

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

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

Petitioner,

v.

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

Respondent.

Case No. 2012-25-CC

**RESPONDENT'S OPPOSITION TO PETITIONER'S
MOTION TO TRANSFER CASE TO CIRCUIT COURT**

Respondent, Caboodle Ranch, Inc. ("Caboodle"), hereby opposes Petitioner's Motion for to Transfer Case to Circuit Court ("Transfer Motion"), filed July 11, 2012, on behalf of the Hon. Ben Stewart, Sheriff of Madison County ("Petitioner"). The Motion should be denied because: (a) Petitioner has already taken the position that this court's Order Placing Animals (June 22, 2012) constituted a "judgment" which fully "concludes the action" as to Petitioner, and (b) Petitioner has not adequately substantiated the alleged "costs" which serve as the basis for the Motion.

Basis for Opposition

1. On June 29, 2012, Petition filed a Motion for Assessment and Taxation of Costs ("Costs Motion").

2. Motions for costs are governed by Fla. R. Civ. P. 1.525, which provides that "[a]ny party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after the filing of the judgment . . . which judgment or notice concludes the action as to that party. Fla. R. Civ. P. 1.525. Similarly, § 59.04 Fla. Stat., which Petitioner cited as the

basis for its Costs Motion, provides for the award of certain costs by "the party recovering judgment." Thus, in filing the Costs Motion on June 29, 2012, Petitioner took the position that this court's June 22, 2012, Order Placing Animals (cited in para. 3 of the Motion) was a "judgment" which "concludes the action" as to Petitioner. Petitioner should not be permitted to take a directly contrary position now.

4. In a Memorandum of Law docketed June 12, 2012 ("Petitioner's Memorandum"), the Petitioner stated unequivocally that "[t]he ASPCA . . . has provided its expert services free of charge to the SHERIFF in this case." Petitioner's Memorandum at 3, para. 7. Those services were described, in Exhibit 'A' thereto, as totaling about \$1.2 million.

5. On July 11, 2012, concurrently with its Transfer Motion, Petitioner filed an amended motion for costs, taking a position directly opposite to the one asserted in this court on June 12, 2012. Now, Petitioner claims that he, the Sheriff -- not the ASPCA -- has incurred "costs" of \$1,427,679.02 for "the care of the animals." Petitioner's Amended Motion for Assessment and Taxation of Costs at 2, para. 5.

6. Petitioner has served Caboodle with a spreadsheet detailing those expenses. They are clearly the expenses allegedly incurred by the ASPCA, not by the Petitioner.

7. Given the Petitioner's earlier statement that all such expenses were provided to the Petitioner free of charge, it is incumbent upon Petitioner to explain how those same expenses have suddenly become costs incurred by the Sheriff. This should include substantiating documentation showing when and how the Sheriff is alleged to have incurred the expenses.

8. If the ASPCA and Sheriff have hastily arranged an agreement only this week that purports to make those expenses the Sheriff's responsibility, then the question becomes whether it is a valid agreement or only a sham designed solely to deprive this court of jurisdiction.

Generally speaking, services that have been provided free of charge in the past do not constitute consideration, and an agreement that is unsupported by consideration is not an enforceable contract.

Conclusion

10. For the foregoing reasons, Caboodle respectfully requests that Petitioner's Motion for to Transfer Case to Circuit Court be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Opposition to Petitioner's Motion for Assessment and Taxation of Costs has been electronically filed via www.myfloridaaccess.com and furnished via email and U.S. Mail to George T. Reeves, P.O. Drawer 652, Madison, FL 32341 (Attorney for Sheriff); Gary E. Brown, 100 S. Ohio Ave., Live Oak, FL 32340 (Attorney for Caboodle), on this 12th day of July 2012.

BY: /s/ David W. Collins

COLLINS LAW FIRM
DAVID W. COLLINS, Esquire
Fla. Bar # 475289
CHUCK COLLINS, Esquire
Fla. Bar # 0037382
Attorneys for Respondent/Appellant
P.O. Box 541
Monticello, FL 32345
(850) 977-8111