

**COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT
MERCER CIRCUIT COURT
CIVIL ACTION NO. 16-CI-____**

Electronically Filed

MERCER COUNTY FISCAL COURT,

and

KENTUCKY DEPARTMENT OF AGRICULTURE,

PETITIONERS,

v.

CHARLES A. BORELL,

MARIA V. BORELL,

BEACON HILL FARM, LLC,

GERSON RACING,

JACK WILLOUGHBY III,

RANDY POLLEY,

JOSHUA MENTZER,

and

THOROUGHBRED CHARITIES OF AMERICA, INC.,

RESPONDENTS.

COMPLAINT AND PETITION FOR DECLARATION OF RIGHTS

Petitioners, the Mercer County Fiscal Court (the “Fiscal Court”) and the Kentucky Department of Agriculture (“KDA”), by and through the undersigned counsel, for their Complaint and Petition for Declaration of Rights, allege and state as follows:

PARTIES, JURISDICTION AND VENUE

1. The Fiscal Court is a political subdivision of the Commonwealth of Kentucky.

2. KDA is an agency within the Executive Branch of the Commonwealth of Kentucky. Its principal office is located at 105 Corporate Drive, Frankfort, KY 40601.

3. KDA is charged by the General Assembly to direct its efforts to promoting the interests of agriculture, which includes the equine industry and the health and welfare of horses. The Office of the State Veterinarian (OSV) is housed within KDA.

4. Charles A. Borell is an adult individual who formerly resided in Kentucky and now resides at 278 Westbrook Hills Drive, Syracuse, NY 13215.

5. Maria V. Borell is an adult individual who formerly resided in Kentucky and now resides at 278 Westbrook Hills Drive, Syracuse, NY 13215.

6. Beacon Hill Farm, LLC is a business entity organized under the laws of Delaware. Its principal place of business is located at 278 Westbrook Hills Drive, Syracuse, NY 13215. Its registered agent is Charles Borell.

7. Gerson Racing is a sole proprietorship or business entity organized under the laws of California. Its principal place of business is located at 23615 El Toro Road, Unit X-152, Lake Forest, CA 92360.

8. Jack "Trey" Willoughby III is an adult individual who resides at 604 Stonetown Road, Stamping Ground, Kentucky 40379.

9. Randy Polley is an adult individual who resides at 1411 Newtown Pike, Georgetown, KY 40324.

10. Joshua Mentzer is an adult individual who resides in Pennsylvania. Benjamin Lee Kessinger III is Mr. Mentzer's attorney. Mr. Kessinger's place of business is located at 120 Kentucky Avenue, Suite 220, Lexington, Kentucky 40502.

11. Thoroughbred Charities of America, Inc. (“TCA”) is a non-profit entity organized under the laws of Kentucky. Its principal place of business is located at 3101 Beaumont Centre Circle, Lexington, KY 40513. Its registered agent is SKO-Lexington Services, LLC, 300 West Vine Street, Suite 2100, Lexington, KY 40507.

12. This Court has jurisdiction over the subject matter of this dispute. The amount in controversy exceeds this Court’s jurisdictional minimum.

13. This Court has personal jurisdiction over the parties because the allegations underlying this Complaint and Petition arise from business that was transacted within the Commonwealth or events that occurred within the Commonwealth.

14. Venue is proper in this Court.

FACTS

15. Charles Borell, Maria Borell, and Beacon Hill Farm, LLC (collectively, “the Borells”) engage in the business of training horses in Kentucky and in other states.

16. The Borells purport to claim ownership or other interests in forty-three (43) horses (collectively, “the horses”) that are currently in the temporary care of individuals and entities acting as agents of the Fiscal Court for this limited purpose.

17. Gerson Racing, LLC claims an ownership or other interest in three of the horses: Princess Megan (KDA reference number 3144), Valerio (KDA reference number 3143), and Unnamed 2013 out of Princess Megan by Offlee Wild (KDA reference number 545).

18. Jack “Trey” Willoughby III claims an ownership interest in one of the horses: Sheza Fun Sponge (KDA reference number 3141).

19. Randy Polley claims an ownership interest in one of the horses: Sheza Fun Sponge (KDA reference number 3141).

20. Joshua Mentzer claims an ownership interest in one of the horses: Unnamed 2012 out of Bald N Blue by Colonel John (KDA reference number 530).

21. Other individuals and entities may claim an ownership or other interest in one or more of the horses.

22. Pursuant to CR 24.01, other individuals and entities claiming an ownership or other interest in one or more of the horses are entitled to intervene in this action, should they elect to do so, because they “claim an interest relating to the property or transaction which is the subject of the action and [are] so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.”

23. On or before June 2, 2016, the Borells transported the horses to a farm located at 263 Martin Lane, Mercer County, Kentucky.

24. At the time when the Borells transported the horses to the farm in Mercer County, the Borells were responsible for the horses’ health and welfare.

25. On June 9, 2016, Deputy State Veterinarian Bradley Keough, DVM traveled to the farm in response to a report indicating that two Bourbon County thoroughbred horses previously reported missing were being held on the farm’s premises.

26. During his visit to the farm on June 9, 2016, Dr. Keough observed that the horses on its premises were without adequate food and water. No caretakers were present. Stall buckets and troughs were either completely empty or contained small amounts of dirty water that was contaminated with loose debris, algae, and mosquito larvae. High temperatures made the lack of clean water especially dangerous to the horses’ health.

27. Dr. Keough visually evaluated the horses' Body Condition Scores. Visual inspection of the thin horses indicated Body Condition Scores mostly in the range of 2 to 4 (out of 10). At least one horse, a gray gelding, had a body condition score of 1.5. Little or no fresh hay was present on the premises.

28. These and other observations supported Dr. Keough's conclusion that the horses were not receiving appropriate care. On the basis of the circumstances he observed, Dr. Keough determined that the horses were receiving inadequate care and declared that the horses' owner(s) had abandoned them.

29. Upon receiving notice of Dr. Keough's declaration of abandonment, Mercer County Sheriff Ernie Kelty took prompt action to provide bales of hay and fresh water to the horses.

30. In the weeks that followed Dr. Keough's declaration of abandonment, KDA and OSV assisted Sheriff Kelty and the Fiscal Court in coordinating an effort to provide temporary care for the horses.

31. To assist the Fiscal Court, KDA and OSV identified certain individuals and entities with resources and manpower available to provide temporary care for the horses. These individuals and entities have been acting as agents of the Fiscal Court for this limited purpose.

32. KRS 259.110 provides that: "A stray equine may be taken up and posted by any person or entity . . . if it can be determined from the circumstances that its owner has abandoned it."

33. Following Dr. Keough's determination of inadequate care and declaration of abandonment, the Fiscal Court, acting through its duly appointed representatives and temporary agents, became the "taker-up" of the horses pursuant KRS 259.110.

34. KRS 257.100(4) provides that: “Abandonment shall constitute the relinquishment of all rights and claims by the owner to the animal.”

35. Upon Dr. Keough’s determination of inadequate care and declaration of abandonment, the Borells relinquished any and all ownership or other interests they may have once held in the horses by operation of KRS 257.100(4).

36. On July 21-22, 2016, KDA and OSV posted photos and information pertaining to each of the horses on OSV’s *Stray and Abandoned Horses Database*, located at <http://www.kyagr.com/statevet/strayhorse>. Each horse was assigned a KDA reference number. Since that time, Gerson Racing, Jack (“Trey”) Willoughby III, Randy Polley and Joshua Mentzer have come forward with claims of ownership or other interests in one or more of the horses.

37. Despite Dr. Keough’s declaration of abandonment, the Borells persist in purporting to claim ownership or other interests in the horses.

38. KRS 259.120(5)(b) provides that “[t]he taker-up shall be paid by the owner of the stray, if and when he claims the stray or its value, the actual itemized costs incurred by the taker-up for keeping the stray equine[.]”

39. TCA is one of the entities known to have provided financial and other support to the Fiscal Court’s efforts to provide temporary care for the horses.

40. TCA has expended more than \$13,000 in itemized expenses to provide temporary care for the horses while acting as temporary agent of the Fiscal Court. These amounts continue to accrue.

41. Other individuals and entities have expended significant sums in itemized expenses to provide temporary care for the horses while acting as temporary agents of the Fiscal Court. Upon information and belief, these individuals and entities may include Sallee Horse Transplant

(more than \$4,800), Rood and Riddle Equine Hospital (amount unknown), Hagyard Equine Medical Institute (amount unknown), Park Equine Hospital (amount unknown), and Patterson Veterinarian Supply (amount unknown).

42. Pursuant to CR 24.01, such individuals and entities are entitled to intervene in this action, should they elect to do so, because they “claim an interest relating to the property or transaction which is the subject of the action and [are] so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.”

43. KRS 259.120(5)(b) requires the Borells to pay the Fiscal Court and its agents the actual itemized costs they have incurred while keeping the horses.

44. KRS 259.120(5)(b) further provides that “[in] the event that a dispute arises relating to ownership, adverse claimants, third-party claims or liens, value of the equine, or actual itemized expenses incurred, the parties may file an action in the court of competent jurisdiction of the county in which the stray equine was taken up.”

45. There is a dispute among one or more parties to this action relating to ownership, adverse claimants, third-party claims or liens, values of the horses, and/or actual itemized expenses occurred.

46. Because such a dispute exists, this action is expressly authorized by KRS 259.120(5)(b).

FIRST CAUSE OF ACTION – PETITION FOR DECLARATION OF RIGHTS

47. The preceding allegations are incorporated by reference as if set forth fully herein.

48. Because an actual controversy exists, KRS 418.040 expressly authorizes the Fiscal Court and KDA to seek “a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.”

49. The Fiscal Court and KDA seek an Order from this Court expressly stating: (a) that the Borells’ abandonment of the horses, as announced by Dr. Keough on June 9, 2016, constituted an irrevocable relinquishment of their ownership and other rights to the horses; (b) that ownership of the horses has vested in the Fiscal Court; (c) that the Fiscal Court, in its discretion, may sell, donate, or otherwise transfer ownership of the horses; and (d) that the Borells must pay the actual itemized costs incurred by the Fiscal Court and its agents the while keeping the horses.

SECOND CAUSE OF ACTION – UNJUST ENRICHMENT

50. The preceding allegations are incorporated by reference as if set forth fully herein.

51. The Fiscal Court and its agents are entitled to recover in quasi-contract for the value of the benefits that they conferred on the Borells while keeping the horses.

52. The Fiscal Court and its agents did not confer these benefits gratuitously, but reasonably expected to receive just compensation for them.

53. The Borells received and appreciated the benefit of these benefits.

54. It is inequitable for the Borells to retain these benefits without paying for their value.

55. The Borells have been unjustly enriched by retaining these benefits.

PRAYER FOR RELIEF

WHEREFORE, the Fiscal Court and KDA seek judgment in their favor and against the Borells as follows:

- a. An Order and Declaration from this Court expressly stating (a) that the Borells' abandonment of the horses constituted an irrevocable relinquishment of their ownership and other rights to the horses; (b) that ownership of the horses has vested in the Fiscal Court; and (c) that the Fiscal Court, in its discretion, may sell, donate, or otherwise transfer ownership of the horses;
- b. An Order and Declaration from this Court requiring the Borells to pay the actual itemized costs incurred by the Fiscal Court and its agents the while keeping the horses;
- c. Interest on all amounts at the statutory rate;
- d. Attorneys' fees and costs; and
- e. Such other relief as the Court deems appropriate.

Respectfully submitted,

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