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THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

RECEIVED
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SC Court of Appeals

MARVIN H. DUKES, III, MASTER-IN-EQUITY

CASE NO.: 2013-CP-07-000918
APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY

Respondent,

vs.

MARE BARACCO,

Appellant.

MOTION TO CORRECT THE CAPTION OF THE CASE

Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

Date: August 7, 2015

Mare Baracco, the Appellant herein, moves this Court for an Order to correct the caption of this case in regard to a letter referencing same dated July 31, 2015 from the Court. Appellant respectfully requests the timelines, to include the timeline for the Appellant's Reply to the Respondent's Initial Brief, be held in abeyance until a decision is reached on this Motion.

This matter before the Court came as a result of a "Notice" (Exhibit 1) issued by the Beaufort County Sheriff's Office (BCSO) on July 9, 2012 (acting as the "Agency") for an incident that occurred in the incorporated municipality of the Town of Port Royal July 4, 2012. The Appellant was issued a violation for an alleged "Animal at Large" by the Port Royal Police Department, pursuant to Port Royal's Code of Ordinances 3-53, and an "Official Notice" of Dangerous Animal from BCSO, pursuant to Beaufort County's Code of Ordinances 14-35.

The Appellant voiced her objection to the issuance of this "Notice" by BCSO Animal Control officer Deputy Brittany Chaplin (Exhibit 2 – highlighted paragraph) and informed Chaplin she was contacting BCSO to appeal the "Notice". The Court would take judicial notice of the testimony of Deputy Chaplin from the (disputed) March 12, 2013 hearing, acknowledging same (Exhibit 3, highlighted paragraph).

When they did not hear back from BCSO, the Appellant and her husband, Captain Tim Deckard, arrived unannounced at BCSO July 10, 2012, and met with a Lt. Spencer, Deputy Chaplin's supervisor. The Appellant and Captain Deckard inquired as to the procedure to appeal/contest the "Notice". Given the *extremely abbreviated* 72 hour time frame for compliance (by July 10 that time frame had dwindled to only 48 hours) the Appellant and her husband were insistent they be allowed to challenge the issuance of the "Notice" as they did not agree with it and further, the Appellant hadn't been found guilty of any wrongdoing in the incident; she had simply received a ticket from Port Royal for an *alleged* violation (which she

was acquitted of on November 8, 2012, by a jury trial in Port Royal Municipal Court.). Lt. Spencer instructed the Appellant and her husband to write a letter to Chief Magistrate Rod Sproatt of the Beaufort County Magistrate Court and Spencer would have Deputy Chaplin hand deliver this letter to the Magistrate. *This was the wrong procedure* and how this case came to be (incorrectly) established in the Magistrate Court as “**The State v. Mare Baracco**” (the Appellant would again ask the Court to take judicial notice that BCSO even used their own internal supplemental report number as the case number (Exhibit 1, top of page, highlighted) as the case # 20120709-508).

The Appellant should have been directed, in order to appeal/contest the “*Notice*” and have the jurisdiction of the agency confirmed, to the process to “*appeal the determination of an employee of an agency*”, under Title 1, Chapter 23 (et. seq.) for the “*Adjudication of contested cases and state agency rulemaking – Administrative Procedures*”. Further, this process should have been codified in the Beaufort County Code of Ordinances (which it was not). *Then* this case would have then been captioned “*Mare Baracco v. Beaufort County*” and the Appellant would have been heard before an administrative council or board. If the Appellant received an adverse ruling from said council or board, she would be able to appeal this adverse decision *directly to the South Carolina Court of Appeals*.

Instead, the “*State*” was designated the “*Plaintiff*” and the *Appellant* the “*Defendant*”. Further, this matter is incorrectly “identified” as an “administrative appeal” from a summary civil court proceeding, to the Master in Equity, to the South Carolina Court of Appeals. The Appellant contends it has always been “The State’s” (Beaufort County) actions that established the matter in this way. Therefore, when this Court determined, by Respondent’s earlier motion, to substitute “**Beaufort County**” in the caption as the Respondent, as opposed to “**The State**”,

then it should be "Beaufort County v. Mare Baracco", as the Appellant's role as the Defendant this matter never changed. In fact, when this case originally came before this court as "The State v. Mare Baracco", this Court classified it as a criminal matter, and further, all of the Appellant's pleadings/motions to date have been captioned "Beaufort County v. Mare Baracco", as she was/is the defendant of record.

For the above reasons, the Appellant respectfully requests this Court review the caption and the Appellant's arguments therein and rule in favor of the Appellant. Respectfully submitted, this the 7 day of August 2015.



Mare Baracco, Pro Se
1006 Madrid Avenue
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1 may or may not have occurred, by these individuals, of
 2 the dog in the community, I don't believe that they're
 3 relevant to this situation.
 4 MS. SMITH: Actually --
 5 THE COURT: So the -- the dangerous dog
 6 designation had already been issued?
 7 WITNESS: Um-hum.
 8 THE COURT: And then other witnesses as to
 9 what had already been done were interviewed?
 10 MS. SMITH: Correct.
 11 WITNESS: Um-hum.
 12 MS. SMITH: And I guess my question is why
 13 that was done. That would actually --
 14 THE COURT: Well, I agree with --
 15 MS. SMITH: -- be the gist.
 16 THE COURT: -- Mr. Gruber that that -- I'm
 17 not sure that's relevant, but I also would like to
 18 know why.
 19 MS. SMITH: And I'll rephrase the question,
 20 and maybe this'll work.
 21 THE COURT: Okay. That might help me.
 22 BY MS. SMITH:
 23 Q Why were those statements and interviews
 24 conducted, or conversations done, after the notice was
 25 issued?

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1 the result of his investigation in this report?
 2 MR. GRUBER: Your Honor, the question calls
 3 for speculation.
 4 MS. SMITH: Withdrawn. One final question.
 5 THE COURT: Ms. Smith withdrew the question.
 6 BY MS. SMITH:
 7 Q Had you had any complaints that you'd documented
 8 about these dogs prior to this incident?
 9 A No, ma'am.
 10 Q Okay. Were you familiar with them prior to this
 11 incident?
 12 A No, ma'am.
 13 Q Or my client?
 14 A Hum-um.
 15 MS. SMITH: I think that's all I have for
 16 you. Thank you.
 17 WITNESS: Thank you.
 18 MS. SMITH: Wait a second.
 19 THE COURT: Hold on.
 20 MS. SMITH: He may have some questions for
 21 you.
 22 THE COURT: Hold on, Corporal Chaplin.
 23 MR. GRUBER: Thank you, Your Honor.
 24 THE COURT: Mr. Gruber?
 25 MR. GRUBER: Just a couple of quick

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1 A That was upon request by my supervisor of other
 2 residents in the area that had issues with Bodi.
 3 Q Okay. And your supervisor being Mr. Hiers?
 4 A Yes.
 5 Q Okay. And do you know why he requested that?
 6 A Other issues with the dog.
 7 Q Was he contacted about those issues?
 8 A Nothing in relation to the dangerous animal
 9 notice, but --
 10 Q And one more thing, then I'm going to leave this.
 11 It was nothing in relation to the dangerous animal notice,
 12 but as part of this case, you went and got statements? Is
 13 that what -- I'm not -- I can't quite figure out what the
 14 reasoning was for that --
 15 A The --
 16 Q -- and why your supervisor --
 17 A With issues --
 18 Q -- didn't document it.
 19 A -- with Bodi, the aggression that he shows, other
 20 residents that had issues with him. That's the reasoning
 21 for the statements.
 22 Q And where did he get that information from, that
 23 there were -- there was a --
 24 A I'm not -- I don't -- I don't know.
 25 Q Okay. And he didn't feel the need to disclose

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1 questions, Your Honor.
 2 CROSS-EXAMINATION
 3 BY MR. GRUBER:
 4 Q Ms. Chaplin, you originally just testified now
 5 that the first time you met Zoey was at the veterinary
 6 hospital; is that correct?
 7 A Yes.
 8 Q Okay. And what did you observe the state of Zoey
 9 to be at that time?
 10 A She was just coming out of anesthesia from
 11 operation. She had several deep wounds that were stitched
 12 up on her stomach, her abdomen, on her hip area, I mean --
 13 Q Puncture wounds?
 14 A Yes, sir.
 15 Q Did they appear to be from a canine, to your
 16 knowledge?
 17 A Yes, sir.
 18 Q Okay. And to your knowledge, what canine caused
 19 those injuries?
 20 A Ms. Baracco's canine, Zoey.
 21 MS. GERMER: Bodi.
 22 WITNESS: Bodi. I'm sorry.
 23 BY MR. GRUBER:
 24 Q Bodi. And you testified just now that you
 25 actually spoke with Ms. Baracco, and she admitted to you

Exhibit 2

AGENCY I. D.
SCO 070000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

20120709-508

NCIC

INQ ENTD.

ORIGINAL REPORT
 MODIFIES ORIGINAL

SUPPLEMENTAL REPORT
 CASE STATUS CHANGE

ADDITIONAL VICTIMS
 ADDITIONAL OFFENDERS

ADDITIONAL STOLEN PROPERTY
 ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 3 PAGES.

Officer's Actions:

I was contacted by Sgt Bush on 7-5-12 in reference to an animal incident that a Port Royal Officer responded to. I made contact with Cpl Williams (PRPD) and met him at the Police Dept to obtain a copy of the incident report. A copy of the incident report and the current rabies vaccination will be attached to this incident report. After reviewing the incident report and speaking with Cpl Williams I responded to Port Royal Vet Clinic where the victim canine "Zoey" was being housed. I met with Dr. Marikay Campbell and observed the canine at the clinic. Dr. Marikay Campbell provided a disc of photos taken of the canine's injuries during surgery. The canine appeared to be in stable condition at this time. She advised that both the victim and the suspect canine are clients at her clinic. She stated she has not had any previous issues with either canine. The photographs of the victim canine will be submitted into evidence as soon as possible.

I contacted SSgt Hiers and advised him of the situation. He advised to make contact with the suspect canine and assess the behavior of the animal. I responded to the incident location and met with the animal owner.

Interview with Suspect (Mare Baracco):

Upon arrival at the incident location I observed two canines inside the residence. I was greeted by the suspects husband and invited inside the residence. Both canines at this location appeared friendly as they greeted me at the front door. Baracco stated that she was very upset over the incident and she and her husband take full responsibility. She stated they would pay the vet bill and that the incident was an accident. Baracco showed me videos of other dog interaction involving Bodi. Baracco stated that Bodi is also trained by Kevin Mackail at her residence as well as other facilities. She stated both of her dogs attend Beaufort Dog or Camp Green dog for doggy day care and have not had any issues at either location. She explained that she has never had any issues with other dogs involving her two dogs. She stated her dogs are leashed and walked three times a day. In my presence, Baracco and I walked outside and she demonstrated her method in walking her canines and riding their bicycle in the evening. Baracco stated that she lets her canine outside in the small front yard to use the bathroom occasionally. Concluding my interview, I did not feel that this was a dangerous animal and I advised Baracco that I was impressed with her canines behavior. I advised Baracco that I would continue the investigation and return to her residence next week.

Officer's Actions:

I contacted Germer and advised her on the status of the investigation. Germer contacted me on 7-6-12 and advised that her dog "Zoey" passed away yesterday evening. I advised Germer that I was sorry for her loss and that the investigation would continue on monday. I contacted SSgt Hiers and advised him of the situation.

On 7-9-12 Cpl Reeves and I responded to the incident location and met with the animal owners. I issued a Dangerous Animal Notice (See Attachment) to Baracco and explained the requirements that needed to be met within 72 hours. Baracco appeared extremely defensive and immediately contacted BCSO to appeal the notice. Cpl Reeves contacted SSgt Hiers and advised him of the situation.

On 7-10-12 I responded to the victim's residence and met with Sally Germer and her husband Buddy Brown. I informed them on the status of the investigation. Germer expressed her concern with the other neighbors in the area being "afraid" of Bodie. I provided statement forms and advised her to have her neighbors write a statement in reference to concerns they have regarding the dog.

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> ACTIVE	<input type="checkbox"/> ADM. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEAR UNDER 18
REASON FOR EXCEPTIONAL CLEARANCE. 1 <input type="checkbox"/> OFFENDER DEATH 2 <input type="checkbox"/> NO PROSECUTION 3 <input type="checkbox"/> EXTRADITION DENIED 4 <input type="checkbox"/> VICTIM DECLINES COOPERATION 5 <input type="checkbox"/> JUVENILE - NO CUSTODY				<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 ANDOVER	<input type="checkbox"/> EX-CLEAR 18 ANDOVER	
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER	
LCpl B. Chaplin	7-10-12	C3538					
Follow-up Investigation <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> OFFICER							

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1 that her dog did cause those injuries?
 2 A Yes, sir.
 3 Q And she went so far as to offer to pay for the
 4 veterinary bills as a result of that occurrence?
 5 A Yes, sir.
 6 Q Is that correct?
 7 A Um-hum.
 8 Q Okay. You also testified that you interviewed
 9 the dog in the home; is that correct?
 10 A Yes.
 11 Q And do you consider that a controlled
 12 environment?
 13 A Yes, sir.
 14 Q Okay. Why do you consider that a controlled
 15 environment?
 16 A The dog is in the owner's presence in an
 17 environment that he's used to in his home.
 18 Q Okay. And to your knowledge, did the alleged
 19 attack occur inside the home?
 20 A No, sir.
 21 Q Where did it occur?
 22 A According to the police report, it was out on the
 23 sidewalk in front of the home at 1006 Madrid Avenue.
 24 Q Okay. And I think you were asked a question
 25 about whether you'd viewed a video of Bodi interacting with

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1 was discussed?
 2 A I informed him of the interviews, of my
 3 observations with the two dogs, and the conditions of Zoey
 4 at the veterinarian.
 5 Q Okay. And did you discuss the county ordinance
 6 at all?
 7 A Yes.
 8 Q And did you review the terms of the county
 9 ordinance?
 10 A Yes.
 11 Q Okay. What items did you specifically look at?
 12 A The propensity and tendency to attack.
 13 Q Okay. And in your opinion, did Bodi meet the
 14 definition of a dangerous animal?
 15 A Yes.
 16 Q And why is that?
 17 A I feel that he has the propensity and tendency to
 18 do this again, so the issue -- the notice was issued based
 19 on that.
 20 Q And what leads you to believe that he has the
 21 propensity and tendency to attack, injure, and/or kill a
 22 domestic animal?
 23 A Based on this attack.
 24 Q So the fact that it occurred is what gives you
 25 knowledge?

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1 other dogs; is that correct?
 2 A Yes.
 3 Q Okay. And to your knowledge, did Bodi -- is it
 4 possible that Bodi had previously interacted with those
 5 animals before?
 6 A Yes.
 7 Q And been socialized to interact with those
 8 animals?
 9 A Yes.
 10 Q All right. And if a dog is socialized to
 11 interact with those animals, it would tend to reason that
 12 it would not attack those animals that it's been socialized
 13 with; correct?
 14 A Yes.
 15 Q But it did attack Zoey?
 16 A Yes.
 17 Q And to your knowledge, what ultimately happened
 18 to Zoey as a result of those injuries?
 19 A She passed away.
 20 Q Let's talk now about how you came to write the
 21 citation. You stated that you interviewed Ms. Baracco.
 22 You met with the dog. You then went back and spoke with
 23 your supervisor.
 24 A Um-hum.
 25 Q And what -- speaking with your supervisor, what

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1 A Yes.
 2 Q If it gives you knowledge, would it stand to
 3 reason that it gives the dog's owner knowledge --
 4 A Yes.
 5 Q -- that this kind of event can occur?
 6 A Yes, sir.
 7 Q Okay. And because the owner now has that
 8 knowledge, it would then stand to reason that they should
 9 be placed on notice that their animal was dangerous to
 10 prevent further attacks from occurring?
 11 A Yes, sir.
 12 Q There was a question of gathering information.
 13 Do you normally solicit testimony as part of your
 14 investigation?
 15 A Yes.
 16 Q And that includes getting witness statements,
 17 including, you know, leaving the witness testimony sheet,
 18 as you stated?
 19 A (Witness nods head; no verbal response.)
 20 Q And is it possible that you were soliciting
 21 information after the citation was written to prepare for
 22 defense of an appeal --
 23 A Yes.
 24 Q -- that you knew would be forthcoming?
 25 A Yes.

Exhibit 1

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"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.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time: July 9, 2012 / 2:30 PM
 Species: Canine Breed: Rhodesian Ridge Back mix
 Name: Bodi Age: 3yrs Gender: M
 Description: Red w/ white chest
 Owner / Address / Location of Animal: Mare Baracco
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures 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 floor (such as concrete) 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. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Staying under dress, app

Receipt left with: [Signature] Date 7/9/12

Deputy: Lcpr B. Chaplin Date 7-9-12

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD) and 20120709-508 (BCSO) involving an animal attack which the victim's K9 died.

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SOUTH CAROLINA COURT OF APPEALS

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BEAUFORT COUNTY,

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PROOF OF SERVICE

I certify I have served the Motion to Correct the Caption of the Case on the Respondents by depositing copies in the United States Mail, postage prepaid, August 7, 2015, addressed as follows:

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