

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KATHRYN L. EDWARDS	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
KNOX COUNTY DOG WARDEN	:	Case Nos. 14CA15 and 14CA17
	:	
Defendant- Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Mount Vernon Municipal Court, Case Nos. 14-CVH-222 and 14-CVH-224

JUDGMENT: Affirmed

DATE OF JUDGMENT: April 1, 2015

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Farmer, J.

{¶1} On March 26, 2014, appellee, the Knox County Dog Warden, designated three dogs owned by appellant, Kathryn Edwards, to be vicious dogs under R.C. 955.11. The dogs are boxers named Joy, Rita, and Owen. The designation occurred after the dogs injured an eleven year old child, T.M., who was on his own property when the dogs entered and attacked him.

{¶2} Appellant objected to the designation and requested a hearing. A hearing was held in the municipal court on June 11, 2014. By journal entries filed June 12, 2014 (mistakenly time-stamped May 12, 2014), the trial court affirmed appellee's decision.

{¶3} Appellant filed three separate appeals, one for each dog, but dismissed the appeal on Owen on January 22, 2015. Appellant assigned the following errors:

CASE NO. 14CA15

{¶4} "THE TRIAL COURT ERRED IN AFFIRMING THE KNOX COUNTY DOG WARDEN'S DECISION TO DESIGNATE APPELLANT'S DOG "JOY" AS A VICIOUS DOG."

CASE NO. 14CA 17

{¶5} "THE TRIAL COURT ERRED IN AFFIRMING THE KNOX COUNTY DOG WARDEN'S DECISION TO DESIGNATE APPELLANT'S DOG "RITA" AS A VICIOUS DOG."

CASE NOS. 14CA15 & 14CA17

{¶6} Appellant claims the trial court erred in affirming appellee's designation, finding Joy and Rita to be vicious dogs under R.C. 955.11. We disagree.

{¶7} Appellant filed an appeal of the designation to the municipal court pursuant to R.C. 955.222(C) which states the following:

If the owner, keeper, or harbinger of the dog disagrees with the designation of the dog as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harbinger, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing shall be in writing and shall be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harbinger. At the hearing, the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog has the burden of proving, by clear and convincing evidence, that the dog is a nuisance dog, dangerous dog, or vicious dog.

{¶8} As stated by this court in *Spangler v. Stark County Dog Warden*, 5th Dist. Stark No. 2013 CA 00023, 2013-Ohio-4774, ¶ 17:

The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond

a reasonable doubt as in criminal cases. It does not mean clear and unequivocal." *In re Estate of Haynes*, 25 Ohio St.3d 101, 103–104, 495 N.E.2d 23 (1986).

{¶9} "Our standard of reviewing the sufficiency of the evidence in a civil case is whether, after viewing the evidence in a light most favorable to the prevailing party, the judgment is supported by competent and credible evidence." *Moran v. Gaskella*, 5th Dist. Knox. No. 2011-CA-21, 2012-Ohio-1158, ¶ 12, citing *Technical Construction Specialties v. Cooper*, 8th Dist. Cuyahoga No. 96021, 2011-Ohio-5252. On review for manifest weight, the standard in a civil case is identical to the standard in a criminal case: a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury [or finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52; *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179; *Spangler, supra*. In weighing the evidence, however, we are always mindful of the presumption in favor of the trial court's factual findings. *Eastley* at ¶ 21.

{¶10} R.C. Chapter 955 governs "Dogs." R.C. 955.11(A)(6)(a) defines "vicious dog" as: "a dog that, without provocation and subject to division (A)(6)(b) of this section, has killed or caused serious injury to any person."

{¶11} R.C. 955.11(A)(7) defines "without provocation" as "a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity."

{¶12} R.C. 955.11(A)(5) defines "serious injury" as:

- (a) Any physical harm that carries a substantial risk of death;
- (b) Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;
- (c) Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;
- (d) Any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.

{¶13} Appellant argues there was insufficient evidence to establish: 1) T.M. suffered a serious injury, 2) Joy and/or Rita bit the child, and 3) Joy and/or Rita caused a serious injury to the child.

{¶14} The record in this case indicates that on the day of March 15, 2014, T.M. was outside playing in his yard when he observed three dogs running toward him. T. at 7. He ran into the garage. *Id.* The dogs left and were in the back in the woods so T.M. went back outside. T. at 7, 18. The dogs came out of the woods and "charged" him

and he froze. T. at 7, 19. The dogs bit him and dragged him. T. at 8. T.M. testified that he did not tease, torment, or abuse the dogs, and did not yell at them. T. at 9, 20.

{¶15} T.M.'s great-aunt and legal guardian, Teena Lang, observed the three dogs the first time "darting" at an "intense speed" toward T.M. T. at 26-27. That's when T.M. ran into the garage. T. at 28. He was "totally afraid." *Id.* The dogs appeared to leave so T.M. went back outside. *Id.* Ms. Lang then heard a commotion so she went to check and heard a "blood curdling scream" and observed the three dogs attacking T.M. T. at 8, 28. The dogs were "snarling and biting." T. at 28. T.M. was "bent over, no hat, no shirt, no coat. His jeans were wedged around his thighs. He was bent in half with his head at his knees, flailing his arms, screaming and kicking." *Id.* T.M. had those articles of clothing on when he left the garage. T. at 29. Ms. Lang observed each of the three dogs biting T.M. T. at 45. She kicked at the dogs and the dogs left T.M. T. at 43. She threw gravel at them to get them to leave. T. at 29-30, 43. T.M. was disoriented, had a "very difficult time walking," and "appeared to be in shock." T. at 30. Ms. Lang opined there was a "good amount of blood that was coming from him." *Id.* She called 911. T. at 31.

{¶16} T.M. went to the emergency room via ambulance. T. at 8. He was treated for scratches on his neck and received stitches on his right leg and both arms. T. at 9-10, 12. He had a deep puncture wound on his right bicep that needed to be packed with tape. T. at 11. T.M. testified it hurt every time the tape was changed, "about every day" for "about a week." *Id.* He sustained a scar on his arm. *Id.* He also sustained scars on his left arm and right leg. T. at 12. T.M. testified it hurt when the stitches were

debrided and the wounds were cleaned out. T. at 13. He received twenty-four stitches and it hurt him to walk and run. T. at 13-14.

{¶17} Ms. Lang testified she observed bites, bruises, lacerations, puncture wounds, tissue hanging out, flesh missing, and multiple "railroad tracks" where the dogs had bit, but had not broken the skin. T. at 33-34. T.M. was seen in the emergency room twice and in the wound clinic ten times. T. at 35. Ms. Lang opined T.M.'s reaction to the tape packing was "extreme pain," "[l]ots of crying, lots of squirming," and this was after pain medication had been administered approximately one hour before. T. at 37. At the time of the hearing, T.M. was still obtaining treatment because two wounds on his leg "periodically continue to break open." T. at 38. T.M. missed three days of school and could not participate in gym for a month. T. at 38-39.

{¶18} Jimmy St. Clair, the Deputy Dog Warden, arrived on the scene, placed the dogs in his truck, and took photographs of T.M.'s injuries. T. at 46, 49-53; Defendant's Exhibits A and B.

{¶19} John Barnard, the Knox County Dog Warden, went to the hospital and took additional photographs of T.M.'s injuries. T. at 58-63; Defendant's Exhibits C through F.

{¶20} Nancy Heinold, DVM, a veterinarian, has had personal experiences with the dogs. T. at 72. She never observed any problems with the dogs. T. at 74-75. Dr. Heinold opined the three dogs attacked because "it was a pack situation, and when the child was moving his arms, he was - - that's a play signal for a dog, so they - - whenever your hands are moving or if you try to push a dog off of you, you're saying come on, let's

go. And once they enter your space and you make a high-pitched noise, that could exacerbate a bite." T. at 78.

{¶21} Shana Gilbert-Gregory, DVM, a veterinarian, evaluated Rita and found no signs of aggregation or viciousness and opined Rita was "not a vicious dog according to her standards, not the legal standards." T. at 87; Plaintiff's Exhibit 4.

{¶22} Robb Icely, a professional dog trainer, evaluated Joy and Owen and opined they were not aggressive. T. at 89, 94; Plaintiff's Exhibit 6. During his evaluation, at no time were the dogs off their leashes, running free. T. at 97-98.

{¶23} Kathryn Edwards, the dogs' owner, breeds boxers and opined the dogs in question "have never shown any aggressive behavior. They've never bitten anyone." T. at 105, 112.

{¶24} There was extensive testimony and evidence regarding T.M.'s injuries and the medical care he required. Defendant's Exhibits A through F. He sustained scars to his right leg and both arms. We find sufficient clear and convincing evidence to support the conclusion that T.M. suffered serious injuries as defined in R.C. 955.11(A)(5).

{¶25} In reviewing the photographs, all three dogs look substantially alike. Plaintiff's Exhibits 2 and 8. T.M. stated the three dogs attacked and bit him. Ms. Lang observed all three dogs biting T.M. It would be impossible to discern which dog made which wound. We find sufficient clear and convincing evidence to support the conclusion that each dog bit T.M. and each dog contributed to his serious injuries.

{¶26} It is obvious from the nature of the testimony relative to the dogs' individual non-aggressive temperaments that a "pack" mentality occurred, and was more likely than not the result of the three dogs escaping from their enclosure and

running free on strange turf. Despite this testimony, the facts are what they are for that March day. We find the dogs' designation as vicious dogs under R.C. 955.11(A)(6)(a) to be substantiated by the evidence, and do not find any manifest miscarriage of justice.

{¶27} Upon review, we find the trial court did not err in affirming appellee's designation, finding Joy and Rita to be vicious dogs under R.C. 955.11.

{¶28} Each assignment of error is denied.

{¶29} The judgments of the Mount Vernon Municipal Court of Knox County, Ohio are affirmed.

By Farmer, J.

Hoffman, P.J. and

Delaney, J. concur.

SGF/sg