

13-0936

IN THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

CITY OF BLUEFIELD

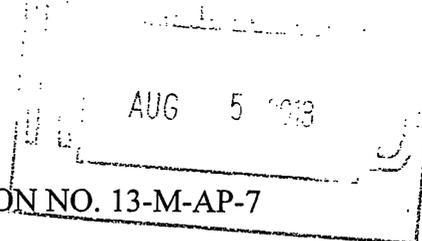
Plaintiff,

v.

ESTELLA MAE ROBINSON,

Defendant.

CIVIL ACTION NO. 13-M-AP-7



ORDER DENING APPEAL

This matter came before the Court on July 24, 2013, for a hearing on Defendant Estella Mae Robinson's appeal of the sentence imposed by the Municipal Court of Bluefield on May 15, 2013. The plaintiff, the City of Bluefield ("the City") appeared by counsel, Brian Cochran. The defendant, Ms. Robinson, appeared in person and by counsel, Gerald Linkous.

At the outset, the Court clarifies that the issue in this appeal is *not* whether Ms. Robinson's pit bull should be killed, as ordered by the Municipal Court; rather, the issue is whether the Municipal Court has the authority to enforce Section 4-49 of the City Code of Ordinances. This Ordinance prohibits a person from keeping or harboring a vicious animal and allows a municipal judge to order the destruction of any animal determined to be vicious or dangerous. Because the issue presented in this appeal is a question of law, the Court reviews the matter *de novo*.

The Court has considered the parties' respective memoranda of law, oral argument, and pertinent legal authorities. As a result of careful deliberation, the Court concludes that the Municipal Court does indeed have power to enforce Ordinance 4-49, and the appeal is therefore DENIED.

Background and Procedural History

On March 6, 2013, the City of Bluefield's animal control Officer, Randall Thompson, responded to Estella Robinson's residence at 1025 Wayne Street in Bluefield, West Virginia in reference to a complaint of a dog running at large and another dog having inadequate shelter. Upon arrival, Officer Thompson met with Ms. Robinson and inquired if the dog that was tied would bite, and Ms. Robinson advised that it would. The dog then broke loose from its chain and attacked Officer Thompson, biting him on both hands. The officer sustained injuries serious enough to require medical attention.

In April of 2013, Ms. Robinson, who was represented by counsel, entered a plea of guilty in the Municipal Court of Bluefield to owning, keeping, and/or harboring a dangerous animal in violation of Section 4-49 of the code of Ordinances for the City. Based upon the defendant's admission by plea that the dog was vicious, the Municipal Court found and adjudicated the dog to be vicious, dangerous or in the habit of biting or attacking persons and ordered the dog to be destroyed, as authorized by Section 4-49 of the Code of Ordinances. The Order was stayed for thirty days to allow the defendant an opportunity to find a suitable home outside of Bluefield if it could be determined within the thirty days that the dog could be rehabilitated so as not to become a threat of future harm.

In May of 2013, Ms. Robinson appeared before the Municipal Court. She informed the Court that she found a home outside of Bluefield for the dog, but she did not have an expert's opinion that the dog could be rehabilitated to a point that it would not be a threat to others. The Court then again ordered the dog to be destroyed, pending any appeal.

On May 20, 2013, Ms. Robinson, by counsel, filed her Notice of Intent to Appeal the Municipal Court's Order. On July 1, 2013, this Court held a status hearing and set the appeal

hearing for July 24, 2013. At the July 24th hearing, the parties agreed that the sole question for the Court is whether the Municipal Court has the authority and jurisdiction to enforce City Ordinance 4-49 by ordering the destruction of a vicious or dangerous animal.

Legal Authorities

1. Article VIII, §11 of the West Virginia Constitution, entitled “Municipal Courts,” empowers the legislature to provide for the establishment of courts in cities, towns, and municipalities. Article VIII §11 also establishes that such courts “*shall* have jurisdiction to enforce municipal ordinances.” Const. Art. VIII, § 11 (emphasis supplied). Specifically, §11 provides, in pertinent part, that

[t]he Legislature may provide for the establishment in incorporated cities, towns or villages of municipal, police or mayors' courts, and may also provide the manner of selection of the judges of such courts. Such courts shall have jurisdiction to enforce municipal ordinances, with the right of appeal as prescribed by law.

2. Pursuant to this Constitutional grant of power, the Legislature enacted Chapter 8 of the West Virginia Code to create and govern Municipal Corporations. W.Va. Code §8-1-1, *et seq.*
3. W. Va. Code Chapter 8, Article 12, Section 5 enumerates the “General Powers” of every municipality. In particular, §8-12-5(26) provides a municipality with authority “[t]o regulate or prohibit the keeping of animals or fowls *and to provide for* the impounding, sale or *destruction of animals* or fowls *kept contrary to law or found running at large.*” (Emphasis supplied).
4. The City of Bluefield passed City ordinance §4-49, which exercises the general power set forth in W.Va. Code §8-12-5. Ordinance 4-49 states that

No person shall own, keep or harbor any dangerous animal known by him to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dog wears a tag or muzzle, and upon satisfactory proof that such animal is vicious, dangerous or in the habit

of biting or attacking persons, *municipal judge may order any police officer or the animal control officer to cause such animal to be killed.* Vicious or dangerous animals are declared to be a public nuisance and a menace to the public safety.

5. In addition to W.Va. Code §8-1-1 *et seq.*, the Legislature also enacted West Virginia Code Chapter 19, entitled “Agriculture.” Chapter 19 also includes a provision similar to Ordinance 4-49. Specifically, §19-20-20 mandates that

no person shall own, keep or harbor any dog known 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.

6. It is argued on appeal that Ordinance 4-49 conflicts with W.Va. Code §19-20-20. It is undisputed that Section 58 of the City’s Code of Ordinances prohibits the City from passing any ordinance conflicting with the Constitution and laws of this State.
7. When the Legislature enacted Chapter 8 of the West Virginia Code, it defined precisely when an Ordinance is “inconsistent” or “in conflict” with State law or the Constitution. Specifically, W.Va. Code §8-1-2(9) establishes that “inconsistent” or “in conflict with” “shall mean that a charter an ordinance provision is repugnant to the Constitution of this State or to general law because such provision:

(i) permits or authorizes that which the Constitution or general law forbids or prohibits, or

(ii) forbids or prohibits that which the Constitution or general law permits or authorizes. . .”

Conclusions of Law

Guided by these legal authorities the Court renders the following conclusions of law:

1. Art. VIII §11 of the West Virginia Constitution unequivocally establishes that municipalities, cities, and towns “*shall* have jurisdiction to enforce municipal ordinances.”

2. In addition to the Constitutional grant of enforcement authority, W.Va. Code §8-12-5(26) expressly provides a municipality with authority to regulate and dispose of dangerous animals. Pursuant to the power granted to the City by both the State Constitution and State law, the City of Bluefield passed Ordinance 4-49 to regulate and dispose of vicious or dangerous animals. As such, Ordinance 4-49 is a valid exercise of the City's power as long as the ordinance does not conflict with the Constitution or State law.
3. The defendant argues that Ordinance 4-49 conflicts with W.Va. Code §19-20-20. However, the Court finds no merit to this argument. For a conflict to exist the Ordinance must either (i) permit or authorize that which the Constitution or general law forbids or prohibits, or (ii) forbid or prohibit that which the Constitution or general law permits or authorizes. W.Va. Code §8-1-2(9). Neither of those circumstances exists because the Constitution expressly directs that municipal courts created by the Legislature "shall have jurisdiction to enforce municipal ordinances," and because W.Va. Code §8-12-5(26) unequivocally authorizes municipalities "to regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals ..." In light of these authorities, the Court concludes that Ordinance 4-49 does not meet either of the statutory definitions of "inconsistent" or "in conflict."
4. Furthermore, even though Chapter 19 of the West Virginia Code gives circuit courts and magistrate courts (as opposed to municipal courts) the authority to destroy a vicious animal, the Court disagrees with the defendant's contention that Ordinance 4-49 thus conflicts with §19-20-20. First, W. Va. Code §8-1-1, *et seq.*, governs municipal corporations; Chapter 19 does not. Second, W. Va. Code §8-1-1 *et seq.* expressly empowers municipal corporations to regulate, prohibit, and destroy animals kept contrary to law. And, third, the language in

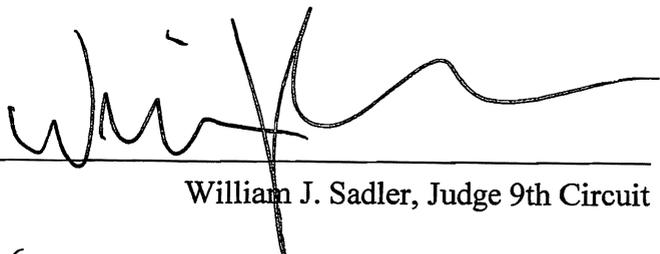
Ordinance 4-49, W.Va. Code §8-12-5, and W.Va. Code §19-20-20 all provide for the regulation and destruction of vicious animals; there is no conflict in substance or purpose. Instead, the primary difference is that Ordinance 4-49 and W.Va. Code §8-12-5 authorize the municipality to order the destruction of vicious animals, whereas W.Va. Code §19-20-20 authorizes circuit courts and magistrate courts to order the destruction of vicious animals. The reason? If not for §19-20-20, circuit courts and magistrate courts would lack authority to regulate and destroy vicious animals, because Chapter 8 applies only to municipal corporations. In other words, there was no need for the Legislature to reiterate in §19-20-20 a municipality's authority to regulate and destroy vicious animals because Chapter 8 already did so. The Legislature did, however, need to empower circuit courts and magistrate courts to do the same. Accordingly, no conflict or inconsistency exists between Ordinance 4-49 and State law.

5. For these reasons, the Court concludes that the City of Bluefield possesses the power to enforce Ordinance 4-49.

RULING

1. It is hereby **ORDERED** and **ADJUDGED** that the City of Bluefield possesses the power to enforce Ordinance 4-49, and the appeal is, therefore, **DENIED**.
2. The circuit clerk shall provide a copy of this Order to Brian Cochran, counsel for the City, and to Gerald Linkous, counsel for the defendant.
3. The circuit clerk shall remove this case from the docket.

ENTERED the 31 day of July 2013.



William J. Sadler, Judge 9th Circuit

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CITY OF BLUEFIELD,

VS.

13-MAP-7-WS

ESTELLA ROBINSON,

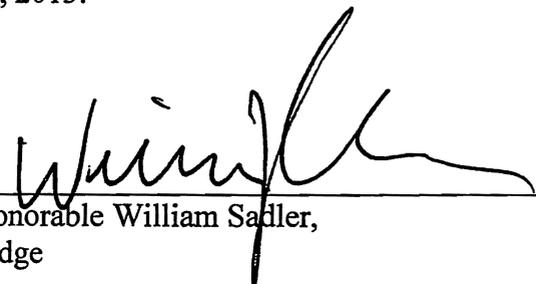
ORDER

ON this the 27 day of August, 2013, came the Defendant Estella Robinson, by counsel, Gerald R. Linkous, and made a Motion to this Court to enter an Order waiving the filing fee and transcript fee, if any, for the Defendant's Appeal Petition in this matter.

Upon careful consideration and due to the fact the Defendant has been indigent for the duration of this matter, it is hereby Ordered that the Defendant Estella Robinson be declared an indigent for this matter only and the filing fee and transcript fee, if any, for her Petition for Appeal to the West Virginia Supreme Court is hereby waived.

The Court does further Order that the Clerk shall fax a copy of this Order to the West Virginia Supreme Court at (304) 558-3815 and provide a copy to the counsel listed below.

ENTERED this the 27 day of August, 2013.



Honorable William Sadler,
Judge

Prepared By:



Gerald R. Linkous
Mercer County Public Defender Corporation
1460 Main Street
Princeton, West Virginia 24740
(304) 487-2543
W.Va. Bar No.: 7076