

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

KATIE SHARE, City of Bunnell Animal
Control Officer, and the CITY OF
BUNNELL, a Florida municipality,

Petitioners,

v.

CASE NO: 2022-CC-000626

WILLIE GARDNER,

Respondent.

**ORDER DETERMINING FITNESS AND ABILITY OF
OWNER TO ADEQUATELY PROVIDE FOR SEIZED ANIMALS**

THIS CAUSE having come before this Honorable Court on November 1, 2022, on the Petitioners' Verified Petition to Determine Fitness and Ability of Owner to Adequately Provide for Seized Animals, and based on Petitioners' Verified Petition and evidence presented by the Petitioners, the Court sets out the following:


1. This Verified Petition concerns six (6) dogs (hereinafter the "ANIMALS"), as described and identified in the Verified Petition, that were seized from the premises at 508 S. Railroad Street, Bunnell, FL 32110 (the "Premises").
2. The Petitioners are KATIE SHARE, a City of Bunnell Animal Control Officer with over twenty years of experience in animal control, and the CITY OF BUNNELL, a Florida municipality (together the "Petitioners"). Petitioners filed a Verified Petition verified by Animal Control Officer Share.
3. Animal Control Officer Mick Van Mook provided testimony detailing the onset of the City's investigation. While responding to a citizen complaint, Animal Control Officer Van Mook testified that he observed at least four dogs tethered by metal chains in an open yard on October 12, 2022, before leaving a notice on the front door of a seemingly abandoned structure on the Premises directing any occupants to call the Flagler Animal Services. Animal Control Officers Van Mook and Share both testified as to the condition of the ANIMALS observed during a second visit to the Premises on October 13, 2022, including that each of the five (5) dogs appeared to have an empty food bowl and a five-gallon bucket of water placed within reach. On October 14, 2022, after observing a new sixth (6) dog on the Premises, Petitioners confiscated the ANIMALS.

4. Animal Control Officers Van Mook and Share each further testified that they observed that each dog also had some form of makeshift shelter available, ranging from cylindrical plastic blue drums to permeable plastic airline carriers. Petitioners introduced photographs depicting these shelters into the record as Petitioners' **Composite Exhibit 1**. Animal Control Officer Share testified that such shelters are inadequate, as they are made of plastic, offering no temperature control, and do not adequately protect the dogs from the elements.
5. Animal Control Officer Share provided testimony regarding the condition of the ANIMALS observed at the time of seizure. According to Animal Control Officer Share, the ANIMALS exhibited fresh as well as older, healed wounds around their head, neck, and front legs consistent with dog bite wounds. Animal Control Officer Share testified that such injuries are consistent with repetitive dog bites. Photographs depicting the physical condition of the Seized Dogs at the time of seizure were admitted into the record as Petitioners' **Composite Exhibit 2**.
6. Animal Control Officer Share provided further testimony that, in her professional opinion, the ANIMALS seized from the Premises were tethered continuously based on wear patterns observed on the ground where each dog was tethered and from excessive bite marks observed on the five-gallon buckets next to each dog. Animal Control Officer Share offered her opinion that continual tethering of a dog constituted animal cruelty, comparing it to being like "solitary confinement."
7. Respondent, WILLIE GARDNER, testified that he is the owner of the six (6) seized dogs. In responding to questions by counsel for Petitioners, WILLIE GARDNER testified that he held the dogs on the Premises for seven (7) days prior to the date of seizure. WILLIE GARDNER also testified that he would visit the Premises at least once every day the dogs were on the Premises to give them food, water, and toys. WILLIE GARDNER did not rebut testimony offered by Animal Control Officer Share that the dogs were continuously tethered. WILLIE GARDNER testified that he was unable to shelter the ANIMALS at his residence because of flooding but offered no support for this claim.
8. Finally, Respondents introduced a Section 828.073, Fla. Stat. Petition and Final Order into the record as **Exhibit 3** and **Exhibit 4**, respectively, bearing Case No.: 2021-CC-000883 where this Court previously found that WILLIE GARDNER failed to provide adequate shelter for the dogs in his possession and that several of the dogs seized had untreated dog bite wounds in various stages of healing before ruling that the then evidence before the Court "established a lack of proper and reasonable care of the animals." Importantly, the Court's prior order mandated that all the dogs in WILLIE GARDNER's possession were to be untethered for at least then hours per day.
9. Respondent, WILLIE GARDNER, was personally served with the Verified Petition and Notice of Hearing on October 27, 2022, and was present at the hearing on November 1, 2022.

Based upon the above facts as established by the Petitioners, and in view of the controlling statute, § 828.073, Fla. Stat., the Court finds as follows:

1. For the purposes of section 828.073, Fla. Stat., WILLIE GARDNER is the owner of the ANIMALS at issue in the Verified Petition. WILLIE GARDNER testified to being the owner of the ANIMALS.
2. As set out in section 828.073(4)(c), Fla. Stat., WILLIE GARDNER is found to be unable and unfit to provide for the ANIMALS. Petitioners met their statutory burden of providing evidence that established a lack of proper and reasonable care of the ANIMALS in WILLIE GARDNER's possession and WILLIE GARDNER failed to demonstrate by clear and convincing evidence that he is able and fit to have custody of, and adequately provide for, the ANIMALS.
3. The evidence indicates that the ANIMALS were continuously tethered for a period of at least seven (7) days in violation of the Court's prior Order. The evidence also indicates that the shelters provided on the Premises were inadequate to house the ANIMALS.
4. The ANIMALS are permanently remanded to the custody of the Flagler Humane Society to allow for the adoption, sale, or other humane disposal.
5. The Court will retain jurisdiction over this matter to allow Petitioners to schedule a hearing to determine costs.
6. Based on the totality of the evidence provided by Petitioners, this Court hereby orders that Respondent, WILLIE GARDNER, shall not own or possess any animals for a period of five (5) years from the date of this order.

DONE AND ORDERED in Flagler County, Florida this _____ day of November, 2022.

11/9/2022 4:02 PM 000626 CC

e-Signed 11/9/2022 4:02 PM 2022 CC 000626
THE HONORABLE ANDREA K. TOTTEN

cc:

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Respondent Willie Gardner