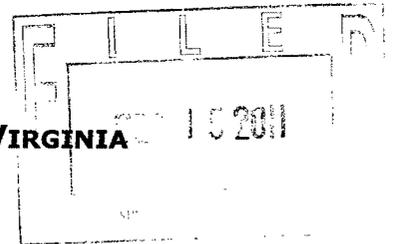


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 11-0745



**Ron Durham and
Rhonda Durham,**
Defendants Below, Petitioners,

Vs.

Appeal from a Final Order
of the Circuit Court of Grant County
(11-CAP-1)

**Freddie Chris Jenkins and
Elisha Chastity Jenkins,**
Plaintiffs Below, Respondents.

Respondents' Summary Response

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BRIEF STATEMENT OF FACTS

The Respondents' three year old child was attacked by two dogs owned by the Petitioners at the Petitioners' residence on or about September 18, 2010. As a result of the attack, the infant child suffered extensive and serious injuries, to-wit: the top of the child's scalp was ripped from her head from behind the bangs line, from ear to ear, and half way down the back of her head; bites to waist, thighs and back. Petitioners voluntarily euthanized one of the dogs responsible for the attack, but refused to euthanize the other dog. Respondents brought a civil action in the Grant County Magistrate Court, pursuant to West Virginia Code § 19-20-20, for the specific relief to have the court order the second dog to be euthanized by the Grant County humane officer. The Respondents prevailed at a bench trial before the Grant County Magistrate Court. The Petitioners appealed the matter to the Grant County Circuit Court. The Respondents prevailed at a bench trial before the Grant County Circuit Court. The Petitioners appealed this matter to the Supreme Court of Appeals of West Virginia. A more detailed account of the evidence presented and the findings of facts by the Grant County Circuit Court can be located at pages 1, 2, 3, 4, 6 and 7 of the Appendix. (A.R. 1-4, 6-7).

ARGUMENT RESPONSE

West Virginia Code § 19-20-20 is a civil statute that allows specific relief to either a government entity or a private person to request either a circuit court or magistrate court to order the humane officer to kill a dog that is deemed vicious, dangerous, or in the habit of biting or attacking other persons upon satisfactory proof of the same.

West Virginia Code § 19-20-20 sets forth the following:

Except as provided in section twenty-one of this article, no person shall own, keep or harbor any dog know by him to be vicious, dangerous, or in the habit of biting or attacking other persons, whether or not such dog wears a tag or muzzle. Upon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous, or in the habit of biting or attacking other persons or other dogs or animals, the judge may authorize the humane officer to cause such dog to be killed.

The entirety of Article 19 of the West Virginia Code governs agriculture and Chapter 20 covers the regulation of dogs and cats. This chapter covers everything from requirements for dog license to kennel operation; dogs killing livestock to dogs in heat – a catchall of laws designed by the legislature to govern both animals and their owners.

The Petitioners assert that West Virginia Code § 19-20-20 is a criminal statute only. The Circuit Court properly ruled that it is not only a criminal statute and ruled that the second sentence of West Virginia Code § 19-20-20 is the operative portion for the issue raised by the Petitioners. It requires that “[u]pon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous, or in the habit of biting or attacking other persons or other dogs or animals, the judge may authorize the humane officer to cause such dog to be killed.” The Court properly held that this sentence has nothing to do with a criminal act, but rather is a portion of the statute that governs dogs. The different standard of proof – “satisfactory proof” – rather than proof beyond a reasonable doubt led the court to conclude that this portion of the statute is not criminal and that dogs are entitled to a “satisfactory proof” stand that the act alleged was committed by the dog. (A.R. 6).

The Court further found that West Virginia Code § 19-20-5 supported this conclusion that this statute was civil in nature with reviewing the entire legislative scheme of Chapter 20. West Virginia Code § 19-20-5 states the following:

Every registered dog shall at all times wear a valid registration tag issued as provided in this article. The failure to have displayed or worn on any dog, at any time, of such valid tag shall be prima facie evidence that such dog is not registered and such dog shall be subject to be, and shall be, impounded, sold, or destroyed as hereinbefore or hereinafter provided.

The Court properly concluded that the statute is regulating the registration of the dog, not by criminally punishing the owner, but by instead seizing and disposing of the dog. The Court found that the second section of West Virginia Code § 19-20-20 functions in the same manner and is a regulation designed to punish bad dog behavior. (A.R. 6).

The Court properly concluded that the Respondents had a right to bring an action for enforcement under West Virginia Code § 19-20-20 and that the civil action was properly plead. The Court found that the Respondents successfully followed the statutory enforcement framework set up for aggrieved parties who have suffered a loss to livestock as a result of a dog attack as set forth in West Virginia Code § 19-20-18, which sets forth the following:

The owner or keeper of a dog that has been worrying, wounding, chasing or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry not the property of the owner or keeper, out of his enclosure, shall, within forty-eight hours, after having received notice thereof in writing from a reliable and trustworthy source, under oath, kill the dog or direct that the dog be killed. If the owner or keeper refuses to kill the dog as hereinbefore provided, the magistrate, upon information, shall summon the owner or keeper of the dog, and, after receiving satisfactory proof that this dog did the mischief, shall issue a warrant on application being made by the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, or colts, or poultry killed; and give it

into the hands of the sheriff, who shall kill the dog forthwith or dispose of by other available methods. The cost of the proceedings shall be paid by the owner or keeper of the dog so killed, including a fee of fifty cents to the officer killing the dog. The owner or keeper of the dog so killed shall, in addition to the costs, be liable to the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry or to the county commission for the value of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts, or poultry so killed or injured.

Under West Virginia Code § 19-20-20, a livestock owner is required to put a dog owner on notice that their dog attacked the livestock. If the dog owner does not euthanize their dog, then the livestock owner may petition the magistrate court for an order directing the sheriff to destroy the dog. The legislature established the same burden of proof – “satisfactory proof” – for a dog killing livestock as it has established in West Virginia Code § 19-20-20 for a vicious or dangerous dog. The Court properly held that a parent of an injured child is entitled to the same procedural protections and opportunity to request the destruction of a dangerous dog as are afforded the owner of a dead sheep. (A.R. 6-7).

CONCLUSION

Based upon the aforementioned reasons, the Court did not commit error or misapply West Virginia Code § 19-20-20 and properly ruled that the statute is a civil statute and that the Respondents had standing to request the Court to order the humane officer to kill a dog that is deemed vicious, dangerous, or in the habit of biting or attacking other persons upon satisfactory proof of the same. The Grant County Circuit Court was concise and on point when it held that a parent of an injured child is entitled to the same procedural protections and opportunity to request the destruction of a dangerous dog as are afforded the owner of a dead sheep.

The March 28, 2011, Order by the Grant County Circuit Court should be affirmed and the relief requested by the Petitioners should be denied.

Dated this 14th day of September, 2011.



G. Isaac Sponaugle, III
Counsel for Respondents

CERTIFICATE OF SERVICE

I, G. Isaac Sponaugle, III, Counsel for Respondents, hereby certify that on this 14th day of September, 2011, true and accurate copies of the foregoing Respondents' Summary Response were deposited in the United States Mail contained in postage-paid envelope addressed to counsel for the Petitioners, namely, Agnieszka Collins, at 155 Armstrong St., Suite 4, Keyser, West Virginia 26726.



Counsel for Respondents