

14-0757

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

FILED
CIRCUIT CLERK'S OFFICE
14 JUL -7 PM 3:19

STATE OF WEST VIRGINIA,

Plaintiff,

WAYNE COUNTY, WV
BY: CA

VS.

MICHAEL BLATT

INFORMATION NUMBER: 14-M-015

and

KIM BLATT

INFORMATION NUMBER: 14-M-016

Defendants.

ORDER

This matter came before the Court on June 30, 2014 for a destruction hearing under WV Code 19-20-20. The State of West Virginia was represented by Prosecuting Attorney Thomas M. Plymale and Assistant Prosecuting Attorney Gary L. Michels. The Defendants were present in person and by counsel, Charles K. Garnes. The Court has considered all of the parties' evidence and examined the pertinent legal authorities. As a result of these deliberations, the Court now makes the following findings of fact and conclusions of law, to wit:

1. The Court denies the Defendant's oral motion to dismiss and finds that the current case is distinguished from Durham v. Jenkins, 229 W.Va. 669, 735 S.E.2d 266, 2012, in that the current case was brought pursuant to a criminal prosecution by the Office of the Wayne County Prosecuting Attorney and not a private citizen
2. The Court further finds that WV Code §19-20-20 is a regulatory statute with a two-fold purpose. *First*, for the Court to determine if there is satisfactory proof that the subject

dog is vicious, dangerous or in the habit of biting other persons, and should be killed by the humane officer; *Second*, for the Court to determine if there is proof beyond a reasonable doubt that the owner knew the dog to be vicious, dangerous or in the habit of biting other persons. The two distinct findings are not mutually inclusive, and have a vastly different burden of proof. Therefore, a conviction of the owner is not a prerequisite for the finding that the dog is vicious and should be euthanized.

3. The Court takes judicial notice of all evidence and testimony from the criminal trial conducted on June 17, 2014 in 14-M-015 and 14-M-016. In that all witness described and identified the dog as a Pitt Bull or Pitt Bull mix bred.
4. The Court takes judicial notice of the decision in the Wayne County Circuit Court case of 09-CM-AP-004, 09-CM-AP-005, and 09-CM-AP-006, that declared a city ordinance valid that prohibited citizens from possessing pit-bulls inside the City limits because of the nature and danger of the breed of dogs, and notes that the West Virginia Supreme Court of Appeals upheld the Court's decision in Steve Hardwick and Sharon Nalley v. Town of Ceredo, Memorandum Decision No. 11-1048, 2013.
5. The Court **FINDS** that Courts in Maryland, Alabama, Florida, Pennsylvania, Kansas have found that the breed of dog known commonly as a pit-bull terrier is dangerous and aggressive and are unpredictable in nature, and present a unique public health hazard. Therefore, the Court **FINDS** that there is a presumption that pit-bull terrier breeds are dangerous, aggressive, a public health hazard and are unpredictable in nature.
6. Based upon the expert testimony, presented by Animal Control Officers in Criminal Case Number: 14-M-015 and 14-M-016, the Court **FINDS** that the dog in this case known as

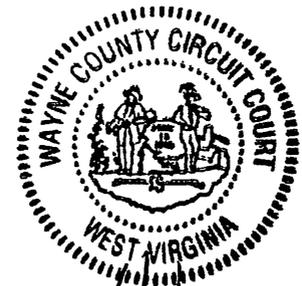
“Tinkerbelle” or “Tink” is a pit-bull terrier or a mix pit-bull terrier, and as a breed pit-bull terriers that are inherently vicious and unpredictable.

7. The Court **FINDS** that dogs are property and subject to government regulations as a reasonable means of protecting the public. City of Buckhannon, ex rel. Cockerill v. Reppert, ex al., 189 S.E. 585 (WV 1937)
8. The Court **FINDS** that “Tinkerbelle” did bite a child and caused severe injuries to the child; that the child was playing in an area where the child was permitted to be when he was attacked by “Tinkerbelle”, and the attack was unprovoked.
9. The Court **FINDS** that one unprovoked attack of a child is sufficient evidence of satisfactory proof that the dog is vicious, dangerous and in the habit of biting people.
10. The Court **FINDS** satisfactory proof that “Tinkerbelle” is vicious, dangerous, and in the habit of biting people.
11. Therefore, the Court **ORDERS** the Defendants to deliver “Tinkerbelle” to the Cabell-Huntington-Wayne Animal Shelter by the close of business on June 30, 2014 and **ORDERED** the Cabell-Huntington-Wayne Animal Shelter to euthanize “Tinkerbelle”.
12. Upon motion of the Defendants the Court hereby grants a thirty (30) day stay of the destruction of “Tinkerbelle” so that the Defendants can be permitted to file a Notice of Intent to Appeal with the West Virginia Supreme Court of Appeals. Defendants shall be responsible for the cost of maintain the dog and euthanizing of the dog.
13. In the event that the Defendants do appeal the case the Defendants must petition this Court for an order extending the stay, and shall be responsible for the costs associated with maintaining the dog at the shelter.

14. During the time of the stay the Cabell-Huntington-Wayne Animal Shelter shall maintain ownership and possession of "Tinkerbell".
15. This is a Final Order which any party may appeal. A Notice of Intent to Appeal must be filed with the West Virginia Supreme Court of Appeals within thirty (30) days from the date of this order.
16. The Clerk of this Court shall remove this case from the active docket of the Court and send a copy of this Order to all parties of record.

Entered this 7th day of July, 2014.

ENTER: 
JUDGE



A COPY TESTE
Milton J. Ferguson, Clerk
By  Deputy