IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2012 Term

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No. 11-0745

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FILED

November 9, 2012
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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RON DURHAM & RHONDA DURHAM,
Petitioners

v.

FREDDIE JENKINS & ELISHA JENKINS,
Respondents

Appeal from the Circuit Court of Grant County
The Honorable Lynn A. Nelson, Judge
Civil Action No. 11-CAP-1

VACATED

Submitted: September 18, 2012
Filed: November 9, 2012

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JUSTICE BENJAMIN delivered the Opinion of the Court.

JUSTICE WORKMAN dissents and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

2. "A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts." Syl. pt. 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950).

3. "'The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal

government.' Syllabus Point 1, *Hurley v. Allied Chemical Corp.*, 164 W.Va. 268, 262 S.E.2d 757 (1980)." Syl. pt. 3, *Hill v. Stowers*, 224 W. Va. 51, 680 S.E.2d 66 (2009).

4. The authority to order a dog killed pursuant to W. Va. Code § 19-20-20 (1981), stems solely from a criminal proceeding, and a private cause of action may not be brought for the destruction of a dog under this section.

Benjamin, Justice:

The petitioners, Ron and Rhonda Durham ("the Durhams"), appeal the March 31, 2011, order of the Circuit Court of Grant County denying the Durhams' motion to dismiss and affirming the Grant County Magistrate Court's order to have the Durhams' dog, a Rotweiller mix, killed pursuant to W. Va. Code § 19-20-20 (1981). The respondents, Freddie and Elisha Jenkins ("the Jenkinses"), brought a civil suit under § 19-20-20 against the Durhams requesting that the magistrate court order the Rotweiller mix killed, alleging that the dog is vicious, dangerous, or in the habit of biting or attacking other people. The Durhams responded by arguing that § 19-20-20 does not provide a mechanism by which parties may bring a civil suit to have a dog destroyed.

After a thorough review of the record presented for consideration, the briefs, the legal authorities cited, and the arguments of the Durhams and the Jenkinses, we find that § 19-20-20 does not authorize a civil suit seeking destruction of a dog, and the circuit court erred by denying the Durhams' motion to dismiss. We therefore vacate the circuit court's March 31, 2011, order. While we believe that our statutory law compels this result, we nevertheless are greatly troubled by this incident and the circumstances giving rise to this incident which resulted in the horror the Jenkinses' daughter endured both physically and psychologically.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of September 18, 2010, the Durhams held a birthday party at their home. Elisha Jenkins, one of the plaintiffs below and a respondent herein, along with her two-year-old daughter, Felicity, and her two brothers, Isaiah and Gavin, were among those in attendance at the Durhams' party.

At approximately 10:00 p.m., Felicity walked unsupervised away from the gathering toward an area of the Durham's property where their two fully-grown dogs, a Great Dane mix named Runt and a Rottweiler mix named Duke, were tied on separate dog chains.[1] There was a vicious attack on the child, and her screams roused party-goers to run to her aid. Testimony varies on whether only the Great Dane mix was involved in the attack or the Great Dane mix and the Rotweiller mix were both involved. Felicity was badly injured as a result of the attack.[2]

[1] The circuit court found that the dogs were tied such that each had its own separate tie-out circle and could touch nose-to-nose, but the dogs could not otherwise physically interact with one another.

[2] Felicity suffered extensive and serious injuries to her head, waist, thighs, and back, which have required hospitalization and surgical repair.

A police officer was called to the Durhams' residence shortly after the attack, but no formal statements were taken that evening. No formal investigation of the incident was conducted by a law enforcement agency, and no criminal charges were brought against the Durhams. In the days following the attack on Felicity, the Durhams voluntarily euthanized their Great Dane mix.[3]

On January 31, 2011, the Jenkinses filed a civil suit in the Grant County Magistrate Court requesting that the Durhams' Rottweiler mix, which they alleged to be vicious, dangerous, or in the habit of biting or attacking people, be killed pursuant to W. Va. Code § 19-20-20. A hearing was held, after which the magistrate ordered the dog to be killed. The Durhams appealed the magistrate's order to the Circuit Court of Grant County and moved to dismiss the suit on the ground that § 19-20-20 could not provide the basis for a civil suit to have the dog killed. In its March 30, 2011, order, the circuit court denied the motion to dismiss and directed that the Rottweiler be killed; however, the circuit court stayed its order to allow the Durhams the opportunity to appeal to this Court.

[3] Testing performed on the Great Dane mix verified that the dog did not have rabies.

II.

STANDARD OF REVIEW

On appeal, this Court is asked to determine whether a civil suit may be brought pursuant to § 19-20-20. Thus, this Court is asked only to determine a question of law. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

III.

ANALYSIS

The Durhams argue that W. Va. Code § 19-20-20 cannot form the basis of the relief requested by the Jenkinses because the section does not provide a private cause of action. Section 19-20-20 states,

> Except as provided in section twenty one [§ 19-20-21] of this article, 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.

The language of § 19-20-20 does not explicitly provide a private cause of action. We must therefore determine whether the section gives rise to an *implied* private cause of action. The test for doing so is four-pronged, and each prong must be satisfied:

> "The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal government." Syllabus Point 1, *Hurley v. Allied Chemical Corp.*, 164 W.Va. 268, 262 S.E.2d 757 (1980).

Syl. pt. 3, *Hill v. Stowers*, 224 W. Va. 51, 680 S.E.2d 66 (2009).

The requirements of the first and fourth prongs are plainly met. Section 19-20-20 acts to protect the public from dogs that are vicious, dangerous, or in the habit of biting or attacking people. The respondents are members of the public, and so they are members of the class for whose benefit § 19-20-20 was enacted. The fourth prong is satisfied because regulation of dog ownership is not delegated exclusively to the federal government.

The second prong is not satisfied; the language of § 19-20-20 evinces the Legislature's intent that § 19-20-20 is entirely criminal in nature and does not give rise to

a private cause of action. An examination of W. Va. Code § 19-20-19 (1981), and *State v. Molisee*, 180 W. Va. 551, 378 S.E.2d 100 (1989), supports this conclusion. Section 19-20-19 reads,

> A person who violates any of the provisions of this article for which no specific penalty is prescribed is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or fined and imprisoned. Magistrates shall have concurrent jurisdiction with the circuit courts to enforce the penalties prescribed by this article.

Molisee is this Court's only decision referencing either § 19-20-20 or §19-20-19. In that case, the appellant's dog injured a child. Pursuant to § 19-20-19, the appellant was charged with a misdemeanor for harboring a vicious animal in violation of § 19-20-20. Subsequently, a magistrate determined that the dog was vicious and ordered it to be killed pursuant to § 19-20-20.

In its March 30, 2011, order, the circuit court agreed with the Durhams that the first sentence of § 19-20-20, as established by *Molisee*, is criminal. The circuit court, however, disagreed with respect to the second sentence: "This sentence has nothing to do with a criminal act, but rather is a portion of the statute that governs dogs." It reasoned that because the second sentence requires "satisfactory proof," not "proof beyond a reasonable doubt," this portion of the § 19-20-20 cannot be criminal.

The Court finds error in the circuit court's analysis. Neither the Court nor the Legislature has recognized the language "satisfactory proof" as referring to one specific and overarching standard of proof. Instead, this language has been included in statutes as a general descriptor of the actual standard of proof. *See, e.g.*, W. Va. Code § 61-6-7 (1923) (regarding criminal conspiracy, where "satisfactory proof" is used to describe the standard of proof required in the criminal context: proof beyond a reasonable doubt); W. Va. Code § 16-3-4 (1987) (regarding required immunization of children, where "satisfactory proof" is used to describe standard of proof required in the criminal context: proof beyond a reasonable doubt); W. Va. Code § 6-6-7 (1985) (using "satisfactory proof" to describe the standard of proof required to remove a person from county, school district, or municipal office: clear and convincing evidence). There simply is no evidence here that the "satisfactory proof" language in the second sentence of § 19-20-20 is indicative of the Legislature's intent that the standard of proof in that section be anything less than "beyond a reasonable doubt." We therefore decline to hold that the Legislature would, without explicit language, establish two different standards of proof in the same statutory section.

Applying our law as to statutory construction clarifies the unity between the first and second sentences of § 19-20-20. Just as separate statutes of the same subject matter must be read *in pari materia* to give meaning to those statutes, portions of a single section of a statute must also be read together.

> A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts.

Syl. pt. 1, *State ex rel. Holbert v. Robinson*, 134 W. Va. 524, 59 S.E.2d 884 (1950).

The first sentence of § 19-20-20 plainly is criminal in nature and requires a standard of proof of "beyond a reasonable doubt." Statutory construction establishes that the second sentence of § 19-20-20 is linked to the established criminal nature of the first sentence. Thus, absent explicit direction from the Legislature to the contrary, the construction of § 19-20-20 evidences the Legislature's intent that the entire section is criminal in nature, giving rise to only criminal proceedings. To conclude otherwise would require us to read into § 19-20-20 something which simply is not there.

The third prong of the test in *Hill v. Stowers*—whether a private cause of action is consistent with the underlying purposes of the legislative scheme—is also unsatisfied. The circuit court compared § 19-20-20 with W. Va. Code § 19-20-18 (1986)[4] in an attempt to show that a private cause of action exists pursuant to § 19-20-20

[4] **§ 19-20-18. Same — Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.**

(continued . . .)

consistent with the private cause of action provided in § 19-20-18. The circuit court said, "Certainly 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 parallel the circuit court attempts to draw between §§ 19-20-18 and -20 fails because the two sections are radically different. Unlike § 19-20-20, § 19-20-18 does not contain a criminal component. Instead, the Legislature provided a civil remedy for

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> 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.

livestock owners whose animals are subject to killing, wounding, or worrying by a dog. Section 19-20-18 provides a civil course through which the owner of livestock can request the destruction of a dog so as to protect future damage to his personal property by that dog. The Legislature could have extended § 19-20-18 to apply to a case such as that before us. It did not, however. While we may not disagree with the circuit court from a personal standpoint, we are obliged to give effect to these statutory sections as they are written, not as we might have preferred they be written.

Section 19-20-20 is not like § 19-20-18. Where § 19-20-18 deals with livestock, which is personal property, § 19-20-20 declares that it is a crime to own a dog that is a danger to people. Section 19-20-20, which is entirely criminal in nature, only provides for the killing of a dog when it is first found that the dog's owner committed a crime described in the first sentence of the section. During that criminal proceeding, upon finding that the dog is dangerous, which is an element of the crime to be proved, the judge may then order the dog killed.

For a magistrate or circuit court to obtain authority to order a dog killed, the magistrate or judge must first find, upon conducting a criminal proceeding, that a crime described in the first sentence of § 19-20-20 has been committed. This Court holds that the authority to order a dog killed pursuant to W. Va. Code § 19-20-20 (1981), stems solely from a criminal proceeding, and a private cause of action may not be brought for the destruction of a dog under this section.

IV.

CONCLUSION

For the reasons set forth above, this Court vacates the circuit court's order entered March 31, 2011, which orders that the Durham's Rottweiler mix be destroyed.

Vacated.