IN THE COUNTY COURT, THIRD JUDICIAL CIRCUIT,
IN AND FOR MADISON COUNTY, FLORIDA.

TIM SANDERS, CLERK
By April Harding DC

The Hon. BEN STEWART, in his official capacity as the Sheriff of Madison County, Florida,

Petitioner,

vs. CASE NO. 2012-25-CC

CABOODLE RANCH, INC.,
a Florida not-for-profit corporation,

Respondents.
_____/

ORDER PLACING ANIMALS

THIS CAUSE having come before the court on the petition of the Petitioner, the Hon. BEN STEWART, in his official capacity as the Sheriff of Madison County, Florida, (hereinafter the "SHERIFF") and the Respondent, CABOODLE RANCH, INC., a Florida not-for-profit corporation, (hereinafter "CABOODLE") and the court having considered the matters presented and being fully advised in the premises finds as follows:

1. This is an action for the custody, control and disposition of animals pursuant to § 828.073, Fla.Stat.

2. The court has jurisdiction over the subject matter of and parties to this action.

3. On or about February 27, 2012 ("date of seizure"), the SHERIFF seized and took custody of certain animals (hereinafter the "ANIMALS").

4. By stipulation of the parties, a portion of the ANIMALS have previously been released and are no longer subject to this action. The remaining ANIMALS (hereinafter the "CABOODLE ANIMALS") are being held by the SHERIFF pursuant to the order of the court in

the presently pending criminal case of *State of Florida v. Craig Allan Grant,* Case No. 2012-39-CF, in the Circuit Court of the Third Judicial Circuit in and for Madison County, Florida (the "CRIMINAL CASE").

5. By stipulation of the parties, at the time of the above seizure, CABOODLE was the owner of the CABOODLE ANIMALS.

6. On May 3, 2012, May 4, 2012 and May 21, 2012, the court held a hearing pursuant to § 828.073(2), Fla.Stat., to determine the custody and control of the CABOODLE ANIMALS. At such hearing, the SHERIFF was represented by GEORGE T. REEVES, Esq., and CABOODLE was represented by DAVID W. COLLINS, Esq.

7. At the above hearing, the initial burden was on the SHERIFF to show that the CABOODLE ANIMALS were not receiving proper and reasonable care. Once this showing was made by the SHERIFF, the burden shifted to CABOODLE to show that CABOODLE was able and fit to have custody of and provide adequately for the CABOODLE ANIMALS. These burdens are set out by statute as follows:

> If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and provide adequately for the animal.

§ 828.073(6), Fla.Stat.; *See also, Brinkley v. County of Flagler,* 769 So.2d 468, 473 (Fla. 5th DCA 2000) ([W]e interpret the statute to require initial proof of lack of care and it is only after that evidence is sufficiently presented does the burden then shift to the owner to demonstrate fitness.").

8. At the close of the SHERIFF's case in chief, the evidence presented up to that point, at a minimum, indicated a lack of proper and reasonable care of the animals sufficient to shift to CABOODLE RANCH the burden to demonstrate by clear and convincing evidence of its

ability and fitness to have custody of and provide adequately for the animals. While § 828.073(6), Fla.Stat. does not indicate that the SHERIFF would be required to present clear and convincing evidence indicating a lack of proper and reasonable care of the animal, the SHERIFF announced the belief that such quality of evidence is the burden of production required of the SHERIFF by the statute. Accordingly, in an abundance of caution, the Court does make that determination and finds that the evidence presented by the SHERIFF indicated, clearly and convincingly, that the CABOODLE ANIMALS were not receiving proper and reasonable care while in the custody of CABOODLE.

9. At the above hearing, and after presentation of the SHERIFF's case in chief, CABOODLE did not thereafter demonstrate, by clear and convincing evidence, that CABOODLE is able and fit to have custody of and provide adequately for the CABOODLE ANIMALS.

10. It is the finding of the Court, therefore, that CABOODLE is not able and fit to have custody of the animals. The Court bases its ruling upon the totality of the facts, including but not limited to the following facts:

a) That in its application to Madison County seeking a permit for an excess animal habitat ("E.A.H.") signed on December 27, 2011, CABOODLE sought authorization for 600 animals.

b) That at the time of the E.A.H. permit application CABOODLE indicated to Madison County authorities that there were 400 cats existing on its property.

c) That on the date of the seizure there were over 600 cats on the CABOODLE property, not counting those released after the date of the seizure, all of which were seized.

d) That prior to the date of seizure, CABOODLE had been advised by one or

more veterinarians that emaciated and seriously ill cats should immediately be transported to a veterinarian.

e) That prior to the date of the seizure, CABOODLE had been advised by one or more veterinarians and the county animal control officer that the sick ward should not allow for the free ingress of egress of animals from the sick ward to remaining portions of the property.

f) That prior to the date of the seizure there was not a sufficient identification and veterinary care record keeping system in place. CABOODLE never adequately explained, if at all, why or how it reported 400 cats on or about the date of the permit application when in fact it had over 600 cats in its possession on the date of the seizure. CABOODLE's own veterinarian testified that the number of animals on the CABOODLE property on the date of the seizure significantly exceeded the limits he had recommended to CABOODLE prior to the permit application. CABOODLE never presented an explanation as to why it exceeded its own veterinarian's recommendation in that regard.

g) That CABOODLE depended upon a continuing influx of new animals for its financial survival. It is more likely than not that CABOODLE would continue to fail to abide by the recommendations of its own veterinarian regarding population limitations if the animals were returned.

h) That on the date of the seizure and despite the best efforts of its veterinarian, less than 200 of the animals had any veterinarian records.

i) According to the standards of the Association of Shelter Veterinarians, and based upon there being over 600 animals, CABOODLE should have been staffed by at least 18 persons working 8 hours per day 365 days per year. The evidence indicates that the operation at CABOODLE was managed by a few full time employees and volunteers who would travel to the

location and help from time to time.

j) On the date of the seizure there existed an access to and from the sick ward by any CABOODLE animal, sick or not. Additionally, fence line contact was allowed between the animals supposedly confined to the sick ward and other animals. Sick animals were not adequately isolated despite earlier recommendations to the contrary. No explanation was given for the continued allowance of free contact between the general population of animals and those animals that apparently should have been confined in a sick ward.

k) That on the date of the seizure the sick ward was in a significantly deteriorated state indicating serious neglect of that building and its occupants. Numerous animals in the sick ward were observed on the date of seizure in desperate need of veterinary attention. Animals were observed having difficulty breathing and constantly sneezing. Many of the animals were lethargic. The litter boxes were full of feces and feces were smeared on the floor. The smell in the room was extremely noxious. The windows were smeared with mucus and blood. CABOODLE argued that testimony and photographs of these disturbing conditions present only a "snapshot" in time and do not discount the possibility that these conditions simply existed between routine and regular cleanings. CABOODLE, however, presented no credible testimony that might support the notion that the condition of the sick ward on the date of the seizure was somehow to be expected and not preventable by timely recurring cleanings. It is clearly not reasonable to conclude that the condition of the sick ward depicted in the testimony and photographs was a result of anything but a failure by CABOODLE to reasonably, properly and timely maintain that facility. Additionally, according to the testimony of the animal control officer, the sick ward was designed such that no more than 12 sick animals should have been allowed in the sick ward. On the date of the seizure there were over 30 animals found in the sick

ward, none of whom were properly isolated from the remaining animals.

l) That on the date of the seizure, buildings other than the sick ward contained similar deteriorated conditions indicating a neglect of both the animals and the facility. In the General Store animal feces and vomit were on the floor. Cats were sneezing and having difficulty breathing. The building smelled of urine and feces. Litter boxes were excessively full of feces. In at least one location 50 or 60 animals were sharing 8 litter boxes, an insufficient amount for that number. Feces were smeared on the wall. One cat in the General Store (not in the sick ward) was soaked in urine and feces and could not stand. Other cats in that building had there eyes shut and some were in pain. The caretaker's residence even had animal feces on its floor and furniture.

m) On the date of seizure of the animals, a sufficient number of animals needing immediate veterinary attention were present on the premises of CABOODLE indicating either one of two conclusions. CABOODLE had either taken possession of the critically ill animals immediately prior to the date of the seizure with no reasonable opportunity to transport the animals for immediate veterinary care prior to the seizure (suggested as a possibility by CABOODLE in argument); or CABOODLE simply failed to act reasonably and present these animals for immediate veterinary care. Either way the indications are that CABOODLE was not acting in a manner that indicated an ability and fitness to possess the over 600 cats in its possession. Even if CABOODLE had no reasonable chance to get the observed seriously ill cats to a veterinarian at the time of the seizure, CABOODLE was not fit or able to care for such cats given its current overflowing population at that time and inability to even identify the animals or maintain current medical records of that population. It was not reasonable for CABOODLE to have taken such seriously ill cats into its care under the circumstances, particularly where the

remaining population was exposed to any and all communicable illnesses suffered by these or other animals. The Court does note that no evidence was presented that would indicate that CABOODLE had recently taken in the number of seriously ill animals that were found on the date of the seizure.

n) The Court finds persuasive the opinion testimony of Dr. Julie Levy, Professor of Veterinary Science at the University of Florida, an expert in veterinary medicine and sheltering of animals. It was her opinion that, despite there being no indications of any cruelty or failure to provide adequate food or water, the animals at CABOODLE were not receiving reasonable and appropriate care.

11. The Court notes that the evidence indicates that the idea and concept of CABOODLE was a noble one, and that those involved seemed sincerely intent on providing a unique and humane alternative to other traditional animal shelters. Nonetheless, CABOODLE is clearly and substantially lacking in the resources, ability, skill, and (most importantly) willingness to follow expert veterinary advice essential to an operation dedicated to the care of such a large and apparently ever-growing number of animals it seemed intent on sheltering.

THEREFORE it is hereby ORDERED and ADJUDGED as follows:

1. Pursuant to § 828.073(4)(c)(1)(b), Fla.Stat., the CABOODLE ANIMALS are remanded directly to the custody of the SHERIFF to be disposed of as the SHERIFF sees fit. CABOODLE shall have no further right, title or interest in the CABOODLE ANIMALS.

2. Pursuant to § 828.073(4)(c)(3), Fla.Stat., CABOODLE is hereby enjoined from hereafter possessing or having custody of live animals. Provided, this injunction is subject to change, modification or termination, upon petition by CABOODLE. Upon receipt of such petition, the court will hold a hearing and should the evidence show that CABOODLE can

properly assume care of animals in a responsible manner this injunction shall be appropriately modified or terminated. *See, Brinkley v. County of Flagler,* 769 So.2d 468, 472 (Fla. 5th DCA 2000).

3. Pursuant to § 828.073(4)(c)(2), Fla.Stat., the court shall hold a separate hearing to address the possible assessment of costs of the care of the CABOODLE ANIMALS, against CABOODLE.

4. The CABOODLE ANIMALS are presently under the control of the court in the CRIMINAL CASE. Therefore, the CABOODLE ANIMALS shall not be released to the SHERIFF until and unless the court, in the CRIMINAL CASE, or the State's attorney, in the CRIMINAL CASE, authorizes such release.

DONE and ORDERED in chambers at Madison County, Florida on June 22nd, 2012.

Greg Parker
Acting County Judge

Copies to:

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