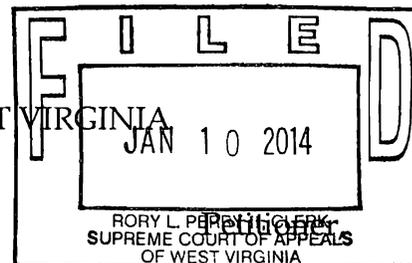


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Estelita Robinson, Defendant Below

v.

Case No. 13-0936

City of Bluefield, Plaintiff Below

Respondent.

RESPONDENT'S BRIEF

FILED BY:

Brian K. Cochran
W.V. State Bar #10503
Brewster, Morhous, Cameron, Caruth,
Moore, Kersey, & Stafford PLLC
418 Bland Street
P.O. Box 529
Bluefield, WV 24701
(304) 324-0304
(304) 324-0362 fax
bcochran@brewstermorhous.com
Attorney for Respondent City of Bluefield

Handwritten initials or signature at the bottom of the page.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Estella Robinson, Defendant Below

Petitioner,

v.

Case No. 13-0936

City of Bluefield, Plaintiff Below

Respondent.

RESPONDENT'S BRIEF

I. TABLE OF CONTENTS

Table of Authorities.....3

Statement of the Case.....4

Summary of Argument.....6

Statement Regarding Oral Argument and Decision.....7

Argument.....7

1. STANDARD OF REVIEW.....7

2. THE CIRCUIT COURT WAS CORRECT IN CONCLUDING THAT WEST VIRGINIA MUNICIPALITIES HAVE THE AUTHORITY, BY ORDINANCE, TO ORDER A VICIOUS ANIMAL TO BE DESTROYED.....8

 a. Municipal Courts in West Virginia have jurisdiction to order the destruction of a vicious and dangerous animal.....8

 b. Section 4-49 of the Code of Ordinance of the City of Bluefield is not inconsistent with, or in conflict with West Virginia Code.....10

3. THE CIRCUIT COURT WAS CORRECT BY NOT CONDUCTING AN ADDITIONAL HEARING CONCERNING THE VICIOUSNESS OF THE DOG BECAUSE THE PETITIONER AGREED THAT THE SOLE QUESTION FOR THE CIRCUIT COURT WAS WHETHER THE MUNICIPAL COURT HAD THE AUTHORITY AND JURISDICTION TO ORDER THE DESTRUCTION OF A VICIOUS OR DANGEROUS ANIMAL.....11

Conclusion.....15

Certificate of Service.....17

II. TABLE OF AUTHORITIES

Constitutional Provisions:

W. Va. Const. Art. VIII, § 11.....8,9

West Virginia Statutes:

W. Va. Code § 8-1-1 (1969).....9

W. Va. Code § 8-1-2(9) (1969).....10,11

W. Va. Code § 8-12-5(26) (2008).....6,8,9,11

W. Va. Code § 8-34-1 (1998).....13,14

W. Va. Code § 19-20-20 (1981).....8,10,11

Code of Ordinances of the City of Bluefield

Section 4-49 (2008).....4,5,6,8, 9,10,11,12,14,16

West Virginia Cases:

Ashby v. City of Fairmont, 216 W. Va. 527, 607 S.E. 2d 856 (2004).....8,15

Cathe A. v. Doddridge County Bd. of Educ., 200 W. Va. 521, 527, 490 S.E.2d 340, (1997)....8

Coordinating Council for Indep. Living, Inc. v. Palmer, 109 W. Va. 274, 280, 546 S.E.2d 454, 460 (2001).....7

III. STATEMENT OF THE CASE

The Mercer County Circuit Court's Order Denying (sic) Appeal, attached to the Petitioner's Appendix as Appendix Item No. 2, is missing pages 2, 4, and 6 of the original Order. Therefore, the Respondent is providing the Court's findings below and attaching a complete copy of the Circuit Court's Order to this Response, attached hereto as Exhibit No. 1.

The Respondent agrees with the Circuit Court's Findings of Fact and Procedural History as cited in the Court's Order titled "Background and Procedural History" in pages 2 and 3 of the Court's Order, including the Court's finding that at the July 24th, 2013 hearing, the parties agreed that the sole question for the Court was whether the Municipal Court has the authority and jurisdiction to enforce City Ordinance Section 4-49 (2008) by ordering the destruction of a vicious or dangerous animal. *See* Appendix No. 2, Order of the Circuit Court of Mercer County, July 31, 2013; *see also* Exhibit No. 1, at 2, and 3.

The following facts and procedural history were found by the Mercer County Circuit Court.

1. FINDINGS OF FACT

On March 6, 2013, the City of Bluefield's Animal Control Officer, Randall Thompson, responded to [Petitioner] Estella Robinson's residence at 1025 Wayne Street in Bluefield, West Virginia in reference to a complaint of a dog running at large and another dog having inadequate shelter. *Id.* at 1. Upon Officer Thompson's arrival, he met with the [Petitioner] and inquired if the dog that was tied would bite and the [Petitioner] advised him that it would. *Id.* The dog then broke loose from its chain and attacked Officer Thompson, biting him on both of his hands. *Id.* The officer sustained injuries serious enough to require medical attention. *Id.*

2. PROCEDURAL HISTORY

In April, 2013, the [Petitioner], who was represented by counsel, entered a plea of Guilty in the Municipal Court of Bluefield to owning, keeping, and/or harboring a dangerous animal, in violation of Section 4-49 of the Code of Ordinances for the City of Bluefield. *Id.* Based upon the facts set forth in the complaint and the [Petitioner's] admission by plea that the dog is vicious, the Municipal Court found and adjudicated the dog to be vicious, dangerous or in the habit of biting or attacking persons and Ordered the dog to be destroyed pursuant to Section 4-49 of Code of Ordinances of the City of Bluefield. *Id.* The Order was stayed for thirty (30) days to allow the [Petitioner] an opportunity to find a suitable home outside of Bluefield, if it could be determined within the thirty days that the dog could be rehabilitated so as not to become a threat to do further harm. *Id.*

In May, 2013, the [Petitioner] appeared before the Municipal Court. *Id.* She informed the Court that she found a home outside of Bluefield for the dog, but she did not have an expert's opinion that the dog could be rehabilitated to a point that it would not be a threat to others. *Id.* The Court then again ordered the dog destroyed, pending any potential appeal rights of the [Petitioner]. *Id.*

On May 20, 2013, the [Petitioner], by counsel, filed her Notice of Intent to Appeal the Municipal Court's Order. *Id.* On July 1, 2013, the Circuit Court held a status hearing and set the appeal hearing for July 24, 2013. *Id.* at 2 and 3. At the July 24th hearing, the parties agreed that the sole question to be decided by the Circuit Court was whether the Municipal Court had the authority and jurisdiction to enforce City Ordinance 4-49 by ordering the destruction of a vicious or dangerous animal. *Id.* at 3.

On July 31, 2013, Mercer County Circuit Court Judge William J. Sadler ruled that the City of Bluefield possesses the power to enforce Ordinance 4-49, and

denied the Petitioner's appeal. *Id.* at 6. On August 12, 2013, Petitioner filed a Motion for Additional Hearing requesting the Circuit Court to conduct another hearing to address whether the Municipal Court's findings of viciousness was factually warranted, and whether Petitioner had a right to appeal that decision. *See* Appendix No. 3. The Circuit Court denied the Petitioner's Motion by refusing to grant an additional hearing.

IV. SUMMARY OF ARGUMENT

A. Mercer County Circuit Court Judge Sadler was correct in concluding that the Municipal Court of the City of Bluefield has the power to enforce Section 4-49 of the Code of Ordinances of the City of Bluefield by ordering the destruction of a dangerous and vicious animal. West Virginia Code Section 8-12-5(26) (2008) provides municipalities in West Virginia with the express power "to regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale *or destruction of animals* or fowls kept contrary to law or found running at large." (emphasis added). Furthermore, the Circuit Court correctly ruled that Bluefield Ordinance Section 4-49 is not inconsistent with or in conflict with West Virginia Code. Therefore, Petitioner's argument that the Bluefield Municipal Court lacked jurisdiction to order the animal to be destroyed is completely without merit and this Court should affirm the Order of the Circuit Court.

B. The Circuit Court was also correct in denying Petitioner's request for an additional hearing to consider the factual question of the viciousness of the dog after the Circuit Court previously concluded that the Petitioner pled guilty to harboring a vicious dog, with the advice of counsel, prior to her initial appeal of the Municipal Court's destruction order. Further, in the hearing prior to Petitioner's Motion for an Additional Hearing, Petitioner agreed that the sole issue before the Circuit Court was to determine whether the Municipal Court had the authority to order the destruction of a

vicious animal. Only after the Circuit Court concluded that the Municipal Court did in fact have this authority did the Petitioner submit a motion for the Court to hold an additional hearing for the purpose of re-opening the record and introduction of additional facts as to the issue of the dog's viciousness. *See* Appendix No. 3. The proffered new evidence presented by Petitioner was an unsigned, and unsworn "report" from what the Petitioner described as an "expert". *Id.*

The Circuit Court was correct in denying Petitioner's Motion because the Petitioner previously pled guilty with the advice of counsel to harboring a vicious animal, making any additional factual inquiry moot, and Petitioner was not entitled to appeal the sentence of the Municipal Court with the exception of her previous challenge to the legal authority of the Municipal Court to order the destruction of the animal.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The facts in this case are straightforward, as noted in the Mercer County Circuit Court's Order. The facts and legal arguments will be adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument. The Respondent believes that this matter is appropriate for disposition by Memorandum Decision pursuant to the Revised Rules of Appellate Procedure. However, the Respondent welcomes the opportunity to appear for oral argument if this Court deems it to be appropriate.

VI. ARGUMENT

1. Standard of Review

Generally, the factual findings upon which a court below relies in making its decision are only subject to review upon appeal under a clearly erroneous standard. *Coordinating Council for Indep. Living, Inc. v. Palmer*, 109 W. Va. 274, 280, 546 S.E.2d 454,

460 (2001). However, questions of law are reviewed de novo. *Id.* A circuit court's interpretation of the West Virginia Constitution is a legal question which is included in this de novo standard. *Cathie A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 527, 490 S.E.2d 340, 346 (1997). The Supreme Court of Appeals applies a de novo standard of review on questions involving an interpretation of a statute. *Ashby v. City of Fairmont*, 216 W. Va. 527, 607 S.E. 2d 856 (2004).

Thus, questions of law and the circuit court's interpretations of the West Virginia Constitution and of West Virginia statutes are subject to a de novo review, while the Circuit Court's factual findings in this matter should be reviewed under a clearly erroneous standard.

2. THE CIRCUIT COURT WAS CORRECT IN CONCLUDING THAT WEST VIRGINIA MUNICIPALITIES HAVE THE AUTHORITY, BY ORDINANCE, TO ORDER A VICIOUS ANIMAL TO BE DESTROYED.

The Mercer County Circuit Court was correct in its conclusion that the Municipal Court of Bluefield, West Virginia has the authority and jurisdiction to order the destruction of vicious animals pursuant to its validly enacted Ordinance Section 4-49. The Circuit Court correctly ruled that the West Virginia Legislature specifically granted municipalities the authority to order the destruction of vicious and dangerous animals. *See* W. Va. Code § 8-12-5(26). The Circuit Court was also correct in determining that § 4-49 of the City of Bluefield's Code of Ordinances is not inconsistent with, or in conflict with West Virginia Code § 19-20-20 (1981).

a. Municipal Courts in West Virginia have jurisdiction to order the destruction of a vicious and dangerous animal.

As noted by the Circuit Court, Article VIII, §11 of the West Virginia Constitution empowers the West Virginia Legislature to provide for the establishment of courts in cities, towns, and municipalities and provides that such courts "shall have

jurisdiction to enforce municipal ordinances.” Const. Art VIII, §11. The Legislature enacted Chapter 8 of the West Virginia Code to create and govern Municipal Corporations. W. Va. Code § 8-1-1 (1969) et seq. Specifically, West Virginia Code § 8-12-5(26) provides municipalities in West Virginia with the express power “to regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale *or destruction of animals* or fowls kept contrary to law or found running at large.” (emphasis added).

In response to the authority granted by § 8-12-5(26), the City of Bluefield enacted Ordinance § 4-49, which states:

“No person shall own, keep or harbor any dangerous animal known by him to be vicious, dangerous, or in the habit of biting or attacking persons, whether or not such dog wears a tag or muzzle, and upon satisfactory proof that such animal is vicious, dangerous, or in the habit of biting or attacking persons, municipal judge may order any police officer or the animal control officer to cause such animal to be killed. Vicious or dangerous animals are declared to be a public nuisance and a menace to the public safety”.

See Exhibit 1, Legal Authorities, ¶ 4.

The Petitioner, who was represented by counsel, entered a plea of guilty to violating § 4-49, and based upon her admission that that the dog was vicious, the Municipal Court found and adjudicated the dog to be vicious, dangerous or in the habit of biting or attacking persons and ordered the dog to be destroyed. Based upon the facts that the Petitioner’s dog attacked Bluefield’s Animal Control officer; that the Petitioner admitted by plea that the dog in question is a dangerous and vicious animal; and that the Petitioner had prior knowledge that the dog would bite, the Municipal Court was clearly within its authority to order the animal to be destroyed pursuant to Bluefield’s Ordinance § 4-49, enacted by authority of West Virginia Code § 8-12-5(26).

Therefore, the Circuit Court correctly concluded that the Bluefield Municipal Court has the authority to order the destruction of a dangerous animal pursuant to the West Virginia Constitution and pursuant to West Virginia Code, and consequently, this Court should affirm the Circuit Court's Order

b. Section 4-49 of the Code of Ordinance of the City of Bluefield is not inconsistent with, or in conflict with West Virginia Code.

The Circuit Court was also correct in its conclusion that § 4-49 of the Code of Ordinances of the City of Bluefield is not in conflict with West Virginia Code § 19-20-20. The Petitioner asserts that the Bluefield Municipal Court lacked the required jurisdiction to order the destruction of the Petitioner's dog because § 4-49 conflicts with West Virginia Code § 19-20-20. However, not only is it clear Bluefield has the authority to Order the destruction of vicious and dangerous animals, it is also clear that according to West Virginia Code § 8-1-2(9), § 4-49 of Bluefield's Code of Ordinances is not in conflict with West Virginia Code § 19-20-20.

West Virginia Code § 19-20-20, titled "Keeping vicious dogs; humane officers may kill such dogs", states the following:

Except as provided in section twenty-one of this article, no person shall own, keep or harbor any dog known by him to be vicious, dangerous, or in the habit of biting or attacking other persons, whether or not such dog wears a tag or muzzle. Upon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous, or in the habit of biting or attacking other persons or other dogs or animals, the judge may authorize the humane officer to cause such dog to be killed.

West Virginia Code § 8-1-2(9) provides the following definition:

"Inconsistent or in conflict with" shall mean that a charter or ordinance provision is repugnant to the constitution of this state or to general law because such provision (i) permits or authorizes that which the constitution or general law forbids or prohibits, or (ii) forbids or prohibits that which the constitution or general law permits or authorizes.

Although the two animal code sections in question are almost identical, Petitioner argues that § 4-49 of Bluefield's Code of Ordinances is in conflict with West

Virginia Code § 19-20-20 because § 19-20-20 states that a circuit court or magistrate may authorize the humane officer to cause a vicious or dangerous dog to be killed, compared to § 4-49 stating that a municipal judge may order any police officer or the animal control officer to cause such animal to be killed. This alternative language providing the authority of a municipal judge to order the destruction of a vicious animal does not fall within the definition of “inconsistent or in conflict with” as provided by § 8-1-2(9) (1969) because § 19-20-20 does not “forbid or prohibit” a municipal court judge in West Virginia from ordering the destruction of vicious or dangerous animals. It also cannot be reasonably interpreted that an Ordinance allowing a municipal court judge to order the destruction of a vicious or dangerous animal is “repugnant” to the general laws of West Virginia when the general law, W. Va. Code § 8-12-5(26) specifically provides municipal courts in West Virginia with the express authority to do that which what the Bluefield Ordinance § 4-49 provides.

Bluefield’s Ordinance § 4-49 is not repugnant to, inconsistent with, or in conflict with West Virginia law. Therefore, the Mercer County Circuit Court correctly concluded that the Bluefield Municipal Court has the authority and jurisdiction to order the destruction of the Petitioner’s vicious and dangerous dog and this Court should affirm the Circuit Court’s Order Denying the Petitioner’s Appeal from the Municipal Court of the City of Bluefield.

3. **THE CIRCUIT COURT WAS CORRECT BY NOT CONDUCTING AN ADDITIONAL HEARING CONCERNING THE VICIOUSNESS OF THE DOG BECAUSE THE PETITIONER AGREED THAT THE SOLE QUESTION FOR THE CIRCUIT COURT WAS WHETHER THE MUNICIPAL COURT HAD THE AUTHORITY AND JURISDICTION TO ORDER THE DESTRUCTION OF A VICIOUS OR DANGEROUS ANIMAL.**

At the July 24th, 2013 appeal hearing before the Circuit Court, both counsel for the Petitioner and counsel for the Respondent “agreed that the sole

question for the Court is whether the Municipal Court has the authority and jurisdiction to enforce City Ordinance 4-49 by ordering the destruction of a vicious or dangerous animal." See Exhibit No. 1, Background and Procedural History, at 3, and Appendix No. 5 at 12, 13, and 14. In addition to the Circuit Court's above finding, after the Circuit Court required counsel for Petitioner and counsel for Respondent to submit Memoranda of Law regarding all issues of the appeal from the Municipal Court, counsel for the Petitioner specifically limited the issue for the Circuit Court to whether a municipal judge has the authority to order a dog to be destroyed:

THE COURT: As I see it the only issue the Court has to answer in this is whether or not the City had the authority to order the destruction of the dog. I think that's the only issue really uh, I think the...the plea itself I don't think the Court has the authority to disturb that because I think it's clear that guilty pleas cannot be appealed from City Court.

MR. LINKOUS: May I reply to that briefly?

THE COURT: Sure

MR. LINKOUS: The Code says that the only time there can be an appeal from City Court case is when a City Court has done something that they don't have jurisdiction to do.

THE COURT: And –

MR. LINKOUS: And I just want to frame the –

THE COURT: - which is the destruction of the dog is what you're saying.

MR. LINKOUS: Right and I would just want to frame the issue. It's not...the issue is not does the City have authority to regulate it. It's does a municipal judge have the authority to order a dog be destroyed.

THE COURT: Well and I think that is the only question that the Court has to answer –

MR. LINKOUS: I would agree with –

THE COURT: - in this case.

MR. LINKOUS: - That. That's the issue –

MR. COCHRAN: I agree too, Your Honor. If the City has jurisdiction -

THE COURT: The conviction stands regardless of what the Court orders.

MR. COCHRAN: Exactly and if the City has jurisdiction to destroy this dog then she does not have the ability to appeal that guilty plea to this Court. That's...that's the City's position.

See Appendix No. 5 at 12, 13, and 14.

After the Circuit Court issued its order and concluded that the City of Bluefield's Municipal Court has the jurisdiction and authority to order the destruction of Petitioner's vicious dog, Petitioner later filed a Motion for Additional Hearing asking the Circuit Court to address whether the Municipal Court's findings of viciousness were factually warranted, and whether Petitioner had a right to appeal that decision. *See* Appendix No. 3.

The Circuit Court did not hold another hearing. Another hearing was not necessary because after briefing the issue as to whether Petitioner had a right to appeal the order of the Municipal Court after her guilty plea, counsel for Petitioner specifically agreed that the sole issue before the Circuit Court was whether the Municipal Court had the authority and/or jurisdiction to order the destruction of the Petitioner's dog. Further, the Circuit Court Order already addressed the issues raised by the Petitioner in her Motion for Additional Hearing in the Court's findings that the Petitioner admitted by plea that the dog was vicious; that the Municipal Court adjudicated the dog to be vicious; and that the Municipal Court Ordered the dog to be destroyed. Finally, counsel for Petitioner agreed at the July 24th hearing that the Municipal Court's adjudication could not be appealed if the Circuit Court determined that the City had the authority to Order the destruction of the dog. *See* Appendix No. 5.

West Virginia Code § 8-34-1 (1998) provides that (a) Every person sentenced under this chapter by any mayor, acting in a judicial capacity, or municipal

court judge to confinement or to the payment of a fine may appeal that sentence to the circuit court *as provided in this section*. (emphasis added). This section further describes the process of appeal “When a jury trial is had...” See subsection (b); “when a nonjury trial is had...” see subsection (c); “In the case of an appeal of such proceeding tried before a jury...” see subsections (e) and (f); and “In the case of an appeal of a Municipal Court proceeding tried without a jury..” see subsection (g).

Here, the Petitioner pled guilty to harboring a vicious animal. She was not tried before a jury or tried without a jury. Therefore, subsection (h) applied to the Petitioner, which provides the following:

Notwithstanding any other provision of this code to the contrary, there *shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided*, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the mayor or municipal court judge lacked jurisdiction. (emphasis added).

Petitioner was represented by the Mercer County Public Defender’s office throughout her appearances in the Municipal Court, including the date on which she entered a plea of Guilty to owning, keeping, and/or harboring a dangerous animal. Petitioner and her attorney were aware of the potential consequences of the Petitioner’s plea of guilty, as well as the Municipal Judge’s ability to destroy a vicious dog as it specifically states in the section of the Municipal Ordinance to which the Petitioner pled guilty that “... municipal judge may order any police officer or the animal control officer to cause such animal to be killed.” See Ordinance § 4-49

Therefore, pursuant to West Virginia Code § 8-34-1(h), because Petitioner was represented by counsel, any appeal of the Petitioner’s guilty plea and subsequent sentence and/or order could occur only if an extraordinary remedy would lie or if the municipal court judge lacked jurisdiction. This Court has held that where the legislature

has prescribed limitations on the right to appeal, such limitations are exclusive and cannot be enlarged by the court. *Ashby v. City of Fairmont*, supra, Syl. Pt. 4. As the Circuit Court correctly concluded that the Municipal Court did have jurisdiction to order the destruction of the Petitioner's vicious animal, the Circuit Court was correct in denying the Petitioner's request for an additional hearing because the Petitioner did not have the right to appeal the sentence after her guilty plea, with the advise of counsel in the Municipal Court.

Even though Petitioner had no right to appeal the findings, the Circuit Court set forth the undisputed facts in its order, that (1) the dog broke loose from its chain and attacked Officer Randall Thompson causing the officer to sustain injuries serious enough to require medical attention; (2) that the Petitioner had prior knowledge that the dog would bite; and (3) Petitioner, who was represented by counsel, entered a plea of guilty in the Municipal Court of Bluefield to owning, keeping, and/or harboring a dangerous animal. Petitioner's motion for an additional hearing was a post-guilty plea, improper attempt to litigate the factual findings of the dog's viciousness, which was waived upon Petitioner entering a guilty plea to harboring a vicious dog.

Petitioner waived the right to an evidentiary hearing on the issue of viciousness when she pled guilty to the charge in Municipal Court and agreed with the Circuit Court that the only issue for the Circuit Court was whether the City of Bluefield had the authority to order the destruction of a vicious animal. This Court should deny her appeal on this point and deem this alleged error as abandoned and/or waived and affirm the decision of the Circuit Court.

VII. CONCLUSION

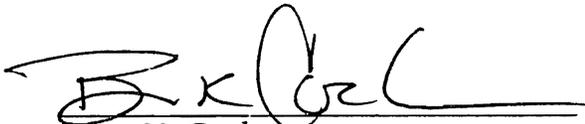
The Circuit Court of Mercer County, West Virginia correctly ruled in Denying the Petitioner's Appeal of the City of Bluefield Municipal Court and in refusing

to grant the Petitioner an additional hearing. Petitioner agreed with the Circuit Court and counsel for the City of Bluefield that the only issue in front of the Circuit Court was whether the City possessed the authority and/or jurisdiction to order the destruction of a vicious animal. The Circuit Court correctly concluded that West Virginia municipalities have the authority to destroy dangerous animals and that Bluefield's Ordinance § 4-49 is not inconsistent with, or in conflict with West Virginia Code.

WHEREFORE, for the foregoing reasons, this Court should deny the Petitioner's Brief and let stand the rulings of the Mercer County Circuit Court.

CITY OF BLUEFIELD,

By Counsel.



Brian K. Cochran
W.V. State Bar #10503
Brewster, Morhous, Cameron, Caruth,
Moore, Kersey, & Stafford PLLC
418 Bland Street
P.O. Box 529
Bluefield, WV 24701
(304) 324-0304
(304) 324-0362 fax
bcochran@brewstermorhous.com
Attorney for Respondent City of Bluefield

VIII. CERTIFICATE OF SERVICE

I, Brian K. Cochran, attorney for Respondent City of Bluefield, hereby certify that on the 9th day of January, 2014, I served the foregoing "RESPONDENT'S BRIEF" upon Gerald Linkous, attorney for Petitioner Estella Robinson, by depositing a true copy thereof into the United States mail, postage prepaid, in an envelope addressed as follows:

Gerald R. Linkous, Esquire
Public Defender Corporation
1460 Main Street, Floor 3
Princeton, WV 24740-2651



Brian K. Cochran