

<b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b> 7325 S. Potomac Street Centennial, CO 80112	<b>EFILED Document</b> <b>CO Arapahoe County District Court 18th JD</b> <b>Filing Date: May 5 2009 1:47PM MDT</b> <b>Filing ID: 25027267</b> <b>Review Clerk: N/A</b>
<b>Plaintiff:</b> STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL  <b>v.</b>  <b>Defendants:</b> COLORADO HUMANE SOCIETY & S.P.C.A, INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case Number: 2008cv2659 Division: 404
<b>ORDER REFORMING DEED</b>	

This matter comes before the court upon the motion of Waverton Group, LLC, as custodian for the Colorado Humane Society, by and through its attorneys, Fairfield and Woods, P.C. The Colorado Humane Society seeks to reform two Personal Representative Deeds covering two parcels of real estate in the County of Otero, State of Colorado. The court has considered the Response filed by the Estate of the Personal Representative and the Reply of the custodian. The court grants the reformation of the deeds.

## **Findings of Fact**

1. Anthonette S. Arnold left two parcels of real estate comprising approximately 35 acres of property (the “Property”) to the Colorado Humane Society in her will (the “Will”) with the intent that the gift benefit the Colorado Humane Society. The Will included the following language:

I give and devise all of my animals and livestock to THE COLORADO HUMANE SOCIETY & S.P.C.A., Inc., 2760 S. Platte River Drive, Englewood, CO 80110 or its successor, to be cared for until the animal's or livestock's natural death. If I do not own any animals or livestock at my death, this gift shall lapse.

I give and devise all real property and improvements that I own at my death to THE COLORADO HUMANE SOCIETY & S.P.C.A., Inc., or its successor, with the proviso that the property be never be [sic] developed and that any indigenous animals, such as prairie dogs and the like will be forever protected. I desire that the property as a whole be used as a reserve for abused and abandoned animals. If I do not own any real estate and improvements at the time of my death, this gift shall lapse.

I give and devise those items of personal property to the specific desivees [sic] in accordance with any memorandum directing the disposition of such property signed by me or in my handwriting which I may leave at my death.

I give and devise all motor vehicles, farm equipment and other household furnishings that I own at my death to THE COLORADO HUMANE SOCIETY & S.P.C.A., Inc., or its successor; If I do not own any motor vehicles, farm equipment and household furnishings at the time of my death, then this gift shall lapse.

2. The Property, however, carried with it certain restrictions. Unknown to the Testator, the restrictions make the property a perpetual net burden on the Colorado Humane Society, something the Testator clearly did not intend.

3. Two Personal Representative Deeds (the “Deeds”) were executed with the intent of carrying out the instructions of Ms. Arnold’s Will. The Deeds included restrictive language that made the property a perpetual net burden on the Colorado Humane Society. Both Deeds included language (hereinafter referred to as the “Restrictive Language”) that stated “This grant specifically includes the restriction that the properties are never to be developed and all indigenous animals and animals owned by me at the time of my death are protected. The properties as a whole are to be used as a reserve for abused and abandoned animals. This restriction of use is to run with the land. Should this restriction be violated, the ownership of the property will revert back to my estate.”

4. The Colorado Humane Society has arranged for the care of the animals that were owned by Ms. Arnold at the time of her death per the instructions in the Will and the Deeds. At the time of this motion, the following animals remain: one horse, two goats, eight sheep, and four feral cats. The Colorado Humane Society fully intends to provide for the

continued care of these animals. The only form of indigenous animals on the two parcels is a colony of prairie dogs that occupies less than five acres of the property.

5. To care for the animals on the property while keeping the property undeveloped has resulted in a financial burden on the Colorado Humane Society. To adhere to Ms. Arnold's dual desires, which were to have her animals cared for and to benefit the Colorado Humane Society, the animals would need to be relocated, the Property used for a more suitable purpose, and the proceeds from the sale of the Property used to support the day-to-day operations of the Colorado Humane Society.

6. The status quo under the Will and the Personal Representative Deeds will benefit a handful of domestic animals that have a perfectly suitable alternative, whereas enabling an unrestricted sale of the Property will go to the benefit of the thousands of animals that the Colorado Humane Society protects every year.

7. The past few years of managing the Property have demonstrated that the Colorado Humane Society will lose thousands of dollars every year managing the Property and those losses will continue in perpetuity. There will never come a time that the Property provides a net financial benefit to the Colorado Humane Society absent this Court

reforming the deeds so that the Colorado Humane Society can sell the Property and apply the proceeds to the charitable purposes for which it was established.

8. Paragraphs 1 and 2 of Section IV of the Will (Residuary Estate) provide: “All of the remainder of my estate, including property referred to above that is not effectively disposed of, shall be liquidated and referred to as my residuary estate. (1) I give and devise twenty percent (20%) of my residuary estate to my niece, ASPEN SARTORIS, of Seattle, Washington. (2) I give and devise eighty percent (80%) of my residuary estate to THE COLORADO HUMANE SOCIETY & S.P.C.A., Inc. or its successor.”

9. The Restrictive Language could be reformed so as to (1) ensure that the animals are cared for, but allow for the care for these animals at another site, (2) allow the Colorado Humane Society to put the Property to beneficial use by removing the restrictive language in the deeds, and (3) allow the custodian to sell the Property so that the proceeds might be put to a high and better use by the custodian in its efforts to rehabilitate the Colorado Humane Society.

10. The proceeds from the sale of the Property could be adequate to ensure the successful rehabilitation of the Colorado Humane Society by not only generating much-needed revenues, but reducing the costs of

maintaining the Property and reducing the costs of the Custodianship Estate in generating revenues.

### **Conclusions of Law**

11. Under the authorities cited by the Colorado Humane Society, including *In re Estate of Vallery*, 883 p.2d 24, 28 (Colo. App. 1994), the reformation of the Deeds should be, and hereby is, issued.

### **Order**

1. The two Personal Representative Deeds covering two parcels of real estate in the County of Otero, State of Colorado are reformed by deleting the Restrictive Language in both Deeds and inserting, in place of the Restrictive Language, the following language: “This grant specifically includes the restriction that all animals owned by me at the time of my death are cared for and protected.”

2. The Colorado Humane Society & S.P.C.A., Inc. is allowed to put the property to beneficial use, including to sell the property and to use the proceeds of the sale for the benefit of the Colorado Humane Society & S.P.C.A., Inc.

3. The custodian may use 80% of the net purchase price (gross price less the costs of sale) for costs of estate administration. “Costs of sale” includes, without limitation, brokerage costs, title insurance costs,

settlement or closing fees, escrow fees, survey, appraisal, attorneys fees (to the extent the custodian's counsel must prepare transfer documents), courier fees, wire transfer fees, and any taxes or payments to government authorities or quasi-government authorities, payment of obligations to the tenant, and costs of repairs that are necessary to sell the property (*e.g.*, upgrading the septic tank so that it meets code). The custodian is not seeking to recover past payments of taxes and repairs in an effort to expedite resolution of this matter, so those are not to be deducted from the gross sale proceeds.

4. The custodian shall pay the other 20% of the net purchase price to the Personal Representative of the Estate of Anthonette S. Arnold for the benefit of Ms. Arnold's niece, Aspen Sartoris, of Seattle, Washington.

SO ORDERD this 5<sup>th</sup> day of May, 2009

BY THE COURT



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Charles M. Pratt  
District Court Judge