

IN THE COUNTY COURT, 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,

vs.

CASE NO. 2012-25-CC

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

Respondent.

PETITIONER'S MOTION TO TRANSFER CASE TO CIRCUIT COURT

Pursuant to Fla.R.Civ.P. 1.060(a), the Petitioner, the Hon. BEN STEWART, in his official capacity as the Sheriff of Madison County, Florida, (hereinafter the "SHERIFF") hereby moves this court to transfer this action to the Circuit Court of the Third Judicial Circuit in and for Madison County, Florida, and as reasons therefore says as follows:

1. On or about February 27, 2012, the SHERIFF seized and took custody of certain animals (hereinafter the "ANIMALS") from the Respondent, CABOODLE RANCH, INC., a Florida not-for-profit corporation, (hereinafter "CABOODLE").
2. 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 ANIMALS.
3. On June 22, 2012, the court entered its ORDER PLACING ANIMALS, dated June 22, 2012 (hereinafter the "ORDER") which takes the ANIMALS from CABOODLE and places them with the SHERIFF for disposition.

4. On June 29, 2012, the SHERIFF served PETITIONER'S MOTION FOR ASSESSMENT AND TAXATION OF COSTS which sought an award of costs pursuant to § 828.073(4)(c)(2), Fla.Stat. and § 57.041, Fla.Stat.

5. The SHERIFF seeks costs under § 828.073(4)(c)(2), Fla.Stat., in excess of \$15,000 as set out in the PETITIONER'S AMENDED MOTION FOR ASSESSMENT AND TAXATION OF COSTS served on the same date as the service of this motion.

6. Under Florida law this case must be transferred to the circuit court as follows:

Brinkley complains that it was error to transfer the case from county court to the circuit court for a hearing on the county's motion for costs because section 828.073 clearly establishes jurisdiction in the county court. Section 828.073(2)(b) requires that the county court determine whether adequate care has been provided and whether the owner is fit to have custody of the animals. The county court fulfilled that duty. However, Brinkley overlooks section 828.073(4)(c)3, which provides: "Upon proof of costs incurred by the agent or officer, the court may require that the owner pay for the care of the animal while in the custody of the agent or officer. A separate hearing may be held." Here, the County was seeking in excess of \$15,000 in costs. Because this amount exceeded the county court's jurisdiction, only the circuit court had subject matter jurisdiction over this aspect of the dispute. See generally Fla. Stat. §§ 26.012; 34.01 (1997). Accordingly, the county court did not err in transferring the cost hearing to the circuit court pursuant to Rule 1.060(a) of the Florida Rules of Civil Procedure.

Brinkley v. County of Flagler, 769 So.2d 468, 473 (Fla. 5th DCA 2000) (Emphasis supplied)

7. *Brinkley, supra*, not only provides for the transfer, but also provides that the transfer shall be accomplished pursuant to Rule 1.060(a). This rule provides:

If it should appear at any time that an action is pending in the wrong court of any county, it may be transferred to the proper court within said county by the same method as provided in rule 1.170(j).

Fla.R.Civ.P. 1.060(a) (Emphasis supplied)

8. Fla.R.Civ.P. 1.170(j), provides:

If the demand of any counterclaim or crossclaim exceeds the jurisdiction of the court in which the action is pending, the action shall be transferred forthwith to the court of the same county having jurisdiction of the demand in the counterclaim or crossclaim with only such alterations in the pleadings as are essential. The court shall order the transfer of the action and the transmittal of all papers in it to the proper court if the party asserting the demand exceeding the jurisdiction deposits with the court having jurisdiction a sum sufficient to pay the clerk's service charge in the court to which the action is transferred at the time of filing the counterclaim or crossclaim. Thereupon the original papers and deposit shall be transmitted and filed with a certified copy of the order. The court to which the action is transferred shall have full power and jurisdiction over the demands of all parties. Failure to make the service charge deposit at the time the counterclaim or crossclaim is filed, or within such further time as the court may allow, shall reduce a claim for damages to an amount within the jurisdiction of the court where the action is pending and waive the claim in other cases.


Fla.R.Civ.P. 1.170(j) (Emphasis supplied)

9. The filing fee for this type of action has been waived by statute. *See*, § 828.073(2), Fla.Stat., (“A fee may not be charged for filing the petition.”)
10. Therefore this case should be transferred without the need for the deposit of any fee with the clerk.

WHEREFORE the SHERIFF requests that this case be transferred to the Circuit Court of the Third Judicial Circuit in and for Madison County, Florida.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to DAVID W. COLLINS, Post Office Box 541, Monticello, Florida 32345, E-Mail-collins.fl.law@gmail.com, and fanlewfl@aol.com, and GARY E. BROWN, 8855 141st Lane, Live Oak, Florida 32060-6357, E-Mail-garybrown1@windstream.net, by email and regular U.S. Mail on July 11, 2012.

DAVIS, SCHNITKER, REEVES & BROWNING, P.A.

By: 

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ATTORNEYS FOR THE SHERIFF