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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED

JUL 16 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Case No.: 2013-CP-07-00918

MARE BARACCOAppellant,

vs.

THE STATE OF SOUTH CAROLINA..... Respondent.

JOINT MOTION TO AMEND THE CAPTION SO AS TO DESIGNATE THE
PROPER PARTIES AND TO HOLD DEADLINES IN ABEYANCE UNTIL
THERE IS A RULING ON THIS MOTION

Pursuant to Rule 265(c), SCACR, the State of South Carolina, currently designated as Respondent in this matter, and Beaufort County, South Carolina hereby jointly move that this appeal be properly captioned with Beaufort County as Respondent, that Beaufort County be recognized as the proper party Respondent in lieu of the State of South Carolina, and that deadlines be held in abeyance until there is a ruling on this motion.

The State of South Carolina and Beaufort County jointly make this motion through their undersigned counsel. Beaufort County has previously entered a notice of appearance by Notice of Appearance on Behalf of Beaufort dated December 9, 2013.

For the reasons set forth, we believe the designation “The Sate vs. Mare Baracco” is inappropriate as this is not a criminal case and the State of South Carolina is not a proper party.

This case is an appeal to the magistrate's court of an administrative determination pursuant to Beaufort County Code of Ordinances 14-35, a copy of which is attached as Exhibit 1. A copy of the circuit court appealed is attached as Exhibit 2. The proper party respondent is Beaufort County as opposed to "the State." The issue before the court is the classification of an animal owned by the Appellant as a "dangerous animal" pursuant to Beaufort Code of Ordinances Section 14-35. The State of South Carolina has played no role in this matter and has no interest in this matter.

A separate supporting memorandum is not filed with this Motion because the grounds for the Motion are set forth in the Motion.

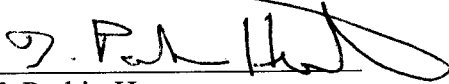
For the foregoing reasons, The State of South Carolina and Beaufort County jointly ask this Court to amend the caption to show Beaufort County as the proper Respondent, to remove the State of South Carolina from this matter, and hold deadlines in abeyance until there is a ruling on this motion.

Respectfully submitted,

Alan Wilson
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By: 
T. Parkin Hunter

July 16, 2014

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Attorney for Beaufort County

Bar No: 16927

By: *Mary Bass Lohr by T. Parkin Hunter*
with permission
Mary Bass Lohr

EXHIBIT 1

Beaufort County Animal Control Ordinance 14-35

- **Sec. 14-35. - Regulation of dangerous animals.**

(a)

Definition. "Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals; an animal which makes an unprovoked attack that causes bodily injury to a human being and the attack takes place other than the place where the animal is confined; or an animal that commits unprovoked attacks any place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being. A dog will be considered a dangerous animal if it is used as a weapon in the commission of a crime.

(b)

Confinement. Every dangerous animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner (S.C. Code 1976, § 47-3-720).

(1)

All dangerous animals shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides.

(2)

All pens or other structures designed, constructed or used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal.

(3)

All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.

(4)

No person shall permit a dangerous animal to go outside its kennel or pen unless such animal is securely leashed and muzzled with a leash no longer than six feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the animal and the leash are under the actual physical control of a person 18 years of age or older.

(5)

Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(c)

Declaring an animal dangerous.

(1)

An animal control officer, in his or her discretion, observes that a particular animal is a dangerous animal as defined in this article, may declare such animal a dangerous animal by delivering a written notice of declaration to the owner. The notice shall include a description of the animal and the basis for the declaration of dangerousness. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on the premises if no adult is present.

(2)

The person owning, keeping, sheltering or harboring the animal in question must comply with the requirements as designated in this section within 72 hours of the receipt of the animal control officer's declaration.

(3)

Any animal that is alleged to be dangerous and that is under impoundment or quarantine at the animal shelter shall not be released to the owner, until such time that the owner is capable of confining the animal to his/her property in accordance with this section.

(4)

All dangerous animals shall have an identification microchip implant placed under the animal's skin once the animal has been declared dangerous. The owner shall pay the actual fee charged by the shelter or the licensed veterinarian who performed the microchip identification procedure.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARE BARACCO

vs.

STATE OF SOUTH CAROLINA.

) IN THE COURT OF COMMON PLEAS
 2013 OCT 16 AM 11:16
)
) FOURTEENTH JUDICIAL CIRCUIT
)
)
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT: 2013-CP-07-00918

ORDER

This matter came before this Court for a hearing on October 4, 2013 upon the Appeal from the Beaufort County Magistrate Court filed by the Petitioners on April 10, 2013. The Appellant was represented by Kimberly Smith of Moss, Kuhn and Fleming, and the State was represented by Allison C. Coppage, Assistant Beaufort County Attorney.


The Appellant appealed the Order of the Magistrate Court dated March 13, 2013 finding the dog, "Bodi" owned by Mare Baracco to be a "Dangerous Animal" pursuant to the Beaufort County Code of Ordinance Sec 14 -35. The issues raised by the pleadings concern whether the Magistrate Court erred as a matter of law in determining that the Respondent met the burden of proof in affirming the administrative decision and whether there was a question of fact as to where the incident occurred.

In an Administrative Appeal, "the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative finding, inferences, conclusions, or decisions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C.Code Ann. §1-23-380(5).

Based upon the facts and testimony contained in the record, I hereby find that the decision to designate the Appellant's dog as a "dangerous animal" was supported by the evidence on the whole record and was neither arbitrary nor capricious

THEREFORE, the Appeal is denied.



The Honorable Marvin H. Dukes, III
Master in Equity and
Special Circuit Court Judge

This 4 day of October 2013
at Beaufort, South Carolina.

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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SC Court of Appeals

MARE BARACCOAppellant,

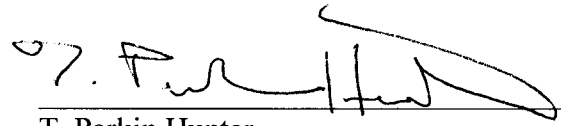
vs.

THE STATE OF SOUTH CAROLINA..... Respondent.

CERTIFICATE OF SERVICE

The undersigned certifies that the Joint Motion to Amend the Caption so as to Designate the Proper Parties and to Hold Deadlines in Abeyance until There is a Ruling on this Motion has been served on the counsel for the parties this 16th day of July, 2014, by having it placed in the United States mail addressed as follows:

Ms. Mare Baracco
1006 Madrid Avenue
Port Royal, South Carolina 29935

A handwritten signature in black ink, appearing to read "T. Parkin Hunter", written over a horizontal line.

T. Parkin Hunter
Assistant Attorney General
Office of the South Carolina Attorney General