

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 MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S
MOTION TO REDUCE AMOUNT OF BOND FOR STAY PENDING APPEAL**

COMES NOW, the Petitioner, the Hon. BEN STEWART, in his official capacity as the Sheriff of Madison County, Florida, (hereinafter the "SHERIFF") hereby gives this memorandum of law in opposition to the RESPONDENT'S MOTION TO REDUCE AMOUNT OF BOND FOR STAY PENDING APPEAL (hereinafter the "MOTION TO REDUCE BOND") served on July 6, 2012 by the Respondent, CABOODLE RANCH, INC., a Florida not-for-profit corporation, (hereinafter "CABOODLE") as follows:

General History

1. On or about February 27, 2012, the SHERIFF seized and took custody of certain animals (hereinafter the "ANIMALS").
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 PLACING ANIMALS") which takes the ANIMALS from CABOODLE and places them with the SHERIFF for disposition.

4. On June 28, 2012, CABOODLE served its MOTION FOR STAY PENDING APPEAL in which CABOODLE requested a stay of the ORDER PLACING ANIMALS during the pendency of the appeal of the ORDER PLACING ANIMALS.

5. On June 29, 2012, the court held a hearing on the MOTION FOR STAY PENDING APPEAL and on July 3, 2012 the court entered its ORDER [ON] RESPONDENT'S MOTION FOR STAY PENDING APPEAL in which the court stayed the ORDER PLACING CATS but conditioned such stay on CABOODLE posting a bond of \$1,800,000.00 by July 16, 2012.

6. At the above hearing, CABOODLE did not object to the amount of the bond nor to the court setting the bond at that time and based upon the matters then before it.

7. In the MOTION TO REDUCE BOND, CABOODLE objects to the amount of the bond set in the ORDER [ON] RESPONDENT'S MOTION FOR STAY PENDING APPEAL and requests that such bond be reduced.

Waiver of All Arguments other than Jurisdictional Arguments

8. The MOTION TO REDUCE BOND contains several arguments concerning the amount of the bond, including a jurisdictional argument. All arguments, other than jurisdictional arguments should be deemed waived because they should have been presented at the June 29, 2012 hearing, which was requested by CABOODLE. At such hearing CABOODLE did not dispute that the amount of \$1,800,000.00 was a reasonable estimate of the costs which would be incurred to care for the ANIMALS during the appeal and further waived the ability to present

evidence otherwise. Of course jurisdictional arguments are never waived and may be raised at any time. *Tabb v. Fla. Birth-Related Neurological Injury Comp. Ass'n*, 880 So.2d 1253, 1256 (Fla. 1st DCA 2004) (Holding that subject matter jurisdiction cannot be waived and can be raised at any time.) Therefore the SHERIFF responds to the jurisdictional argument as set out below.

Legal Argument

9. In the MOTION TO REDUCE BOND, CABOODLE argues that the County Court may only award the costs of care to the SHERIFF up to the jurisdictional amounts of the County Court (\$15,000.00) and thus any bond must be limited to this amount. (MOTION TO REDUCE BOND at paragraphs 1 - 6)

10. CABOODLE acknowledges, and the SHERIFF agrees, that there is no Florida case law in support of or against the above argument.

11. The SHERIFF does not agree that the appeal bond should be limited, because the court is required to set the bond in an amount necessary to pay the, “[C]osts; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or order affirmed ...” Fla.R.App.P. 9.310(c)(2) The costs for care may properly be included in the appeal bond amount. *See, Wells v. Circle Redmont, Inc.*, 88 So.3d 433 (Fla. 5th DCA 2012) (Approving amount of bond set by trial court which covered amount of money judgment plus storage costs incurred for storage of property which was subject of action.)

12. In this case, the amount of costs that can be awarded is not limited to the County Court’s jurisdictional amount. Rather, the SHERIFF is allowed to seek whatever costs he can support, but if he seeks costs in excess of \$15,000, the case must be transferred to the circuit court.

13. In *Brinkley v. County of Flagler*, 769 So.2d 468 (Fla. 5th DCA 2000), the court specifically approved the seeking of costs under § 828.073(4)(c)(3), Fla.Stat., in excess of the \$15,000 and the transfer of such actions to the Circuit Court. *Brinkley, supra*, provides:

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, at 473. (Emphasis supplied)

14. Therefore in the instant case, unlike normal County Court actions, the law specifically contemplates that damages for costs may be sought and awarded in excess of the jurisdictional amount.

15. Further, on July 11, 2012, the SHERIFF served PETITIONER'S AMENDED MOTION FOR ASSESSMENT AND TAXATION OF COSTS which requested costs in excess of \$1,000,000.00.

16. Also on July 11, 2012, the SHERIFF served PETITIONER'S MOTION TO TRANSFER CASE TO CIRCUIT COURT which requested the court to transfer this action to the Circuit Court due to the fact that the SHERIFF had demanded costs in excess of the jurisdictional limits of the County Court.

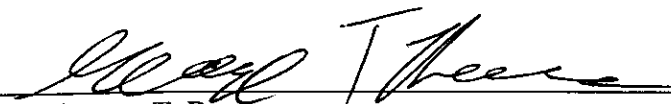
17. As the rules and procedure require the court to set appeal bonds in the amount necessary to make the SHERIFF whole, should the order on appeal be affirmed, and since there is no rule which limits the amount of such bonds to the jurisdictional amount of any court, the appeal bond in this case should not be limited.

18. This is especially true in this case because demands for damages have already been made which are in excess of the jurisdictional limits of the County Court and a motion to transfer to the Circuit Court is pending.

WHEREFORE the MOTION TO REDUCE BOND should be denied.

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 12, 2012.

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

By: 
George T. Reeves
Fla. Bar No. 0009407
Post Office Drawer 652
Madison, Florida 32341
(850) 973-4186
Fax No. (850) 973-8564

ATTORNEYS FOR THE SHERIFF