

IN THE CIRCUIT COURT OF APPEAL
IN AND FOR MADISON COUNTY, FLORIDA

CABOODLE RANCH, INC.
A Florida Not for Profit
Corporation,

Appellant,

VS.

Case No.: Appeal No.: 12-199-AP
Trial Case No.: 2012-25-CC

BEN STEWART, in his
Capacity as Sheriff of
Madison County, Florida.

_____ /

APPEAL FROM THE COUNTY COURT
IN AND FOR MADISON COUNTY, FLORIDA.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Citations.....3

Preliminary Statement4

Statement of the Case and Facts.....5

Summary of the Arguments.....9

Issue:

 Point One

 The Court erred in not requiring an individual determination of whether each cat seized received reasonable care pursuant to the plain meaning of F.S. 828.072 and the due process requirements thereof.....9

 a. Standard of Review.....9

 b. Argument on the Merits10

Conclusion.....12

Certificate of Font and Service.....13

TABLE OF CITATIONS

Cases

Brinkley v. County of Flagler, 769 So.2d 468 (Fla. 5th DCA, 2000).....10
Cochran v. Harris, 654 So.2d 969 (Fla. 4th DCA 1995).....10
D.S. v. J.L., 18 So.3d 1103 (Fla.1st DCA 2009).....11
Florida Farm Bureau Cas. Ins. Co. v. Cox, 967 So.2d 815 (Fla. 2007).....11
JPG Enterprises, Inc. v. McClellan, 31 So.3d 821(Fla. 4th DCA 2010).....11
Town of Oakland v. Mercer, 851 So.2d 266 (Fla. 5th DCA 2003).....12

Statutes

F.S. 828.073.....5, 7, 9, 10, 11, 12
F.S. 932.703(2)(a).....10

PRELIMINARY STATEMENT

Appellant, Caboodle Ranch, Inc., was the respondent in the trial court and the Appellee, Ben Stewart as Sheriff of Madison County, was the petitioner. In this brief, the parties are referred to as “Appellant” and “Appellee,” by proper name, or as they stood in the lower court, where appropriate.

This is the direct appeal from the county court in Madison County, Case No.: 2012-25-CC. The record consists of six volumes, which cover three different dates, with two volumes for each date of May 3, 2012, May 4, 2012, and May 29, 2012, respectively.

Exhibits or documents in the record will be referenced by (R.), followed by the relevant page number(s) in the record as prepared by the Clerk. The page number of the respective volumes and each date occurred will be referred to as (V.1- p.63,5-3), (V.2-p.131, 5-4), and (V.2-p.131,5-29) respectively.

STATEMENT OF THE CASE AND FACTS

This is an appeal from an order placing animals which changed the ownership of 653 cats from Caboodle Ranch, Inc. to Sheriff Ben Stewart to do as he sees fit with such animals (R.1139-1146). This order resulted after three days of a statutory hearing pursuant to F.S. 828.073, which occurred on May 3, 4 and 29th respectively of this year. Said hearing was initiated by the arrest of Craig Grant, for animal cruelty and neglect, owner of the property were Caboodle Ranch, Inc. is located and where the cats were seized.

Through counsel, Mr. Grant was served with the petition filed by the Sheriff seeking ownership of the 653 seized cats, (R.1020). An order setting the aforestated hearing was set (R. 1017). On May 3, 2012 presentation of evidence and argument began regarding the right to legal ownership under the standards of F.S. 828.073.

For purpose of the one issue raised in this appeal, it is the Appellant's position that what follows are the relevant factors needed to discern the issue raised in the appeal.

At the onset of the hearing, counsel for each respective party was given an opportunity to present an opening statement. (V.1-p.17-20, 5-3) Counsel for the Sheriff framed the issue as 650-700 cats were not given reasonable and proper care and he could prove that by clear and convincing evidence. (V.1-p.17, 5-3) Counsel

for the Caboodle Ranch, Inc. stated, to ensure due process to the owner, each animal must be considered under the factors and written law set forth in F.S. 828.073.

The evidence which was presented by the Sheriff, inter alia, was mainly expert testimony and exhibits depicting a number of cats who were allegedly suffering from different acute conditions. (V.1-p.21-24, 5-4) (V.1-p.154-155, 5-3)

However, when scrutinized, the expert testimony revealed that Dr. Judy Levy had only examined 20 cats at Caboodle Ranch, Inc. in May of 2009 (V.1-p.28, 5-3) and later examined approximately a hundred cats on the day of seizure, February 27, 2012. (V.1-p.46, 5-3) The court, upon objection, sustained an objection to the testimony regarding her May 2009 examination on relevance grounds. (V.1-p.77-80, 5-3)

The other expert testimony offered was that of Dr. Dana Miller who opined that when she visited the Caboodle Ranch on January 3, 2012 she estimated she saw about 300 cats of which she estimated 75% had some clinical illness, of which 50-60% she estimated, had upper respiratory infections. (V.1-p.17-24, 5-4)

Upon cross examination Dr. Miller admitted that an upper respiratory infection is a "cold" and on the day of the raid it was wet and cold out. (V.2-p.115-116, 5-4)

Further, Dr. Miller admitted she never spoke to Dr. John Lewis or was aware of the veterinary care provided by him to the cats at Caboodle. (V.2-p.135-144, 5-4) In fact, Caboodle Ranch, Inc. had spent since 2005, \$92,000.00 for veterinary care and medicine to Dr. Lewis. In 2011 alone, \$36,000.00 was paid for said services. (V.1-p.12, 5-29)

At the close of the Petitioner's case, counsel for the respondent made a motion to dismiss/directed verdict, authorized by rule 1.480 of Fl. R. Civ. P. (V.2-p.157-174, 5-4) Said motion was renewed at the close of the case before the final order was entered. (V.2-p.157, 5-4)

The basis for such was that the Petitioner had failed to meet the legal requirements of F.S. 828.073 in that evidence was only presented as to approximately 16-20 cats and that the vast majority of the 653 cats seized were in fine shape. (V.2-p157, 5-4)

Further, it was argued by counsel for Caboodle that Petitioners theory of the sick cats being exposed to the healthy cats, as evidence that all the cats did not receive reasonable care, was not supported by the evidence or the law as a basis for seizing all the cats. (V.2-p.157-161, 164, 5-4) This was because due process and the plain meaning of the language of F.S. 828.073 requires an individual determination of the care given to each animal and not a representative few. (V.2-p.159,5-4)

The court in denying said motion said the guidance given in said statute is less than perfect (V.2-p.176, 177, 5-4) and later acknowledged that this is a very important case with unusual statutory issues that are unprecedented. (V.2-p.5, 5-29)

After taking the case under advisement, the court entered an order on June 22, 2012 in favor of the Petitioner giving him ownership of the cats seized and enjoining the respondent from owning any animals (R.1139-1146). A timely notice of appeal followed. (R. 806-814)

SUMMARY OF THE ARGUMENT

The sole point on appeal in this case is that the trial judge erred in denying the respondents motion to dismiss/directed verdict. This point is based on the argument that the plain meaning of the language, the legislative intent of F.S. 828.073 and the judicial acknowledgement that a statutory action for possession of animals under F.S. 828.073 is a forfeiture action. As such, it requires heightened due process safeguards that require that each cat did not receive reasonable care before the burden shifts to the owner to prove fitness. In this case such evidence was insufficient and the owner's due process rights were not recognized.

ARGUMENT

POINT ONE

THE COURT ERRED IN NOT REQUIRING AN INDIVIDUAL DETERMINATION OF WHETHER EACH CAT SEIZED RECEIVED REASONABLE CARE PURSUANT TO THE PLAIN MEANING OF F.S. 828.073 AND THE DUE PROCESS REQUIREMENTS THEREOF.

A. Standard of Review

It is Appellant's position that the court erred in deciding that there was sufficient evidence to support its order denying the motion to dismiss/directed verdict and the conclusions of law contained therein. Therefore, the standard of review is a mixture of the competent substantial evidence test standard of review and de novo standard of review.

B. Arguments on the Merits

In Brinkley v. County of Flagler, 769 So.2d 468 (Fla. 5th DCA, 2000) it was held that the Sheriff's action of seeking removal of animals from the owner's possession and enjoining him from possessing animals is a forfeiture action subject to constitutional due process consideration. In the case of Cochran v. Harris, 654 So.2d 969 (Fla. 4th DCA 1995), a forfeiture case that was also a case of first impression, the court in construing F.S. 932.703(2)(a) noted:

“Although we have no precedent to guide us..., we are keenly aware of the concerns expressed by the Florida Supreme Court in Real Property:

“The Act raises numerous constitutional concerns that touch upon may substantive and procedural rights protected by the Florida Constitution. In construing the Act, we note that forfeitures are considered harsh extractions and as a general rule, they are not favored in either law or equity. Therefore, this court has long followed a policy that it must strictly construe forfeiture statutes.”

Citing Real Property at 588 So. 2d 961 (Id at 972.)

F.S. 828.073 and key provisions therein provide important due process protections that require certain standards and facts be considered and proven before an order can remove and change legal ownership of animal from its legal owner to a government official F.S. 828.073 (s) a-h and (6).

In said provisions the word animal is used in the singular, as needed, and also pluralized when needed, indicating the plain meaning such provisions are referring to. Most noteworthy is the reference in subsection (5)e, referring to:

“testimony... as to prior treatment or condition of this
(emphasis provided) or other animals in the same
custody” Id.

The plain meaning of F.S. 828.073 when strictly construed, is that when the government takes an animal and deprives the owner of such, due process requires that an individual determination as to whether each animal taken was deprived of reasonable care. Nowhere does F.S. 828.073 state that a representative sample or expert conjecture can substitute for such.

The central purpose of statutory interpretation is deciphering and giving effect to legislative intent JPG Enterprises, Inc. v. McClellan, 31 So.3d 821(Fla. 4th DCA 2010). Legislative intent, which is chiefly derived from the language of the statute itself, governs statutory interpretation. D.S. v. J.L., 18 So.3d 1103 (Fla.1st DCA 2009). The statute’s text is the most reliable and authoritative expression of the legislature’s intent. Florida Farm Bureau Cas. Ins. Co. v. Cox, 967 So.2d 815 (Fla. 2007).

In the instant case, the court erred in not enforcing the plain meaning of the statute.

Further, in doing such, the Court relied upon insufficient incompetent evidence such as expert conjecture based upon unsubstantiated estimates and a presentation of no more than 20 cats alleged to have been sick out of 653. (V.1-p.154-155,5-3) (V.1-p.2-24,5-4)

Finally, the court in failing to follow or enforce the plain meaning of the statute failed to recognize that due process mandates that the provisions of a forfeiture act be strictly interpreted in favor of the persons being deprived of their property Town of Oakland v. Mercer, 851 So.2d 266 (Fla. 5th DCA 2003).

CONCLUSION

In conclusion, the Appellant respectfully submits the denial of its motion to dismiss/directed verdict was reversible error based upon insufficient incompetent evidence and a failure of the court to protect the due process rights of the Appellant by strictly construing F.S. 828.073 in its favor and giving said statute its plain meaning. The courts order should be reversed.

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