

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/Appellee,

v.

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

Respondent.

Case No. 2012-25-CC

**RESPONDENT'S MOTION TO REDUCE AMOUNT
OF BOND FOR STAY PENDING APPEAL**

Respondent, Caboodle Ranch, Inc. ("Caboodle"), hereby moves for modification of this court's order of July 3, 2012, entitled "Order [on] Respondent's Motion For Stay Pending Appeal" ("Stay"). Specifically, Caboodle respectfully requests that the amount of the bond described in the Stay be reduced from \$1.8 million to an amount not greater than \$15,000, the maximum amount this court has jurisdiction to award to any party who comes before it.

Basis for Motion

1. This motion is made pursuant to Fla. R. App. P. 9.310(c), which provides that "[t]he lower tribunal shall have continuing jurisdiction to determine the actual sufficiency of any such bond," and Fla. R. App. P. 9.310(a), which provides that "the lower tribunal . . . shall have continuing jurisdiction, in its discretion, to . . . modify" a stay pending review.

2. The purpose of a stay pending review is to preserve the *status quo* to the extent necessary to protect the appellant's ability to obtain meaningful appellate review. *See QBE Ins. Corp. v. Chalfonte Condominium Apartment Ass'n, Inc.*, 37 Fla. L. Weekly S 395 (Fla. 2012). The right to appellate review is guaranteed to Caboodle by Florida's constitution. Art. V,

§ 4(b)(2), Fla. Const.; *TA Enter., Inv. v. Olarte, Inc.*, 931 So. 2d 1016 (Fla. 2006); *BDO Seidman, LLP, v. Banco Espirito Santo International, Ltd.*, 998 So. 2d 1 (Fla. 3d DCA 2008).

3. The subject matter of Caboodle's appeal is whether Caboodle is entitled to the return of any, or all, of the hundreds of cats (and some dogs) which were seized by the Petitioner and his agents in late February 2012 and have remained since then in the custody of the American Society for the Prevention of Cruelty to Animals ("ASPCA"). Were any of the animals to be killed, given away, or "adopted out" to a third party during the pendency of Caboodle's appeal, Caboodle's appeal with respect to that animal -- some of which are personal pets of Caboodle's proprietor, predating the establishment of Caboodle's sanctuary operations -- would thereby be mooted. Accordingly, in order to preserve Caboodle's right to appeal under the Florida constitution, it is necessary to stay the June 22, 2012, order (the "Order Placing Animals") from which Caboodle now appeals. Specifically, it is necessary to prevent the ASPCA from killing, giving away, "adopting out," or otherwise transferring or disposing of the animals pending review by the appellate court.

4. While the statute at issue provides for "payment by the owner for the care and provision of the animal while in the agent's or officer's custody," § 828.073(4)(a)(1), Fla. Stat., this court can only act within the limits of its own jurisdiction in applying that provision. The Florida legislature has provided that county courts shall have original jurisdiction "of all actions at law in which the matter in controversy does not exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts." § 34.01(1), Fla. Stat.; *see also*, Art. V, § 6(b), Fla. Const. Accordingly, the maximum amount that this court may lawfully order Caboodle to pay for care of the animals is \$15,000. *See Fitzgerald v. Addison*, 287 So.2d 151 (Fla. 2d DCA 1973) (quashing order that required

posting of a supersedeas bond in excess of the maximum amount appellant could have been required to pay); *Alexdex v. Nachon Ent.*, 641 So.2d 858 (Fla. 1994) (county court may exercise equity jurisdiction but only "within the specified monetary limits" stated by the legislature in defining county courts' jurisdiction).

5. There appear to be no Florida cases in which an appellate court has ruled upon the propriety of a county court's attempt to require a bond in an amount far greater than the county court's jurisdictional limitation on the amount in controversy -- probably because Florida's county courts more typically handle small claims than multimillion-dollar disputes. It is therefore appropriate to look to the decisions of Florida's sister states, which, although not binding, may be considered for their inherent persuasiveness.

6. As it turns out, such cases are as rare in other states as in Florida, probably for the same reason -- lower-tier courts with small jurisdictional limits seldom feel the need to require multimillion-dollar bonds. The highest court of one state, however, has recently considered the issue. In *State v. Erdman*, 727 N.W.2d 123 (Iowa 2007), the Supreme Court of Iowa considered whether a lower court, having jurisdiction in cases in which the amount in controversy was \$10,000 or less, could enforce a \$26,500 appearance bond. The Supreme Court of Iowa answered in the negative, noting, "If the legislature had intended to confer such jurisdiction, it would have done so expressly." *Id.* at 126.

7. Caboodle, which chose neither this dispute nor this forum, perceives no injustice in the \$15,000 cap on Petitioner's recovery. To the extent that the Petitioner might feel otherwise, its objections may be properly addressed only by the Florida legislature, not by the courts. It was the legislature's decision to vest jurisdiction, in actions under § 828.073, in courts which lack the power to make awards in excess of \$15,000. Most likely, the legislature never envisioned that

the statute, which repeatedly refers to "any animal" and "the animal," would be wielded, along with criminal charges, as part of a two-pronged juggernaut to try to mandate specific animal management and euthanasia practices for a colony of over 600 cats.

8. It was Petitioner's choice, not Caboodle's, to use § 828.073 as the mechanism for addressing what it perceived to be problems with the level of care given to the animals. ASPCA, for its part, volunteered to assume the duties which are now required of it, during the pendency of litigation, under § 828.073(4).

9. Since the court currently has only the bare assertion of the ASPCA, and not a detailed accounting, to support the claim that \$1.2 million had been expended to care for the animals as of June 11, 2012, it is not known how much of this amount would fall within the statutory language of allowable "care and provision *for the animal*," § 828.073(4)(a)(1), Fla. Stat. (emphasis added), and how much of it is for hotel accommodations, meals for staff, administrative overhead, publicity, and the like. But, overlooking that problem for the sake of argument, it is clear that the ASPCA can readily afford to meet the statutory obligations it has voluntarily undertaken. According to its 2010 Annual Report (the most recent available), the ASPCA had over \$209 million in assets at the end of its fiscal year. This figure includes nearly \$28 million in cash and cash equivalents on hand -- \$6.3 million more than all of its then-current liabilities. *See* Exhibit 1 hereto. Moreover, the ASPCA, which claims on its website to have "more than 1 million supporters across the country," (*see* <http://www.asPCA.org/about-us/about-the-asPCA.aspx>, visited July 5, 2012), has a highly plastic income stream and a demonstrated ability to rapidly raise huge additional sums very quickly when it so desires in order to accomplish the missions that it has voluntarily undertaken to promote its version of animal welfare and its beliefs about when euthanasia is appropriate. *See* Exhibit 2 hereto.

10. Neither the ASPCA nor the Sheriff of Madison County will suffer deprivation of any constitutional rights by reason of this court's decision on this motion, regardless of what the court's decision might be. Caboodle, in contrast, can barely afford even to pay for the transcripts for its appeal, should the bond be lowered to \$15,000 as requested. *See Williams v. Oklahoma City*, 395 U.S. 458 (1969) (a state, having provided a right of appeal, may not burden it with unreasonable restrictions); *M.L.B. v. S.L.C.*, 519 U.S. 102 (1996) (applying this principle in noncriminal context). One reason for Caboodle's difficulty is that Caboodle is not a multimillion-dollar enterprise like the ASPCA but is simply a small group of dedicated people doing their best to save cats that would otherwise have been put to death. Another reason is that, in light of this action and the related criminal charges, donations to Caboodle have been sharply curtailed.¹ Yet another reason is that all of Caboodle's records and even uncashed checks were seized in the February raid and held as "evidence" in the related criminal case.²

11. Caboodle's constitutional rights, and its very survival, are at stake; the ASPCA's and Petitioner's are not. Petitioner and the ASPCA chose this forum; Caboodle did not. The ASPCA volunteered; Caboodle was, and continues to be, coerced.

Conclusion

12. Caboodle's appeal, if not barred by the imposition of a bonding requirement that is

¹ Contrary to the statement made in the Order Placing Animals, Caboodle's business model has never been to rely solely on fees paid at the time a cat is accepted. Funds for caring for the cats have been provided by numerous other continuing donations, large and small. Those who have made such donations, however, have had no reason to do so after the February 2012 raid and seizure, since there have been virtually no cats at the property since that time.

² The cats, which this court obviously expected would continue to be held as "evidence" for the criminal case, apparently ceased to be "evidence" almost immediately after the Order Placing Animals, as they were released to the custody of the ASPCA.

impossible to meet, concerns important rights and difficult questions that Caboodle ought to be permitted to put before an appellate court. The trial court, obviously, feels that it has rendered a just and lawful decision; but if that were sufficient, there would be no need for appellate courts.

13. This court has concluded that some of the Caboodle cats suffered neglect as a result of conditions arising from the presence of over 600 cats on the property. Obviously, those conditions, if they were ever present on the property, are not present now. There is some number of cats between zero and 600 that, even by this court's own logic, could be returned without risk of recurrence of those alleged conditions, but Caboodle has been foreclosed from this option by the court's and the Petitioner's all-or-nothing, condemnatory approach. The propriety of the all-or-nothing approach -- i.e., the failure to apply the statute on an animal-specific basis at each step -- will be a central focus of Caboodle's appeal, should it be allowed to progress. While the court has disagreed with Caboodle's arguments on this subject, those arguments are neither frivolous nor interposed for the purpose of vexation or delay. Caboodle deserves the opportunity to put those arguments before an appellate court for decision. Without a stay pending appeal, it cannot do so.

14. Lurking behind this dispute is a deep philosophical divide between two groups of animal lovers, both with good intentions, about man's responsibilities toward the millions of abandoned cats in this country and especially about when euthanasia is the most moral choice. The ASPCA and its allies take the view that it is better for a cat to be dead than ill, injured, homeless, or in any situation where it cannot receive the best possible medical care. Caboodle has dedicated itself to a different view: that when it is possible to save a life, even an imperfect one, euthanasia is inappropriate. It is Caboodle's contention that the ASPCA position has not been adopted as the law of the State of Florida and does not establish the standard of care

required under § 828.073. This, too, is a serious argument which Caboodle should be permitted to put before an appellate court.

15. Finally, we note that, should Caboodle's appeal be permitted to proceed, Fla. R. App. P. 9.710 (providing for mediation) will provide an opportunity for a type of resolution that has not been possible so far under the all-or-nothing approach. This may well be the most productive approach for resolution from among the alternatives, but it cannot be reached unless the ASPCA and Petitioner are barred from mooted Caboodle's appeal.

Request for Relief

16. For the foregoing reasons, Caboodle respectfully requests that the amount of the bond described in the Stay be reduced from \$1.8 million to an amount not greater than \$15,000.

17. Caboodle respectfully requests expedited decision on this request, in sufficient time that, should the motion be denied, Caboodle will have a reasonable and fair opportunity to seek review of the decision on this motion from the appellate court prior to expiration of the current stay on July 16, 2012.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Motion to Reduce Amount of Bond for Stay Pending Appeal has been furnished 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 _____ day of July 2012.

BY: _____
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