

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

In the Matter of a Protective Order for Jean Marie Primrose,	)	Linn County
	)	Case No. 21840
	)	
CAT CHAMPION CORPORATION,	)	CA No. A131082
	)	
Appellant,	)	
	)	
v.	)	
	)	
JEAN MARIE PRIMROSE,	)	
	)	
Respondent.	)	

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APPELLANT'S BRIEF AND EXCERPT OF RECORD

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Appeal From the Judgment Entered on December 20, 2005  
in the Linn County Circuit Court  
The Honorable Glen D. Baisinger

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March 2006



**APPELLANT’S BRIEF OF CAT CHAMPION CORPORATION**

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## APPELLANT'S BRIEF

### STATEMENT OF THE CASE

#### Nature of the Action.

In July of 2004 police investigated a complaint that respondent Jean Primrose was abusing and neglecting cats in her care (App-1).<sup>1</sup> The police found at least fifteen cats living with Primrose in a small trailer so filled with cat urine and feces and with an odor so “overwhelming” that the police officers were unable to stay in the residence for more than a few minutes at a time (App-1 to App-6). The cats were uniformly underfed, filthy and in poor health (App-2; App-5). Primrose was arrested and charged with animal neglect in the second degree. Eleven of the cats, all that could be captured, were given by the Sheriff’s department into the care of appellant Cat Champion Corporation through their representative Sandra Chitwood (App-4; App-6; ER-7). The cats have remained in the care of Cat Champion since that time.

Dr. Nielsen was ordered by the court to do a competency evaluation of Primrose. His conclusion was that Ms. Primrose had a “cognitive impairment . . . such that she cannot aid and assist in her own defense” (App-10). In January of 2005 the criminal charges against Primrose were dismissed “based upon the interests of justice and because defendant has been found unable to aid and assist” (App-11). No order was entered regarding the disposition of the cats, and Primrose has never filed any pleading seeking the return of her cats.

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<sup>1</sup> The evidence in this case was submitted in the form of affidavits and exhibits (included in the appendix) which are primarily from the police officers who investigated the animal abuse and helped seize the cats. Because the identity of the specific police officer adds nothing to the factual summary, the citations will be only to the document’s location in the appendix.

In July of 2005 Cat Champion filed a Petition for Limited Protective Order Regarding Respondent's Property: Cats (ER-1). Cat Champion was not seeking the appointment of a guardian or a conservator. It was requesting that the court appoint Cat Champion ". . . as fiduciary for the limited purpose of providing for the care and permanent placement of Respondent's 11 cats . . ." (ER-6). The Petition also sought to have any adoption fees received by Cat Champion be used first to offset the cost of caring for the cats prior to placement and the remaining balance to be placed in a trust fund or escrow account for the benefit of Primrose (ER-6). Cat Champion represented that if they were allowed to arrange for permanent adoption of the cats they would forgive all of the \$32,000.00 debt that Primrose has incurred for the care of the cats which was not covered by adoption fees (ER-19 to ER-20). Cat Champion also submitted a proposed form of Limited Protective Order (ER-8 to ER-9). Primrose made no appearance in opposition to this Petition.

On August 18, 2005, Judge Baisinger wrote a letter to the attorney for Cat Champion requesting "some legal authority for the proposition that a Probate Court can permanently divest an incapacitated person of their property in the manner you suggest" (ER-10). Cat Champion filed a legal memorandum in support of its position that the court had the authority and should exercise it in this case (ER-11). On November 3, 2005, Judge Baisinger wrote a second letter to the attorney for Cat Champion stating that he was "sympathetic to the dilemma created when the criminal proceedings were suspended and then dismissed due to the apparent incapacity of Ms. Primrose" (ER-21). However, the judge stated that he would deny the Petition because he remained "unpersuaded that such an order is authorized by existing law" (ER-21).

**Nature of the Judgment.**

On December 16, 2005, an Order and Judgment was issued by the Linn County Circuit Court finding that:

- a. the procedural requirements for commencing a proceeding for a protective order and appointment of a fiduciary under ORS Chapter 125 were met;
- b. even assuming all of the facts alleged by Cat Champion were true “nothing in ORS Chapter 125 authorizes this Probate Court to permanently divest Ms. Primrose of her personal property, to wit: her cats”;
- c. the Petition of Cat Champion was denied (ER-22).

**Statutory Basis of Appellate Jurisdiction.**

Appellate jurisdiction is based on ORS 19.205.

**Effective Date of Judgment and Appeal.**

The Order and Judgment was entered by the trial court on December 20, 2005. The notice of appeal was timely filed on January 18, 2006.

**Questions on Appeal.**

1. Did the trial court err in finding that petitioner was seeking to permanently divest Primrose of property when if the petition were granted the net value of Primrose’s total personal property would increase because her on-going cost for care and boarding of her cats would end, Primrose would be forgiven a large debt and Primrose would be prevented from receiving animals for which the uniform evidence established she did not have the ability to care?
2. Does the text and context of ORS 125.650 unambiguously give a court the authority to appoint a temporary fiduciary to care for and place in permanent homes cats for

which the protected person will never be able to provide adequate care?

3. If ORS 125.650 is ambiguous, does a review of the effect of the statute establish that the legislature would not have intended the absurd result that follows from the circuit court's interpretation of the statute?

**Summary of Argument.**

The trial court misstated the nature of the relief requested in this case. The petition should have been granted to protect the net personal property estate of Primrose from being further dissipated by the ongoing cost of these cats. The court was not being asked to permanently divest Primrose of her property.

The text and context of ORS 125.650 is unambiguous and supports the authority of the court to award the relief requested in the petition in this case. If this court holds that the statute is ambiguous, then it should find that the legislature could not have intended the absurd result caused by the circuit court's interpretation of the statute. Time is of the essence in this case because it involves live animals and an ever increasing cost. The circuit court judgment was clear that the judge would have granted the petition if he believed that he had the authority to do so. Therefore, this court should not remand this case but should grant the petition issuing the proposed form of Limited Protective Order which was submitted by petitioner (ER-8).

**Statement of Facts.**

Jean Primrose has been diagnosed as being in the mild range of mental retardation (App-10). A psychological evaluation of Primrose was performed in March of 2003 by Dr. Weinman. In this evaluation Dr. Weinman recited a history of Primrose which revealed that she has lived with her family for most of her life. Primrose had lived for a brief time in a

trailer on her aunt's property. However, she "had a large number of cats and neighbors complained that the filth was unbearable" (App-8). It was also reported that Primrose was verbally abusive to anyone who was outside or passed by her home and that she would spend hours pounding on the walls and making loud noises (App-8).

Primrose reported to Dr. Weinman that she had 20 cats, that some had recently died and that others were sick (App-8). Dr. Weinman noted that sources informed him that Primrose's home had an overwhelming smell of urine and feces and that an arrangement had been made in 2002 for Primrose to have a paid worker to assist her in cleaning and other household duties (App-8). Because of complaints by the neighbors, Primrose moved and began to live in her own trailer on property next to her parents' manufactured home. Primrose's trailer did not have electricity or plumbing (App-8). She spent most of her time in her parents' home but slept in her own trailer (App-8).

In July of 2004 a veterinarian contacted the Linn County Sheriff's Department to report that cats she had examined as part of her work were "covered in diarrhea and appeared to be thin" (App-1). Sheriff's deputy Adams investigated the home of Jean Primrose, the owner of the cats. She found a manufactured home (in which Primrose's parents live) and a single-wide trailer on the property (App-1). As the deputy approached the manufactured home she saw several cats in the window of the trailer (App-1). Primrose came out of the manufactured home and walked to the trailer with the deputy. Primrose was "mad someone thinks her cats may not be cared for" (App-1).

When the deputy approached the front door of the trailer she immediately smelled a strong odor of urine and feces (App-2). When the front door was opened several small very thin cats ran outside (App-2). The deputy noticed that some of the cats had hair missing

(App-2). When the door to the trailer was opened, the smell of urine and feces was so “overwhelming” that the deputy had to step off the porch to talk to Primrose (App-2). The deputy was on medication for a sinus infection and severely congested and still was overwhelmed by the odor (App-3).

Prior to entering the residence the deputy informed Primrose that her cats might be removed. Primrose “became very upset and started softly saying she would kill whomever reported the condition her cats were in” (App-2). While she was in the trailer taking pictures the deputy had trouble breathing due to the odor (App-3). Urine and feces were on the floor of every room, some of it old and dried (App-2). The deputy was unable to step anyplace in the trailer without stepping on old, fresh or smeared cat feces (App-3). The kitchen appliances, including the stove and sink, were filled with old and fresh feces (App-3). The kitchen floor was “covered” in feces and urine (App-3). When the door to a bedroom was opened at least eight cats ran out and one remained hiding under a table (App-3). The bathroom had feces in the sink and on the floor (App-3). Primrose showed the Deputy the other bedroom and said that she no longer sleeps there because rats had eaten through the walls and made holes (App-3). Primrose stated that she now sleeps on blankets on the feces covered floor of the family room (App-2).

Primrose informed the deputy that she was supposed to take two cats each month to the veterinarian (App-2). She told the deputy that the two cats she had recently taken had respiratory problems and were currently living at her parents’ house (App-2). Primrose was uncertain exactly how many cats she had but thought it was “close to fifteen” (App-2). She informed the deputy that she feeds all of her cats together a total of six cans of cat food a day (App-2). No dry food was mentioned or was seen by the deputy. The deputy did not observe

any area for the cats to be fed or for them to have access to water (App-2). The deputy reported that when Primrose was told that her cats would be removed the next day, she stated that “they would have a hard time because she would not go down without a fight” (App-4).

The next day two deputies arrived at the Primrose trailer to seize the cats (App-4; App-5). When they arrived Primrose “immediately began screaming and yelling and kicking at the cats to scare them away then began throwing gravel at them” (App-5). However, the cats appeared to be weak and starving and did not run (App-5). Several of the cats were “very thin and suffered from loss of their fur” (App-5). These deputies reported that the stench in the trailer was so severe they had difficulty breathing, were unable to remain in the trailer for long, and became nauseated when they exited the trailer (App-5). They observed “piles of cat waste” in every room (App-5). The deputies caught every cat they could and removed them from the premises placing them in the custody of Sandra Chitwood, a representative of Cat Champion Corporation (App-6; App-4; ER-7).

Primrose was arrested and charged with second degree animal neglect. A psychological evaluation of Primrose was requested by her court-appointed attorney, Arnold Poole. The evaluation was performed by psychologist Dr. Nielsen, who concluded that:

“Ms. Primrose is functioning within the mild range of mental retardation. It seems quite certain that this has been a consistent level of functioning for her intellectually throughout her lifetime. This cognitive impairment is such that she cannot aid and assist in her own defense. She understands that the authorities accuse her of neglecting her cats, but she does not perceive herself as having done anything wrong or harmful. She is not capable of caring for herself or her cats on her own without assistance. She does not have a major mental illness or mental disorder beyond the cognitive impairment. She will require ongoing assistance in all aspects of her life” (App-10).

Based on this report from Dr. Nielsen the district attorney moved for dismissal of the criminal charges against Primrose “based upon the interests of justice and because defendant

has been found unable to aid and assist” (App-11). The charges were dismissed in January of 2005 (App-11).

Cat Champion has had the physical custody and care of the cats from the time they were seized from Primrose in July of 2004 to the present. Primrose has never filed anything with any court or agency requesting the return of her cats. From July 2004 to July 2005 (when the Petition was filed) Cat Champion has incurred \$32,510.00 in providing for the food, medical exams, medical care, and boarding of these eleven cats (App-12).

In July of 2005 Cat Champion filed a Petition for a Limited Protective Order Regarding Respondent’s Property: Cats” (ER-1). Cat Champion sought to be appointed as the fiduciary for Primrose,

“ . . . for the limited purpose of providing continuing care for Respondent’s cats while determining the best legal, permanent placement for the cats, which are living, sensitive, special property of the Respondent requiring the immediate attention and extensive ongoing care of experienced cat keepers and/or experts, for their own preservation and benefit and for the benefit of the Respondent” (ER-2).

Cat Champion further requested that any adoption fees received by them for the cats be used first to offset the cost already incurred for their care with any remaining balance to be placed in a trust or escrow fund for Primrose (ER-6).

The petition was personally served on Primrose by a Linn County Sheriff’s Deputy (See Mueller Proof of Service). Cat Champion served the petition by mail on Poole (the criminal attorney for Primrose), Robert and Silva Primrose (her parents), Wade Pierce (her case worker) and Nielsen (the psychologist who found Primrose to be incompetent) (See Proof of Service). The criminal lawyer (Poole) filed a notice that he did not represent Primrose in this matter. No other appearance was made in this case by Primrose or by anyone else on her behalf. No one ever filed any objection to the petition of Cat Champion.



In the Memorandum of Law submitted in support of the Petition, Cat Champion stated that pursuant to ORS 87.159 it had a lien on the cats for the reasonable charges for transportation, feed, care and treatment of the cats impounded under ORS 167.345 (ER-19). Cat Champion also stated that it had the right to retain possession of the animals until those charges are paid (ER-19). However, Cat Champion stated in its memorandum and reiterates here in this brief that it is willing to give up any right to seek recovery of its costs accrued (in excess of any adoption fees received) if the cats are permanently placed with Cat Champion so that it can place them in permanent homes (ER-19 to ER-20).

### **FIRST ASSIGNMENT OF ERROR**

The Trial Court Erred in Holding in its Letter Opinion (incorporated by reference into the Judgment) and in the Judgment and Order that “. . . nothing in ORS Chapter 125 authorizes this Probate Court to permanently divest Ms. Primrose of her personal property, to-wit: her cats” (ER-21; ER-22).

### **SECOND ASSIGNMENT OF ERROR**

The Trial Court Erred in Denying the Petition for Limited Protective Order Regarding Respondent’s Property: Cats (ER-22).

### **Preservation of First and Second Assignments of Error.**

The sole purpose of the Petition for a Limited Protective Order was for Cat Champion to be given the right to continue to care for and to find permanent homes for the cats seized from Primrose. The trial court requested and petitioner provided a legal memorandum on the issue of whether the trial court had the authority to grant the petition requested in this case (ER-10; ER-11 to ER-20).

**Standard of Review for First and Second Assignments of Error.**

The trial court reached its decision assuming the truth of all of petitioner's factual allegations (ER-22). The facts to support the petition were submitted by affidavit and attached exhibits. No contrary facts were submitted. Therefore, there are no factual issues in this case. Issues of statutory construction and interpretation are reviewed by this court for errors of law. *Shin v. Sunnier Preparatory School, Inc.*, 199 Or App 352, 372, 111 P3d 763, *rev den* 339 Or 406 (2005).

**ARGUMENT ON FIRST AND SECOND ASSIGNMENTS OF ERROR**

Petitioner asked to be appointed as a temporary fiduciary for the limited purpose of caring and finding permanent homes for the cats seized from Primrose because of her extreme neglect. The trial court found that it had no authority to grant the requested petition because it could not permanently deprive Primrose of her property. This conclusion misstates the recovery sought in the petition and misconstrues ORS 125.650 and other related statutes.

**A. The Trial Court Misstated the Nature of the Relief Sought in the Petition.**

Although petitioner sought the ability to find permanent homes for Primrose's cats, this was not a petition which, if allowed, would have resulted in a loss to Primrose of the value of her personal property. The cats continue to incur mounting fees for veterinary and boarding costs. Primrose is liable for these costs. If the petition had been granted, the cats would have been adopted and the mounting fees would have stopped. Any income from the adoptions would have decreased the amount that Primrose owes for the cats' care prior to the adoptions. Thus, granting the petition would have resulted in an increase in the value of Primrose's total personal property.

In determining the application of other relevant statutes the court must first find what legal category of property is involved in this case. In spite of their needs and gifts, cats are, legally speaking, only personal property. ORS 609.020 specifically declares that dogs are personal property.<sup>2</sup> There is no equivalent statute for cats or for any other domestic animal. However, the same conclusion can be drawn from the definition of property contained in ORS 433.001(5). This statute defines the term “property” to include “animals . . . and all other real or personal property.” Clearly cats are not real property. Therefore, they must be personal property and thus subject to the rules governing disposition of personal property. There is no legal reason for the court, acting on a petition for protective order, to treat Primrose’s rights to these animals any differently than it would treat her right to a car or a couch.

If Primrose had a car that was sitting in an impound lot and the evidence showed that Primrose would never have the mental capacity to make use of the car, the court likely would not have hesitated to authorize someone to take the car from the lot, sell the car and use the fees generated to pay the amount due to the impound lot. The car might not have been returned to Primrose, but she would have received the benefit from the value of the car. The disposition of the cats as personal property for this purpose is no different. The cats need to be permanently adopted by others to protect the net assets of Primrose from further dissolution by this ongoing cost. The trial court was incorrect when it characterized this petition as a request to permanently divest Primrose of her property.

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<sup>2</sup> Under old common law dogs were property “of an inferior sort,” something less than personal property. *Hofer v. Carson*, 102 Or 545, 552, 203 P 323 (1922). Petitioner found no cases that cited a similar common law categorization for cats.

**B. The First Level of Statutory Construction: an Analysis of the Text and Context of ORS 125.650.**

Even if this court finds that the petition requested the right to permanently divest Primrose of her property, the petition was within the court's authority under the applicable statutes. The governing statute for this petition is ORS 125.650 which provides in pertinent part:

“(1) The court may enter protective orders without the appointment of a fiduciary or in addition to appointment of a fiduciary.

\* \* \* \* \*

(2) In issuing protective orders under this section, the court may exercise any power that could be exercised by a guardian or conservator in a protective proceeding, or any power that could be exercised by the court in a protective proceeding in which a fiduciary is appointed.

\* \* \* \* \*

(4) The court may appoint a fiduciary whose authority is limited to a specified time and whose power is limited to certain acts needed to implement the protective order. A fiduciary appointed under this subsection need only make such report to the court as the court may require.

(5) In addition to any other protective order that may be entered under this section, the court may authorize, direct or ratify:

(a) Any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person, including but not limited to payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property . . .

(b) Any contract, trust or other transaction relating to the protected person's financial affairs or involving the estate of the person if the court determines that the transaction is in the best interests of the protected person.”

(Emphasis added)

**1. Rules governing analysis of text and context of statute.**

The court's task in interpreting a statute is to “discern the intent of the legislature.”

*Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606, 610, 859

P2d 1143 (1993). It must apply legislation as the legislature intended, not what the court might believe to be better policy. *Godfrey v. Fred Meyer Stores*, 202 Or App 673, 676, 124 P3d 621 (2005).

The Supreme Court has established a three-step “level of analysis” for determining the intent of the legislature. The first level of analysis is an examination of the text and context of the statute itself. *Id.*, at 610-11. “[T]here is no more persuasive evidence of the purpose of a statute than the words used by the legislature to express its wishes.” *Jowens v. Motor Vehicles Division*, 319 Or 259, 265, 875 P2d 463 (1994). However, this first level of analysis involves more than a mere review of the wording of the statute. It requires an analysis of the statutory text in the context of any other relevant statutory provisions, prior versions of the same statute (if any), and Oregon Supreme Court interpretations of the same statutory language. *Shin v. Sunnier Preparatory School, Inc.*, 199 Or App at 372. The court has developed the following rules of statutory construction that govern this first step of analysis:

- a. do not insert what was omitted or omit what has been inserted (*Id.*, at 611);
- b. words of common usage should be given their plain, natural and ordinary meaning (*Id.*);
- c. the statute must be evaluated in the context of other provisions of the same statute and other related statutes (*Id.*);
- d. the statute must be evaluated in the context of any prior Supreme Court interpretations of the statute (*Godfrey v. Fred Meyer Stores, Inc.*, 202 Or App at 676);
- e. where there are several provisions the statute should be construed to give meaning to them all (ORS 174.010);

f. a particular intent shall control a general one that is inconsistent with it (ORS 174.020);

g. the use of a particular term throughout a statute indicates that the term has the same meaning throughout the statute (*PGE v. Bureau of Labor*, 317 Or at 611).

If the legislature's intent is clear after this first level of analysis, further inquiry is unnecessary. ORS 125.650, analyzed under the above rules of construction, unambiguously provides the authority for the court to grant the relief requested by petitioner in this case.

## **2. Definitions of Key Terms of ORS 125.650.**

Fiduciary is defined in relevant part by ORS 125.005(2) as “. . . any other person appointed by a court to assume duties with respect to a protected person . . . .” Protective Order is defined in relevant part by ORS 125.005(8) as “. . . or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.”

## **3. Evaluation of the Text and Context of ORS 125.650(2).**

ORS 125.650(2) provides that in issuing a protective order under this section the court “. . . may exercise any power that could be exercised by a guardian or conservator . . . .” The actions that a conservator may take without prior court approval are set forth in ORS 125.445. Section (7) of that statute states that a conservator may “. . . acquire or dispose of an estate asset including real property wherever situated for cash or on credit, at public or private sale.”<sup>3</sup> Thus, ORS 125.650(2), which provides that a temporary fiduciary may exercise any power that could be exercised by a conservator, unambiguously gives a court the

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<sup>3</sup> The sole exception to this authority is the limitation of ORS 125.430 which deals with the sale of the protected person's residence.

authority to issue a temporary protective order that would allow the fiduciary to dispose of an estate asset for cash, which is all that was proposed by the petition in this case.

A conservator also has the power to waive rights when this is in the best interest of the protected person. ORS 114.105 provides that a conservator has the power to file an election on behalf of the protected person that accepts a one-quarter share of the spouse's net estate and forfeits all of the protected persons other rights under the will or estate. Thus, a conservator has the right to permanently divest a protected person of an interest in property if the action is in the best interest of the protected person. Because a temporary fiduciary can be given all the power of a conservator, a temporary fiduciary can also be given this authority. This is further evidence of the legislative intent to empower courts and fiduciaries to do what is necessary to protect the person and estate of the protected person even if the result of that action is to permanently divest the protected person of all interest in a particular item of personal property.

Also relevant is ORS 125.025(7) which provides that if the court finds that a conservator should be appointed, the court may exercise "all the powers over the estate and affairs of the protected person that the protected person could exercise if present and not under disability, except the power to make a will." Such powers are to be exercised for the benefit of the protected person and "members of the household of the protected person." This is a further indication that the legislature intended that the court would have the authority to take whatever action was necessary as to the property of a protected person. Because Primrose would have the right if not disabled to find permanent homes for her cats, give the cats away or sell the cats, the court, under ORS 125.650(2) has the authority to give this same power to Cat Champion as a temporary fiduciary for Primrose.

**4. Evaluation of the Text and Context of ORS 125.650(7).**

It is obvious from her history that Primrose will never be able to care for these cats. Dr. Nielsen made this specific finding in the report in which he found Primrose incompetent to stand trial (App-10). If the cats are returned to Primrose, not only will the cats suffer but Primrose will almost certainly again be guilty of the crime of animal neglect. Thus, allowing the cats to be adopted by those who will care for them responsibly is a “transfer of property” which is “. . . necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs” of Primrose. ORS 125.650(5)(a).

**5. ORS 125.095 Supports Giving a Temporary Fiduciary the Authority to Pay Funds for the Care of These Cats.**

One of the rights requested by the petitioner in this case was the right to use any adoption fees to first pay the cost expended by petitioner in caring for and boarding the cats. This is authorized by ORS 125.095, which provides that the funds of a protected person may be used to pay reasonable compensation to any “temporary fiduciary for services rendered in the protective proceeding or for services rendered on behalf of the fiduciary or protected person.”

**6. ORS 125.650 Unambiguously Gives the Court the Authority to Grant the Relief Requested in the Petition in this Case.**

The text of ORS 125.650 when viewed in the context of all other related statutes unambiguously gives a court the right to appoint a temporary fiduciary to accomplish any action that is necessary to protect the person and the property of the protected person. The only way to protect the property of Primrose and to protect Primrose from future criminal liability is to keep the cats from Primrose and allow Cat Champion to find permanent homes



for the animals. The specific language of this and related statutes gives a court the authority to grant the petition of Cat Champion.

**C. The Second Level of Statutory Interpretation: No Relevant Legislative**

**History Exists as to ORS 125.650.**

If this court finds that statute remains ambiguous even after the full analysis of the text and context of the statute using all of the above rules of statutory construction, the court resorts to the second level of statutory construction, reviewing legislative history (*Godfrey v. Fred Meyer Stores, Inc.*, 202 Or App at 676). In this case, petitioner reviewed the legislative history and found nothing that would assist the court in its determination in this case.

**D. The Third Level of Statutory Interpretation: Application of General Rules of**

**Statutory Construction.**

Where no legislative history exists the court moves to the third level of interpretation, which requires the application of general maxims of statutory construction. *Linn-Benton-Lincoln Education Assoc. v. Linn-Benton-Lincoln ESD*, 163 Or App 558, 563, 989 P2d 25 (1999). The court will attempt to determine how the legislature would have intended the statute to be applied had it considered the issue. *Carlson v. Myers*, 327 Or 213, 225, 959 P2d 31 (1998). In making this determination the court is “. . . permitted to assume that the legislature would not have intended that its enactment produce absurd results.” *State v. Walker*, 192 Or App 535, 546, 86 P3d 690, *rev den* 337 Or 327 (2004). In such a case the court will use a finding that a particular interpretation was “implausible” or “absurd” to aid in its interpretation of the text of the statute. *Jowens v. Motor Vehicles Division*, 319 Or 259, 268, 875 P2d 463 (1994).

It is actually somewhat unclear from case law whether the court will interpret a statute to reach an absurd result if it finds that this is the plain meaning of the statute. In *Fleetwood Homes of Oregon v. Vanwechel*, 164 Or App 637, 642, 993 P2d 171 (1999) this court found that it could not “subvert the plain meaning of a statute to avoid a supposedly absurd result.” The court found that the “absurd result” argument could not be evaluated until the third stage of interpretation of a statute. However, in a more recent opinion the Court of Appeals found that there was only one “plausible interpretation of the statutory language.” *State v. Rodvelt*, 187 Or App 128, 135, 66 P3d 577 (2003). In his dissent in that case Judge Edmonds argued that the court had applied the absurd result argument to change the meaning of the statute even though the text of the statute was unambiguous. *Id.*, at 140-41.

In this case, the point at which the absurd result test is applied is probably irrelevant. Either the statute clearly gives the court the authority to enter the protective order in this case or it is, at the very least, ambiguous on this issue. If it is ambiguous then this court can look at the absurd result that has been created by the trial court’s ruling in this case. Primrose was criminally negligent in her care of her cats over a long period of time. She is incompetent to stand trial and incapable of ever caring for the cats. If the cats are returned to Primrose the court will simply be setting up the cats for living conditions that amount to torture and setting up Primrose for criminal liability.

Primrose has no one to assist her in caring for the cats. If she were going to receive such assistance from her parents, they would already have provided it, because she was living in a trailer on their property when she was arrested. If anyone else were willing to assist her they would have appeared on her behalf in response to the petition. Without substantial assistance Primrose simply cannot care for these cats. The legislature cannot have intended

to create a situation where a person deemed too incompetent to stand trial for animal neglect must be given back the very animals she has criminally neglected. It cannot have intended that the only method of protecting neglected animals would be to get a full guardianship and conservatorship over Primrose, something that no one has alleged is necessary for any other purpose at this time.

The legislature also cannot have intended that a volunteer charity organization such as Cat Champion, which steps up to aid law enforcement and to protect neglected and abused animals, must care for the animals in perpetuity with no ability to place them in permanent homes. As it stands now, Cat Champion has the cats, has a lien for their expenses that allows it to keep the cats but has no legal right to place the cats in any permanent adoptive home. If Primrose demands the return of the cats, Cat Champion (and the cats) would be in an untenable position. Because Cat Champion agreed to cooperate with the Sheriff's department and provide temporary care and shelter for these abused and neglected animals, it now has the choice of providing all care for the animals in their facilities for the full life of the animals or returning these neglected and abused animals to the abuser who has been found mentally incompetent to stand trial. The legislature cannot have intended to create this absurd result.

### **CONCLUSION**

The Court of Appeals should reverse the Judgment of the Trial Court and find that the court has the authority to grant the Petition for a Limited Protective Order. There is no dispute as to the facts in this case and the court's letter opinion and judgment leave no doubt that the trial court would have granted the Petition had the judge believed he had the authority. Time is of the essence here because the case involves the disposition of living creatures. Therefore, petitioner respectfully requests that this court not remand the case.

Petitioner requests that the Court of Appeals reverse the trial court and grant petitioner the Limited Protective Order requested.

Respectfully submitted,

MASON & ASSOCIATES



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Margaret H. Leek Leiberan, OSB #77046  
Of Attorneys for Cat Champion Corporation

## APPENDIX

Affidavit of Sheriff's Deputy Beth Adams on Behalf of Petitioner .....	App-1
Affidavit of Sheriff's Deputy Art Sprague on Behalf of Petitioner .....	App-5
Psychological Evaluation of Jean Primrose by Gary E. Nielsen, Ph.D. ....	App-7
Motion and Judgment Order to Dismiss .....	App-11
Costs Incurred by Petitioner in Caring for Eleven Cats Seized from Respondent's Property on July 8, 2004 .....	App-12



IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

PROBATE DEPARTMENT

21840

In the Matter of a Protective Order for )  
)  
JEAN MARIE PRIMROSE )  
)  
Respondent. )

Case No. \_\_\_\_\_  
  
AFFIDAVIT OF SHERIFF'S  
DEPUTY BETH ADAMS  
ON BEHALF OF PETITIONER

I, Beth Adams, being first duly sworn, affirm that:

I am a Deputy for the Linn County Sheriff's Office, Albany, Oregon, and have been a Deputy with the Sheriff's Office for over three (3) and a half years. During my employment as a Police Officer I have received training and experience in investigating animal neglect, animal abuse, and animal abandonment cases. During my employment as a Police Officer I have investigated several animal abuse and animal neglect cases, some of these involving cats. I know from investigating animal abuse and animal neglect cases that the owners of the animals are protective of their property and their animals. I further know through my training and experience that owners of abused and/or neglected animals can be deceptive about why their animals are not being properly cared for.

On Wednesday, July 7, 2004 at approximately 1855 hours, I arrived at 38423 Century Drive, Albany, Linn County, Oregon, regarding an animal complaint. A veterinarian had contacted the Sheriff's Office to report that some cats she had examined as part of her work were covered in diarrhea and appeared to be thin.

Upon my arrival, I observed a manufactured home and a single wide trailer on the property. While I was locating a door to knock on at the manufactured home, I observed several cats in a window in the single wide trailer that sits north of the manufactured home and east off the roadway. I located a door and knocked on it. Three people came out of the residence, including one (1) female who identified herself as Ms. Jean Primrose. I explained to Ms. Primrose that there was a complaint that her cats might be taken care of poorly; she told me her cats are fine and that she is mad someone thinks her cats may not be cared for. Ms. Primrose and I walked to the single wide trailer where I observed the front porch was secured by a screen door and a master lock. The lock was not secure and was just hanging on the screen door. Ms. Primrose opened the screen door and said she was embarrassed because her house was not clean. She told me she was in the process of cleaning her house and her case worker was helping her. Ms. Primrose informed me that her case worker was "Wade."

As Ms. Primrose opened the screen door and I stepped onto the front porch just outside the front

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door of the residence, I could immediately smell a strong odor. The odor was one of urine and feces. I observed old, empty cat food cans and miscellaneous newspapers stacked on the front porch. I also observed flies on the items and in the air. Ms. Primrose opened the front door of the trailer and several cats ran outside. The cats who ran outside from the trailer appeared small and very thin. I noticed hair was missing in some areas on the cats. I asked Ms. Primrose how old her cats are and she told me she has had them for several years and that none of them are young cats.

As Ms. Primrose opened the door to the trailer I could again smell a strong odor of urine and feces. The smell was so overwhelming that I had to step off the porch to speak to Ms. Primrose. I could see into the residence and observed several cats inside the residence that did not exit even though the door was open. I noticed several blankets on the floor in the family room and noticed a blanket draped over an item of furniture.

Ms. Primrose and I discussed recent visits to a veterinarian and she informed me she is supposed to take two (2) cats each month to the veterinarian. She informed me that Carey Patterson is helping her out and providing transportation to the veterinarian. Two cats who recently saw a veterinarian are suffering from respiratory problems and are thin; they are being treated with medicine and are residing at Ms. Primrose's parents' house. Ms. Primrose told me there is food for the cats at her parents' house and that she feeds her cats two (2) times a day and that, among all the cats, they eat three (3) cans of food at each meal.

Ms. Primrose was unable to give me an exact count of how many cats she had; she thought she had close to fifteen (15). I asked Ms. Primrose to show me where she feeds her cats and we walked to her parents' house. Once there, I observed several stacks of canned food stacked near the back door. I noticed approximately ten (10) large cans of "Friskies" mix grill and approximately 25 cans of "Pet Pride" brand cat food. I did not observe any area for the cats to be fed or for them to have access to water.

Ms. Primrose and I walked back to her residence where the cats were and I began counting cats I could see without entering the trailer. I counted eight (8) cats. While counting, I peered into the front door of the residence and looked into the kitchen area of the trailer. I saw the floor was covered in animal feces and urine. I had to quickly step off the porch again due to the overwhelming odor of feces and urine.

I asked Ms. Primrose how long her house had been in this condition. She replied she had been sick for two (2) weeks and unable to keep her house clean; yet when I asked her what she was sick with she could not answer because she had not seen a doctor. At that time I observed what appeared to be old urine stained into the floor in the kitchen and dried feces. I explained to Ms. Primrose what I observed and told her the environment her cats were living in appeared to be very dirty and not healthy for the cats. She told me she was trying to keep her house clean. She also told me she sleeps in the trailer with her cats and that her bed is the blankets I observed on the floor of the family room.

I told Ms. Primrose I was going to make a phone call and that her cats may be removed from her residence. She became very upset and started softly saying she would kill whomever reported the condition her cats were in. I also explained to Ms. Primrose I would be entering her residence to



take photographs.

I contacted Captain Harmon who informed me Sandra Chitwood of Cat Champion Corp. had been contacted. She said that provided the cats were alright for one (1) more night, she would go to Ms. Primrose's residence the following day to seize the animals.

I had trouble breathing as I was photographing the residence. The odor of urine and feces was very strong everywhere in the house. I observed that the kitchen appliances, including the stove and sink, were filled with old and fresh feces. I further observed that the kitchen floor was covered in feces and urine. I walked into the family room and observed more feces on the floor. I saw one (1) cat in the carry all and asked Ms. Primrose why that cat was not loose. She said that cat does not get along with the other cats.

I continued photographing the residence. I observed spider webs in all corners of the trailer that had old flies stuck in them. As I walked through the hall I observed three (3) closed doors. I required that Ms. Primrose open the doors for me. She opened the first door and I lost count at eight (8) as I counted the cats running from the bedroom. I observed one (1) cat hide under a table in the bedroom. The table was covered with a blanket and the floor in the room had cat feces all over it.

Ms. Primrose opened the second door and I saw it was a bathroom. I noticed feces in the sink and on the floor. There was something on the other side of the door preventing it from opening fully. Ms. Primrose then opened the final door to show me what was at one time her bedroom; however, rats had eaten through the walls and made holes so she no longer sleeps there. I observed a mattress on its side in the middle of the bedroom and what appeared to be old cat feces on the floor.

I decided to exit the residence. While walking through the residence, there was no place to step without stepping on old, fresh, or smeared cat feces. Despite being on antibiotics for a sinus infection and being severely congested, I was still able to smell the strong odor.

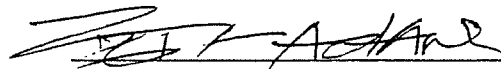
Once back outside I spoke with Ms. Primrose's parents. Her mother spoke with me a little but did not appear to have a problem with the condition of Ms. Primrose's trailer. Her father sat outside but did not speak to me. Ms. Primrose then provided me with Carey Patterson's home telephone number. I was told Carey would be returning to Ms. Primrose's residence in two (2) days. Ms. Primrose said I could contact Carey at any time regarding this incident.

At approximately 1930 hours I contacted Carey Patterson by telephone. I introduced myself and told her I was at Ms. Primrose's residence and informed her why I was there. Carey works for Resource Connection of Oregon and has been visiting Ms. Primrose for the last two (2) weeks. She mentioned that Ms. Primrose is classified as mentally retarded and that she has been helping Ms. Primrose integrate into society and is attempting to teach her how to clean herself and her house. Carey told me she and her supervisor, Wade Pierce, were contacted about the cats, but that Carey did not want to remove the cats for fear of upsetting Ms. Primrose.

I spoke further with Ms. Primrose and told her I was concerned for the welfare of her cats. I told

her I thought she was unable to properly provide the necessary care for the fifteen (15) cats she told me she has. She became upset and told me her cats are fine. I further informed her there would be a deputy and someone from a shelter arriving the following day to remove the cats from the property. Ms. Primrose told me they would have a hard time because she would not go down without a fight. Ms. Primrose also said she might not call the cats that night so they might not be around the following day. Several of the cats had exited the residence and were roaming around on the property.


On Thursday, July 8, 2004, I spoke with Deputy Alan Campbell and he told me he was meeting Sandra Chitwood before heading to Ms. Primrose's property to seize the cats. I informed Deputy Campbell of the photographs I had taken and he said they would photograph any cats they seized. I was later informed that Sergeant Sprague was at Ms. Primrose's residence with Deputy Campbell and Sandra Chitwood to seize the cats.

  
Deputy Beth Adams

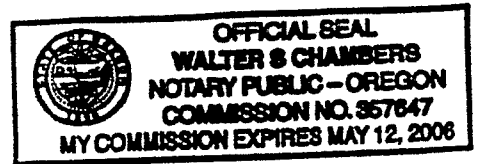
State of: OREGON

County of: LINN

SUBSCRIBED AND SWORN to before me this 27 day of June, 2005

  
Notary Public - State of Oregon

My Commission Expires: 5/12/06



IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

PROBATE DEPARTMENT

21840

In the Matter of a Protective Order for )  
 )  
JEAN MARIE PRIMROSE )  
 )  
Respondent. )

Case No. \_\_\_\_\_

AFFIDAVIT OF SHERIFF'S  
SERGEANT ART SPRAGUE  
ON BEHALF OF PETITIONER

I, Art Sprague, being first duly sworn, affirm that:

I am a Deputy Sheriff for Linn County, my current rank is First Sergeant and I have been employed by the Linn County Sheriff's Office for 30 years. During those 30 years I have had extensive experience in cases involving animal abuse and mentally ill people.

On Thursday, July 8, 2004, at approximately 1151 hours I arrived at 38423 Century Drive, Albany, Linn County, Oregon, to assist Deputy Alan Campbell in seizing numerous cats who were being neglected. On arriving, we contacted Ms. Primrose. She was apparently mentally ill and became out of control. She unlocked the door of the trailer where the cats were kept locked up and let approximately ten (10) cats out. She immediately began screaming and kicking at the cats to scare them away then began throwing gravel at them. However, the cats did not run and appeared to be weak and starving. Several of the cats were very thin and suffered from loss of their fur.

I assisted Deputy Campbell in photographing the cats and the trailer where they were housed. The trailer itself is a single wide mobile home with an attached front porch. Most of the windows had a heavy screen covering the windows to prevent the cats from escaping. The front porch door was padlocked and wrapped in the same type of screening.

Inside the porch door I noticed piles of trash made up of newspaper and empty cat food cans. Upon entering the trailer, I noted a very foul stench of cat urine and solid waste. The stench was severe enough to cause me difficulty breathing. I photographed the interior and noticed piles of cat waste in every room. I was unable to remain in the trailer for very long and became nauseated once I exited the trailer. I observed that Deputy Campbell was having difficulty too, and kept exiting the trailer.

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I remained at the scene until all the cats we could catch were loaded and removed. Deputy Campbell was given the film containing the photos of the trailer.

Arthur Sprague  
Sergeant Art Sprague

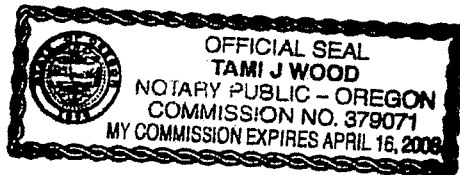
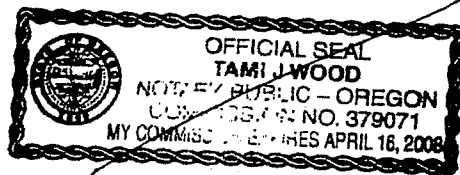
State of: OREGON

County of: LINN

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of June, 2005

Tami J Wood  
Notary Public – State of Oregon

My Commission Expires: 04-16-2008



**Gary E. Nielsen, Ph.D.**  
Clinical and Forensic Psychology

Forensic Psychology Associates  
2290 State Street  
Mailing Address:  
P.O. Box 565, Salem, OR 97308  
(503) 399-1123

Confidential

November 3, 2004

Arnold W. Poole  
Attorney at Law  
204 Ellsworth Street SW  
Albany, Oregon 97321

**RE: Jean M. Primrose, DOB 04/05/58**  
Linn County Cir No 0408-1771

Dear Mr. Poole:

At your request I conducted a psychological evaluation of your client, Jean Primrose, at my office in Salem. The primary purpose of the evaluation was to determine Jean Primrose's ability to aid and assist in her own defense. Concern was expressed about her intellectual and cognitive ability. You noted that she was evaluated in March of 2003 by Bill Weinman, Ph.D. and was found to be within the mild range of mental retardation. You also noted that Jean lives next door to her elderly parents home in small trailer, which she shared with 21 or more cats. She wasn't able to care for the cats so the authorities arrested her and took her cats. You suggested that in your conversation with her she had difficulty understanding the charges against her. You also noted that Jean had a caseworker through Adult Services who did bring her to the evaluation in Salem.

Jean has been charged with Animal Neglect II under ORS 167.325. A report was filed by the Linn County Sheriff's Office on 07/07/04. An investigating officer arrived with regard to an animal complaint. A veterinarian contacted the Sheriff's Office to report some cats that she observed covered in diarrhea and appeared to be thin. The investigating officer was further informed that there were possibly 15 cats in a padlocked trailer on the property. Three people came out of the residence, one of them being Jean Primrose, who said she was the owner of the cats in the trailer. Jean said her cats were fine and she was mad that someone thought her cats might not be cared for. Jean said she was in the process of cleaning her house and her caseworker was helping her. According to the report, there was a strong smell of urine and feces. Jean said she was supposed to take two cats each month to the veterinarian. She said the doctor told her the two cats she brought in were thin and had respiratory problems. She said there was food at her parents' house for the cats. Jean said she thought she had close to 15 cats. Jean was very upset at the thought of her cats being removed. She was angry at whoever reported her and said she would kill them. Jean went on to say she could not live without her cats.

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EXHIBIT**

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**RE: Jean Primrose**  
November 3, 2004  
Page Two

Contact was made with Carey Patterson, who said she works for Resource Connection of Oregon and had been visiting Jean. She mentioned that Jean was classified as mentally retarded and she was trying to help Jean by teaching her how to clean herself and her house.

A further report indicates that on 07/08/04 authorities arrived and two people from the Humane Society picked up numerous cats that were said to be neglected. Contact was made with Jean Primrose. According to the report she was apparently mentally ill and became out of control. She began screaming and kicking at the cats to scare them away.

I was provided with a copy of a Psychological Report by Bill Weinman, Ph.D., dated 03/14/03. Jean was referred for the evaluation by a case manager supervisor from Linn County Developmental Disabilities in order to determine her level of intellectual and adaptive functioning. That report notes that according to an evaluation conducted on 08/24/94, Jean demonstrated developmental delays from an early age. She had difficulties in the beginning of public school. Jean has lived with her family most of her life. For a brief period of time she went to live in a trailer on her aunt's property. She had a large number of cats and neighbors complained that the filth was unbearable. It was reported that she was verbally abusive to anyone who was outside or passed by her home and she would spend hours pounding on the walls and making loud verbalizations. Because of problems with the neighbors she began living in her own trailer on the property next to her parents' trailer. Her trailer was described as having no electricity or plumbing. She spent most of her time in her parents' home, but sleeps in her trailer.

At the time of the above mentioned evaluation, Jean noted that she had about 20 cats, although some had recently died and others were sickened. Information gathered at that time from a referral source indicated that her home had an overwhelming smell of urine and feces. An arrangement was made in 2002 to have a paid worker assist Jean in cleaning and other household duties.

Past intellectual assessments indicated a Full Scale IQ score of 68, a Performance IQ of 77 and a Verbal IQ score of 64. A Vineland Adaptive Behavior Scale Composite Score was 40. On the evaluation that took place on 03/14/03 she was found to have a Full Scale IQ score of 61, a Verbal IQ of 61 and a Performance IQ of 68, placing her within the mild range of mental retardation. Jean and her father Robert were interviewed using the Vineland Adaptive Behavior Scale. Jean was functioning within the moderate range of retardation in regards to adaptive functioning with a composite score of 48. It was concluded that Jean Primrose, then 44 years of age, was functioning in the mild range of retardation and adaptive behavior was in the moderate range of retardation.

Jean Primrose was brought to the office in Salem for the evaluation by her caseworker. She was always cooperative and spoke in a very soft voice that was difficult to hear at times. She was anxious and appeared a little frightened. She needed considerable reassurance. From a physical standpoint, she was appropriately dressed with reasonable hygiene it seemed. Based upon my conversation with her there was no evidence of a major thought disorder or psychotic process. I asked her numerous questions with regard to the charges against her and recent events. She could not name her attorney and was not sure if she had ever talked with him. She couldn't identify the charges against her. She thought for awhile and said that she had been

**RE: Jean Primrose**  
November 3, 2004  
Page Three

accused of neglecting her cats. She insisted that she fed them and took care of them. She could not explain the function of a District Attorney or of the Judge. She knew she had to go to court to get her cats back. But she wasn't sure of the process or just why that was the case.

Jean described living on the property next to her parents. She said she was born in Corvallis and has always lived in the general area. She said at one time she went to school but couldn't recall how many years she spent there. She said it got very difficult and she stopped going. She has a younger brother Robert, who is deaf. He brings grandchildren to their parents' place on occasion. Jean could not identify any time where she thought she had ever been abused. She admitted that she couldn't take care of herself independently and needed help. She seemed grateful for the help she did get. She said her days are spent watching T.V. and being around her cats.

I administered the Bender Gestalt Test. This is a brief screening instrument for perceptual motor ability. She worked carefully on reproducing the designs. They were well organized with no overlapping, showing reasonable control. There were numerous errors suggesting a perceptual motor delay of some significance. However, this perceptual motor delay seems to be in keeping with her overall intellectual ability.

I administered the Wechsler Adult Intelligence Scale (WAIS-III). Jean was cooperative with this test, but required considerable encouragement. The results seemed to be quite valid and basically consistent with previous testing. She obtained a Full Scale IQ score of 58, a Performance IQ of 65 and a Verbal IQ score of 58. This places her once again within the mild range of mental retardation. I would note that mild mental retardation is usually considered to be between an IQ score of 55 and 70. Therefore Jean is well within those parameters. The scale scores are listed below where a score of 10 is considered average with some variation to be expected. It is important to note that her scores here are quite consistent with not a great deal of variation. This tends to increase the validity of the overall intellectual assessment.

VERBAL		PERFORMANCE	
Vocabulary	2	Picture Completion	4
Similarities	3	Digit Symbol	4
Arithmetic	3	Block Design	5
Digit Span	2	Matrix Reasoning	4
Information	3	Picture Arrangement	5
Comprehension	3		

#### CONCLUSIONS AND RECOMMENDATIONS

Axis I, adjustment disorder with anxiety (309.24). Axis II, mild mental retardation (317). Axis III is deferred. Axis IV, severity of psychosocial stressors: 3, moderate. Axis V: GAF 40.

RE: **Jean Primrose**  
November 3, 2004  
Page Four

Jean Primrose is functioning within the mild range of mental retardation. It seems quite certain this has been a consistent level of functioning for her intellectually throughout her lifetime. This cognitive impairment is such that she cannot aid and assist in her own defense. She understands that the authorities accuse her of neglecting her cats, but she does not perceive herself as having done anything wrong or harmful. She is not capable of caring for herself or her cats on her own without assistance. She does not have a major mental illness or mental disorder beyond the cognitive impairment. She will require ongoing assistance in all aspects of her life. I would be glad to consult further on this case. Please feel free to contact me.



Gary E. Nielsen, Ph.D.  
Licensed Psychologist



IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINN

CO. JAN 12 PM 3:33  
BY [Signature]

STATE OF OREGON, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) JEAN MARIE PRIMROSE, )  
 )  
 ) Defendant(s). )

MOTION AND JUDGMENT  
ORDER TO DISMISS

Case No. 04081771

Defendant Info:

\_\_\_\_\_ Control#  
\_\_\_\_\_ Presiding Judge 04/05/1958 DOB  
\_\_\_\_\_ Court Reporter SID#  
\_\_\_\_\_ (Deputy) District Attorney  
\_\_\_\_\_ Defense Attorney ALS 04-10746 Agency#

COMES NOW, the District Attorney in and for Linn County, State of Oregon,  
and respectfully moves the Court for a Judgment Order dismissing the Information dated August 12,  
2004 on file in the above entitled case based upon the interests of justice and because defendant has  
been found unable to aid and assist.

Dated this 12<sup>th</sup> day of January, 2005.

[Signature]  
Eric Hsu, OSB #97285  
Deputy District Attorney

JUDGMENT  
IT IS SO ORDERED.

DATED this of 24 day of Jan, 20 05

[Signature]  
CIRCUIT JUDGE

BY [Signature]  
05 JAN 24 PM 2:54  
FILED



Costs Incurred by Petitioner in Caring for Eleven Cats Seized from Respondent's Property on July 8, 2004.

Cat's name	food/meds/exams	kennel	boarding	mileage	misc
#1 Larry	376.96	5 days, \$52.00	358 days, \$3580.00	104 RT	
#2 Jerry	49.2		358 days, \$3580.00	26 RT	
#3 Amy	0		358 days, \$3580.00		
#4 Butch	0		358 days, \$3580.00		
#5 Bruce	0		358 days, \$3580.00		
#6 Pearl	116.79		358 days, \$3580.00	32 RT	
#7 Huey	226.67		169 days, \$1690.00	78 RT	
#8 Possuum	0		358 days, \$3580.00		
#9 Sweet Girl	350.21	6 days, \$140.97	218 days, \$2,180.00	64 RT	
#10 Crissy	65.2		358 days, \$3580.00	26 RT	
#11 Female Boarded	143.53	207 days, \$1609			
Day of rescue cost	\$899			330 RT	\$102.08
<b>Totals</b>	<b>\$2,027.56</b>	<b>\$1,801.97</b>	<b>\$32,510.00</b>		<b>\$102.08</b>

**Days since rescue**  
 July 8 2004 = 23 days  
 August 2004 = 31 days  
 Sept 2004 = 30 days  
 Oct 2004 = 31 days  
 Nov 2004 = 30 days  
 Dec 2004 = 31 days  
 Jan 2005 = 31 days  
 Feb 2005 = 28 days  
 March 2005 = 31 days  
 April 2005 = 30 days  
 May 2005 = 31 days  
 June 2005 = 30 days  
 July 2005 = 1 day

358 days

**Grand total=\$36,441.61**

\*These figures represent costs incurred from 07-08-04 rescue through 07-01-05 filing of Petition

**EXCERPT OF RECORD**

Petition for Limited Protective Order Regarding Respondent's  
Property: Cats [ORS 125.650(4)] ..... ER-1

Proposed Limited Protective Order (ORS 125.650(4)) (not signed or entered) ..... ER-8

Judge Baisinger's Letter of August 18, 2005 ..... ER-10

Memorandum of Law in Support of Petition for Protective Order ..... ER-11

Judge Baisinger's Letter of November 3, 2005 ..... ER-21

Order and Judgment ..... ER-22



IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

PROBATE DEPARTMENT

In the Matter of a Protective Order for	)	Case No. _____
	)	
JEAN MARIE PRIMROSE	)	
	)	
Respondent.	)	PETITION FOR LIMITED PROTECTIVE
	)	ORDER REGARDING RESPONDENT'S
	)	PROPERTY: CATS [ORS 125.650(4)]

Petitioner, Cat Champion Corporation (CCC) , by and through its attorney, Dana M. Campbell of the Animal Legal Defense Fund, petitions the court for a protective order for the court to appoint the Petitioner as a fiduciary for the above-named Respondent for the limited purpose of providing for the continued physical care and the legal, permanent placement of Respondent's cats, which at present number 11. This petition is made pursuant to ORS 125.650(4). Petitioner presents as follows:

1.

The following information is given with regard to the Respondent:

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**Name:** Jean Marie Primrose  
**Age/ Birthdate:** April 5, 1958/47 years old  
**Address:** 38423 Century Drive  
Albany, OR 97321

**Current Location:** See above

2.

The following information is given with regard to the Petitioner/Proposed Fiduciary:

**Name:** Sandra Chitwood  
**Address:** 37099 Deadwood Drive, Lebanon, OR 97355  
**Interest of Petitioner:** Currently in possession and providing care of the cats

as the result of an investigation by the Linn County Sheriff's Office of possible Animal Neglect criminal charges against Respondent.

**Status of Petitioner:** Petitioner Cat Champion Corporation, an Oregon-based nonprofit corporation, has not been convicted of a crime, filed for or received protection under the bankruptcy laws, nor had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation.

3.

The appointment of a guardian or conservator is not requested. It is requested that the court appoint CCC as fiduciary for the limited purpose of providing continuing care for Respondent's cats while determining the best legal, permanent placement for the cats, which are living, sensitive, special property of the Respondent requiring the immediate attention and extensive ongoing care of experienced cat keepers and/or experts, for their own preservation and benefit and for the benefit of the Respondent.

4.

The names, addresses and relationships to the Respondent of the following persons entitled to notice are:

- a. Any fiduciary that has been appointed for the Respondent by a court of any state: **NONE**
- b. A trustee for Respondent established by or for the Respondent: **NONE**
- c. Any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660: **NONE**
- d. Any person acting as attorney-in-fact for Respondent under a power of attorney: **NONE**

e. Any attorney for Respondent in the last three years:

**Arnold W. Poole  
204 Elsworth SW  
Albany, OR 97321**

f. Any person required notice by ORS 125.060(2):

Respondent: see page 1

Spouse or Adult Child or Next of Kin:

**Father, Robert (mentioned in report by Dr. Neilsen, but couldn't find info), and Brother, Robert (also mentioned by Dr. Neilsen, but no other info)**

Courtesy notice sent to:

**Wade Pierce  
Resource Connection of Oregon  
3876 Beverly Avenue NE  
Salem, OR 97305**

5.

The name and address of the Respondent's treating physician and any other person who is providing care to Respondent are as follows:

**Gary E. Neilsen, Ph.D. (Licensed Psychologist)  
Forensic Psychology Associates  
P.O. Box 565  
Salem, OR 97308**

6.

The names and addresses of persons, other than Petitioner, who have information that Respondent is incapacitated are as followed:

**Wade Pierce  
Resource Connection of Oregon  
3876 Beverly Avenue NE  
Salem, OR 97305**