

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 13-0936

ESTELLA ROBINSON,
Petitioner,

V.)

Appeal from a Final Order of the Circuit
Court of Mercer County (13-M-AP-7-WS)

CITY OF BLUEFIELD,
Respondent

PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

STATUTORY LAW

No new authorities were cited.

PROCEDURAL RULES

~~*No new procedural rules were cited.*~~

CASE LAW

No new case law was cited.

STATEMENT OF THE CASE

Petitioner's brief has already set forth Petitioner's statement of the case, and Petitioner's counsel now submits this Reply Brief to both the Response by the DHHR's counsel and the Response of the Guardian Ad Litem.

SUMMARY OF ARGUMENT

Pursuant to Rule 10(g) of the Revised Rules of Appellate Procedure, no summary of the argument is necessary in this Reply Brief.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner asserts that the City of Bluefield agrees with Petitioner that this is a matter which is to be reviewed *de novo* by this Court. And, as this is a matter to be reviewed *de novo* Petitioner reasserts that oral argument is necessary in this matter.

ARGUMENT

1. The City of Bluefield's argument errs in that it misrepresents the Petitioner's position at the Circuit Court's hearing of July 24, 2013.

The first matter that counsel for Petitioner wishes to be address is counsel for Petitioner wishes to apologize to this Court and to counsel for the City of Bluefield for the error of the missing pages from the Circuit Court's Order pointed out by the City of Bluefield's counsel. Petitioner's counsel intended to include all pages from the Circuit Court's Order. Petitioner's counsel always intends to include the total pages of all items included in Petitioner's Appendix. Said error is an oversight not an intentional effort to omit material material from the Appendix. Counsel for Petitioner appreciates the City of Bluefield's counsel correctuing the oversight.

Now to the substance of this Reply.

Petitioner Estella Robinson's counsel on this appeal is the same counsel that represented Estella Robinson in both the Municipal Court of Bluefield and the Circuit Court of Mercer

County. Therefore, present counsel knows firsthand the intention of Estella Robinson's counsel's position at the July 24, 2013 hearing held by the Circuit Court.

Estella Robinson's counsel at the July 24, 2013 hearing thought the Circuit Court wanted to address the issue of whether the Judge for the Municipal Court had authority to order a dog be destroyed at a hearing without the necessity of the parties having witnesses being brought in concerning the facts that were in dispute, i.e. the viciousness of the dog. If the Circuit Court had in fact ruled that the City of Bluefield Municipal Court did not have the authority to destroy a dog, there would have been no need for witnesses to have been brought in to address the factual issues. That's why Estella Robinson's counsel, at the July 24, 2013 Circuit Court hearing, stated that the issue for the Court that day was whether a Municipal Court can order a dog be destroyed.

2. The City of Bluefield's position that a municipality has the right to regulate vicious animals in the manner the City of Bluefield has chosen ignores current West Virginia law.

The City of Bluefield's brief ignores Estella Robinson's arguments concerning statutory interpretation and the conflicting statutory law, as presented in Petitioner's brief.

Additionally, the City of Bluefield's position "comes up short" because there are numerous situations under our current law where the City of Bluefield's position of "we have the authority to regulate and we did" already is not allowed by law.

For example, the City of Bluefield could pass an ordinance against homicide, to accompany or replace the State's law on the subject. But if the City of Bluefield wanted to prosecute someone under their new homicide statute, if the new statute declared homicide a felony, the City of Bluefield would still have to comply with State law requiring someone charged with a felony to be indicted by a Grand Jury. And the City of Bluefield would still not be able to enforce any penalty for homicide by sentencing someone to any sentence longer than

thirty days if the City of Bluefield chose to prosecute the individual in municipal court. Because state law forbids any jail sentences over thirty days in municipal court.

This situation involving the destruction of a dog is the same. The Legislature has already limited an action to seek the destruction of a dog to circuit or magistrate court, just like the Legislature has limited the action municipal courts can take in enforcing other municipal laws. A municipality can regulate certain activities, but state law already mandates how such regulations can be enforced.

In the matter now before the Court, in order for the City of Bluefield to enforce its animal destruction ordinance, the City of Bluefield should have simply brought the action for the destruction of the dog in magistrate or circuit court. Just like the City of Bluefield already brings actions that the City wants enforced with harsher sentences than the Municipal Court of Bluefield can issue.

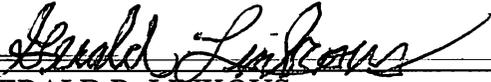
CONCLUSION

Petitioner Estella Robinson is entitled to relief from this Court because the City of Bluefield Municipal Court exceeded the authority given to municipal courts under West Virginia law by ordering the destruction of an animal, and Petitioner Estella Robinson was denied a meaningful appeal of the action because the Circuit Court failed to conduct a hearing on the merits of the decision to destroy the dog because the Circuit Court refused to hear any facts concerning the viciousness of the animal. Because even if the City of Bluefield Municipal Court, *arguendo*, had the authority to order the destruction of the dog, Estella Robinson was entitled to appeal that decision because the destruction of the dog was *not* a part of the plea agreement which Estella Robinson entered into with the City of Bluefield, and *was* an action that was reviewable, on the merits, by the Circuit Court of Mercer County.

RESPECTFULLY SUBMITTED,

ESTELLA ROBINSON,
PETITIONER,

BY COUNSEL.



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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have on this the 27th day of January, 2014, served a true copy of the foregoing PETITIONER'S REPLY BRIEF upon the following

Counsel:

Mr. Brian Cochran
City of Bluefield City Attorney and Prosecutor
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by either placing a true copy thereof in the United States Postal System, addressed to the address above which is the last known address of the above counsel known to me.


Gerald R. Linkous