

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

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TIM SANDENS, CLERK
BY *Paul Herding*

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 MEMORANDUM OF LAW

Pursuant to the court's oral instructions at the May 21, 2012 hearing, the Petitioner, the Hon. BEN STEWART, in his official capacity as the Sheriff of Madison County, Florida, (hereinafter the "SHERIFF") hereby provides the following memorandum of law on the question posed by the court concerning the Respondent, CABOODLE RANCH, INC., a Florida not-for-profit corporation, (hereinafter "CABOODLE") and the subject animals (hereinafter the "CABOODLE ANIMALS"):

QUESTION 1

1. The first question asked by the court was:

If the court ruled that the CABOODLE ANIMALS were to be placed with the SHERIFF, could the court direct what would happen to the CABOODLE ANIMALS after such placement?

2. Respectfully, the SHERIFF would assert that the present law requires the above question to be answered in the negative.

3. The subject statute provides upon the proper proof:

The court may:

- a. Order that the animal be sold by the sheriff at public auction, that the current owner have no further custody of the animal, and that any animal not bid upon be remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit; or
- b. Order that the animal be destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit.

§ 828.073(4)(c)(1), Fla.Stat. (Emphasis supplied)

4. The above statute provides that upon placement, the subject animals shall be “disposed of as the agency or person sees fit.” Of course, the court is bound by the plain and ordinary meaning of the language of the statute. *Germ v. St. Luke's Hosp. Ass'n*, 993 So.2d 576, 578 (Fla. 1st DCA 2008) (“Courts should give statutory language its plain and ordinary meaning, and may not add words that were not included by the legislature.”). In this case the plain and ordinary meaning of the phrase “see fit” is, “Deem appropriate, as in *He's entitled to divide up his property as he sees fit*, or *If we see fit to attend, we'll be there*.” (Definition of the phrase “see fit” shown at Dictionary.com. Website: <http://dictionary.reference.com/browse/see+fit>) See *Nehme v. Smithkline Beecham Clinical Labs., Inc.*, 863 So.2d 201, 205 (Fla. 2003) (stating that where the Legislature has not defined a term, its plain and ordinary meaning can be taken from a dictionary)

5. As the legislature chose to vest the authority to dispose of the animals with the

person receiving them, the court is not permitted to construe this provision in any other manner. *See, Department of Revenue ex rel. Smith v. Selles*, 47 So.3d 916, 920 (Fla. 1st DCA 2010) (“Where the plain and ordinary meaning of statutory language is unambiguous, we cannot construe the statute in a manner that would extend, modify, or limit its express terms or its reasonable and obvious implications.”)

Intentions of the SHERIFF with Regards to the CABOODLE ANIMALS

6. However, even though the SHERIFF, if awarded the CABOODLE ANIMALS may dispose of them as he “sees fit.” The SHERIFF does not object to sharing his intentions in this regard. Should the court place the CABOODLE ANIMALS with the SHERIFF, the SHERIFF intends to use the services of the American Society for the Prevention of Cruelty to Animals, Inc., a New York not-for-profit corporation with a mission to provide effective means to prevent cruelty to animals throughout the United States (hereinafter the “ASPCA”) to place the CABOODLE ANIMALS. The intentions of the ASPCA in this regard are set out in its letter attached hereto as Exhibit “A” and as set out below.

Intentions of the ASPCA

7. The ASPCA, acting as an agent of the SHERIFF, has provided its expert services free of charge to the SHERIFF in this case. The most ambitious undertaking in terms of both staffing and financial resources to date has been the sheltering and animal care operation that the ASPCA has run from the day of the seizure in February until now. The nearly four month operation has required daily staffing by a myriad of workers (kennel staff, veterinarians, technicians, behaviorists) who have worked ten hours a day, seven days a week for the past four months to provide the CABOODLE ANIMALS with a clean, safe place to recuperate, the highest

level of veterinary care, daily personal attention and behavioral enrichment to improve the “adoptability” of the less social cats in the population. Thousands of hours of intensive care have fostered considerable emotional bonding between staff and CABOODLE ANIMALS, making many workers feel personally vested in assuring “happy endings” for their furry charges. To date, and as further delineated in the letter attached as Exhibit “A”, the ASPCA has expended more than 1.2 million dollars to remove, house and humanely care for nearly 700 feline and two canine charges most of whom have challenging and costly medical and behavioral needs. Now, as the dispositional phase of the case draws to a close, the ASPCA is poised to undertake an adoption initiative on behalf of the Caboodle Ranch animals that is as ambitious, creative and successful as the exemplary care it has provided to the animals to date.

8. Organizing, publicizing and holding highly successful adoption events for several hundred animals is nothing new to the ASPCA. Among such events recently held by the organization was an adoption event that the ASPCA held in Joplin, Missouri last year after a devastating tornado killed over 100 human residents and displaced over 1,000 pets. In addition to running the emergency animal shelter, rescuing pets in peril after the disaster and reuniting scores of pets with their owners, the ASPCA joined forces with local groups to hold an unprecedented adoption event at which over 700 displaced animals were adopted in a single day.

9. The ASPCA’s adoption efforts on behalf of the CABOODLE ANIMALS will of course not be reserved to a single day adoption event but rather will entail a nationwide outreach to rescue partners and organizations that routinely assist the ASPCA with the placement of less adoptable animals and those with special medical or behavioral needs.

10. In sum, granting custody of the CABOODLE ANIMALS to the organization that

has so expertly and professionally provided them with compassionate, loving care to date, and which has a proven record of success in placing large numbers of animals - even those with special needs - will truly give them the best chance for a happier and healthier future.

QUESTION 2

11. The second question asked by the court was:

Does the court have the authority to order that only a portion of the CABOODLE ANIMALS be placed with the SHERIFF and the remainder returned to CABOODLE?

12. Respectfully, the SHERIFF would assert that § 828.073, Fla.Stat., would allow such relief but that in the present case the court would could not order such relief.

13. First, CABOODLE never made any request that the court only place a portion of the CABOODLE ANIMALS with the SHERIFF and return the rest to CABOODLE. Such relief could have been requested in the alternative to its main argument that it was entitled to the return of all of the CABOODLE ANIMALS. *See* Fla.R.Civ.P. 1.110(g) (stating that “[a] pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative”); *DiChristopher v. Bd. of County Comm'rs*, 908 So.2d 492, 495 (Fla. 5th DCA 2005) (allowing plaintiff to plead alternative bases for relief); *Hines v. Trager Constr. Co., Inc.*, 188 So.2d 826, 830-31 (Fla. 1st DCA 1966) (noting that a pleader may seek relief under different theories of law even if relief depends upon materially different or inconsistent facts).

14. However, as CABOODLE never requested such relief, by pleading or otherwise, such relief cannot be granted to it. *See, Homestead-Miami Speedway, LLC v. City of Miami*, 828 So.2d 411, 413 (Fla. 3d DCA 2002) (striking portion of order providing relief that was neither

pled nor requested).

15. Second, even if such relief had been requested, no evidence supporting such relief was offered. In cases such as this, the initial burden is on the petitioner to show that the subject animals are not receiving proper and reasonable care. Once this showing was made by the petitioner, the burden shifts to the owner to show that owner is able and fit to have custody of and provide adequately for the 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.”)

16. In this case, the SHERIFF has shown, by clear and convincing evidence, that the CABOODLE ANIMALS, were not receiving proper and reasonable care while in the custody of CABOODLE. (See expert testimony of veterinarians Dr. Miller and Dr. Levy as well as photographic evidence.) Once this happened CABOODLE was required to show, by clear and convincing evidence, that CABOODLE was able and fit to have custody of and provide adequately for the CABOODLE ANIMALS or some portion thereof.

17. CABOODLE failed to present the court with any evidence that it was able and fit to have custody of and provide adequately for a portion of the CABOODLE ANIMALS.

18. The assessment of ability and fitness under § 828.073, Fla.Stat., necessarily relates to the ability of the owner to care for the specific animals at issue in the case. Here, as

established by the hearing testimony, at the time of seizure, the specific animals had a daunting range of chronic, serious and costly medical needs that have required, and in some cases will require in the future, the sort of diligent monitoring, daily attention and proactive veterinary treatment that CABOODLE has failed to show it has the capacity to provide. Notably, restoration of this population of cats to a state of improved (but by no means optimal) health has been achieved only after long-term, extensive and costly medical intervention provided by, and at the expense of the ASPCA.

19. Further, the assessment of ability and fitness under § 828.073, Fla.Stat., also relates to the ability of the owner to care for animals generally. (Otherwise why would the court be empowered to order the taking of the owner's other animals and enjoin the owners possession or custody of animals in the future. § 828.073(4)(c)(3), Fla.Stat.) For this determination the court must look at the long history of CABOODLE's inability to humanely manage a colony of this size. The hearing testimony clearly established that CABOODLE possessed far more cats than it could provide with reasonable and proper care; that it continued to take in additional cats despite repeated recommendations not to do so over the course of several years from Dr. Julie Levy, Madison County Animal Control and its own treating veterinarian, Dr. John Lewis; and that it thereby allowed the population to swell to an unmanageable (and apparently unknown to CABOODLE) number of nearly 700.

20. Had CABOODLE seriously sought to show that it was so able and fit, it would have offered evidence concerning the serious issues raised at the hearing such as:

- A. Why did CABOODLE never cease taking in additional cats, even when Dr. Levy and Dr. Lewis (CABOODLE's own veterinarian) both told CABOODLE to do so,

in writing, as early as 2009?

- B. Does CABOODLE ever intend to cease taking new cats, or is it the intention of CABOODLE to simply increase the cat herd in perpetuity?
 - C. If CABOODLE follows the recommendations of Dr. Levy and Dr. Lewis and ceases taking new cats (and the fees or donations associated with new cats), how will CABOODLE afford to provide food and care for its cats?
 - D. Does CABOODLE believe it is acceptable for cats to spend the night laying in their own vomit, urine and feces as stated by the two CABOODLE volunteers who testified at the hearing that this was normally what happened until the cleaning crew arrived in the morning?
 - E. Why did CABOODLE refuse to follow the recommendations of Dr. Levy and Dr. Lewis (CABOODLE's own veterinarian) that all of the cats be given identification and individual medical records including vaccination for rabies and other dangerous diseases? Why did CABOODLE only start taking action on these issues when CABOODLE was forced to by the passage of Madison County Ordinance No. 2011-196, (hereinafter the "EAH ORDINANCE") concerning excess animal habitats? Does CABOODLE not believe that protecting the CABOODLE ANIMALS from these dangerous diseases is important?
 - F. Why did CABOODLE refuse to have all of the CABOODLE ANIMALS spayed or neutered? Does CABOODLE intend to have any remaining animals spayed or neutered?
21. CABOODLE chose not to address the above issues and therefore has not shown

what is necessary for the court to find that CABOODLE is able and fit to have custody of and provide adequately for the CABOODLE ANIMALS or any portion thereof.

Lack of Control and Supervision of CABOODLE ANIMALS if Returned.

22. If the court were to determine that CABOODLE was able and fit to have custody of and provide adequately for a portion of the CABOODLE ANIMALS it would have no choice but to return such animals to CABOODLE. See, §§ 828.073(4)(a)(1), 828.073(4)(b), Fla.Stat. Such statutes do not provide that the court may impose any subsequent control or supervision requirements. As such are not provided by statute, the court cannot read the same into the statute. See, *Department of Revenue ex rel. Smith v. Selles*, 47 So.3d 916, 920 (Fla. 1st DCA 2010) (“Where the plain and ordinary meaning of statutory language is unambiguous, we cannot construe the statute in a manner that would extend, modify, or limit its express terms or its reasonable and obvious implications.”)

23. CABOODLE has not offered any assurance that it intends to do anything differently if given back some portion of the CABOODLE ANIMALS.

24. Without such assurances and a reasonable method of verification, no portion of the CABOODLE ANIMALS should be returned to CABOODLE because CABOODLE has not shown itself able and fit to care for them.

Alternatively, Number of CABOODLE ANIMALS to be returned

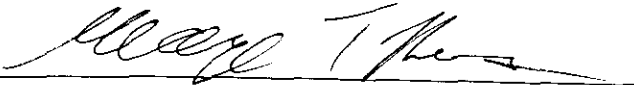
25. The SHERIFF therefore respectfully asks the court to order that all of the CABOODLE ANIMALS be placed with the SHERIFF. However, without waiving such request, the SHERIFF asserts that should the court consider an order requiring forfeiture of fewer than all of the CABOODLE ANIMALS, the court should exercise considerable caution since there has

been little beyond hopeful conjecture to suggest that CABOODLE will be any more fit or able to care for animals than when the CABOODLE ANIMALS were seized. An order that allows a portion of the CABOODLE ANIMALS to return to CABOODLE should limit that number to well under the thirty animals allowed by the EAH ORDINANCE without special permit. Those cats should be selected exclusively by the SHERIFF, with assistance from the ASPCA, and should include only cats that are healthy and deemed "difficult to place" due to their feral or unsocialized status, as such cats are most likely to survive the conditions prevailing at CABOODLE. Such an order should also contain safeguards and conditions to help ensure the well being of the animals, including a requirement that all animals be micro chipped and spayed or neutered at CABOODLE's expense prior to their return and that CABOODLE enter a written stipulation agreeing to refrain from taking in any additional animals and to unannounced visits by Madison Animal Control. Finally, any such order should be predicated on CABOODLE's compliance with all recommendations made to date by Dr. Levy, Animal Control and Dr. Lewis with respect to sanitation, housing, record keeping and separation of sick from healthy cats prior to the return of any animals to CABOODLE.

WHEREFORE, the SHERIFF requests the court to place all of the CABOODLE ANIMALS with the SHERIFF for disposal as he sees fit.

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 June 11, 2012.

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

By: 

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ATTORNEYS FOR THE SHERIFF

EXHIBIT "A"



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June 11, 2012

Honorable Gregory S. Parker, Circuit Judge
Third Judicial Circuit of Florida
P.O. Box 1060
Madison, FL 32341

Re: *Stewart v. Caboodle Ranch, Inc.*, Case No. 2012-25-CC

Dear Judge Parker:

The American Society for the Prevention of Cruelty to Animals (ASPCA) is the oldest humane organization in the nation. Alleviating animal suffering and assisting local law enforcement in preventing animal cruelty are core tenets of the ASPCA's mission and integral to the work that, over the course of its rich 146-year history, has made the organization a leader in the field of animal welfare.

At the request of the Madison County Sheriff's Office, the ASPCA has been caring for and sheltering the nearly 700 cats and two dogs rescued from Caboodle Ranch in February 2012. Since then, the ASPCA has housed the animals at a specially outfitted temporary shelter in Jacksonville, FL, where they are receiving extensive care that includes ongoing medical services and behavioral enrichment. To date, the ASPCA has spent approximately \$1.2 million to provide for and rehabilitate the animals with the goal of placing them in permanent caring homes should the Court transfer legal custody from Caboodle Ranch to Madison County.

At the time the animals were rescued from the dire conditions at Caboodle Ranch, many were suffering from untreated medical illnesses such as upper respiratory infections, and chronic conditions such as lymphoma, blindness, polyps, and inflammatory bowel disease. The ASPCA is providing the animals with a range of essential medical services to treat the illnesses, including 24-hour emergency room monitoring and intensive care; 24-hour intravenous fluids; endoscopic procedures; blood work; feeding tubes; echocardiograms; urinalysis; radiographs; ultrasounds; and dental procedures. To date, the ASPCA has spent more than \$250,000 on veterinary care, supplies, and medications.

The ASPCA is also providing the animals with behavioral enrichment to remedy the effects of the severe neglect and lack of socialization they experienced during their time at Caboodle Ranch. This includes environmental enhancements such as perches; calming pheromones; treats

WE ARE THEIR VOICE.

and toys; handling enrichment for kittens; and obedience training and socialization for the two Caboodle Ranch dogs. In addition, each of the nearly 700 cats is in the process of receiving individual behavioral evaluations to assist in placing them into caring permanent homes.

In order to provide such extensive care, the ASPCA has drawn on its own extensive resources, as well as the resources of partner organizations from around the country. The ASPCA has marshaled the services of numerous outside veterinary providers, for which it has spent approximately \$100,000. Over 500 individuals (consultants, partners, staff members, and volunteers) have devoted substantial time to the care of the animals, with strong bonds frequently forming between the animals and their caretakers as a result. Facility costs and expenses for sheltering supplies—much of it essential to fighting existing disease, preventing further disease transmission, and facilitating behavioral enrichment—currently total more than \$150,000.

As these facts demonstrate, the ASPCA has devoted enormous resources to the care and rehabilitation of the Caboodle Ranch animals, with the hope that they will ultimately be placed in caring permanent homes. Indeed, the ASPCA has already developed concrete plans for achieving this goal should the Court award legal custody of the animals to Madison County.

Specifically, the ASPCA intends to hold an adoption event similar in scale to the one held in the wake of the devastating tornado that struck Joplin, MO, in 2011. Working with partners from around the country, the ASPCA's two-day adoption event in Joplin resulted in the adoption of more than 700 displaced animals. The ASPCA is confident that it can achieve similar results with the Caboodle Ranch animals by applying many of the same strategies used in Joplin and other adoption events—including the use of grassroots outreach, social networking media, paid advertising, and press coverage.

In addition, the ASPCA intends to draw on existing relationships with specialized rescue organizations to place cats with special needs in appropriate environments. Indeed, the ASPCA has had great success in the past with the adoption and placement of feral cats and cats with ongoing medical issues such as feline immunodeficiency virus (FIV) and feline leukemia virus (FeLV).

In sum, the ASPCA believes that given the substantial resources expended to treat, care for and rehabilitate the Caboodle Ranch cats and dogs (responsibilities wholly abdicated by Caboodle Ranch), as well as the organization's past success in finding loving homes for scores of displaced animals, the vast majority of the Caboodle Ranch animals will be placed in environments where they will have the chance to thrive—an opportunity that Caboodle Ranch denied them.

Respectfully,



Tim Rickey
Senior Director
Field Investigations and Response