Sky, although this was removed on 11 August 2016. It was "the hope of the Crown Court that Sky would live with Barbara McCann" [29].

Significance

Although several questions formed part of the stated case, perhaps the most useful point to arise for those handling cases involving dangerous dogs and destruction orders on a day to day basis was the High Court's attempt to define the phrase "person for the time being in charge of the dog". This is a phrase found in section 4B(2A)(ii) of the 1991 Act and is part of a consideration a court must weigh when considering making a CBO: "whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog". A working definition is therefore important to cases where the owner has placed the dog in someone else's care on a temporary or permanent basis.

The Court's Definition

Somewhat unhelpfully, the High Court initially stated that the phrase "should not be understood in a particularly narrow (or indeed a particularly expansive) sense" [88]. However, the judgment then expanded on this, noting that the words were ones in everyday use, covered a range of typical situations and was highly fact sensitive. It boiled down to whether the person in question "has responsibility for the dog" in question and the phrase was broad enough to cover "anyone who, for whatever reason and in whatever way, is in charge of the dog for the time being". This could include a person who walked the animal on a regular basis, but not an agent. It would even stretch to someone who volunteered to care for the dog.

The High Court also considered the meaning of the phrase "for the time being", again concluding that the phrase was fact specific and could cover a multitude of situations. However, it did note that it could not extend to possible or proposed future contact [89].

In future, therefore, a fact-specific approach must be adopted with all the considerations in mind. However, logic must rule: a person cannot be in charge for the time being when they only intend to care for the dog in the future, nor can an owner delegate to an agent and thereby avoid consideration.

Outcome of Sky's Case

In Sky's case, no consideration was given to whether Mrs McCann (and her daughter) were the people for the time being in charge of Sky was not a point argued before the Crown Court. Given the significance of this possibility, the matter was remitted to the Crown Court to make a finding of fact on this point.

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