[Cite as *Ruiz v. Brecksville*, 2017-Ohio-9164.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105390

TAMI RUIZ

PLAINTIFF-APPELLANT

vs.

CITY OF BRECKSVILLE

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Garfield Heights Municipal Court
Case No. CVH 1600472

BEFORE: E.T. Gallagher, J., McCormack, P.J., and Jones, J.

RELEASED AND JOURNALIZED: December 21, 2017

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EILEEN T. GALLAGHER, J.:

{¶1} In this administrative appeal, plaintiff-appellant, Tami Ruiz, pro se, appeals a judgment of the Garfield Municipal Court designating her dog a "dangerous dog" under the Brecksville Codified Ordinances. She raises four assignments of error:

> 1. The trial court erred when it denied plaintiff-appellant's appeal to the Garfield Heights Municipal Court to dismiss the city of Brecksville's dangerous dog determination, overruling Ruiz's objections to the magistrate's decision, and denied Ruiz's motion for stay because the city of Brecksville presented inadequate evidence as a matter of law to convict Ruiz. The dangerous dog determination is a violation of Ruiz's due process rights under the Fourteenth Amendment to the United States Constitution and Article I of the Ohio Constitution. Specifically, the city of Brecksville could not prove the dog in question (Trucks) bit Ruiz. Ruiz's undisputed testimony established that she was bitten by the defendant's witness's dog, Bosley, that the bite occurred on premises not controlled by Ruiz, that the dog was not provoked by the neighbor's dog (Bosley McKay), and that the city's only witness (Lisa McKay) at the incident was truthful in her testimony.
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> 2. The trial court erred when rendering findings of facts and conclusions of law, as a matter of facts from the hearing and testimonies. These findings of facts and conclusions of law led to the dangerous dog ruling. The facts and conclusions had multiple errors, including length of residency, amount of time with partner, type of fence, "multiple bites," and some small misheard comments not supported by testimony.
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> 3. The trial court erred in failing to stay the judgment against Ruiz. Ruiz's trial counsel objected to the magistrate's findings of facts with a motion to dismiss and a motion to stay, where the undisputed testimony indicated that Bosley bit Ruiz.
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> 4. The trial court erred by failing to apply provisions of city of Brecksville ordinances that require lack of provocation in making the dangerous dog determination.

{¶2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶3} In December 2015, the Brecksville Animal Control Officer determined that three of Ruiz's dogs were "dangerous dogs" as defined by Brecksville Codified Ordinances ("B.C.O.") 505.17(a)(1). The Brecksville Animal Appeals Board affirmed the determinations, and Ruiz appealed the board's decision to the Garfield Heights Municipal Court, where the court held a de novo hearing on the issue.

{¶4} At the de novo hearing, Lisa McKay, a Brecksville resident who lives next door to Ruiz, testified that on December 14, 2015, at approximately 9:30 a.m., she let her dog, Bosley, out into backyard. The yard is surrounded by a 44-inch tall wooden stockade fence. Additionally, there is a netted deer fence within Ruiz's property that Ruiz installed as an additional buffer to keep her dogs away from the stockade fence.

{¶5} Bosley ran to an area of the fence that faces Ruiz's property and began barking and jumping. McKay observed that Trucks, a 50-pound pit bull, was standing on his hind legs with his paws and head extending over the wooden fence on McKay's property. When Bosley, who weighs approximately 35 pounds, jumped up on the fence, Trucks seized Bosley's face and neck in his mouth and refused to release him. McKay, who was holding her one-year old child in one arm, grabbed Bosley's hindquarters in the other arm to support him and to prevent him from being dragged over the fence. She feared that Trucks would kill Bosley if he managed to pull him into Ruiz's yard.

{¶6} Ruiz approached the fence and prevailed upon Trucks to release Bosley but was bitten in the hand during the struggle. Bosley dropped to the ground, and McKay

carried him into the house. McKay's husband took Bosley to a veterinarian, who stitched the puncture wounds in his face and applied another kind of adhesive to Bosley's ear. Although McKay did not see which dog bit Ruiz, she observed Ruiz grabbing Trucks's jaw to open his mouth and release Bosley. (Tr. 20.)

{¶7} Cliffette Rebecca Thacker, who has been the Brecksville animal warden for 22 years, testified that she questioned Ruiz in her home as part of her investigation of the incident. At the time of the interview, Ruiz had seven dogs in her home, including Trucks, a couple of shar peis, and another pit bull. Thacker based her determination that Ruiz's dogs were "dangerous dogs" on several factors, including Bosley's injuries, her interviews with McKay and Ruiz, and the aggressive behavior Thacker observed during her visit to Ruiz's home. Thacker testified that Ruiz's dogs "started circling" her and "mu[zz]le-punched" her, and that such behavior was "a sign of aggression." (Tr. 45, 56.)

{¶8} Ruiz testified that Bosley was the first aggressor and that Trucks bit Bosley to defend Ruiz because Bosley was biting Ruiz. (Tr. 91.) Ruiz explained that as she was moving her hands in a broad sweeping motion to pick up Trucks, Bosley bit her finger. (Tr. 74, 94.) She explained:

> I went like this (indicating) to grab my dog. Bosley was up on the fence with his head over the fence and bit my finger. When I went like this (indicating), my finger got bit by him. Her dog's head was over the fence, standing on the stringers, biting my hand.
>
> I looked at her and said, "Your dog is biting me, get him off of me." And all she could do was sit there — or, stand there and scream, "Help me. Help me." She didn't grab her dog's legs. And then I had to sit there —

> or when — when that happened, and I was screaming this, my dog jumped up, not over the fence, * * * grabbed the side of his face and — and was pulling him.
>
> * * *
>
> — it was very slow-mo for a minute there, and I knew that I wasn't going to get any help from her when I told her my dog's — or her dog's mouth was on mine, and I knew I had to react in such a manner, and I had to extricate this dog's teeth from my hands, and then I had to extricate Trucks from the dog.

(Tr. 74, 91.)

{¶9} A magistrate in the Garfield Heights Municipal Court issued a decision affirming only the designation of Trucks as a dangerous dog, based on the evidence in the record and the testimony presented at the de novo hearing. Ruiz filed timely objections to the magistrate's report, and a motion to stay the trial court's judgment. The court granted the stay, but subsequently overruled Ruiz's objections and adopted the magistrate's decision. Ruiz now appeals the trial court's "dangerous dog" ruling.

II. Law and Analysis

{¶10} Ruiz appealed the decision of the Animals Appeals Board to the Garfield Heights Municipal Court pursuant to B.C.O. 505.20, which authorizes timely appeals to "a court of competent jurisdiction." B.C.O. 505.20(b). B.C.O. 505.20(c) provides that all hearings held by the Animals Appeals Board are "administrative in nature." R.C. 2506.03 provides that hearings of administrative appeals are generally "confined to the transcript," but that the trial court may hear additional evidence under certain circumstances.

{¶11} The trial court in this case conducted a de novo hearing without objection by either party, perhaps because R.C. 955.222, which is analogous to B.C.O. 505.20, authorizes a de novo hearing. *Montgomery Cty. Animal Res. Ctr. v. Johnson*, 2d Dist. Montgomery No. 27110, 2017-Ohio-7939, ¶ 11; *Henry Cty. Dog Warden v. Henry Cty. Humane Soc.*, 2016-Ohio-7541, 64 N.E.3d 1076, ¶ 13 (3d Dist.).

{¶12} In reviewing an appeal from a de novo hearing, we review the record to determine if the trial court's judgment is supported by the evidence. "[A]n appellate court should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). When reviewing the manifest weight of the evidence, the appellate court "'weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way * * *'". *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001).

{¶13} The rationale for giving deference to the trial court's factual findings is based on the understanding that "the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co.* at 80. We, therefore, will not disturb a judgment supported by competent, credible evidence.

A. Dangerous Dog

{¶14} In the first assignment of error, Ruiz argues the trial court erred in failing to dismiss the Brecksville dog warden's dangerous-dog determination. In the third and fourth assignments of error, Ruiz argues the trial court erred in overruling her objections to the magistrate's decision because there was no evidence that Trucks bit her, only that Bosley bit her. In the fourth assignment of error, Ruiz argues there was no evidence of provocation. We discuss these assigned errors together because they all relate to Ruiz's argument that the dangerous-dog determination is not supported by the evidence.

{¶15} B.C.O. 505.17(a)(1) defines the term "dangerous dog" as

> [a] dog that, without provocation, * * * has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper or harborer and not under the reasonable control of its owner, keeper, harborer, or some other responsible person, or not physically restrained or confined to a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top.

{¶16} Ruiz argues the trial court erred in affirming the dangerous-dog designation because there is no credible evidence that Trucks bit Ruiz. Indeed, McKay testified that she did not observe which dog bit Ruiz, and Ruiz testified that Bosley, not Trucks, bit her hand. However, the ordinance does not require that the dog bite someone in order to be designated a dangerous dog. It is enough that the dog "otherwise endanger any person."

{¶17} The evidence presented at the de novo hearing established that Trucks approached Bosley in a menacing fashion without provocation. McKay testified that the wooden stockade fence was located within her property approximately 12 inches from

the border of Ruiz's property. Therefore, Trucks was off his owner's property and not under his owner's control when he approached Bosley. Although Ruiz had a deer fence on her property and testified that she clipped Trucks to a tether, neither the tether nor the deer fence were strong enough to restrain Trucks, who was determined to attack Bosley.

{¶18} Moreover, Trucks's attack of Bosley created a dangerous situation for both Bosley's owner, McKay, and Ruiz. McKay approached Trucks to prevent Trucks from pulling Bosley over the fence. And, according to McKay, Ruiz placed her hands in Trucks's mouth in an effort to release Bosley from its grasp. Moreover, Ruiz sustained a dog bite as a result of the incident. Trucks's unprovoked attack of Bosley on McKay's property endangered both McKay and Ruiz. This evidence is sufficient to establish the requirements of B.C.O. 505.17(a)(1) for the designation of a dangerous dog.

{¶19} The Fifth District Court of Appeals reached a similar conclusion in *Spangler v. Stark Cty. Dog Warden*, 5th Dist. Stark No. 2013 CA 00023, 2013-Ohio-4774. In that case, the court affirmed a dangerous-dog designation even though there was conflicting evidence as to whether the "dangerous dog" or a neighbor dog bit the complainant. The court reasoned that even if the factfinder rejected testimony that the "dangerous dog" initiated the bite, evidence was presented that the dog left the owner's property and confronted a neighbor's dog, which precipitated a chain of events that resulted in a human puncture wound. This is precisely what happened in this case. The undisputed evidence showed that Trucks left Ruiz's property, attacked Bosley without provocation, and the attack resulted in a puncture wound to Ruiz's hand.

{¶20} Therefore, the first, third, and fourth assignments of error are overruled.

B. Erroneous Findings of Fact

{¶21} In the second assignment of error, Ruiz asserts that the trial court made erroneous findings of fact regarding the length of time she resided in Brecksville, the number of years she has been with her partner, the type of fencing involved, and whether there were multiple dog bites. However, none of these facts are relevant to the dangerous-dog analysis. The facts discussed in the first assignment of error are the only material issues of fact in this case. Therefore, even if the trial court made mistakes regarding the number of years Ruiz lived in Brecksville or the number of years she has been with her partner, these errors would not have influenced the dangerous-dog designation.

{¶22} Therefore, the second assignment of error is overruled.

{¶23} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Garfield Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
LARRY A. JONES, SR., J., CONCUR