

Last Will and Death Sentence

When Vermont farmer Howard Brand modified his last will and testament less than a month before he died last year, it became a death sentence for his bay mare and his work horse.

Soon after Brand's death, his lawyer, Thomas McCormick, made arrangements to follow Brand's last wishes to have the 25-year-old animals killed and buried on his farm.

When Mary Ingham, the 24-year-old daughter of the animals' caretaker, heard the news she was shocked that such a thing could happen. She had grown up with the animals and knew them well.

"They're very gentle, intelligent animals," she says. "They have a lovely temperament. It would be senseless to end their lives like this."

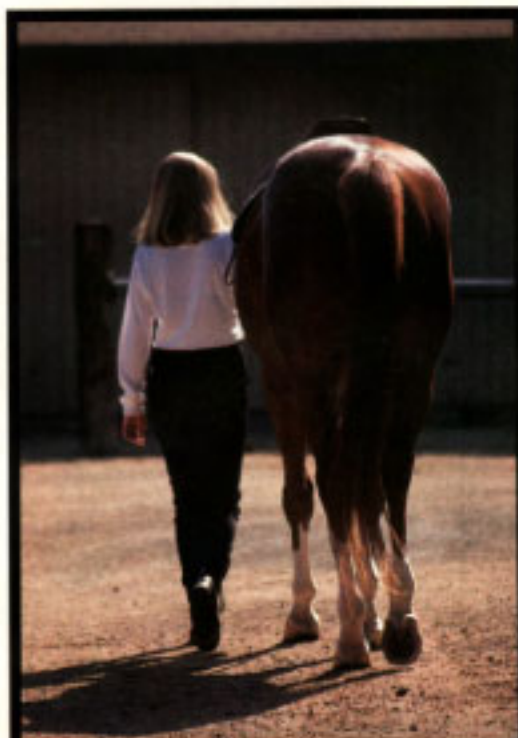
Ingham contacted friends and animal rights groups and they hired an attorney to file a lawsuit against Brand's estate, asking that the court judge overrule Brand's last request and spare the horses' lives. After an article about the case was published in the newspaper, dozens of concerned citizens and animal rights groups called Ingham to offer financial support and homes for the animals if their lives could be spared.

McCormick and many of Brand's friends objected that these groups had no standing in the case and that Brand was within his rights to have the animals killed, which he could have legally done if he were still alive.

Caught in the middle was Susan Fowler, the Chittenden County Probate Court Judge, bound by law to follow Brand's last wishes yet sensitive to the complaint that killing the animals was a senseless and needless act of cruelty. Lawyers for both sides searched for legal precedents to back up their cases.

McCormick said Brand, an animal lover all his life, sought the horses' deaths because he was afraid they would be mistreated when he could no longer care for them.

"He was not a man who abused animals," McCormick told the *Rutland Herald*, "he



Some people are so afraid that when they die, their horses will fall into bad hands—and so they put a clause in their will to have the horse euthanized rather than be sold to an uncertain future.

though it was ordered in a will. We believe that it's against the public policy of the state to have these animals put to death by will."

Bjerke found legal precedents in California, Pennsylvania, New York and Connecticut where courts had reprieved dogs and cats that had been sentenced to death in their owners' wills. There was nothing about horses, however.

The Vermont legislature rushed to pass a law prohibiting the destruction of animals in wills, but it was thought to be too late to save the two horses. Animal rights groups around the country sent letters to Fowler asking her to spare the horses.

When Fowler issued her ruling on March 17, 1999, she noted that while Brand's intention was to prevent abuse of his animals, "a death sentence imposed upon healthy, if aging, animals might be considered cruel in its own right." In less enlightened times, she said, wives and slaves were also considered "property" to be disposed of as the owner thought fit. The word animal, she noted, came from the Latin anima, which means "soul," and abuse of animals has been outlawed by every state, including Vermont.

She then ordered that the work horse and the bay mare be placed in the custody of a Vermont animal protection group which would arrange for their adoptions. The horses have since been placed on farms.

While the Vermont story had a happy ending, how many animals are killed each year through the misguided last wishes of their owners? No one knows for sure. The half-dozen cases that have come to public attention within the last few decades have all ended with the animals being spared, but there may be many more where the death

was a man who was practical about animals. This was best for his animals. The legislature permits this. Laying down animals is not in itself cruelty."

"From the response we received you would have thought we were putting down Trigger," he later told the *Boston Globe*. "Like it or not, the law considers horses to be nothing more than property."

Alan Bjerke, the lawyer for the groups attempting to save the horses, called the will an act of misguided abuse.

"There's a distinction to be made between a toaster, say, and living, breathing animals," he says. "The courts have made this distinction in the past. We knew of a case in San Francisco where the court prevented a dog from being destroyed, even

sentences are carried out in private.

Derek St. Pierre, a San Francisco attorney for In Defense of Animals, an animal rights group that filed a brief in the Brand case, suspects that there may be hundreds of such cases involving family pets and farm animals.

"It just kind of goes unnoticed," he says. "It's really unfortunate. In the Brand case you just happened to have a person who knew about the will and was familiar with the animals. She raised the alarm and people took action. If she had not been there, the will would have been carried out and no one would have known about it."

Animal lovers concerned about protecting pets that outlive them have much better options than death sentences. According to St. Pierre, in most cases the pets are placed with family members who will care for them properly. If there are no family members available, he said, a trust can be created and funded by the estate to make sure the animals are provided for and there are animal sanctuaries around the country that will ensure that the animals' final years are pleasant ones.

Phyllie Gutto, a New Jersey attorney and chair of the American Bar Association's committee dealing with probate issues, said that in her 12 years of practice, she has dealt with only one case involving an owner issuing a death sentence. "It's certainly not something that comes up at meetings or in discussions with other lawyers," she says. "I think it is quite rare."

In the case she handled, a Doberman dog had been ordered to be put to sleep by the owner. "She was concerned about the dog's care and well-being and thought this was the best way to handle it," she says. "In more cases than not, you do what people ask you to do in this kind of law. It's much more common to designate funds for their care and I've done a lot of that sort of thing. This was the only case I handled like this."

In the case of the Doberman, she said, she made arrangements with the New Jersey Humane Society to put the dog to sleep, as the owner had asked. But then, at the last moment, the society had a change of heart and decided that it could not go through with the request and put the dog up for adoption instead. No one had any objection to that decision, says Gutto. ■

Our guest columnist, Craig Brandon, teaches writing and editing at Keene State College in New Hampshire.