

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Steve Hardwick and
Sharon Nalley,
Defendants Below, Petitioners**

vs) **No. 11-1048** (Wayne County 09-CM-004, 005 & 006)

**Town of Ceredo,
Plaintiffs Below, Respondent**

FILED
January 14, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioners Steve Hardwick and Sharon Nalley, by counsel Cathy L. Greiner, appeal the June 7, 2011 order of the Circuit Court of Wayne County denying their appeal from convictions in municipal court. Respondent Town of Ceredo, by counsel Lora L. Lake, has filed a response.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

On November 12, 2009, petitioners were convicted in the Municipal Court of Ceredo for violations of § 505.16 of the Codified Ordinances of the Town of Ceredo, which prohibits ownership of pit bull terriers within the Town of Ceredo. Each petitioner was fined \$162, plus costs. Thereafter, petitioners appealed their convictions to the Circuit Court of Wayne County. Pursuant to an order entered on June 7, 2011, the circuit court upheld petitioners' convictions.

On appeal, petitioners allege that the circuit court erred in denying their appeal because the ordinance in question is unconstitutional in that it is arbitrary and unreasonable. According to petitioners, the ordinance assumes a dog to be vicious based merely upon its breed without any further evidence of viciousness. In response, the Town of Ceredo argues that West Virginia Code § 8-12-1, et seq., grants municipalities general police powers to protect their communities. Respondent asserts that it has a legitimate interest in protecting its residents against the dangers of pit bulls and that the ordinance in question is constitutional because it is rationally related to that legitimate interest.

“This Court reviews the circuit court’s final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*.” Syllabus Point 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996).” Syl. Pt. 1, *State v. Smith*, 225 W.Va. 706, 696 S.E.2d 8 (2010). After careful consideration of the parties’ arguments, this Court concludes that the circuit

court did not abuse its discretion in denying petitioners' appeal. Having reviewed the circuit court's "Order" entered on June 7, 2011, we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions as to the assignment of error raised in this appeal. The Clerk is directed to attach a copy of the circuit court's order to this memorandum decision.

For the foregoing reasons, we find no error in the decision of the circuit court and its June 7, 2011 order denying petitioners' appeal is affirmed.

Affirmed.

ISSUED: January 14, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISQUALIFIED:

Justice Menis E. Ketchum

11-1048

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

TOWN OF CEREDO,

PLAINTIFF,

Civil Action No. 09-CM-004
09-CM-005
09-CM-006

v.

STEVE HARDWICK,
GLENNA PELFREY and
SHARON NALLEY

JUDGE DARRELL PRATT

DEFENDANTS.

ENTERED

JUN 07 2011

CIVIL ORDER
BOOK 118 PAGE 137

ORDER

This matter came on for hearing on the 2nd day of December, 2010, upon the Defendants' appeal of each of their convictions in the Municipal Court of Ceredo for violation of §505.16 of the Codified Ordinances of the Town of Ceredo. Present at said hearing was the Town of Ceredo, by the prosecuting attorney Lora L. Lake, the Defendant Steve Hardwick, present in person and by his legal counsel, Attorney Cathy L. Greiner, and Defendant Sharon Nalley, present in person and by her legal counsel, Attorney Cathy L. Greiner. Defendant Glenna Pelfrey failed to appear.

The Court having called for Defendant Glenna Pelfrey three times and the Defendant having failed to appear, and defense counsel having advised the Court that she has had no communication with Defendant Pelfrey the Court hereby finds that Defendant Pelfrey's appeal is dismissed for failure to prosecute and the municipal court conviction is affirmed and the appeal bond thereby forfeited to the Town of Ceredo.

BOOK 118
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Whereupon, counsel advised the Court that the parties agreed to proceed by proffer of legal argument regarding the constitutionality of the ordinance and that the Defendants acknowledge their ownership of the pit bull dogs within the corporate boundaries of the Town of Ceredo.

Thereupon, the Court having then proceeded to hear the legal arguments proffered by counsel hereby makes the following findings of fact and conclusions of law:

1. That each Defendant's dogs are of the breed that is typically referred to generically as pit bull dogs which are aggressive by nature, have been known as attack animals with strong massive heads and jaws, and have been found to represent a public health hazard. The majority of jurisdictions have accepted the proposition that dogs of this type have a propensity to be aggressive and attack without provocation and it is well established that such dogs have gotten a lot of notoriety of being dangerous to public health and safety.
2. That in the State of West Virginia, a municipality has the authority to pass an ordinance to promote the safety of its citizens and to prevent risk of harm to its citizens which is a legitimate exercise of their police powers as granted by the West Virginia Legislature in Chapter 8 Article 12 of the West Virginia Code.
3. The ownership, maintenance and control of dogs or other animals within city limits is a local concern which does not exceed the limitations of the home rule doctrine.
4. That §505.16 of the Codified Ordinances of the Town of Ceredo is legitimate, specific, rationally related to that legitimate interest and exercises the constitutional

powers of the municipality to impose safety regulations to insure the health, protection and welfare of the citizens.

5. That the ordinance is not unconstitutionally vague nor does it violate the due process of the Defendants because the owners may be limited by and subject to the City's legitimate exercise of police powers by living inside the city limits.
6. That the conviction of each Defendant was based upon the evidence that these were pit bull dogs, they were within the city limits, and they were owned, harbored or maintained by each of the defendants within the jurisdiction and based upon the same the Court finds that there was no violation of due process.

It is therefore **ORDERED, DECREED and AJUDGED** as follows:

1. That Defendant Glenna Pelfrey's appeal is hereby dismissed for her failure to prosecute the same, her conviction in the Municipal Court of Ceredo is affirmed and the appeal bond posted herein is to be surrendered to the Town of Ceredo.
2. The conviction of Defendant Steve Hardwick is hereby affirmed with any fines, costs or conditions of the court below to be so ordered.
3. The conviction of Defendant Sharon Nalley is hereby affirmed with any fines, costs or conditions of the court below to be so ordered.
4. That the Circuit Clerk forward a certified copy of this order to all Defendants and

counsel of record.

5. *Defendants shall pay costs assessed by the Clerk of this Court.*

DATE: June 7, 2011



ORDER

ENTER: *Darrell Pratt*

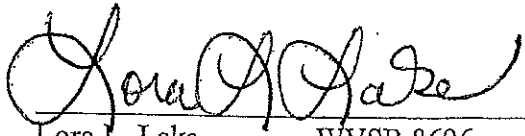
DARRELL PRATT
CIRCUIT JUDGE

A COPY TESTE

Milton J. Ferguson II Clerk
By *J. Scott* Deputy

BOOK 118
PAGE 739

Respectfully submitted for entry by:



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Approved for entry by:

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