

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

ORANGE COUNTY, FLORIDA,

CASE NO.: 2013-CV-000051-A-O

Lower Case No: 2013-CC-004751-A-O

Appellant,

v.

JOSE ORTIZ,

Appellee.

Appeal from the County Court,
for Orange County, Florida
Wilfredo Martinez, County Judge.

P. Andrea De Loach, Assistant County Attorney,
for Appellant.

Jonathan T. Gilbert, Esquire,
for Appellee.

Before EGAN, SCHREIBER, and GRINCEWICZ, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Orange County, Florida (“County”), timely appeals the Trial Court’s “Order and Entry of Final Judgment on Appeal of Intent to Destroy Animal” entered on May 28, 2013 in favor of Appellee, Jose Ortiz (“Ortiz”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

This case arose from an incident involving dog bites. The events leading up to the dog bites and thereafter are summarized as follows: On April 1, 2013, a child, Gabrielle Seiber (“Gabrielle”), was playing in her backyard and picking greens for her lizard when she noticed two neighbor dogs, a Cocker Spaniel and a German Shepard, in her yard. At that point, the German Shepard named Rocky owned by Ortiz approached Gabrielle and began biting her. Gabrielle was able to escape from Rocky and ran to the back door. Rocky chased her and she was screaming. Gabrielle’s mother, Jessica Seiber, heard her screaming, went to the door, and quickly pulled Gabrielle inside. Gabrielle’s mother saw Rocky through the door and tended to Gabrielle’s wounds as Gabrielle was bleeding profusely from many places on her body. Subsequently, on the same day, Orange County Animal Services reported to the Seiber home to investigate the attack and took photos of Gabrielle’s wounds and of the area in the Seiber’s backyard where the attack occurred.

On April 5, 2013, based on Rocky attacking and causing severe injury to Gabrielle, Orange County Animal Services issued Ortiz a Notice of Intent to Destroy Animal, pursuant to sections 767.11 and 767.13, Florida Statutes. On April 10, 2013, Ortiz, per section 767.12, Florida Statutes, filed an Appeal of the Notice of Intent to Destroy Animal that was heard at a de novo evidentiary hearing on May 16, 2013.

At the hearing, testimony was provided by several witnesses and evidence was admitted by Orange County. The parties stipulated to admitting into evidence the sworn written statement of Gabrielle Seiber in lieu of requiring her to testify. Also, admitted into evidence were the photos taken by Orange County Animal Services of Rocky, Gabrielle’s injuries, and the Seiber’s backyard.

After Ortiz and Orange County each closed their case in chief and after taking a brief break, the presiding judge issued his decision granting Ortiz's appeal and ordering that Rocky be released to Ortiz upon Ortiz's payment of all boarding and impound fees. Thereafter, on May 28, 2013, the "Order and Entry of Final Judgment on Appeal of Intent to Destroy Animal" ("Trial Court's Order") was entered that is the subject of this appeal.

Arguments on Appeal

Orange County argues: 1) The facts presented at the May 16, 2013 de novo evidentiary hearing were undisputed and Orange County met its burden of proof being the preponderance of the evidence; 2) The Trial Court ignored the law and the basic tenants of statutory construction and interpretation; and 3) Within these arguments, Orange also argues that it was prejudiced by certain actions by the Trial Court during the hearing.

Conversely, Ortiz argues: 1) The appeal should be dismissed because it was filed untimely and 2) The Trial Court exercised its discretion, ruled based upon the facts in dispute, and the ruling is supported by the evidence.

Standard of Review

The crux of this appeal involves a question of law as to whether the Trial Court correctly applied the governing statutes to the facts in evidence. Thus, the standard of review is de novo. *Bosem, M.D. v. Musa Holdings, Inc.*, 46 So. 3d 42, 44 (Fla. 2010). Also, the decision of the Trial Court is presumed to be correct and the burden is on Orange County to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

Analysis

Ortiz's Motion and Argument that the Appeal be Dismissed as Untimely

First, this Court addresses Ortiz's motion and argument that the appeal should be dismissed as untimely. Florida Rule of Appellate Procedure 9.110(b) provides that jurisdiction of the appellate court is invoked by filing the Notice of Appeal with the clerk of the lower court within 30 days of rendition of the order to be reviewed. Florida Rule of Appellate Procedure 9.020(i) defines the term "rendition" and states that an order is rendered when a signed, written order is filed with the clerk of the lower tribunal. In this case, the Trial Court's Order was filed on May 29, 2013 and the Notice of Appeal was filed on June 28, 2013. The Notice of Appeal was filed on the 30th day after the Trial Court's order was filed and thus, was filed timely.

Orange County's Argument that the Trial Court Ignored the Law and Basic Tenants of Statutory Construction and Interpretation

Next, this Court addresses the governing statutes in this case. Section 767.13(2), Florida Statutes (2013), states the procedures for addressing dog attacks and bites as follows:

If a dog that has not been declared dangerous attacks and **causes severe injury** to or death of any human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under s. 767.12. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure. In addition, if the owner of the dog had prior knowledge of the dog's dangerous propensities, yet demonstrated a reckless disregard for such propensities under the circumstances, the owner of the dog is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. [*Emphasis added*]

Section 767.11(3), Florida Statutes (2013), defines the term "Severe injury" and states:

Severe injury means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

From review of the record in the instant case, the evidence at the hearing revealed that Gabrielle Seiber's injuries consisted of multiple bites from the dog Rocky. According to Gabrielle's sworn statement and her mother's testimony, Gabrielle was bleeding profusely from many places on her body and her mother had to administer pressure to all of the bleeding wounds. Also, when asked whether the dog bites required stiches, Gabrielle's mother answered "No. They said they didn't do stiches because of --they were a deeper wound." Her mother also testified that surgery was not required. It appears that the Trial Court interpreted the statutes to mean that the multiple bites were not severe because sutures (stiches) or reconstructive surgery was not required. This Court disagrees with that statutory interpretation of the statutes and finds that, from the plain meaning of these statutes, multiple dog bites fall under the definition of a severe injury regardless whether the bites require sutures (stiches) or reconstructive surgery. Instead, the condition of sutures or reconstructive surgery in order for the injury to be considered severe, only applies to disfiguring lacerations. *See Florida Convalescent Centers v. Somberg*, 840 So. 2d 998, 1000-1001 (Fla. 2003) (applying plain meaning of the statute); *Osorio, Sr. v. Board of Professional Surveyors and Mappers*, 898 So. 2d 188, 190 (Fla. 5th DCA 2005) (applying plain meaning of the statute). Accordingly, this Court finds that Gabrielle's injuries were severe. Thus, Orange County's action to destroy the dog was warranted.

***Orange County's Argument that It Met the
Preponderance of the Evidence Burden of Proof***

This Court finds that Orange County met its burden of proof being a preponderance of the evidence that Rocky attacked and bit Gabrielle multiple times. At the hearing there was ample record evidence including Gabrielle's sworn statement, her mother's testimony, the testimony and photos provided by Orange County Animal Services staff, and even Ortiz's own testimony. Also, there was no evidence that rebutted Orange County's evidence. Lastly, in

reviewing the Trial Court's findings from the hearing, it appears that the Trial Court was applying a higher standard of proof.

Orange County's Argument that It was Prejudiced by the Trial Court

Orange County also argues that it was prejudiced by certain actions taken by the Trial Court during the hearing. Orange County points out that after both parties closed their case in chief and after taking a 10 minute break, the Trial Court issued the decision without allowing Orange County to make its closing argument. From review of the transcript, the portion of colloquy, occurring after the break and as the Trial Court was discussing the findings, that is relevant to this issue was as follows:

MS. DELOACH: If I may, Your Honor.

THE COURT: No. You had your chance. You had your chance, and you could not come forward for the County and put a victim [sic]. I can't do your work for you. Remember, I'm here to maintain a level playing field.

I think we have enough on the record to show the failure of the County to prove its case. I'm not going to go point by point over what was missing. We'll let the record stand on its own. It's frustrating for me.

This Court points out that from review of the hearing transcript, Ortiz who appeared pro se also did not present a closing argument. Also, neither party specifically requested to present a closing argument, except at most Orange County's attempt to speak further. Orange County also argues that the Trial Court improperly focused on another case that was in the media and the Trial Court improperly put itself in Ortiz's position by making arguments for Ortiz that were not made by him and not supported by the evidence. This Court finds that further review of Orange County's prejudice claims is not necessary as this Court's review and findings as to the governing statutes and the record evidence are dispositive.

Accordingly, is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Order and Entry of Final Judgment on Appeal of Intent to Destroy Animal" entered on May 28, 2013 is **REVERSED and REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 20th day of May, 2014.

/S/
ROBERT J. EGAN
Presiding Circuit Judge

SCHREIBER and GRINCEWICZ, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **P. Andrea DeLoach, Assistant County Attorney**, P.O. Box 1393, Orlando, Florida 32802-1393 and **Jonathan T. Gilbert, Esquire**, Colling Gilbert Wright & Carter, 801 N. Orange Avenue, Suite 830, Orlando, Florida 32801, on this 20th day of May, 2014.

/S/
Judicial Assistant