

OCT 11 2024

Shelley A. Johnson
Clerk

On the day "July 20, 20^{Pg 1}"
when my dogs were taken
from me and my son
Dolan Foss, the rental truck
was also impounded.

We were charged with
neglect

The issues are food, water,
clean cages + temperatures.

The city petition for our
dogs be signed over to them
so they could dispose of
them.

While we were in court for
neglect charge + court for dogs
our things were towed to
Budget in Casper Wyo by
Plains towing. We were not
allowed to get into truck.

My medicine, clothes + important
papers were gone.

Also my water bottles, bag
of dog food, traps for

30826

pg 2

Cages and my Hermit and
had on the wall above cages

Some friends took me to
get our belongings.

Mitch + myself loaded
things into another truck. We
did not have room for everything

I had to leave my free for
a dog man and although we
still have a couple of gallon
jugs with water we had to
throw away 10-15 bathes because
we had no room left. We put
the dog food into a tub as we
were cleaning up the horrible

mess that officer Ted Schmidt
left in there. I had a plastic
barrel with a lid that I would
fill each month with 100 lbs
of dog food to keep moisture +
bugs out and I would fill a
tub up for dialy food. The
50 lb that was out was the

Last one and I left it out.

My ice chest had a case of store bought water in it.

Anyway, the barrel fell off the truck coming back. Mitch found some black trays left in the truck that were taken out of cages, and I swept out the back of the truck. There was no poop anywhere on floor or pea slats. Truck had a wooden floor.

Plain's dispatch said to get things by 4:00 pm on the 2nd of Aug. But they were already gone.

There's pictures of dogs that they took shows no dirty cages + full water jugs.

Officer Schmidt did not look very hard + he did not get me my shoes, I was confronted the night I got out of jail + told where my dogs were. I was

sitting across from hospital +
getting ready to go to ER I
was sick. I called for appointment
to see my dogs no return calls
I left message to volunteer to
work out there + nothing. They
got rid of our things + denied
visitation.

The night or early morning of court
they detained me saying they had
some papers to serve me + doing
a welfare check on me saying
they have seen me out where they
stopped me at. That was the first
time I ever been down that road.
They made me almost late for
court.

I have July 20th have to have
temperatures.

Also, these dogs are not
pit.

They are Australian Blue
shepherd - the white ones have

been said to be worth 1.2 million
dollars-

I have never breed them or
sold them. I have just been
their mom. They are my kids
you can't own blood-

July 2002
Oct 8, 24

Aug 15, 24

Personnel Statement pg 1

Claim Dispute
Claim # 1-8134777672

I Judy Foss do hereby dispute the transaction to my direct express account in the amount of Three Thousand Two Hundred thirty nine dollars and fifty six cents

\$ 3239.56 posted on Aug 15, 2024 By Budget Rental Truck. The last time I spoke with them I told them I needed to work out a payment plan and that I was trying to get an emergency hardship loan. They said ok. It was not my sons or my fault that the truck was impounded. We were only 4 days behind before we were arrested we are still going to court over the whole mess caused by one very nasty Police Officer who also impounded our dogs arresting us + charges of neglect 1st offence

misdeameanor but then petitioning ^{pg 2}
the court for us to sign ownership
of dogs to them so they can dispose
of them.

We had paid for insurance in the
Budget Rental contract and was told
we could get things out by 4:00 p.m.
on Thursday August first 2024

8/1/24

that the truck wasn't scheduled to
go out until Friday August 2, 2024
We finally located a storage shed
and some help to move our belongings
out of truck. We got to Plains
towing the Truck and all our belongings
were taken to Casper Wyoming.

Plains towing dispatcher told me I
had until 4 p.m. August 1st, 2024 to
get our things out. I had talked to
Budget more than once about a three
month rental and or possibly buying
the truck.

Plains will not give us a detailed

statement

pg 3

of charges and a paid in full statement because it is Budget's track. So I don't know what was owed or who paid it, Insurance we purchased or Budget themselves.

Unless I see an itemized Billing statement I totally dispute this transaction being taken from my account and without any discussion with Budget. Budget has not produced a statement either. We have a right to see transactions being charged also. We had the contract with Budget. I don't just pay out money with no Billing statement.

I am leaving Sunday August 18 29 to go to Casper and put our belongs in storage.

I am disabled and I have to hitchhike to Casper as Buses and trams do not run there.

They are putting my life at risk and the whole mess caused by all of them has put a financial, physical + emotional

hardship on our dogs and ourselves.
We had to purchase cloths, a tent, bedding
and food all of which we already had
in the track and are fighting to save
our pets

signed Judy Foss

Judy Foss
Judy Foss
Dated August 16, 2024

E-mail to:
USDXclaims@usdirectexpress.com

Claim number: 1-8134777672

I helped Judy Foss
unload the budget Truck in
Casper Wyo. And she did &
still does have 25⁰⁰ of dog food
We lost her barrel on the road
it flew out and I had to throw
away about 20 1 gal jugs of water
there was no room. We had to leave
the dog fence down. There was no
pee mats or poop on the floor of
the truck. The officer had left
the Truck in a total wreck

Mike Mansbach

Maintenance Man Day End

picked up in Casper Wyo. on
Sept before 22nd.

Animal Help Contacts pg 1
to save my dogs from
being taken and disposed
of

Goodnet Gateway
Royal Society

RSPCA.org
over animal cruelty case
300-123-0346
1-800-278-3589

HSI

SPCA

World Animal Protection
646-783-2200
535 English Ave. 301
NY NY
10015

Joined: Ask a dog lawyer
no representation for dogs or us
at hearing No notice to ~~person~~



Past Weather in Sturgis, South Dakota, USA — July 2024

Time Weather ▼ Time Zone DST Sun & Moon ▼

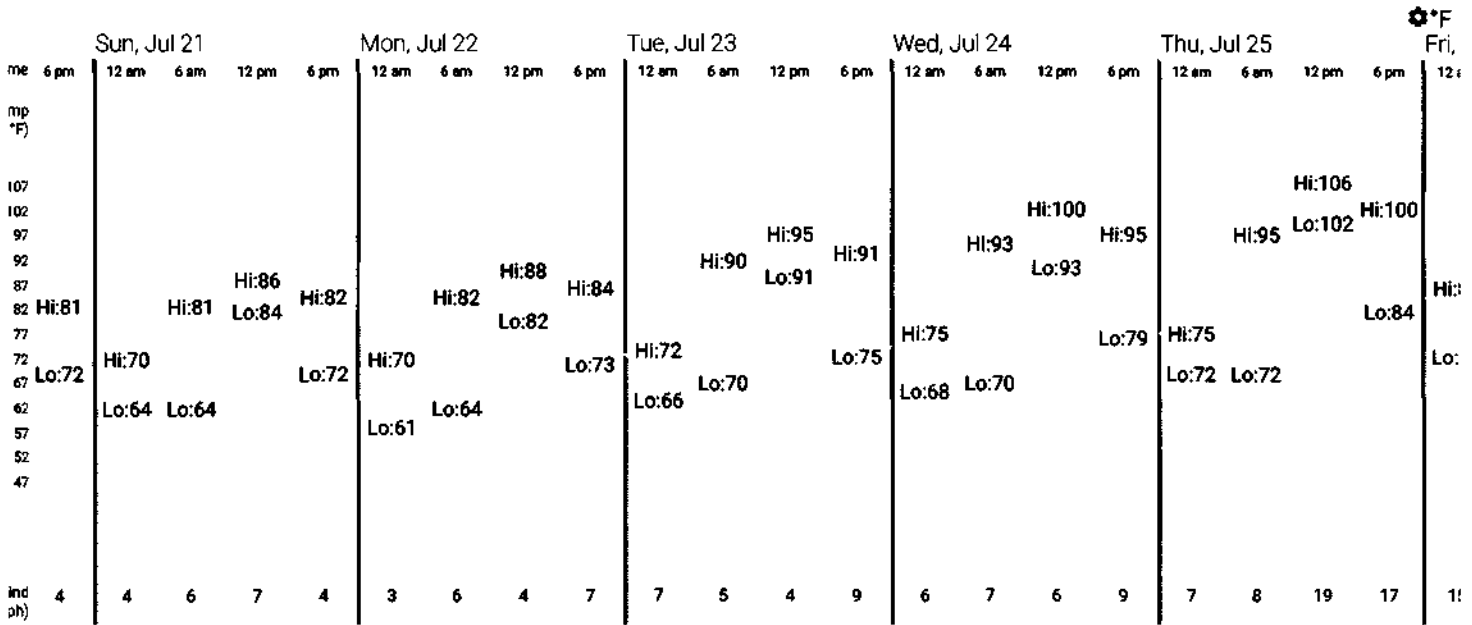
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Currently: 81 °F Sunny. (Weather station: Ellsworth Air Force Base, USA). See more current weather [>](#)

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Select month: July 2024

July 2024 Weather in Sturgis — Graph



Monday, July 1, 2024, 12:00 am — 6:00 am

72 / 64 °F

Sunny

Humidity: 76%

Barometer: 29.74 Hg

Wind: S 8.7 mph

[Mon, Jul 1](#) [Tue, Jul 2](#) [Wed, Jul 3](#) [Thu, Jul 4](#) [Fri, Jul 5](#) [Sat, Jul 6](#) [Sun, Jul 7](#) [Mon, Jul 8](#) [Tue, Jul 9](#) [Wed, Jul 10](#) [Thu, Jul 11](#) [Fri, Jul 12](#) [Sat, Jul 13](#) [Sun, Jul 14](#) [Mon, Jul 15](#) [Tue, Jul 16](#) [Wed, Jul 17](#) [Thu, Jul 18](#) [Fri, Jul 19](#) [Sat, Jul 20](#) [Sun, Jul 21](#) [Mon, Jul 22](#) [Tue, Jul 23](#) [Wed, Jul 24](#) [Thu, Jul 25](#) [Fri, Jul 26](#) [Sat, Jul 27](#) [Sun, Jul 28](#) [Mon, Jul 29](#) [Tue, Jul 30](#) [Wed, Jul 31](#)

High & Low Weather Summary for July 2024

	Temperature	Humidity	Pressure
High	106 °F (Jul 25, 4:14 pm)	88% (Jul 3, 4:55 pm)	30.15 "Hg (Jul 3, 4:55 pm)
Low	48 °F (Jul 5, 2:55 am)	7% (Jul 25, 2:57 pm)	29.57 "Hg (Jul 27, 5:55 pm)
Average	77 °F	44%	29.92 "Hg





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Note: Actual official high and low records may vary slightly from our data, if they occurred in-between our weather recording intervals... [More about our weather records](#)

Sturgis Weather History for July 20, 2024

Show weather for: July 20, 2024

Time	Conditions		Comfort		Barometer	Visibility
	Temp	Weather	Wind	Humidity		
12:55 am Sun, Jul 20	70 °F	Clear.	3 mph	67%	30.05 "Hg	10 mi
1:55 am	66 °F	Clear.	No wind	77%	30.05 "Hg	10 mi
2:55 am	67 °F	Passing clouds.	No wind	75%	30.05 "Hg	10 mi
3:55 am	64 °F	Passing clouds.	No wind	81%	30.08 "Hg	10 mi
4:55 am	64 °F	Broken clouds.	5 mph	80%	30.09 "Hg	10 mi
5:55 am	62 °F	Partly sunny.	6 mph	86%	30.12 "Hg	10 mi
6:55 am	66 °F	Sunny.	No wind	81%	30.11 "Hg	10 mi
7:55 am	72 °F	Sunny.	5 mph	65%	30.12 "Hg	10 mi
8:55 am	73 °F	Passing clouds.	No wind	59%	30.14 "Hg	10 mi
9:55 am	77 °F	Passing clouds.	5 mph	55%	30.14 "Hg	10 mi
10:55 am	80 °F	Passing clouds.	3 mph	49%	30.14 "Hg	10 mi
11:55 am	82 °F	Passing clouds.	7 mph	43%	30.14 "Hg	10 mi
12:55 pm	83 °F	Scattered clouds.	5 mph	39%	30.12 "Hg	10 mi
2:55 pm	87 °F	Broken clouds.	7 mph	31%	30.09 "Hg	10 mi
3:55 pm	86 °F	Passing clouds.	8 mph	29%	30.09 "Hg	10 mi
4:55 pm	87 °F	Passing clouds.	12 mph	27%	30.08 "Hg	10 mi

6:55 pm		80 °F	Passing clouds.	8 mph ←	42%	30.09 "Hg	10 mi	
7:55 pm		78 °F	Clear.	5 mph ←	45%	30.10 "Hg	10 mi	
8:55 pm	*	77 °F	Clear.	3 mph ←	51%	30.12 "Hg	10 mi	
9:55 pm		72 °F	Passing clouds.	3 mph ↑	61%	30.14 "Hg	10 mi	
10:55 pm		72 °F	Passing clouds.	No wind	↓	61%	30.15 "Hg	10 mi
11:55 pm	*	71 °F	Clear.	5 mph ↑	61%	30.14 "Hg	10 mi	

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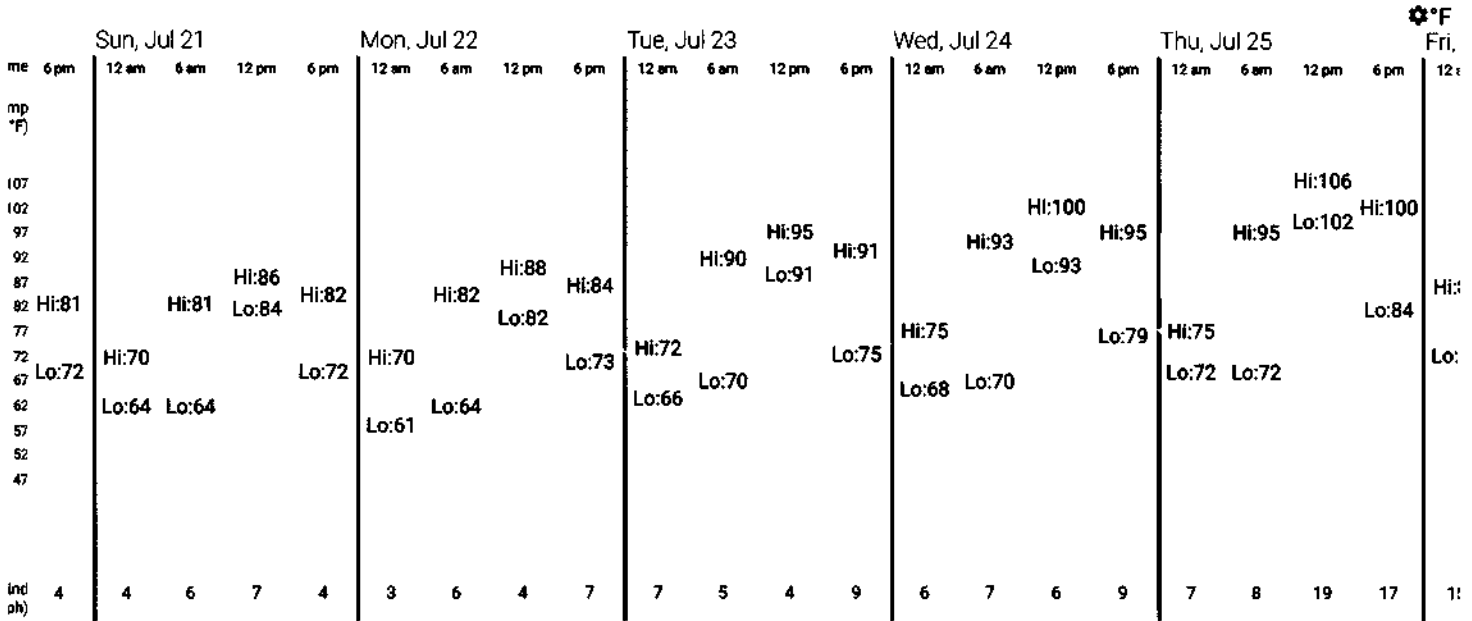
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Monday, July 1, 2024, 12:00 am - 6:00 am

72 / 64 °F
Sunny.

Humidity: 76%
Barometer: 29.74 Hg

Wind: S 8.7 mph

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Low	48 °F (Jul 5, 2:55 am)	7% (Jul 25, 2:57 pm)	29.57 "Hg (Jul 27, 5:55 pm)
Average	77 °F	44%	29.92 "Hg

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Sturgis Weather History for July 18, 2024

Show weather for: July 18, 2024

Time	Conditions		Comfort			
	Temp	Weather	Wind	Humidity	Barometer	Visibility
12:55 am * Thu, Jul 18	66 °F	Clear.	8 mph	↑ 71%	30.08 "Hg	10 mi
1:55 am *	65 °F	Clear.	7 mph	↑ 74%	30.05 "Hg	10 mi
2:55 am *	63 °F	Clear.	7 mph	↘ 76%	30.04 "Hg	10 mi
3:55 am *	62 °F	Clear.	5 mph	↑ 80%	30.04 "Hg	10 mi
4:55 am *	62 °F	Sunny.	8 mph	↘ 83%	30.04 "Hg	10 mi
5:55 am	63 °F	Sunny.	5 mph	↘ 82%	30.05 "Hg	10 mi
6:55 am	66 °F	Sunny.	3 mph	↗ 79%	30.06 "Hg	10 mi
7:55 am	69 °F	Sunny.	7 mph	↗ 70%	30.07 "Hg	10 mi
8:55 am	75 °F	Sunny.	8 mph	↑ 60%	30.06 "Hg	10 mi
9:57 am	80 °F	Passing clouds.	10 mph	↘ 47%	30.05 "Hg	10 mi
10:55 am	85 °F	Passing clouds.	14 mph	↘ 38%	30.02 "Hg	10 mi
11:55 am	87 °F	Sunny.	14 mph	↘ 29%	30.01 "Hg	10 mi
12:55 pm	89 °F	Passing clouds.	17 mph	↑ 27%	30.00 "Hg	10 mi
1:57 pm	90 °F	Sunny.	13 mph	↑ 24%	29.98 "Hg	10 mi
2:55 pm	96 °F	Passing clouds.	9 mph	↑ 21%	29.97 "Hg	10 mi
3:55 pm	95 °F	Sunny.	10 mph	↑ 19%	29.95 "Hg	10 mi

5:55 pm	●	94 °F	Sunny.	7 mph ↘	18%	29.93 "Hg	10 mi
6:55 pm	●	92 °F	Sunny.	9 mph ↑	23%	29.92 "Hg	10 mi
7:55 pm	●	86 °F	Clear.	5 mph ↑	31%	29.93 "Hg	10 mi
8:55 pm	*	83 °F	Clear.	5 mph ↑	38%	29.94 "Hg	10 mi
9:55 pm	*	80 °F	Clear.	5 mph ↑	41%	29.93 "Hg	10 mi
10:55 pm	*	73 °F	Clear.	7 mph ↘	46%	29.95 "Hg	10 mi
11:55 pm	*	74 °F	Clear.	8 mph ↘	54%	29.93 "Hg	10 mi

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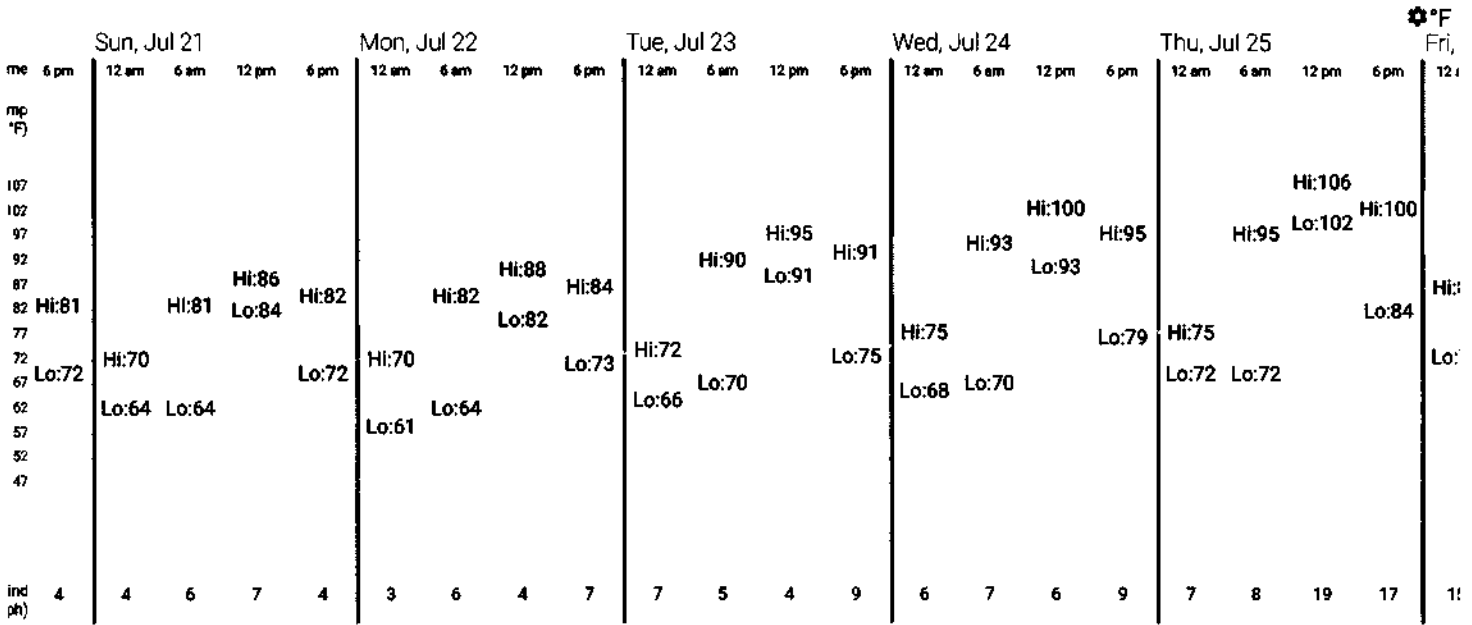
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Sunny.

Humidity: 76%

Barometer: 29.74 inHg

Wind: S 8.7 mph

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Low	48 °F (Jul 5, 2:55 am)	7% (Jul 25, 2:57 pm)	29.57 "Hg (Jul 27, 5:55 pm)
Average	77 °F	44%	29.92 "Hg













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Sturgis Weather History for July 19, 2024

Show weather for: July 19, 2024

Time	Conditions		Comfort		Barometer	Visibility
	Temp	Weather	Wind	Humidity		
12:55 am Fri, Jul 19	* 75 °F	Clear.	7 mph	↑ 54%	29.92 "Hg	10 mi
1:55 am	72 °F	Passing clouds.	7 mph	↗ 55%	29.89 "Hg	10 mi
3:11 am	72 °F	Thunderstorms. Passing clouds.	6 mph	→ 65%	29.89 "Hg	9 mi
3:26 am	* 68 °F	Clear.	5 mph	↓ 69%	29.89 "Hg	10 mi
3:55 am	77 °F	Thundershowers. Clear.	12 mph	✓ 52%	29.88 "Hg	10 mi
4:55 am	* 70 °F	Sunny.	3 mph	↑ 67%	29.89 "Hg	10 mi
5:55 am	68 °F	Sunny.	8 mph	↘ 74%	29.92 "Hg	10 mi
6:55 am	72 °F	Sunny.	13 mph	↘ 53%	29.93 "Hg	10 mi
7:58 am	79 °F	Passing clouds.	18 mph	↘ 34%	29.95 "Hg	10 mi
8:57 am	86 °F	Scattered clouds.	20 mph	↓ 24%	29.94 "Hg	10 mi
9:57 am	84 °F	Scattered clouds.	17 mph	↓ 29%	29.96 "Hg	10 mi
10:56 am	86 °F	Passing clouds.	16 mph	↘ 31%	29.96 "Hg	10 mi
11:56 am	86 °F	Sunny.	14 mph	↘ 35%	29.96 "Hg	10 mi
12:55 pm	88 °F	Sunny.	13 mph	↓ 38%	29.98 "Hg	10 mi
1:12 pm	90 °F	Scattered clouds.	14 mph	↓ 36%	29.96 "Hg	10 mi
1:55 pm	90 °F	Sunny.	14 mph	↓ 33%	29.96 "Hg	10 mi

2:57 pm		88 °F	Scattered clouds.	16 mph	✓ 38%	29.96 "Hg	10 mi
4:06 pm		84 °F	Scattered clouds.	10 mph	← 45%	29.97 "Hg	10 mi
4:22 pm		84 °F	Thunderstorms. Passing clouds.	12 mph	← 48%	29.96 "Hg	10 mi
4:55 pm		83 °F	Scattered clouds.	8 mph	✓ 42%	29.96 "Hg	10 mi
5:14 pm		81 °F	Strong thunderstorms. Broken clouds.	21 mph	✓ 48%	30.01 "Hg	6 mi
5:19 pm		72 °F	Strong thunderstorms. Broken clouds.	16 mph	↓ 61%	29.99 "Hg	1 mi
5:27 pm		72 °F	Thunderstorms. Partly sunny.	6 mph	↘ 65%	30.01 "Hg	2 mi
5:55 pm		70 °F	Thundershowers. Mostly cloudy.	16 mph	✓ 73%	30.02 "Hg	10 mi
6:04 pm		72 °F	Thunderstorms. Broken clouds.	10 mph	✓ 65%	30.04 "Hg	10 mi
6:22 pm		72 °F	Scattered clouds.	No wind	↓ 69%	30.02 "Hg	10 mi
6:55 pm		76 °F	Passing clouds.	No wind	↓ 59%	30.01 "Hg	10 mi
7:55 pm		70 °F	Clear.	6 mph	↘ 73%	30.01 "Hg	10 mi
8:55 pm	*	73 °F	Clear.	5 mph	↓ 68%	30.02 "Hg	10 mi
9:55 pm	*	69 °F	Clear.	8 mph	↘ 72%	30.03 "Hg	10 mi
10:55 pm	*	74 °F	Clear.	6 mph	✓ 61%	30.03 "Hg	10 mi
11:55 pm	*	69 °F	Clear.	5 mph	↓ 63%	30.05 "Hg	10 mi

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IN SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 30826

CITY OF STURGIS,

Plaintiff/Appellee,

v.

DOLAN M. FOSS, JUDY L. FOSS, and SIX IMPOUNDED DOGS,

Defendants/Appellants,

APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
MEADE, SOUTH DAKOTA

THE HONORABLE JOHN FITZGERALD
CIRCUIT COURT JUDGE

PLAINTIFF/APPELLEE'S BRIEF

Pro Se Appellants:
Dolan M. Foss
Judy L. Foss
c/o Days End Campground
2501 Avalanche Road
Sturgis, SD 57785

Attorneys for Plaintiff/Appellee:
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Phone: (605) 224-8803

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PRELIMINARY STATEMENT

This brief will refer to Appellant, Dolan Foss, as “Dolan.” This brief will refer to Appellant, Judy Foss, as “Judy.” This brief will refer to Appellant, Six Impounded Dogs, as “the dogs.” This brief will refer to Appellants collectively as “the Fosses.” Plaintiff/Appellee, the City of Sturgis, will refer to itself as “the City.”

References to the Settled Record will be indicated by “SR ____.” Appellee’s Appendix will be referred to as “AA ____.”

JURISDICTIONAL STATEMENT

This is an appeal from an Order Ratifying Impoundment and Transferring Ownership in favor of the City entered on August 2, 2024, by the Honorable John Fitzgerald. AA 01. The Order was dispositive and was a final order pursuant to SDCL § 15-26A-3(2). Notice of Entry was filed on August 6, 2024. Notice of Appeal was filed on September 3, 2024. The referenced Order is appealable, and the present appeal is timely.

STATEMENT OF LEGAL ISSUES

1. Whether the circuit court correctly found exigent circumstances to issue its Order Ratifying Impoundment and Transferring Ownership of the dogs?

The Circuit Court ruled that the City possessed the proper exigent circumstances to impound the dogs and it transferred ownership of the dogs to the City as a result.

Authorities:

- SDCL § 40-1-5
- *State v. Fifteen Impounded Cats*, 2010 S.D. 50, 785 N.W.2d 272

STATEMENT OF THE CASE

Fosses appealed the circuit court's order ratifying the impoundment of six dogs and transferring ownership of the six dogs to the City, apparently arguing that the Fosses did possess food and water for the dogs and therefore the dogs should be returned to them.

This brief will outline that the dogs were in dire circumstances when the City impounded them, demonstrating sufficient exigent circumstances to permit the City to impound and transfer ownership. This brief will explain that Fosses failed to successfully respond to the City's evidence that they were unfit to care for the dogs in question and, by their own statements, had been unfit for some time prior to the impounding. Finally, based on Fosses' own testimony, this brief will demonstrate how returning the dogs would place the dogs back in the same unfit circumstances they left.

STATEMENT OF FACTS

On July 20, 2024, officers responded to a citizen report concerning the welfare of dogs being housed in a truck trailer. SR 8. When officers arrived they found six dogs stacked inside a Budget Rental Truck trailer, in rusty kennels with ill-fitting plastic floors and with feces and urine soaked blankets. SR 19-29, 98 lines 19-22. No water or food was found in their kennels. SR 66 lines 4-8, 69 lines 6-10. The trailer did not just house the dogs; it housed numerous other items crammed tightly into the unit, covering some of the dogs' kennels and blocking ready ingress and egress. SR 19-20. The dogs' kennels were covered with blankets and, while the Fosses testified that there were vents and a fan

in the trailer, the responding officer, Teal Schmidt, did not notice any air circulation. SR 19-20, 66 lines 5-8.

Officer Schmidt had also been dispatched to the Fosses' trailer the day prior to July 20 because of another citizen's report concerning the dogs. SR 70 lines 1-10. Dolan Foss had informed him that they were looking for work during the Sturgis Motorcycle Rally. SR 71 lines 11-13. Officer Schmidt informed Dolan that he needed to do something about their dogs because of the heat and the conditions. SR 70 lines 14-22.

On July 20, 2024, after Officer Schmidt was dispatched again, he asked Dolan Foss when the last time the dogs had been watered. SR 71 lines 20-22. Dolan responded that he had given them water the day before. SR 71 lines 23-25, 72 lines 1-2. When asked why the dogs had not been watered that day, Dolan responded that the dogs urinated everywhere when they were given water.¹ *Id.*

Officer Schmidt entered the open trailer and took temperature readings which ranged from 89 degrees to 103 degrees. SR 69 lines 21-23. The dogs were panting heavily and sweating. SR 69. Officer Schmidt testified that after he had taken the dogs out of the truck, he went to his car and got a water bottle, poured it over one of the dogs' kennels, and the dog attempted to grab the water in the air to drink it. SR 72 lines 23-25, 73 lines 1-2.

¹ Judy Foss disputes that the dogs were not given water, claiming that if they needed water, they had water. SR 83 lines 19-23. Notably, Judy did not tell Officer Schmidt that she allegedly watered the dogs earlier that day. *See id.* However, before alluding that she had given the dogs water (or at least tritely asserting that the dogs had water if they needed it), she testified that she was just waking up for the day. SR 68 lines 17-20. She also testified that she was about to check into the emergency room for an inner ear infection, presumably leaving the dogs alone with her son, Dolan. SR 63 lines 3-8, 86 lines 7-10.

When the dogs arrived at the Sturgis Animal Shelter, all of the dogs drank copious amounts of water. SR 40 lines 1-2. When food was given to the dogs, four of the dogs ate the food faster than they could chew it; two of the dogs were too scared to eat and cowered in their kennels. SR 39 lines 15-25.

Judy and Dolan were both cited pursuant to SDCL § 40-1-2.3. *See* 46CRI24-518 & 46CRI24-519.

A hearing seeking ratification of the impoundment was held on August 1, 2024. At the hearing the Honorable John Fitzgerald heard all of the facts previously outlined, as well as the testimony (mostly in the form of “Did you know” questions from Dolan and Judy) of the Fosses. *See generally* SR 59-137. The Fosses testified that they had been making their way up to Montana from Oklahoma. SR 80 lines 4-13. They testified that they had regular interactions with police and animal welfare agencies who continuously told them to take their dogs and get out of town. SR 82 lines 18-20, 118 lines 19-25, 119 lines 1-11. Judy testified that they had started with nine dogs [SR 122 lines 7-9 (“seven boys, two girls”)] and twenty puppies [SR 119 lines 12-25] but had gotten rid of some [SR 119 lines 18-22], while others had died from being tortured [SR 80 lines 10-11], ran over [SR 92 line 12], having their throat slit [SR 87 lines 19-22], or shot by others [SR 81 lines 16-18]. Judy had testified that they had been living in a truck (or a U-haul) for some time before being detained in Sturgis. SR 119 lines 5-11. While Judy testified that they were planning to travel to Montana to find a home [SR 80 lines 4-13], the rental vehicle was actually due to be dropped off in Casper, Wyoming, a few days before the Fosses were detained in Sturgis [SR 73 lines 24-25, 74 lines 1-2]. At the hearing, Judy and

Dolan were living in a tent and would continue to do so if they could not find a camper. SR 124 lines 3-13.

Judy testified that she had dog food and water (in bottles) for the dogs but had the food and water outside of the kennels so the dogs would not have made a mess inside their kennels. SR 76 lines 22-23. However, according to Officer Schmidt, an inventory was made of the Budget truck's contents² found no food. SR 72 lines 5-14.

Judge Fitzgerald orally found, in addition to the heat of the day, the dogs were extremely hungry or too traumatized to eat, the cages were filthy, without much room to move about. SR 130 lines 9-25. He found that the Fosses and the dogs had been living in the truck for an unknown period of time, but that the dog's situation had not come to Sturgis's attention until the day before the dogs were impounded. SR 131, lines 1-8. He found that the Fosses were "more or less homeless." *Id.* lines 9-10. He found that there were a number of encounters with law enforcement because of concerned citizens regarding the dogs' welfare. *Id.* lines 15-19. He stated "I believe that the animals were in serious jeopardy and that they were suffering from lack of water, at least at that time, and food, and that the shelter that they were in was filthy and unsanitary." *Id.* lines 20-24.

While Judge Fitzgerald's August 2, 2024 Order did not specifically label a section for findings of fact and conclusions of law, it did outline that the court found sufficient exigent circumstances to impound the dogs and transfer ownership. *See generally* AA 01-03. The exigent circumstances included: temperature both inside and outside of the moving van/truck; lack of sufficient food and water for the animals; the sanitary

² When officers determined that the truck was overdue in Casper, Wyoming, they impounded it and inventoried the same until arrangements could be made to get the truck to Casper. SR 73 lines 23-25, 74 lines 1-5.

conditions of the cages, including lack of sufficient size cage bottoms, the urine and feces-soaked blankets in the cages; and lack of adequate housing for the animals. *Id.* at 01-02. The court found that the combination of the exigent circumstances listed placed the dogs in serious jeopardy. *Id.* at 02. The circuit court found that the transfer of ownership from the Fosses to the City's animal shelter was appropriate because the Fosses did not have adequate living arrangements to provide for the dogs' wellbeing and safety. *Id.*

STANDARD OF REVIEW

A circuit court's findings for cases such as this are reviewed under the clearly erroneous standard. *See State v. Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 26, 785 N.W.2d 272, 281.

We will not set aside a [circuit] court's findings of fact unless they are clearly erroneous. A [circuit] court's finding is clearly erroneous if, after reviewing the entire evidence, we are left with the definite and firm conviction that a mistake has been made[.] All conflicts in the evidence must be resolved in favor of the [circuit] court's determinations. The credibility of the witnesses, the weight to be accorded their testimony, and the weight of the evidence must be determined by the [circuit] court and we give due regard to the [circuit] court's opportunity to observe the witnesses and the evidence. We review any documentary or deposition evidence under a de novo standard of review.

On review the successful party is entitled to the benefit of his version of the evidence and of all favorable inferences fairly deducible therefrom.

Fifteen Impounded Cats, 2010 S.D. 50, ¶ 26, 785 N.W.2d at 281–82 (quoting *In re Estate of Pringle*, 2008 SD 38, ¶ 18, 751 N.W.2d 277, 284) (citations omitted).

Although a preference exists for written findings and conclusions, oral findings and conclusions where the basis of the trial court's ruling is clear are also accepted. *See In re Guardianship and Conservatorship of Fischer*, 2008 S.D. 51, ¶ 8, 752 N.W.2d 215,

217 (stating that generally the failure to file findings of fact and conclusions of law is reversible error, but that this Court may decide the appeal without further findings if it feels it is in a position to do so); *State v. Stevenson*, 2002 S.D. 120, ¶ 10, 652 N.W.2d 735, 739 (observing that this Court has accepted verbal findings and conclusions where the record leaves no room for speculation and conjecture concerning what the trial court found or concluded). If a trial court's ruling in this case is clear, "there is no necessity of a remand for the entry of written findings of fact and conclusions of law. *Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 23, 785 N.W.2d at 281.

Finally, whether the facts constitute exigent circumstances is a mixed law-fact question reviewed de novo. *Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 20, 785 N.W.2d at 280.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY FOUND EXIGENT CIRCUMSTANCES TO PERMIT THE IMPOUNDING AND TRANSFER OF OWNERSHIP OF THE DOGS TO THE CITY OF STURGIS

South Dakota Codified Laws section 40-1-2.3 prohibits a person owning or being responsible for the care of an animal from neglecting, abandoning, or mistreating that animal. "Neglect" under SDCL Ch. 40-1 is defined as "fail[ure] to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal." SDCL § 40-1-1(10).

Section 40-1-5 provides for the process by which a law enforcement officer may impound a mistreated or neglected animal. It states:

Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or

subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered. *However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist.* If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

SDCL § 40-1-5. (emphasis added).

“Exigent circumstances exist when a situation demand[s] immediate attention with no time to obtain a warrant.” *Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 15, 785 N.W.2d at 278 (quoting *State v. Dillon*, 2007 S.D. 77, ¶ 18, 738 N.W.2d 57, 60). “The need to protect or preserve life or avoid serious injury presents that kind of situation.” *Id.*

Further SDCL § 40-1-34(2) provides that any peace officer (among others) may dispose of a properly impounded animal by “[t]ransferring ownership to a humane society as described in chapter 40-2.”

In this case the circuit court properly found that Officer Schmidt possessed exigent circumstances to impound the dogs. The circuit court found that a combination of the temperature (ranging from 89 to 103 degrees inside the trailer), lack of sufficient food and water for the animals, the sanitary conditions of the cages, including lack of sufficient sized cage bottoms, the urine and feces-soaked blankets in the cages, and lack of adequate housing for the animals all constituted sufficient exigent circumstances and that the dogs were in serious jeopardy to impoundment without a warrant or court order. *See* SR 130-31; AA 01-03. Add in the fact that the dogs were in a mobile vehicle and

could be hidden away without food or water for long periods of time, the dogs were lucky not to have succumbed to the same fairs as the other approximately twenty-three other dogs the Fosses had started off with in Oklahoma.

While Fosses clearly loved the animals enough to appeal their cause to this Court, they were and are in no position to care for six large dogs. The circuit court found as much in its oral findings. *See* SR 130-31. Furthermore, contrary to the Fosses' assertions that they possessed food for the dogs, the inventory of the truck found no food for the dogs in the trailer. SR 72 lines 5-14. There was certainly no food or water in the dogs' kennels. SR 66 lines 4-8, 69 lines 6-10. The lack of food, taken with Dolan's statement that he had not watered the dogs since the day before so the dogs wouldn't urinate all over the floor (suggesting that the Fosses didn't let the dogs out of their kennels to relieve themselves) (*see* SR 71 lines 23-25, 72 lines 1-2), and the fact that while Judy alludes that she may have watered the dogs, she also stated she had just woken up for the day and was headed to the hospital (from which she was not released until shortly before the hearing [*see* SR 63 lines 3-8]), the circuit court's finding that the dogs were in serious jeopardy and that adequate exigent circumstances existed should not be set aside.

The dogs' condition was in a state of extreme suffering and neglect due to the Fosses' "fail[ure] to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care." *See* SDCL §§ 40-1-1(10) & -5. Officer Schmidt properly followed SDCL § 40-1-5 by impounding the dogs and then showing cause to the circuit court to seek ratification of the impoundment. The circuit court properly ratified the impoundment and made the determination pursuant to SDCL § 40-1-34(2) that

CERTIFICATE OF SERVICE

Terra M. Larson of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 2nd day of January, 2025, she filed an electronic copy via Odyssey File and Serve of the foregoing Appellee's Brief and appendices in the above-captioned action and served appellants by mailing a copy of the foregoing to:

Dolan M. and Judy L. Foss
c/o Days End Campground
2501 Avalanche Road
Sturgis, SD 57785

BY: /s/ Terra M. Larson
Terra M. Larson

Plaintiff/Appellee's Appendix Table of Contents

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Order Ratifying Impoundment and Transferring Ownership	AA 01

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) SS	
COUNTY OF MEADE)	FOURTH JUDICIAL CIRCUIT
)	
CITY OF STURGIS,)	46CIV24-261
)	
Plaintiff,)	
)	
vs.)	ORDER RATIFYING
)	IMPOUNDMENT AND
SIX IMPOUNDED DOGS,)	TRANSFERRING
)	OWNERSHIP
Defendants.)	

Before the Court is the City of Sturgis' Petition to Ratify Seizure Under SDCL § 40-1-5 and for Order Transferring Ownership. The Court held an evidentiary hearing on August 1, 2024, appearing the City of Sturgis represented by counsel Eric Miller, and the dog owners, Dolan Foss and Judy Foss, without counsel. The Court being familiar with the entire file, testimony, and admitted exhibits hereby ratifies the July 20, 2024, impoundment of the six (6) dogs based on exigent circumstances, transfers ownership of the dogs to the Sturgis Animal Shelter, and grants the City of Sturgis impoundment costs as provided in the Court's oral ruling.

In conjunction with the Court's oral ruling, the Court finds that exigent circumstances existed under SDCL § 40-1-5 which required immediate attention to protect or preserve life or avoid serious injury of the six (6) dogs without obtaining a warrant or court order prior to impounding the dogs. Exigent circumstances existed based on the temperature both inside and outside the moving van/truck; the lack of sufficient food and water for the animals; the sanitary conditions of the cages, including the lack of sufficient

sized cage bottoms, the urine and feces soaked blankets in the cages; and the lack of adequate housing for the animals. The above-mentioned conditions placed the animals well-being in serious jeopardy.

The Court additionally finds that the transfer of ownership from Dolan and Judy Foss (collectively referred to as the Foss) to the Sturgis Animal Shelter is appropriate because the Foss' do not have adequate living arrangements to properly provide for the animals' well-being and safety. The Court finds the Sturgis Animal Shelter is a suitable caretaker or facility to house and care for the animals so the animals may be rehabilitated to the point they are available for adoption or other disposition as the Sturgis Animal Shelter determines is in the best interests of the animals. The Court finds that the \$20.00 daily cost for each dog at the Sturgis Animal Shelter is reasonable and justified.

WHEREFORE, for the reasons set forth above and through the Court's oral ruling, it is hereby:

ORDERED that the Sturgis Police Department's July 20, 2024, warrantless impoundment of the six (6) dogs is hereby ratified; and

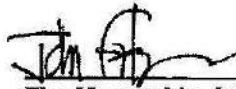
ORDERED the ownership of the six (6) impounded dogs is hereby transferred from Dolan Foss and Judy Foss to the Sturgis Animal Shelter for disposition that is in the best interests of the animals; and

ORDERED that Dolan and Judy Foss jointly and severally pay \$1,560 to the Sturgis Finance Office located 1040 Harley-Davidson Way, in the City of

Sturgis, plus any additional days at \$120.00 per day after August 1, 2024,
until the date this order is signed.

Dated this 2 day of August 2024.

BY THE COURT:



The Honorable John H. Fitzgerald
Circuit Court Judge

ATTEST:
Linda Keszler
Clerk of Courts

STATE OF SOUTH DAKOTA
Fourth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:

AUG 02 2024

Linda Keszler
Meade County Clerk of Courts

By: Shelby Moister
Clerk or Deputy

By: _____

