

IN THE CIRCUIT COURT IN AND FOR
THE SEVENTH JUDICIAL CIRCUIT OF
FLAGLER COUNTY, FLORIDA

CASE NO: 2018-CA-000292
DIVISION: 49

DOTTYE BENTON,

Petitioner,

vs.

CITY OF PALM COAST,

Respondent.

ORDER DENYING WRIT OF CERTIORARI

THIS CAUSE came before the Court on November 5, 2018 for Oral Argument on a Petition for Writ of Certiorari seeking review of the findings and conclusions contained in the Order of Final Hearing entered on April 18, 2018. For the reasons discussed, the Petition is hereby **denied**.

This case concerns the fate of a dog named Cooper. Cooper is owned by the Petitioner, Dottie Benton, who resides in Palm Coast. Cooper is believed to be a Black and Tan and Doberman mix. While visiting Port Orange, Cooper attacked and bit Connie Ronanako, causing her significant injuries. Port Orange commenced an action to quarantine the dog and to have the dog destroyed. Notice was provided to the parties and a hearing was conducted. On January 27, 2018, and based on the evidence presented, including the testimony of Ms. Benton, the City found that Cooper was a "dangerous dog" under Sec. 767.11, *Fla. Stat.* (2017) and should be destroyed. That classification was upheld by the City's Dangerous Dog Board on February 21, but the Board declined to follow the recommendation that Cooper be destroyed. Accordingly, Cooper returned home with Ms. Benton to Palm Coast.

On February 24, three days after the Port Orange Board found Cooper to be a dangerous dog, Cooper attacked and bit Terry Sandt. Mr. Sandt was the owner of the carpet cleaning business hired by Ms. Benton to clean the carpets in her home. When Mr. Sandt came to the home to start work, Cooper immediately and without provocation attacked Mr. Sandt, biting and severing a portion of his lip, then biting his hand and leg.

On February 27, Cooper was taken to the Flagler County Humane Society for quarantine. A short time later, the Petitioner was advised that the City of Palm Coast intended to follow the procedures set out in Sec. 767.13, *Fla. Stat.* (2017) when a previously determined "dangerous dog"

again causes severe injury. In response, Petitioner requested a full hearing and on April 16, 2018 that hearing was conducted.

At the hearing, the City presented two witnesses, Terry Sandt and Eva Rodriguez. Mr. Sandt testified in detail how he arrived at the house to clean the carpets, toured the home with Ms. Benton and walked with her onto the porch. As his back was turned, Ms. Benton asked him if he wanted to meet her other dog and he let Cooper onto the porch. Cooper immediately jumped upon Mr. Sandt, biting his lip. Cooper then shook and tore Mr. Sandt's lip off. Cooper then attacked Mr. Sandt's leg and hand, before Mr. Sandt's escaped through the back yard. Mr. Sandt's described the attack as immediate and completely unprovoked. Ms. Benton drove Mr. Sandt to the hospital Emergency Room immediately after the attack. At the hearing, Mr. Sandt's described and showed his injuries and scarring and the hearing officer received and reviewed photographs of the injuries. In addition, the hearing officer reviewed the medical bills for Mr. Sandt's treatment of his injuries. Mr. Sandt required reconstructive surgery on his facial wounds. It should be noted that Ms. Benton paid the hospital bill.

Eva Rodriguez is the animal control officer for Palm Coast. She first saw Cooper while conducting a quarantine release check on February 1, 2018. Cooper's quarantine from the Port Orange bite had concluded and she was confirming that Cooper was released from quarantine. She remembered that Cooper barked at her the whole time and appeared territorial. The next time she was involved with Cooper, was to call Ms. Benton and direct her to take Cooper to the Flagler County Humane Society to start quarantine after the second bite involving Mr. Sandt. The next day, February 27, she met Ms. Benton and Cooper at the Humane Society. Although Ms. Benton expressed a desire to euthanize Cooper, she needed to wait until the quarantine period expired. Ms. Rodriguez testified that because Cooper had previously been designated as a dangerous dog, under Florida law and the City's ordinance, the City must destroy the dog if he bites a second time without provocation and causes severe injuries.

The Petitioner presented 3 witnesses. Jason Moreland, a kennel worker at the Humane Society, testified that Cooper was not aggressive and interacted well with strangers and other animals. Joseph Pimental testified that he runs a dog rescue and would be willing to care for Cooper for the rest of the dog's life, even with his dangerous dog designation. The Petitioner testified that she knew Cooper was a dangerous dog and told Mr. Sandt that, but Mr. Sandt insisted on meeting Cooper. Further, it was Mr. Sandt, not Ms. Benton, who actually let Cooper onto the porch. When Mr. Sandt bent down to pet him, Cooper bit his lip and, later, his leg and hand.

The hearing officer received and reviewed photographs of Mr. Sandt's injury, medical records related to treatment of Mr. Sandt's injury and documents and photographs from the City of Port Orange regarding the earlier attack and the City's classification of Cooper as a dangerous dog. After reviewing all of the evidence, the hearing officer found that (i) Cooper was previously designated as a dangerous dog, (ii) that Cooper attacked and bit Mr. Sandt multiple times without provocation and (iii) that Cooper caused severe injury to Mr. Sandt requiring medical treatment, including reconstructive surgery on his face. Based on those 3 findings, the hearing officer determined that under 767.13, *Fla. Stat.* (2017), the City of Palm Coast was required to destroy Cooper. The hearing officer followed her oral pronouncements with a written Order on Final Hearing.

Petitioner seeks to quash the Order on Final Hearing on 3 grounds. First, Petitioner claims she was not afforded due process in her hearing with the Respondent. Specifically, Petitioner complains that she was not informed of the burden of proof standard nor which party carried the initial burden. She further argues that the City had the initial burden of proof and failed to meet its burden by clear and convincing evidence.

Clearly, Petitioner was entitled to due process of law in these proceedings. Due process in this quasi-judicial process requires notice of the proceedings and an opportunity to participate and be heard. The rules of evidence don't apply and court procedures are relaxed. It is undisputed that Petitioner received notice, appeared at the hearing, presented evidence and even testified. Petitioner was clearly provided her due process rights. Due process does not, however, require that the Petitioner be educated by the City on who has the burden of proof or the level of proof required. The Petitioner was represented by counsel. Moreover, the hearing office did make abundantly clear that the City would be presenting its case first and then the respondent would have an opportunity to respond. It is enough that the City was held to its burden and met its burden in presenting its evidence.

Petitioner next argues that she was denied due process because a less drastic alternative existed to destroying the dog. Petitioner contends that Mr. Pimental's testimony established that he could securely house and confine Cooper so the dog would not be exposed to the public in the future. So, she argues, it is not necessary for Cooper to be destroyed to protect the public health and safety and the City does not have a compelling interest in destroying the dog. Petitioner cites no case or authority for the proposition that the statute is not supported by a compelling interest. Petitioner's argument ignores that the statute is expressly based on a compelling public interest in keeping the public safe from dangerous dogs. The Petitioner's argument misses the important public purpose of the law. Sec. 767.13 mandates that when (i) a dangerous dog (ii) bites another person without provocation, (iii) causing severe injury, that dog must be destroyed. The plain language of the statute makes clear that if those 3 conditions are met, the dog must be destroyed. The City has no discretion. The City has no legal authority to evaluate other less restrictive alternatives. If the 3 conditions are met, the dog must be destroyed. The City followed the strict but clear language of the law by seeking to destroy Cooper and did not infringe on the Petitioner's due process rights by seeking the only remedy provided in the statute.

Next, Petitioner argues that the essential requirements of the law were not followed because the hearing officer accepted only hearsay testimony to establish that Cooper was previously designated as a dangerous dog by the City of Port Orange. Petitioner's argument ignores the Petitioner's own testimony. At the hearing she testified that she knew that Cooper had been designated a dangerous dog by the City of Port Orange, she appeared at that hearing and even testified at that hearing. Further, the Petitioner testified that she told Mr. Sandt that Cooper was designated as dangerous. Finally, she admitted that Cooper had bit Mr. Sandt and she even paid Mr. Sandt's medical bills. Her testimony along with the letters from Port Orange and the photographs of that first injury clearly and properly established that Cooper was previously designated as a dangerous dog.

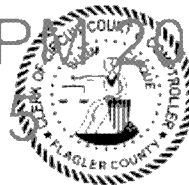
Finally, Petitioner argues that the Order under review is not supported by competent, substantial evidence. In reviewing this determination, this Court is not permitted to reweigh the evidence or substitute its judgment for the judgment of the hearing officer. *Haines City Cmty. Dev.*, 658 So.2d at 530; *Florida Power & Light Co. v. City of Dania*, 760 So.2d 1089, 1093 (Fla. 2000). Further, “[t]he issue before the [circuit] court is not whether the agency’s decision is the ‘best’ decision or the ‘right’ decision or even a ‘wise’ decision, for these are technical and policy-based determinations properly within the purview of the agency.” *Dusseau v. Metro Dade County Bd. Of County Comm’rs*, 794 So.2d 1270, 1276 (Fla. 2001). Furthermore, “a circuit court applies the ‘wrong’ or ‘incorrect’ law when it reweighs or reevaluates conflicting evidence and decides the merits of the underlying dispute anew.” *City of Satellite Beach v. Goersch*, 217 So.3d 1143, 1145 (Fla. 5th DCA 2017) (quoting *State, Dep’t of Highway Safety & Motor Vehicles v. Wiggins*, 151 So.3d 457, 463 (Fla. 1st DCA 2014)). Certiorari review is reserved for those situations where “there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.” *Haines City Cmty. Dev.*, 658 So.2d at 528 (quoting *Combs v. State*, 436 So.2d 93, 96 (Fla. 1983)). As such, the writ of certiorari is intended to function “as a safety net” which “gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists.” *Broward County v. G.B.V. Intern., Ltd.*, 787 So.2d 838, 842 (Fla. 2001).

In order to justify destruction of this pet, the City was only required to prove three things. First, that Cooper was previously designated as a dangerous dog under 767.11. Second, that at a time thereafter Cooper attacked and bit for a second time a person without provocation and, third, that the person was severely injured. The hearing officer found that the City proved each of the three elements. Looking closely at the complete record and transcript in this case, the facts relied upon by the hearing officer to support those 3 findings were clearly shown by competent, substantial evidence. In fact, looking at all of the evidence and argument, it does not appear that these three elements were in serious contention. Although there was some contradiction in the testimony of Mr. Sandt and Ms. Benton about who let Cooper onto the porch, there was no dispute that Cooper attacked Mr. Sandt without any provocation. Accordingly, the Order of Final Hearing is amply supported by competent, substantial evidence.

Based on the above findings, the Petition for Writ of Certiorari is hereby **denied**.

DONE AND ORDERED in Bunnell, Flagler County, Florida.

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TERENCE R. PERKINS
CIRCUIT JUDGE

Conformed copies to all parties of record